

# **REQUEST FOR PROPOSAL**

**SELECTION OF  
AGENCY**

**FOR**

**Operations & Maintenance of  
Hotel Kalinga Ashok,  
Bhubaneswar  
an ITDC Property**

Bid due date: 22-04-2019  
upto 1600 hrs

**INDIA TOURISM DEVELOPMENT CORPORATION  
LIMITED**

**OPERATION AND MAINTENANCE OF HOTEL KALINGA ASHOK,  
BHUBANESWAR IN THE STATE OF ODISHA  
Notice No. ITDC/HKA/O & M/2019**

**REQUEST FOR PROPOSAL DOCUMENT**

Online Bids in the prescribed format are invited for the project.

1	Name of the Project/Hotel	OPERATION AND MAINTENANCE OF HOTEL KALINGA ASHOK, BHUBANESWAR IN THE STATE OF ODISHA
2	Last date & time for submission of e-bid (Bid Due Date)	<b>Date – 22-04-2019</b> <b>Time – upto 1600 hrs</b>
3	Time and Place of Pre Bid Conference	<b>Date – 08-04-2019</b> <b>Time – From 1100 hrs to 1300 hrs</b> <b>Place – SCOPE Complex, New Delhi</b>
4	Date & time for opening of Technical e-bids	<b>Date – 23-04-2019</b> <b>Time – 1600 hrs</b> <b>E-bid opening- Electronically</b>
5	Date & time for opening of Financial e-bids	To be intimated on e-portal
6	RFP processing fee	Non-refundable INR 10,000/- (Rupees Ten Thousand only)
7	Bid security amount	INR 5,00,000/- (Rupees Five Lakhs only)

It is expressly understood that the party has subscribed to this document with an express understanding that they will use this document only for the sole purpose of participating in the Selection process for the Operation and Maintenance of Part Hotel Kalinga Ashok, Bhubaneswar in the State of Odisha and must not be used for any other purpose. This document must not be passed to a third party except professional advisers assisting with this Bid submission. The document may not be reproduced or communicated, in whole or in part, and its contents may not be distributed in written or oral form without written permission from the issuing authority.

*Request for Proposal for selection of agency for Operations and Maintenance of proposed ITDC Property at Hotel Kalinga Ashok, Bhubaneswar.*

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## **INSTRUCTIONS FOR SUBMITTING E-TENDERS ON CENTRAL PUBLIC PROCUREMENT (C.P.P) PORTAL**

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates (DSC). The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal. More information useful for submitting online bids on the CPP Portal may be obtained at: <https://etenders.gov.in/eprocure/app>.

### **REGISTRATION:**

1. Bidders are required to enrol on the e-Procurement module of the Central Public Procurement Portal (URL:-<https://etenders.gov.in/eprocure/app>) by clicking on the link "Online bidder Enrolment" on the CPP Portal which is free of charge.
2. As part of the enrolment process, the bidders will be required to choose a unique username and assign a password for their accounts.
3. Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
4. Upon enrolment, the bidders will be required to register their valid Digital Signature Certificate (Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify / nCode / eMudhra, etc.) with their profile.
5. Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC's to anyone which may lead to misuse.
6. Bidder can then log in to the site through the secured log-in by entering their user ID / password and the password of the DSC / e-Token.

### **SEARCHING FOR TENDER DOCUMENTS:**

1. There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keywords etc. to search for a tender published on the CPP Portal.

2. Once the bidders have selected the tenders they are interested in, they may download the required documents / tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the bidders through SMS / e-mail in case there is any corrigendum issued to the tender document.
3. The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification / help from the Helpdesk.
4. The minimum system requirement for e-tendering as given below:

**COMPUTER / LAPTOP - MINIMUM SYSTEM REQUIREMENT, etc**

- A Class III Digital Signature Certificate (DSC) with encryption
- A Computer / Laptop with at least 1 GB RAM
- Must have Internet Explorer 7.0 or Mozilla Firefox 3.0 or above
- Must have internet connectivity with at least 2 MBPS speed
- Must have Java Run Time Engine (JRE-1.7.0) or higher

**Note:** Please ensure the validity of the DSC used for the bid submission till the last date/extended last date & time for bid submission.

**PREPARATION OF BIDS**

1. Bidder should take into account any corrigendum released in relation to the tender document before submitting their bids and regularly monitor the website for any further corrigendum.
2. Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. Please note the number of covers in which the bid documents have to be submitted, the number of documents - including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.
3. Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/XLS/RAR/DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.
4. To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor/ chartered accountant certificates etc.) has been provided to the bidders. Bidders can use "My Space" or "Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" area

while submitting a bid and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

**Note:**

- Any document(s) placed in "My Space" or "Other Important Documents" is/are **NOT** automatically uploaded as part of the Technical Bid.
- "My Space" or "Other Important Documents" area is only a repository given to the Bidders to ease the uploading process.
- If used, please ensure that all these documents are/have been uploaded as part of the Technical Bid.

**SUBMISSION OF BIDS**

1. Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.
2. The bidder has to upload the required bid documents digitally signed one by one as indicated in the tender document.
3. Bidder should deposit the bid security and RFP processing fees as per the instructions specified in the RFP document. The details of the U.T.R Number/money transfer in respect of RFP processing fees and bid security deposit in scanned copy must be uploaded along with the technical bid.
4. The financial Bid form as given in Appendix- C1 is required to be filled up and uploaded in a portable document format as financial bid along with the financial model (Business Plan). Please note that if the financial bid form is uploaded alongwith the technical bid, the bid is liable to be rejected outrightly.
5. The server time (which is displayed on the bidders' dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission.
6. All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128-bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system

generated symmetric key. Further, this key is subjected to asymmetric encryption using buyers/bid opener's public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers. The uploaded tender documents become readable only after the tender opening by the authorized bid openers.

7. Upon the successful and timely submission of bids (i.e. after Clicking "Freeze Bid Submission" in the portal), the e-portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.
8. The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

### **ASSISTANCE TO BIDDERS**

1. Any queries relating to the tender document and the Scope of work, terms and conditions contained therein should be addressed to the Tender Inviting Authority for the tender or contact person – Company Secretary, Room No- 616, India Tourism Development Corporation Ltd, Core-8, Scope Complex (6<sup>th</sup> Floor), 7 Lodi Road, New Delhi-110003. Telephone Number: 011-24360303 Extension: 616.
2. For further guidance please refer to the 'Bidders Manual Kit' on NIC e-tendering portal <https://etenders.gov.in/eprocure/app>. Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may also be directed to the 24x7 CPP Portal Helpdesk. Telephone Number's: 0120-4200462, 0120-4001002, 0120-4001005, 0120-6277787. International Bidders are requested to prefix + 91 as country code.

### **Note:**

Bidders are requested to kindly mention the URL of the Portal and Tender Id in the subject while emailing any issue along with the Contact details. For any issues/clarifications relating to the tender(s) published kindly contact the respective Tender Inviting Authority or 24 x 7 CPP Portal helpdesk telephone Number's: 0120-4200462, 0120-4001002, 0120-4001005, 0120-6277787, E-Mail: support-eproc[at]nic[dot]in

## **1. 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 ITDC 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 ITDC 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 ITDC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for ITDC, 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.

ITDC 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. ITDC 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. ITDC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

ITDC, 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.

ITDC 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.

ITDC 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 ITDC is bound to select a Bidder or to appoint the Selected Bidder or O&M Operator, as the case may be, for the Project and ITDC 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 ITDC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and ITDC 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 ITDC and the Bidder.

ITDC 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 ITDC 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.

## **2. Introduction**

### *Background*

The President of India acting through the Ministry of Tourism, Government of India, and represented by the Secretary to the Government of India is engaged in the development of tourism in the country.

India Tourism Development Corporation ("**ITDC**"), owned by Government of India, under Ministry of Tourism, was incorporated on March 31, 1965 with the objective of developing and expanding tourism infrastructure in the country and thereby promoting India as a tourist destination. ITDC is running hotels, restaurants at various places for tourists, besides providing transport facilities.

ITDC has currently a network of 5 (Five) Ashok Group of Hotels. Hotel Kalinga Ashok, Bhubaneswar ("**Hotel**") a unit of ITDC is the Government of India Undertaking Hotel.

ITDC has decided to hire a reputed hotel operator for operating and maintaining the Hotel in the State of Odisha ("**Project**").

Hotel Kalinga Ashok is located on two land parcels. One land parcel is on lease hold basis with Government of Odisha measuring 3.121 acres and the other land parcel is free hold measuring 1.89 acres. Presently the Hotel is in operation at lease hold parcel and certain areas/ services are on free hold land parcel. The number of keys and other services are indicated in the RFP. Certain services like HT/LT system, Kitchen and ETP etc. are on another free hold land parcel. A site plan indicating the two land parcels is annexed in the RFP.

ITDC intends to do partnership with a reputed hotel chain operator to operate the property for the period of 30 (thirty) years ("**Term**"). ITDC proposes to contract reputed hotel operators to manage the property on "**as-is-where-is**" basis presently operative at Lease hold land.

In pursuance of the above, the ITDC has decided to carry out the process for selection of a hotel operator for operating and maintaining the Hotel for the Term of 30 (thirty) years through a competitive bidding/ open tender process.

## **3. Scope of work for the bidder**

ITDC intends to engage agency for hotel Operations and Maintenance services for Part Hotel Kalinga Ashok, Bhubaneswar for management of all related operations ("**O & M**"). The O&M service provider shall market the hotel property and provide all related services to the guests as per the standards of 3 stars or above. It will include all front office management, room services, housekeeping, repair & maintenance services, food and

beverage services, banquet and related services. It may also include transport and logistics required, travel desks, any health club/spa services if required. The Operator will be entitled to fix the prices/tariff of these services and change the rates thereof whenever it deems fit.

The scope of work of the Project shall broadly include management, operation and maintenance of the Hotel as per norms and guidelines provided by Ministry of Tourism, Government of India and applicable laws and acts.

Brief description of the Part Hotel is as follows:

S. No.	Particulars	Details
a)	No. of Rooms	36 including 4 suites
b)	Restaurant Phulbani	Continental, Chinese and Indian cuisine
c)	Convention & Banquet Facilities	Utsav – Seats 150 Theatre style, Konark – Seats 350 Theatre style, Lawns with a total spread of 40,000+ square feet in 3 different locations for receptions and parties
d)	Hotel Amenities	Wi-Fi Internet connectivity, Doctor on Call, Laundry, Money changer & Parking facilities

O & M Agreement (defined below) will be applicable to all components in the building structure of new wing under operation. This however will not include HT/LT, ETP, Kitchen etc. which fall in free hold land.

The prospective Bidder must be a Company incorporated under the Companies Act, 1956/2013. However, in case of a consortium, the selected bidder shall form an SPV which shall be a company incorporated as per Companies Act of 1956/2013. The SPV shall be incorporated before execution of the operation and maintenance agreement (the “**O&M Operator**” or “**Operator**”) which shall be responsible for financing, operation and maintenance of the Hotel for the Term of 30 (thirty) years or until the termination of the lease agreement between ITDC and the State Government of Odisha whichever is earlier, in accordance with the operation and maintenance agreement (the “**O&M Agreement**”), to be entered into between the Selected Bidder and ITDC in the form provided by ITDC as part of the Bidding Documents pursuant hereto. The O & M Operator shall be engaged as a service provider and the Hotel shall be given on a license basis to the O&M Operator on as-is-where-is basis. **It is hereby clarified that O&M Operator has to use the brand name “Ashok” under which the Hotel is operated by ITDC or the O&M Operator can operate the**

**Hotel during the "Term" under its own brand name in conjugation with the name of "Ashok".**

Submission of e-bid by a Bidder will be an acknowledgement by the Bidder that it is relying upon its own investigation and has satisfied itself of the title, ownership, physical condition of the Hotel and the assets lying therein and ITDC has made no representation and/ or warranty, express or implied, as regards the Hotel, including without limitation quality, condition, merchantability and suitability thereof. It is further provided that the Bidder shall satisfy itself of any additional services that may be required for running and operating the Hotel and shall arrange or procure the same at its own cost and consequences and ITDC shall not be responsible for providing any additional infrastructure, civil construction or any other services to the Operator. Without prejudice to the generality of the above, the areas/ services presently provided to the Hotel like HT/LT Power, Kitchen, ETP etc., which are located in the other parcel of land shall need to be relocated in the Hotel Operation premises within a period of 6 (six) months from the date of execution of the O&M Agreement and the Operator shall have to make its own arrangement for relocation of said services to operate and maintain the Hotel.

It is agreed that the Operator shall include the investment required and cost outlay of relocating of the above or any Services in its business plan to be provided for the purposes. It is also agreed that in case the Operator requires any statutory approvals, it shall procure it in the name of ITDC and ITDC shall facilitate the Operator in this regard. Further all the operational licenses to be obtained from respective Government Departments, shall be obtained by the Successful Bidder/ SPV at its own cost, in its own name, for the entire Term of 30 (thirty) years or until the termination of the lease agreement between the ITDC and the State Government of Odisha, whichever is earlier. Obtaining such approvals in the name of Successful Bidder/ SPV would be the sole responsibility of the Successful Bidder/SPV and ITDC will not provide any guarantee or security to the concerned authority or any comfort letter of any sort.

The hotel shall have all modern facilities, conforming to the guidelines and minimum standards laid down by the Ministry of Tourism duly incorporating the best industry practices and standards for 3 star and above category. These terms and conditions will be specified in the O & M Agreement between ITDC and the Successful Bidder.

The O & M Agreement shall set forth the detailed terms and conditions for the grant of the license to the Successful Bidder, including the scope of the Successful Bidder's services and obligations to be undertaken by it. At the end of the Term, the hotel facilities both movable & immovable provided by ITDC and developed /maintained by the Successful Bidder shall be

transferred back to ITDC, free of cost and free of all encumbrances and liabilities.

The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders regarding the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Successful Bidder set forth in the O & M Agreement or ITDC's right to amend, alter, change, supplement or clarify the scope of work, the Service be awarded pursuant to this RFP or the terms thereof Contained herein. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this purpose / object / intent, and no claim so on that account shall be entertained by ITDC.

#### **4. O & M Operator's responsibilities**

The Operator shall start the operations of the Hotel immediately after the commercial operations date or COD (as defined in the O&M Agreement). In case the Operator is unable to start the Hotel operations, ITDC may at its discretion extend the period without prejudice to its rights to receive payments as per agreed terms and conditions.

The Operator shall at its own cost and expense:

- 4.1. Run the ITDC property as a three star or higher rating hotel facility. **The Brand name "Ashok" of the Hotel which is ITDC Brand name is to be used or the operator may include their own brand in the name of Hotel in conjugation with name of "Ashok", for which ITDC will not be liable for any royalty or payment whatsoever.**
- 4.2. Be entitled to set the tariff terms for all facilities and services it provides at the property and also entitled to change such rate whenever it deems fit. However, at the end of each quarter, the operator will provide a detailed breakup of the revenue to ITDC. The O&M Operator shall, in consideration of its investment and services, be entitled to collect charges as per the provision of O&M Agreement.
- 4.3. Investigate study, operate and maintain the Project Assets in accordance with the provisions of the Agreement, Good Industry Practice and Applicable Laws.
- 4.4. Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Term.

- 4.5. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project.
- 4.6. Provide to the ITDC Officials reports on a regular basis during the operation period in accordance with the provisions of the O&M Agreement;
- 4.7. Appoint, supervise, monitor and control the activities of staff or any other service provider under their respective agreements as may be necessary.
- 4.8. Develop, implement and administer a surveillance and safety program for the Project and the users thereof and the personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide as safe environment in accordance with Applicable Laws and Good Industry Practice;
- 4.9. Take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims;
- 4.10. Not place or create nor permit any contractor or vendor or service provider or any other person claiming through or under the Operator to create or place any Encumbrance over whole or any part of the Project Assets, or on any rights of the Operator therein, save and except as expressly set forth in the O&M Agreement (O&M);
- 4.11. Be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards;
- 4.12. Ensure that the Project remains free from all encroachments / liabilities and take all steps necessary to remove encroachments, if any;
- 4.13. Operate and maintain the Project at all times during the Term in conformity with the Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- 4.14. Remove promptly according to Good Industry Practice, from the Project, all surplus construction machinery and materials, waste materials (including, but not limited to hazardous materials and waste water), rubbish and other debris (including but not limited to

accident debris) and keep the Project in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

- 4.15. Provide to ITDC at the end of each quarter as agreed in the Agreement, audited profit and loss statement within 15 (fifteen) days of the end of the quarter.
- 4.16. Provide access to the appointed auditors/ officers of ITDC whenever ITDC chooses to conduct such audit or assessment.

## **5. Brief description of e-bidding Process**

5.1 ITDC has adopted an online two stage bidding process for selection of the Bidder for awarding the Project collectively referred to as the "**Bidding Process**" for selection of the Bidder for award of the Project. The e-tendering process is online at Central Public Procurement e-Portal (URL:-<https://etenders.gov.in/eprocure/app>) by clicking on the link "Online bidder Enrolment" on the C.P.P. Portal which is free of charge. Aspiring bidders may go through the details given in 'Instructions for submitting e-tenders on Central Public procurement (CPP) Portal.'

- a. 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 and (b) Financial Bid.
- b. The Bidder shall pay to ITDC a sum of Rs. 10,000/- (Rupees Ten Thousand Only) as the cost of the RFP document. The cost may be paid in the form of a Demand Draft issued by one of the Scheduled Commercial Banks in India in favour of 'India Tourism Development Corporation Limited' payable at New Delhi or transferred electronically through NEFT/RTGS as per details given in Clause 8.4.1 of this RFP Document. If the Bidder pays the cost of the RFP through a Demand Draft, it should remain valid for 90 (ninety) days after the Bid Due Date and 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 8.3.4

The e-bid shall be summarily rejected if it is not accompanied with the details of payment of the Bid cost.

- c. The pre-qualification stage (the "**PQ Stage**") of the Bidding Process involves pre-qualification (the "**PQ**") of prospective bidder(s) in accordance with the provisions of this RFP which

expression shall, unless repugnant to the context, include the members of the Bidder bidding. At the end of this stage, ITDC shall shortlist pre-qualified Bidders fulfilling the qualification criteria.

- d. The Bidders shortlisted after the pre-qualification stage shall be eligible for opening and evaluation of their Price Bids at the Price Bid stage of the Bidding Process (the "**Price Bid Stage**") comprising the opening and evaluation of price Bid (the "**Price Bid**").
- e. The Bidding Documents inter alia include the draft O&M Agreement for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- f. A Bidder is required to deposit, a bid security of Rs. 5,00,000/- (Rupees Five Lakh Only) (the "**Bid Security**"), 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. The Bidders will have to provide Bid Security in the form of a Demand Draft issued from Scheduled Commercial Bank to ITDC or transfer the amount electronically through NEFT/RTGS in favour of India Tourism Development Corporation Limited as per details given in Clause 8.4.1 of this RFP Document. If the bidder provides the Bid Security through the demand draft, it shall be encashed by ITDC and receipt shall be provided by ITDC. In case the same has to be refunded, an amount equal to the Bid Security shall be refunded without any interest. The e-bid shall be summarily rejected, if it is not accompanied with the documents evidencing payment of RFP Processing Fee and Bid Security. The original demand draft should be submitted as per clause 8.3.4. The e-bid shall be summarily rejected if it is not accompanied with the details of payment of the RFP Processing Fees and Bid Security.

Bidders registered as 'Micro' and 'Small' Enterprises are exempted from making payment of RFP Processing Fee and Bid Security. In this regard it is clarified that a Consortium shall be



eligible for this exemption in case the Lead Member of such Consortium is registered as a 'Micro' or 'small' enterprise. In order to claim exemption, the Bidder is required to upload the copy of the valid registration certificate for 'Micro' or 'Small' enterprises issued by the authorities as per Ministry of Micro, Small and Medium Enterprises. The registration certificate should clearly mention the item /service details against which the bidder is registered as 'Micro' or 'small' enterprise. The bidder is required to be registered for the relevant item/ services for which they intend to bid in order to claim exemption.

- g. During the bidding stage, Bidders are entitled to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Bid for implementation of the Project.
- h. Details of the process to be followed at the bidding stage and the terms thereof are spelt out in this RFP.
- i. The Bidder may submit their queries, if any, before the last date of receiving queries as specified in this RFP. ITDC 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. However, queries received after prescribed date shall not be entertained.

**5.2. Schedule of Bidding Process**

<b>S. No.</b>	<b>Event Description</b>	<b>Date</b>
1	Availability of Bid Documents at online portal	27-03-2019
2	Last date for receiving queries	06-04-2019 upto 1600 hrs
3	Pre-Bid Conference	08-04-2019 from 1100 hrs to 1300 hrs
4	Authority response to queries latest by	Not later than 10 (ten) days of Bid Due Date
5	Last date for downloading the Bid documents from the website	21-04-2019

<b>S. No.</b>	<b>Event Description</b>	<b>Date</b>
6	Last date for Submission of e-bids	22-04-2019 upto 1600 hrs
7	Opening date and time of technical e-bids	23-04-2019 at 1600 hrs
8	Announcement of short-listed Bidders for Price Bid Stage	To be intimated electronically at e-portal
9	Opening date and time of Financial Bid	To be intimated electronically at e-portal
10	Issue of Letter of Award	To be intimated later
11	Validity of Bids	180 (one hundred eighty) days from Bid Due Date.
12	Signing of O&M Agreement	within 60 days of issue of LOA.

### 5.3. **Pre-Bid Conference**

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: 08-04-2019

Time:-1100 Hrs to 1300 Hrs

Venue:- ITDC Office, Conference Room, 6<sup>th</sup> Floor

SCOPE Complex, Lodhi Road, New Delhi

110003

## **6. Instructions to Bidders**

### **6.1. Scope of the Bid**

- 6.1.1. ITDC wishes to receive Bids in order to select experienced and capable Bidders for the Project. The Price Bids of Bidders fulfilling the Pre-qualification criteria shall be subsequently evaluated.

### **6.2. General terms of Bidding**

- 6.2.1. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids and satisfy itself of the title, ownership, physical condition of the Hotel and the assets lying therein and ITDC has made no representation and/ or warranty, express or implied, as regards the Hotel, including but without limitation to the quality, condition, merchantability and suitability thereof.
- 6.2.2. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the O&M 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 O&M Agreement.
- 6.2.3. 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.
- 6.2.4. The documents including this RFP and all attached documents, provided by ITDC are and shall remain or become the properties of ITDC 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. The provisions of this Clause shall also apply *mutatis mutandis* to Bids and all other documents uploaded by the Bidders. ITDC will not return to the Bidders any Bid, document or any information provided along therewith.
- 6.2.5. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of ITDC in relation to the Project 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 Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the O&M Agreement. In the event any such adviser is engaged by the Selected Bidder or O&M Operator, as the case may be, after issue of the LOA or execution of the O&M Agreement for matters related

or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the O&M Agreement and without prejudice to any other right or remedy of ITDC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which ITDC may have thereunder or otherwise, the LOA or the O&M Agreement, as the case may be, shall be liable to be terminated without ITDC being liable in any manner whatsoever to the Selected Bidder or O&M Operator for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser 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 adviser is engaged after a period of 3 (three) years from commencement of the Project.

6.2.6. This RFP is not transferable.

6.2.7. Award of contract pursuant to this RFP shall be subject to the terms of Bidding Documents.

## **7. Eligibility Criteria**

### **Eligibility of Bidders**

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

#### **7.1. Proposal Submitted by a Consortium**

7.1.1. 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 hereinbelow), this number may be increased to a maximum of 5 (Five) members.

7.1.2. The financial eligibility criteria set out in Clause 7.2 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 7.2.1 below;

and the technical eligibility criteria set out in Clause 7.3.1 below must be satisfied by any one member of the Consortium.

- 7.1.3. 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.
- 7.1.4. No change in the constitution of consortium will be allowed except in accordance with the provisions of this RFP and the O&M 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**").
- 7.1.5. The Consortium shall, inter alia form a Special Purpose Vehicle (SPV) registered under the Companies Act 2013 in India for the implementation of the Project. 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 ITDC and prior to the execution of the O&M Agreement. The SPV would enter into an O&M Agreement and subsequently carry out all the responsibilities of the Operator and undertake the Project as stipulated in the O & M 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 O&M Agreement.
- 7.1.6. 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 10 (ten) 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 subject to the following conditions:

- (i) At least one member of the Consortium holds not less than 51% (Fifty-one percent) of the paid-up share capital of the SPV and such member undertakes to assume all the duties and obligations of the Lead Member under this RFP and the O&M Agreement; and
    - (ii) the total number of members of the Consortium shall not exceed 5 (Five).
  - 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 5 (five) years commencing from the COD.
  - c) After the expiry of the period of 5 (five) years from the COD ("**Operator Lock-in Period**"), the Lead Member may, subject to the approval from ITDC, replace the member having the technical capability ("**Substitution Right**") in terms of the provisions contained in the O&M Agreement. However, the aforesaid Substitution Right shall not be exercised by the Lead Member more than 3(Three) times during the entire term of the O&M Agreement.
  - d) 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 ITDC.
  - e) Notwithstanding anything to the contrary contained in this RFP, the exit related provisions contained in this Clause 7.1.6 will only be applicable in case of a Consortium.
- 7.1.7. All Members of the Consortium shall be liable jointly and severally for the O & M of the Project in accordance with the terms of the O & M Agreement and a statement to this effect shall be included in the Joint Bidding Agreement. ITDC 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 O & M Agreement.
- 7.1.8. Subject to the provisions of Clause 7.1.6 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 ITDC. Unless specifically advised to the contrary, ITDC 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.

- 7.1.9. 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 Project, 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 Project.
  - d) Each of the Consortium members will be jointly and severally liable to ITDC.

7.1.10. 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.

## 7.2. **Financial Eligibility criteria**

7.2.1. The Bidder should have a minimum positive Net Worth of at least INR 8,00,00,000 (Indian Rupees Eight crores only) in the close of preceding financial year. The Bidder must establish the minimum positive Net Worth specified and provide details as per format of Appendix-B2.

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

- a) by the Lead Member of the Consortium; or
- b) by all the members jointly to be calculated by aggregating the Net Worth of each member of the Consortium, which shall be in proportion to its respective shareholding in the SPV.

For the purposes of explanation, the minimum positive Net Worth of the Consortium will be a sum of the amount of each Member's Net Worth, calculated in the manner given below, which should

be equal to or more than INR 800,00,000 (Indian Rupees Eight Crores only):

- a) Lead Member's Net Worth = Net Worth of respective Consortium member X percentage of its shareholding in the SPV;
- b) Second Consortium Member's Net Worth = Net Worth of respective Consortium member X percentage of its shareholding in the SPV; and
- c) Third Consortium Member's Net Worth = Net Worth of respective Consortium member X percentage of its shareholding in the SPV.

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

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

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



7.2.2. The Bid must be accompanied by a valuation report issued by an approved valuer certifying the market value of assets which have been included in the Statement of Assets and Liabilities, the annual audited annual accounts along with the audit reports, by the statutory auditor/ independent chartered accountant (as the case may be) as specified in Clause 9.3.1 (h) and the annual reports (if applicable) of the Bidder (of each Member in case of a Consortium) for the last 5 (five) accounting years, preceding the year in which the Bid is made i.e., 2017-18, 2016-17, 2015-16, 2014-15 and 2013-14.

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

#### 7.3.1. Eligibility Criteria

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

- (i) International/national chains or a standalone operator operating at least a 3-star category hotel as per Ministry of Tourism guidelines, any time during the 5 (five) years immediately preceding December 31, 2018; or
- (ii) a hotel having amenities/ facilities set out in Part 1 of Appendix B3 hereto.

In case the Bidder operates a 3-star or above category hotel, the Bidder shall also submit a copy of the star categorization certificate issued by Ministry of Tourism. In case the Bidder operates a hotel having the amenities/ facilities set out in Part 1 of Appendix B3, it shall also submit a certificate certifying that it fulfils the conditions set out in Part 1 of Appendix B3, in the format set out in Part 2 of Appendix B3. The amenities/facilities may be verified by a physical inspection, as and when required.

#### 7.3.2. Site visit and verification of information

Bidders are encouraged to submit their respective Bids after visiting the Hotel 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.

#### 7.3.3. **Acknowledgement of the Bidders**

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

- a) made a complete and careful examination of the Bidding Documents;
- b) received all relevant information requested from ITDC;
- c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of ITDC relating to any of the matters referred to in Clause 7.3.2 above;
- d) satisfied itself about all matters, things and information including matters referred to in Clause 7.3.2 herein above necessary and required for submitting an informed Bid, execution of the Project 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 7.3.2 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from ITDC, or a ground for termination of the O&M Agreement by the O&M Operator;
- f) acknowledged that it does not have a conflict of interest; and
- g) agreed to be bound by the undertakings provided by it under and in terms hereof

7.3.4. ITDC 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 ITDC.

#### 7.4. **Verification and disqualification**

7.4.1. Notwithstanding anything contained in this RFP, ITDC 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 ITDC rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

#### 7.4.2. **Right to accept or reject any or all Bids**

Notwithstanding anything contained in this RFP, ITDC reserves the right to verify all statements, information and documents uploaded

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

7.4.3. ITDC 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 ITDC, the supplemental information sought by ITDC 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 Highest Bidder gets disqualified / rejected, then ITDC reserves the right to take any such measure as may be deemed fit in the sole discretion of ITDC.

- c) In case it is found during the evaluation or at any time before signing of the O&M Agreement or after its execution and during the period of subsistence thereof, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the O&M Operator either by issue of the LOA or entering into of the O&M Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the O&M 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 ITDC to the Selected Bidder or the O&M Operator, as the case may be, without ITDC being liable in any manner whatsoever to the Selected Bidder or O&M Operator. In such an event, ITDC 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 ITDC under the Bidding Documents and/ or the O&M Agreement, or otherwise.

7.4.4. **Clarifications**

- a) Bidders requiring any clarification on the RFP Document may send their queries to The Company Secretary, Room No- 616, India Tourism Development Corporation Ltd, Core-8, Scope Complex (6<sup>th</sup> Floor), 7 Lodi Road, New Delhi-110003. Telephone Number: 011-24360303 Extension: 616. Email- vkjain@itdc.co.in latest by the relevant date and time mentioned in Clause 5.2, Schedule of Bidding Process. ITDC would endeavour to respond to the queries by the date mentioned in Clause 5.2, Schedule of Bidding Process. ITDC will forward its responses, at its sole discretion, to all the Bidders and would include a description of the enquiry and the response of ITDC without identifying the source of the enquiry.
- b) ITDC shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, ITDC 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 ITDC to respond to any question or to provide any clarification.
- c) ITDC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by ITDC 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 ITDC.
- d) To facilitate evaluation of Bidders, ITDC 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 ITDC 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 7.4.4 (d) above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, ITDC 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 ITDC.

#### **7.4.5. 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.

#### **7.4.6. Amendment of RFP**

- a) At any time prior to the Bid Due Date, ITDC 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 CPP Portal website <https://etenders.gov.in/eprocure/app> 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, ITDC may, at its own discretion, extend the Bid Due Date by an appropriate period.

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

### **8.1. 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.

### **8.2. Preparation of Bid**

The Bidder shall provide all the information sought under this RFP. ITDC 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.

### **8.3. Bid submission**

- 8.3.1. Please refer to the Instructions/ Guidelines for NIC E-Tendering Portal for Online Bid Submission. The Bidders are required to submit their e-bids electronically on <https://etenders.gov.in/eprocure/app> website, using valid DSCs. The said instructions are meant to assist the bidders in registering on the <https://etenders.gov.in/eprocure/app> website, prepare the e-bids in accordance with the requirements and

submitting their e-bids online on the website.  
<https://etenders.gov.in/eprocure/app>.

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

- a) Technical Bid
- b) Financial Bid

8.3.3. (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 8.3.4 and 8.4.1. Financial Bid shall be uploaded online only in the prescribed format.

8.3.4. Documents requiring submission in original hard copy:

Apart from uploading the documents online, the hard copy (in originals) of the following documents must also be submitted in a sealed envelope at the address given in this Clause 8.3.4 on or before the closing date and time for receipt of e-bids:

- (1) Power of Attorney for signing the Bid as per Appendix A2 (Hard copy in original). This will be in addition to Appendix A-3 (which is to be given in case the Bidder is a Consortium).
- (2) Power of Attorney for Lead Member of Consortium as per Appendix A3, if applicable (Hard copy in original).
- (3) Joint Bidding Agreement in case of a consortium as per Appendix A4 (Hard copy in original).
- (4) An undertaking in the format set out in Appendix - A7 along with Annexure 1 thereto.
- (5) Integrity pact in form Appendix D1 (Hard copy in originals)
- (6) Original demand drafts towards payment of RFP Processing Fees of Rs. 10,000/- and Bid Security of Rs. 5,00,000/-, if the payment is not remitted electronically.
- (7) Statutory Auditor's/ independent chartered accountant's certificate/ valuer's certificate (if applicable) in original as mentioned in appendix B2.
- (8) Certificate to be submitted by hotels having specified facilities/ amenities (if applicable) in the form set out in Part 2 of Appendix B3.

(9) Self-certification affidavit as per appendix B4.

All the hard copies of required e-bid documents mentioned in the RFP document along with the demand drafts in originals towards RFP Processing Fee and Bid Security should be submitted (if the amount is not remitted electronically) in a sealed envelope superscribed as '**TENDER FOR OPERATION AND MAINTENANCE OF HOTEL KALINGA ASHOK, BHUBANESWAR IN THE STATE OF ODISHA**' with the name of the bidder mentioned on the sealed envelope. The sealed envelope should be dropped in the designated tender box located at the following address before the closing date and time for e-bid submission:

ADDRESS:  
Company Secretary, ITDC,  
Room No. 616  
Core 8, 6<sup>th</sup> floor,  
Scope Complex, Lodhi Road,  
New Delhi 110003

The Bid shall be summarily rejected if the hard copies of all or any of the applicable documents mentioned herein are not received by ITDC on or before closing date for receipt of online bids.

The financial bid is required to be uploaded at e-portal only in the prescribed field allocated for the same and must neither be enclosed as hard copy along with the technical bid nor be uploaded along with technical bid at e-portal.

#### 8.4. **Instructions for submission of Bid**

8.4.1. Technical Bid: The following documents shall constitute the Technical Bid and are required to be uploaded on <https://etenders.gov.in/eprocure/app> website:

#### **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)
6	Appendix - A6	Statement of Legal Capacity
7	Appendix - A7 along with Annexure 1 thereto	An undertaking indicating that the bidder is not in violation of the fraud prevention policy of ITDC
<b>PART B: FORMAT FOR TECHNICAL BID SUBMISSION</b>		
7	Appendix B1	Particulars of the Bidder
8	Appendix B2	Financial Capacity of the Bidder
	Part 1 of Appendix B2	Statement of Assts and Liabilities along with the valuer's certificate
9	Appendix B3	Particulars of O&M Experience along with a copy of star categorization certificate issued by Ministry of Tourism, if applicable.
	Part 1 of Appendix B3	Certificate to be submitted by hotels having specified facilities/ amenities, if applicable.
11	Appendix B4	Self-Certification Affidavit
<b>PART D: INTEGRITY PACT</b>		
12	Appendix D1	Integrity Pact
<b>PART E: OPERATION AND MANAGEMENT AGREEMENT</b>		
13	Appendix E1	Operation and Management Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney.
<b>ADDITIONAL DOCUMENTS</b>		
14	<b>RFP Processing Fee:</b> Document evidencing payment of INR 10,000 (Indian Rupees Ten Thousand only) in favour of the ITDC payable at New Delhi towards RFP Processing Fee.	
15	<b>Bid Security:</b> Document evidencing payment of INR 5,00,000 (Indian Rupee Five Lakhs only) in favour of ITDC.	
16	Letter in terms of Clause 7.1.9 of this RFP Document.	
17	Letter(s) in terms of Clause 7.1.4 of this RFP Document.	
18	Copies of Bidder's duly audited annual accounts along with annual reports for the preceding 5 (five) years.	
19	Copy of Memorandum and Articles of Association of the Bidder and in case of a Consortium, of all the Consortium members (if applicable).	
20	Any other document required to be submitted in terms of this RFP.	



## **Fee and Deposits to Be Paid by the Bidder**

### **RFP Processing Fee:**

The Proposal shall be accompanied by RFP Processing Fee of **Rs. 10,000.00 (Rupees Ten Thousand only)** in any one of the following manners:

- a) Demand Draft issued by a Scheduled Commercial Bank in favour of **India Tourism Development Corporation Limited** payable at New Delhi

OR

- b) NEFT/ RTGS in favour of **"India Tourism Development Corporation Limited"** as per below details:

A/C Name: **India Tourism Development Corporation Limited.**

Name of Bank: State Bank of India

Branch Address: SCOPE Complex, Lodi Road, New Delhi

IFSC: SBIN0020511

Account No: 52142903505

### **Bid Security**

The Proposal shall be accompanied by an initial Bid Security for a value of **Rs. 5.00 Lakhs (Rupees Five Lakh only)** in any one of the following manners:

- a) A Demand Draft issued by a Scheduled Commercial Bank in favour of **India Tourism Development Corporation Limited** payable at New Delhi

OR

- b) NEFT/ RTGS in favour of **"India Tourism Development Corporation Limited"** as per below details:

A/C Name: **India Tourism Development Corporation Limited.**

Name of Bank: State Bank of India

Branch Address: SCOPE Complex, Lodi Road, New Delhi

IFSC: SBIN0020511

Account No: 52142903505

The photocopy of demand draft should be uploaded on the e-portal as a proof of deposit of the RFP Processing Fee and Bid Security amount. If the amount is deposited electronically through RTGS/ NEFT, the transaction details/UTR Number should be uploaded on the e-portal. All charges, commissions, taxes for money transfer etc. shall be borne by the bidder. The prospective bidders are advised to transfer the relevant fees well in advance in view of the time taken for processing electronic payments and crediting amount to ITDC via NEFT/ RTGS, net banking, credit/debit cards. In case the RFP Processing Fee and Bid Security amount is not credited to ITDC within the stipulated time i.e. on or before 22-04-2019 upto 1600 hrs, the bid shall not be entertained under any circumstances and ITDC will not be liable in this regard.

- 8.4.2. Financial Bid: The following shall be uploaded as a part of the financial bid on the website: <https://etenders.gov.in/eprocure/app>

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 Project for operation and maintenance of the Hotel by the Successful Bidder, in the format attached in Appendix C1, hereof, wherein Revenue Share in percentage as a part of license fee payable by the selected bidder, shall be stated. Please note that the format of Financial Bid as provided in Appendix C1 is only for the purpose of reference/acclimatization, the bidder needs to upload the financial bid as per the format annexed.

The Successful Bidder, in addition to the revenue share percentage as indicated by the Successful Bidder in Appendix C1 hereof, would be required to make the payments specified in Clause 10.4 of this RFP Document.

## 8.5. **Common instructions**

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

## 8.6. **Bid Due Date**

- 8.6.1. Bids should be uploaded before 1600 hours IST on the Bid Due Date i.e. 22-04-2019 e-portal and hard copies of the documents listed in Clause 8.3.4 shall be submitted at the address provided in the said Clause 8.3.4 in the manner and form as detailed in this RFP.

8.6.2. ITDC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 7.4.6 uniformly for all Bidders.

**8.7. Late Bids**

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

**8.8. Modifications/Substitution/Withdrawal of Bids**

8.8.1. 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.

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

**8.9. Rejection of Bids**

8.9.1. Notwithstanding anything contained in this RFP, ITDC 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.

8.9.2. ITDC 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.

**8.10. Validity of bids**

8.10.1. 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 ITDC.

**8.11. Confidentiality**

8.11.1. 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 ITDC in relation to, or matters arising out of, or concerning the Bidding Process. ITDC 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. ITDC 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.

8.11.2. 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 ITDC.

## 8.12. **Correspondence with the Bidder**

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

## 9. **Bid Security**

### 9.1. Bid Security

9.1.1. 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 or transferred electronically through NEFT/ RTGS in favour of ITDC as per details given in Clause 8.4.1, for Rs. 5.00 Lakh (Rupees Five Lakh only), in favour of the ITDC. Bidders registered as 'Micro' and 'Small' Enterprises are exempted from making payment of RFP Processing Fee and Bid Security. In this regard it is clarified that a Consortium shall be eligible for this exemption in case the Lead Member of such Consortium is registered as 'Micro' or 'small' enterprise. The Bidder shall upload a copy of the valid registration certificate issued by the authorities as per Ministry of Micro, Small and Medium Enterprises. The registration certificate should clearly mention the item /service details against which the bidder is registered as 'Micro' or 'small' enterprise. The bidder shall be registered as a 'Micro' or 'Small' enterprise for the item/ services for which they intend to bid.

9.1.2. Any e-bid without the documents evidencing the payment of RFP Processing Fees and Bid Security shall be summarily rejected by ITDC as non-responsive.

9.1.3. The Bid Security of unsuccessful Bidders will be returned by ITDC, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by ITDC. 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 favour of the unsuccessful Bidder(s) or through electronic transfer.

- 9.1.4. The Selected Bidder's Bid Security will be returned, without any interest, upon signing the O&M Agreement and furnishing the Performance Security in accordance with the provisions thereof. ITDC 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 O&M Agreement.
- 9.1.5. ITDC shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 9.1.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that ITDC 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.
- 9.1.6. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to ITDC under the Bidding Documents and/ or under the O&M 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 12 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 ITDC;
  - c) the Selected Bidder fails within the specified time limit –
    - (i) to sign and return the duplicate copy of LOA; or
    - (ii) to sign the O&M Agreement; or
    - (iii) to furnish the Performance Security in accordance with the Bid Documents.

## 9.2. **Opening and Evaluation of Bids**

- 9.2.1. ITDC shall open the Bids electronically at 1600 hours IST as per Clause 5.2 of this RFP, on the website <https://etenders.gov.in/eprocure/app>.
- 9.2.2. Bids for which a notice of withdrawal has been submitted in accordance with Clause 8.8 shall not be opened.
- 9.2.3. ITDC will subsequently examine and evaluate e-bids in accordance with the provisions set out in RFP.

Bidders are advised that qualification of e-bids will be entirely at the discretion of ITDC. 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.

- 9.2.4. Any information contained in the Bid shall not in any way be construed as binding on ITDC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 9.2.5. ITDC 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.
- 9.2.6. To facilitate the evaluation of Bids, ITDC may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

### 9.3. **Test of responsiveness**

- 9.3.1. Prior to evaluation of Bids, ITDC shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
  - a) it is uploaded as per formats prescribed in Appendices Part-A, Part-B, Part-C and Part-D;
  - b) it is uploaded by the Bid Due Date including any extension thereof pursuant to Clause 8.6.2;
  - c) it is signed, sealed, and marked as stipulated in Clauses 8.3 and Clause 8.4;
  - 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 8.3.4;
  - 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 Project;

- i) it is accompanied by the Joint Bidding Agreement (for Consortium), as stipulated in Clauses 7.1.3;
- j) it does not contain any condition or qualification; and
- k) it is not in violation of terms hereof.

9.3.2. ITDC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by ITDC in respect of such Bid. Provided, however, that ITDC may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the bid.

#### 9.4. **Qualification and Bidding**

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

ITDC 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. ITDC will not entertain any query or clarification from the Bidder who could not be shortlisted.

##### 9.4.2. **Opening of Price Bids**

Price bids of only those Bidders who are short-listed after the Pre-qualification shall be opened by ITDC

##### 9.4.3. **Proprietary data**

All documents and other information supplied by ITDC or uploaded by a Bidder to ITDC shall remain or become the property of ITDC. 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. ITDC will not return any Bid or any information provided along therewith.

##### 9.4.4. **Correspondence with the Bidder**

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

## **10. Criteria for Financial Evaluation**

### **Financial Bid**

10.1. All the bidders will upload a Business Plan for a total of 30 (thirty) years as per format annexed with duly filled Financial Bid at Appendix C1. Bidder can submit the Business Plan using their own cost heads and revenue.

### **10.2. For Selection of Bidders only**

Bidders have to quote the percentage Revenue Share and have to submit Business Plan in the format enclosed. **Total MAG payout to ITDC i.e. 80% of revenue share as highlighted in Business Plan, is to be worked out and the NPV for 30 (thirty) years be calculated at discounting factor of 11% for the ITDC MAG payout as per the format annexed at Appendix C1. Bidder with Highest aggregate NPV at this stage would be "Selected Bidder".**

### **10.3. MAG as per Business Plan (Minimum Annual Guarantee amount payable to ITDC)**

80% of the annual revenue share number as highlighted in the Business Plan above will become the Minimum Annual Guarantee (MAG) amount which will be payable to ITDC in 4 (Four) equal quarterly installment before 15 (fifteen) days of the start of a new quarter.

Balance revenue share amount being difference between calculated by revenue share percentage on actual audited turnover of respective accounting year and the MAG of that year would be payable by the O & M Operator to ITDC within 60 (sixty) days after end of the accounting year.

### **10.4. Upfront Fee**

In addition to the above, one-time Upfront Fee shall be paid to ITDC. The formula for calculating the same has been given below:

Average MAG of first 10 (ten) years (as per Business Plan) X 6 (six)

10.5. The Financial Bid should be furnished in the format at Appendix-C1, clearly indicating the revenue share percentage in both figures and words, and signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

### **10.6. Post Selection of Bidder**



- 10.6.1. After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by ITDC to the Selected Bidder and the Selected Bidder shall, within 7 (seven) 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, ITDC 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.
- 10.6.2. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the O&M Operator to execute the O&M Agreement within the period prescribed in Clause 5.2 of this RFP. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the O&M Agreement.

#### 10.7. **Contacts during Bid evaluation**

- 10.7.1. Bids shall be deemed to be under consideration immediately after they are opened and until such time ITDC 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, save and except as required under the Bidding Documents, from contacting by any means, ITDC and/ or their employees/ representatives on matters related to the Bids under consideration.

### 11. **Roles and Responsibilities of the Successful Bidder:**

#### 11.1. **Performance Security:**

The Operation and Maintenance Performance Security: The Successful Bidder shall, on or before the execution of the O&M Agreement, submit the O&M Performance Security in form of the irrevocable Bank Guarantee issued from Scheduled Bank in India. The O&M performance security shall be equivalent to 1.5 (one and a half) times of the Minimum Annual Guarantee (MAG) share payable to the Authority for the respective year and shall be kept valid throughout the Term of 30 (thirty) years.

- 11.2. The bidder is expected to maintain the property at 3-star or higher rating as per Government of India, Ministry of Tourism guidelines revised from time to time.
- 11.3. The Successful Bidder or Bidders would operate the hotel for the Term of 30 (thirty) years as per the provisions of the O & M Agreement including the responsibility for the services of the Hotel Facilities.

- 11.4. The Successful Bidder shall be responsible for ensuring that the employees engaged by it, in fulfillment of its obligations under the O & M Agreement, are at all times properly trained for their functions and that all the statutory requirements relating to the employees in the hotel Project is adhered to.
- 11.5. The Successful Bidder shall, at its own cost, obtain all licenses from relevant authorities for the operation of the hotel Project in the name of Successful Bidder/ SPV. The ITDC shall facilitate the Successful Bidder for the same, if required.
- 11.6. The ownership of the project shall always remain vested with ITDC. It is clarified for the avoidance of doubt that title to the project shall vest exclusively with ITDC and the Successful Bidder shall only have the right to use the same in accordance with the provisions of the O & M Agreement that shall be for a period of 30(thirty) years. The Successful Bidder cannot mortgage the land to any financial institution or third party. The Successful Bidder would have no lease rights to the property, including land and structures.
- 11.7. The Successful Bidder would hand over the Project Facilities to ITDC at the end of the Service Period Term or on termination of the Term, on an "as-is-where-is" basis, free of all cost, liabilities and encumbrances including movable & immovable assets along with all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Successful Bidder in, on, over or under the Project Site.
- 11.8. The aforesaid Term will not be extended and the new O&M operator will be hired through a new round of competitive bidding, as required.
- 11.9. The Successful Bidder shall handover their respective Facilities (as defined in the Agreement) including the development, if any, along with movable and immovable assets and all rights thereto to ITDC free of cost and free of all encumbrances.

## **12. FRAUD AND CORRUPT PRACTICES**

- 12.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the O&M Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the O&M Agreement, ITDC may reject a Bid, withdraw the LOA, or ITDC may terminate the O&M Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or O&M Operator, as

the case may be, if it determines that the Bidder or O&M Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, unfair practice or restrictive practice in the Bidding Process. In such an event, ITDC 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 ITDC under the Bidding Documents and/ or the O&M Agreement, or otherwise.

- 12.2. Without prejudice to the rights of ITDC under Clause 12.1 hereinabove and the rights and remedies which ITDC may have under the LOA or the O&M Agreement, or otherwise if a Bidder or O&M Operator, as the case may be, is found by ITDC 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 O&M Agreement, such Bidder or O&M Operator shall not be eligible to participate in any tender or RFP issued by ITDC during a period of 1(one) year from the date such Bidder or O&M Operator, as the case may be, is found by ITDC 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.
- 12.3. For the purposes of this Clause 12, 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 ITDC 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 O&M 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 ITDC, 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 6.2.5 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 O&M Agreement, as the case may be, any person in respect of any matter relating to the Project or the

LOA or the O&M Agreement, who at any time has been or is a legal, financial or technical adviser of ITDC in relation to any matter concerning the Project;

- b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c) **"coercive practice"** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d) **"unfair practice"** means (i) establishing contact with any person connected with or employed or engaged by ITDC 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.

### **13. MISCELLANEOUS**

13.1. 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 in which ITDC 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 New Delhi.

13.2. Dispute Resolution mechanism: Any difference or dispute arising out of or relating to this RFP will be referred to the Chairman & Managing Director of ITDC 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 Delhi.

The laws of India shall govern this agreement. The courts in Delhi shall have exclusive jurisdiction

13.3. Authorized signatory: The selected Bidder shall indicate the authorized signatories who can discuss and correspond with ITDC

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 ITDC, raise invoice and accept payments and also to correspond. The Bidder shall provide proof of signature identification for the above purposes as required by ITDC.

- 13.4. Patent rights: In the event of any claim asserted by a third party of infringement of copyright, patent, trademark, industrial design rights, etc., arising from the use of the Hotel or any part thereof in India, the Selected Bidder shall act expeditiously to extinguish such claim. If the Selected Bidder fails to comply and ITDC 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. ITDC will give notice to the Selected Bidder of such claim, if it is made, without delay. The Selected Bidder shall indemnify ITDC against all third party claims.
- 13.5. 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.
- 13.6. Conflict of interest: The Bidder shall disclose to ITDC 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 Project as soon as practical after it becomes aware of that conflict.
- 13.7. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which ITDC has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 13.8. ITDC, 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 ITDC 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.

13.9. It shall be deemed that by submitting the Bid, the Bidder agrees and releases ITDC, its employees, agents and advisers, 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.

#### 13.10. **Force Majeure**

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

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

Provided either party shall within 10 (ten) days from occurrence of such a cause, notify the other in writing of such causes. The Bidder or ITDC 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.

## **APPENDICES**

**PART A – FORMATS FOR BID SUBMISSION**



## **APPENDIX–A1**

### **Letter comprising the Bid for Pre-qualification and Technical Evaluation**

To,

\_\_\_\_\_

#### **Sub: OPERATION AND MAINTENANCE OF HOTEL KALINGA ASHOK, BHUBANESWAR IN THE STATE OF ODISHA**

Dear Sir,

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 Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that ITDC will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the O&M Operator for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as O&M Operator for the operation and maintenance of the aforesaid Project.
4. I/ We shall make available to ITDC any additional information it may find necessary or required to supplement or authenticate the Bid.
5. I/ We acknowledge the right of ITDC 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>£</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 project

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

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 ITDC; and
- (b) I/ We do not have any conflict of interest in accordance with Clauses of the RFP document; and
- (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 12.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with ITDC or any other public sector enterprise or any government, Central or State; and
- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 12 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 Project, without incurring any liability to the Bidders, in accordance with the RFP document.

9. I/ We believe that we/ our Consortium satisfy(s) the positive Net Worth criteria and meet(s) the requirements as specified in the RFP document.

10. I/ We declare that we/ any Member of the Consortium, are not a Member of a/ any other Consortium submitting a Bid for the Project.

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 Project 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.<sup>£</sup>
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 ITDC of the same immediately.
15. I/We further certify that we/any Member of the Consortium are not barred by the Central Government/State Government or any entity controlled by it, from participation in any project, 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 ITDC forthwith along with all relevant particulars and ITDC 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 O&M Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the O&M Agreement shall be liable to be terminated without ITDC 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 O&M Agreement.

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<sup>£</sup>In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule ..... hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

18. I /We hereby confirm that we shall comply with the O&M requirements specified in requisite Clause of the RFP.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by ITDC in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project 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 O&M 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 O&M Agreement, I/we shall have no claim, right or title arising out of any documents or information provided to me/us by ITDC 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 Lakhs only) to ITDC in accordance with the RFP Document.
23. I/ We agree to make payment of Minimum Annual Guarantee/ Revenue Share (as percentage of Project Revenue) and Upfront fee, as per the provisions of the O&M Agreement.
24. The Bid Security in the form of a demand draft is attached (if applicable).
25. 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 Project is not awarded to me/us or I/our Bid is not opened or rejected.
26. The revenue share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, O&M Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.

27. I/ We certify that in terms of the RFP, my/our positive Net Worth is Rs. .... (Rupees .....);
28. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
29. I/We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the O&M Operator under the O&M Agreement till occurrence of financial close in accordance with the O&M Agreement.
30. I/ We shall keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
31. 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 Bid<sup>§</sup>**

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 ..... Project 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 ITDC, representing us in all matters before ITDC, signing and execution of all contracts including the O&M Agreement and undertakings consequent to acceptance of our bid, and generally dealing with ITDC in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to me/us and/or till the entering into of the O&M Agreement with ITDC.

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.

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

Accepted

Notarized

(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 favour 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 legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.*

## APPENDIX-A3

### Power of Attorney for Lead Member of Consortium

Whereas the .....(**"ITDC"**) has invited Bids from interested parties for the ..... Project (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 authorise 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 authorise 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 Project, 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 ITDC, 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 O&M Agreement is entered into with ITDC.



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 favour 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 legalised by the Indian Embassy and notarised 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

#### **[If the Consortium Member is a company]**

1. \_\_\_\_\_, (CIN no. \_\_\_\_\_) a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its authorized signatory, \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) duly authorized *vide* board resolution dated \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns);

OR

#### **[If the Consortium Member is a Partnership Firm]**

\_\_\_\_\_, a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of Business at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its authorized partner, \_\_\_\_\_, (Aadhar No. \_\_\_\_\_) authorized *vide* \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/their assigns);

OR

#### **[If the Consortium Member is an Individual]**

Mr. / Ms. \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) son / daughter of \_\_\_\_\_, aged \_\_\_\_\_

about \_\_\_\_\_, residing at \_\_\_\_\_ (PAN \_\_\_\_\_), hereinafter called the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/her heirs, executors, administrators, successors-in-interest and permitted assigns).

OR

**[If the Consortium Member is a limited liability partnership]**

\_\_\_\_\_, a limited liability partnership registered under the provisions of the LLP Act, 2008, having its registered office at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its authorized signatory, \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) duly authorized *vide* resolution dated \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns)

**AND**

2.

**[If the Consortium Member is a company]**

1. \_\_\_\_\_, (CIN no. \_\_\_\_\_) a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its authorized signatory, \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) duly authorized *vide* board resolution dated \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns);

OR

**[If the Consortium Member is a Partnership Firm]**

\_\_\_\_\_, a partnership firm registered under the Indian Partnership Act, 1932, having its principal place of Business at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its

authorized partner, \_\_\_\_\_, (Aadhar No. \_\_\_\_\_) authorized \_\_\_\_\_ *vide* \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include the partners or partner for the time being of the said firm, the survivor or survivors of them and their heirs, executors and administrators of the last surviving partner and his/her/their assigns);

OR

**[If the Consortium Member is an Individual]**

Mr. / Ms. \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) son / daughter of \_\_\_\_\_, aged about \_\_\_\_\_, residing at \_\_\_\_\_, (PAN \_\_\_\_\_), hereinafter called the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his/her heirs, executors, administrators, successors-in-interest and permitted assigns).

OR

**[If the Consortium Member is a limited liability partnership]**

\_\_\_\_\_, a limited liability partnership registered under the provisions of the LLP Act, 2008, having its registered office at \_\_\_\_\_, (PAN \_\_\_\_\_), represented by its authorized signatory, \_\_\_\_\_, (Aadhar no. \_\_\_\_\_) duly authorized *vide* resolution dated \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, and permitted assigns)

**AND**

3.

**[If the Consortium Member is a company]**

1. \_\_\_\_\_, (CIN no. \_\_\_\_\_) a company incorporated under the provisions of the Companies Act, [1956 or 2013, as the case may be], having its registered office at

\_\_\_\_\_, (PAN \_\_\_\_\_),  
represented by its authorized signatory, \_\_\_\_\_,  
(Aadhar no. \_\_\_\_\_) duly authorized *vide* board  
resolution dated \_\_\_\_\_, hereinafter referred to as the "**First  
Part**" (which expression shall unless repugnant to the context or  
meaning thereof be deemed to mean and include its successor-in-  
interest, and permitted assigns);

OR

**[If the Consortium Member is a Partnership Firm]**

\_\_\_\_\_, a partnership firm registered under the Indian  
Partnership Act, 1932, having its principal place of Business at  
\_\_\_\_\_, (PAN \_\_\_\_\_), represented by its  
authorized partner, \_\_\_\_\_, (Aadhar No.  
\_\_\_\_\_) authorized *vide*  
\_\_\_\_\_, hereinafter referred to as the  
"**First Part**" (which expression shall unless repugnant to the context  
or meaning thereof be deemed to mean and include the partners or  
partner for the time being of the said firm, the survivor or survivors  
of them and their heirs, executors and administrators of the last  
surviving partner and his/her/their assigns);

OR

**[If the Consortium Member is an Individual]**

Mr. / Ms. \_\_\_\_\_, (Aadhar no.  
\_\_\_\_\_) son / daughter of \_\_\_\_\_, aged  
about \_\_\_\_\_, residing at  
\_\_\_\_\_, (PAN  
\_\_\_\_\_), hereinafter called the "**First Part**" (which  
expression shall unless repugnant to the context or meaning thereof  
be deemed to mean and include his/her heirs, executors,  
administrators, successors-in-interest and permitted assigns).

OR

**[If the Consortium Member is a limited liability partnership]**

\_\_\_\_\_, a limited liability partnership registered under the  
provisions of the LLP Act, 2008, having its registered office at  
\_\_\_\_\_, (PAN \_\_\_\_\_),  
represented by its authorized signatory, \_\_\_\_\_,

(Aadhar no. \_\_\_\_\_) duly authorized *vide* resolution dated \_\_\_\_\_, hereinafter referred to as the "**First Part**" (which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successor-in-interest, 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) India Tourism Development Corporation represented by its Chairman and having its principal office at \_\_\_\_\_ (hereinafter referred to as the "**Authority**" 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 **OPERATION AND MAINTENANCE OF HOTEL KALINGA ASHOK, BHUBANESWAR IN THE STATE OF ODISHA** (the "**Project**").
- (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 the "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 a O&M Agreement with the Authority and for performing all its obligations as the O&M Operator in terms of the O&M 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 O&M 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 Project and in accordance with the terms of the "RFP" and the O&M Agreement, till such time as the financial close for the Project is achieved under and in accordance with the O&M 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 O&M 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 authority 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 favour 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 Project is achieved under and in accordance with the O&M 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 ITDC 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 ITDC.

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
LEAD MEMBER by:

SIGNED, SEALED AND  
SECOND PART

(Signature)  
(Name)  
(Designation)  
(Address)

(Signature)  
(Name)  
(Designation)  
(Address)

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

SIGNED, SEALED AND  
DELIVERED

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:  
1.

**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 favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.

3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

## **APPENDIX-A5**

### **Bank Guarantee for Performance Security**

B.G. No. Dated:

1. In consideration of you,....., having its office at ....., (hereinafter referred to as the "Authority", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/ 2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Project on license basis (hereinafter referred to as "the Project") pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft O&M Agreement (hereinafter collectively referred to as "Bidding Documents"), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to ITDC an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by ITDC stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of ITDC is disputed by the Bidder or not, merely on the first demand from ITDC stating that the amount claimed is due to ITDC by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the

said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees ..... only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 30 (thirty) years from the LOA or for such extended period as may be mutually agreed between ITDC and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that ITDC shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of ITDC that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between ITDC and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, ITDC shall be entitled to treat the Bank as the principal debtor. ITDC shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to ITDC, and the Bank shall not be released from its liability under these presents by any exercise by ITDC of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of ITDC or any indulgence by ITDC to the said Bidder or by any change in the constitution of ITDC or its absorption, merger or amalgamation with

any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for ITDC to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which ITDC may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of ITDC in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees ..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if ITDC serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before .....

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

**APPENDIX-A6**

**Statement of Legal Capacity**

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

Ref. Date:

To,

-----

Dear Sir,

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

We have agreed that ..... (insert member's name) will act as the Lead Member of our consortium.<sup>\$</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<sup>\$</sup> and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

---

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



**Appendix- A7**  
**Undertaking from the Bidder**

I/ We, hereby confirm that I/ we am/ are in compliance with the Fraud Prevention Policy of ITDC annexed as Annexure 1 hereto and if selected, I/ we undertake to comply with the said policy during the term of the O&M Agreement entered into with ITDC.

Thanking you,

Yours faithfully,  
For and on behalf of.....

(Signature, name and designation of the authorised signatory)

## **Annexure 1**

### **Fraud Prevention Policy – ITDC**

#### INTRODUCTION

ITDC has placed adequate systems and procedures commensurate to its nature of business such as licensing procedure, purchase procedure, engineering & works manual, delegation of power etc. for ensuring the orderly and efficient conduct of business in an honest, ethical and transparent manner without any bias or malafide.

Further as per Schedule V to SEBI (LODR) Regulations, 2015 relating to Corporate Governance provisions requirement, ITDC has placed a whistle blower policy. This policy envisages the Corporation to put in place a mechanism for employees to report to the Management about unethical behaviour, actual or suspected fraud or violation of conduct rules.

Clause 34(2)(f) of the SEBI (LODR) Regulations, 2015 requires top 500 companies (based on market Capitalization) to give in its Annual Report the Business Responsibility Report describing the initiative taken by the Company from an environmental, social and governance perspective. Principal 1 of the policy requires that businesses should not engage in practices that are abusive, corrupt, or anti-competition. Pursuant to this, it is considered appropriate to formulate and implement a fraud prevention policy in the Company.

#### OBJECTIVES

The objective of the "Fraud Prevention Policy" is to provide a system for detection, reporting and prevention of fraud, whether committed or suspected. The policy will provide a framework and lay down a procedure for detection, reporting and prevention of fraud or suspected fraud. The policy will ensure that management is aware of its responsibilities for detection and prevention of fraud and for establishing procedures for preventing fraud and/or detecting fraud when it occurs.

#### SCOPE OF THE POLICY

The policy applies to all frauds committed or suspected linked to the business of the Company involving any employees as well as representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency doing business with the company.

#### DEFINITION OF FRAUD

"Fraud" is a wilful act intentionally committed by an individual(s) - by deception, suppression, cheating or any other fraudulent or any other illegal means, thereby, causing unlawful gain(s) to self or any other individual(s) and wrongful loss to other(s), whether in cash or kind.

## ACTIONS CONSTITUTING FRAUD

While fraudulent activity could have a very wide range of coverage, the following are some of the act(s) which constitute fraud. The list given below is only illustrative and not exhaustive :-

- i. Forgery or alteration of any document or account belonging to the Company.
- ii. Forgery or alteration of cheque, bank draft or any other financial instrument etc.
- iii. Misappropriation of funds, securities, supplies or others assets by fraudulent means etc.
- iv. Falsifying records such as pay-rolls, removing the documents from files and /or replacing it by a fraudulent note etc.
- v. Willful suppression of facts/deception in matters of appointment, placements, submission of reports, tender committee recommendations etc. as a result of which a wrongful gain(s) is made to one and wrongful loss(s) is caused to the others.
- vi. Utilizing Company funds for personal purposes.
- vii. Authorizing or receiving payments for goods not supplied or services not rendered. Destruction, disposition, removal of records or any other assets of the Company with an ulterior motive to manipulate and misrepresent the facts so as to create suspicion/suppression/cheating as a result of which objective assessment/decision would not be arrived at.

Any other act that falls under the gamut of fraudulent activity. Suspected improprieties concerning an employee's moral, ethical, or behavioural conduct, should be resolved by departmental management and Employee Relations of Human Resources rather than under Fraud Policy.

## REPORTING OF FRAUD

Any employee, representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency doing business with the company as soon as he / she comes to know of any fraud or suspected fraud or any other fraudulent activity must report such incident(s). Such reporting shall be made to the designated Nodal Officer(s) nominated by the Company for this purpose from time to time. If, however, there is shortage of time such report should be made to the immediate HOD whose duty shall be to ensure that input received is immediately communicated to the Nodal Officer. The reporting of the fraud normally should be in writing. In case the reporter is not willing to furnish a written statement of fraud but is in a position to give sequential and specific transaction of fraud/suspected fraud, then the officer receiving the information/Nodal

Officer should record such details in writing as narrated by the reporter and also maintain the details about the identity of the official / employee / other person reporting such incident. Reports can be made in confidence and the person to whom the fraud or suspected fraud has been reported must maintain the confidentiality with respect to the reporter and such matter should under no circumstances be discussed with any unauthorised person.

All reports of fraud or suspected fraud shall be handled with utmost speed and shall be coordinated by Nodal Officer(s) to be nominated.

On receiving input about any suspected fraud/nodal officer(s) shall ensure that all relevant records documents and other evidence is being immediately taken into custody and being protected from being tampered with, destroyed or removed by suspected perpetrators of fraud or by any other official under his influence.

#### DUTY OF NODAL OFFICER

The "Nodal Officer" shall, refer the details of the Fraud/suspected fraud to the Vigilance Department of ITDC, immediately for further appropriate investigation and needful action.

During receipt of information of Fraud/Suspected Fraud, it would be the duty of Nodal Officer to verify the identity of the Complainant. Anonymous Complaint should not be acted upon. After verification of the identity of the Complainant, the Nodal Officer should keep the identity of the Complainant secret.

After completion of the investigation, due & appropriate action, which could include administrative action, disciplinary action, civil or criminal action or closure of the matter if it is proved that fraud is not committed etc. depending upon the outcome of the investigation shall be undertaken.

Vigilance Department shall apprise "Nodal Officer" of the results of the investigation undertaken by them. There shall be constant coordination maintained between the two.

#### RESPONSIBILITY FOR FRAUD PREVENTION/CREATING AWARENESS/CIRCULATION OF POLICY

It is the responsibility of every employee, representatives of vendors, suppliers, contractors, consultants, service providers or any outside agency doing business with the company to ensure that there is no fraudulent action being indulged in, in their own area of activity/responsibility. As soon as they learn of any fraud or have suspicion regarding it, they should immediately report the matter as per the procedure laid down in the policy.

All vendors, suppliers, contractors, service providers, consultants and other agencies having business relations with the company are required to affirm to the Fraud Prevention policy of the company. As such this policy document

shall form a part of the tender/RFP document and shall have to be concurred to by all bidders.

All Departmental Heads shall be responsible for proper implementation of the Fraud prevention policy of the company. The Nodal officers have powers to take corrective actions as per this policy. Name and contact number of nodal officers shall be available on Website and all prominent locations. Efforts will be made to keep the name of the informer secret.

The company recognises that employee/ stakeholders' awareness is essential for effective detection/prevention of fraud/suspected fraud. As such the company shall put in place adequate communication mechanisms for dissemination of information about the policy and its importance to the corruption free governance of the company.

#### AMENDMENTS/REVIEW OF POLICY

The Chairperson and Managing Director shall be the competent authority for the interpretation and revision of this policy. The policy will be reviewed and revised as and when needed.

Nodal Officers: Following will be the nodal officers:

1. For Duty Free Shops and ATT Units in Eastern Region, RM(East) will be the nodal officer.
2. For Duty Free Shops and ATT Units in Western Region, RM(West) will be the nodal officer.
3. For Duty Free Shops and ATT Units in Southern Region, RM(South) will be the nodal officer.
4. For Hotel units/Catering Units/Restaurants, Head of the Hotel Unit/Catering Unit/Restaurant will be the nodal officer.
5. For Corporate Office- HoD of the different divisions will be the nodal officer.

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

## **APPENDIX-B1**

### **Particulars of the Bidder**

1.
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  
3. 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 Authorised 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:

-

Sl. No.	Name of Member	Role <sup>§</sup>	Percentage of equity in the Consortium <sup>\$\$</sup>
1.			
2.			
3.			

§ 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.

\$\$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:**

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State] 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 projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary)



**APPENDIX-B2**  
**Financial Capacity of the Bidder**

(In Rs. crore\$)

Bidder type \$\$	Net Cash Accruals					Net Worth££		
	Year 1 (2)	Year 2 (3)	Year 3 (4)	Year 4 (5)	Year 5 (6)	Year 1 (7)		
Single entity Bidder								
Lead Member of Consortium								
						<b>Lead Member</b>	<b>Member 1</b>	<b>Member 2</b>
Consortium (in proportion to their shareholding in the SPV)								

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

\$For conversion of other currencies into rupees, see notes below Appendix B2.

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

££The Bidder should provide details of its own Financial Capacity specified in RFP

### **Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the audit report (if any), balance sheets, financial statements and annual reports (where applicable) for 5 (five) years preceding the Bid Due Date. The financial statements shall
  - (a) reflect the financial situation of the Bidder or Consortium Members where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor in case of companies and independent chartered accountant in case of bidders other than companies;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean:
  - (a) Paid-up share capital + reserves created out of profits and securities premium account) less (aggregate value of accumulated losses + deferred expenditure + miscellaneous expenditure not written off + reserves created out of revaluation of assets + write-back of depreciation and amalgamation), in case of companies.
  - (b) The difference between the total assets and total liabilities, as per the audited financial statements of the bidders, being individuals undertaking any business and maintaining a balance sheet, partnership firms and LLPs.
4. Year 1 (i.e. 2017-18) will be the latest completed accounting year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.

5. In the case of a Consortium, a copy of the Joint Bidding Agreement shall also be submitted.
6. The Bidder shall provide a Statutory Auditor's Certificate (in case the bidder is a company)/ independent chartered accountant's certificate (in case of bidders other than companies) specifying the positive Net Worth of the Bidder and also specifying the methodology adopted for calculating such positive Net Worth in accordance with Clause 7.2.1 of the RFP document.

## APPENDIX B2

### PART 1

#### Statement of assets and Liabilities

Asset and Liability at the end of the year										
A	Details of immovable asset									
S. No.	Description	Address								Amount (INR)
		Flat / Door / Block no	Name of Premises / Building / village	Road / street / Post office	Area / Locality	Town / City / District	State	Country	Pin Code	
1										
2										
3										
4										

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

Instructions:

1. Net worth shall mean:
2. The difference between the total assets and total liabilities, specified in the Statement of Assets and Liabilities, in case of bidders (being an individual not doing any business). The Bidder shall provide an independent chartered accountant's certificate specifying the positive Net Worth of the Bidder and also specifying the methodology adopted for calculating such positive Net Worth and a valuation report issued by an approved valuer certifying the market value of assets which have

been included in the Statement of Assets and Liabilities, in accordance with Clause 7.2.3 of the RFP document.

### **APPENDIX-B3**

#### **Particulars of the O&M Experience**

1. (a) Name:  
 (b) Country of incorporation:  
 (c) Address of the corporate headquarters and its branch office(s), if any, in India:  
 (d) Date of incorporation and/ or commencement of business:
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this 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 operational hotels for fulfilment of O&M Experience eligibility criteria:

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

--	--	--	--	--	--	--	--	--

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

*# Attach relevant project certificates*

- For all the hotels mentioned above including the hotels owned by the bidder and those owned by others– self certified copy of the latest licenses/ registrations/ certificates/ consents obtained in relation to the hotels as per the Applicable Laws.*
- For hotel owned by other – In addition to the licenses specified above, the bidder shall also attach a copy of the O&M Contract (First Page and other relevant pages indicating the number of rooms in the property and the tenure of O&M contract) and contact details of the hotel owner.*

## **Appendix- B3**

### **Part 1**

#### **List of amenities/ facilities**

1. Minimum of 10 lettable rooms, with 50% of rooms to be air conditioned.
2. All rooms with attached bathrooms with guest toiletries.
3. All rooms to have facilities of Television and Mini Fridge in addition to other basic requirements.
4. Room and other facilities like ramps for differently abled guests.
5. A well appointed Lobby / Lounge area and Reception, with furniture and fixtures of good quality.
6. Multi-cuisine Restaurant-cum-Coffee Shop with good quality crockery / cutlery.
7. 24 hours Room Service.
8. Left Luggage Facilities.
9. Parking facilities with valet service.
10. 24 hours Lifts for buildings higher than ground + 2 floors.
11. Eco Friendly Practices, such as Sewage Treatment Plant, Rain Water Harvesting, Waste Management, Pollution Control Methods, etc.
12. Safety and Security measures like metal detectors, CCTV at strategic locations

## **Appendix- B3**

### **Part 2**

#### **Certificate**

I/ We hereby confirm that I/ we, the Bidder, fulfil the conditions laid down in Part 1 of Appendix B3 of the RFP document and maintain the following facilities/ amenities in the hotels being operated by me/ us and listed in the particulars of O&M experience in Appendix B3:

1. Minimum of 10 lettable rooms, with 50% of rooms to be air conditioned.
2. All rooms with attached bathrooms with guest toiletries.
3. All rooms to have facilities of Television and Mini Fridge in addition to other basic requirements.
4. Room and other facilities like ramps for differently abled guests.
5. A well-appointed Lobby / Lounge area and Reception, with furniture and fixtures of good quality.
6. Multi-cuisine Restaurant–cum–Coffee Shop with good quality crockery / cutlery.
7. 24 hours Room Service.
8. Left Luggage Facilities.
9. Parking facilities with valet service.
10. 24 hours Lifts for buildings higher than ground + 2 floors.
11. Eco Friendly Practices, such as Sewage Treatment Plant, Rain Water Harvesting, Waste Management, Pollution Control Methods, etc.; and
12. Safety and Security measures like metal detectors, CCTV at strategic locations.

Thanking you,

Yours faithfully,  
For and on behalf of.....

(Signature, name and designation of the authorised signatory)



**APPENDIX B4**

**Self-Certification Affidavit**

(On stamp paper of appropriate value)

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

I/ We hereby confirm that the hotels run and operated by me/ us are at all times operated as 3 star or above category hotels or have the amenities/ facilities listed in Part 1 of Appendix B-3.

Thanking you,

Yours faithfully,  
For and on behalf of.....

(Signature, name and designation of the authorised signatory)

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

**APPENDIX-C1**  
**Financial Bid Form**

To,

.....

Dear Sir,

1. We are pleased to submit our business plan for 30 (thirty) years.
2. We are pleased to quote a revenue share of \_\_\_\_\_ (%) for the scope of work for the entire period for the abovementioned Assignment.
3. 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.
4. I/ we agree that my/our Financial Proposal shall remain valid for a period of 120 (one hundred and twenty) days from the Proposal Due Date prescribed for submission of Proposal.
5. I / we confirm that our Financial Proposal is unconditional and that we accept all terms and conditions specified in the RFP.
6. I / we agree to be bound by this offer if we are the Selected Agency for the said Assignment.
7. We further certify that we shall follow the Scope of 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

## FINANCIAL MODEL FORMAT – HOTEL KALINGA ASHOK BHUBANESWAR

Revenue and Expenditure	Year 1 2019	Year 1 2020	Year 2 2021	Year 3 2022	Year 4 2023	Year 5 2024	Year 6 2025	Year 7 2026	Year 8 2027	Year 9 2028	Year 10 2029
<b>Income from Hotel</b>											
Revenue from Room Rent											
Revenue from F&B											
Revenue from MOD											
Any other source of income											
<b>A. Total Income</b>											
<b>Operating Expenditure</b>											
Room Cost	-	-	-	-	-	-	-	-	-	-	-
Food & Beverage Cost	-	-	-	-	-	-	-	-	-	-	-
Minor Operating Department Cost	-	-	-	-	-	-	-	-	-	-	-
<b>Other Overhead Expenses</b>											
Administrative Expenditure											
Maintenance Expenditure / Consumables											
Payroll Expenses											
Operating Expenses											
Marketing Expenditure											
Upfront fee to be paid to ITDC											
F&FE %											
F&FE	-	-	-	-	-	-	-	-	-	-	-
Any other expenses											
<b>MAG payable to ITDC (assuming a revenue share of 15%)</b>											
Balance Revenue share payable to ITDC											
<b>B. Operating Cost</b>											
<b>C. Operating Cost + Management Incentive Fee</b>											
GOP Post Management Fee (A-C) - Hotel											
<b>Profit Before Interest Depreciation and Tax</b>											
Interest											
Actual Tax Payable											
<b>D. Profit After Tax (PBT-Tax)</b>											

Revenue and Expenditure	Year 11 2030	Year 12 2031	Year 13 2032	Year 14 2033	Year 15 2034	Year 16 2035	Year 17 2036	Year 18 2037	Year 19 2038	Year 20 2039
<b>Income from Hotel</b>										
Revenue from Room Rent										
Revenue from F&B										
Revenue from MOD										
Any other source of income										
<b>A. Total Income</b>										
<b>Operating Expenditure</b>										
Room Cost	-	-	-	-	-	-	-	-	-	-
Food & Beverage Cost	-	-	-	-	-	-	-	-	-	-
Minor Operating Department Cost	-	-	-	-	-	-	-	-	-	-
<b>Other Overhead Expenses</b>										
Administrative Expenditure										
Maintenance Expenditure / Consumables										
Payroll Expenses										
Operating Expenses										
Marketing Expenditure										
Upfront fee to be paid to ITDC										
F&FE %										
F&FE	-	-	-	-	-	-	-	-	-	-
Any other expenses										
<b>MAG payable to ITDC (assuming a revenue share of 15%)</b>										
Balance Revenue share payable to ITDC										
<b>B. Operating Cost</b>										
<b>C. Operating Cost + Management Incentive Fee</b>										
GOP Post Management Fee (A-C) - Hotel										
<b>Profit Before Interest Depreciation and Tax</b>										
Interest										
Actual Tax Payable										
<b>D. Profit After Tax (PBT-Tax)</b>										

Revenue and Expenditure	Year 21 2040	Year 22 2041	Year 23 2042	Year 24 2043	Year 25 2044	Year 26 2045	Year 27 2046	Year 28 2047	Year 29 2048	Year 30 2049
<b>Income from Hotel</b>										
Revenue from Room Rent										
Revenue from F&B										
Revenue from MOD										
Any other source of income										
<b>A. Total Income</b>										
<b>Operating Expenditure</b>										
Room Cost	-	-	-	-	-	-	-	-	-	-
Food & Beverage Cost	-	-	-	-	-	-	-	-	-	-
Minor Operating Department Cost	-	-	-	-	-	-	-	-	-	-
<b>Other Overhead Expenses</b>										
Administrative Expenditure										
Maintenance Expenditure / Consumables										
Payroll Expenses										
Operating Expenses										
Marketing Expenditure										
Upfront fee to be paid to ITDC										
F&FE %										
F&FE	-	-	-	-	-	-	-	-	-	-
Any other expenses										
<b>MAG payable to ITDC (assuming a revenue share of 15%)</b>	-	-	-	-	-	-	-	-	-	-
Balance Revenue share payable to ITDC										
<b>B. Operating Cost</b>										
<b>C. Operating Cost + Management Incentive Fee</b>										
<b>GOP Post Management Fee (A-C) - Hotel</b>										
<b>Profit Before Interest Depreciation and Tax</b>										
Interest										
Actual Tax Payable										
<b>D. Profit After Tax (PBT-Tax)</b>										

### TOTAL MAG PAYOUT TO ITDC

TOTAL PAYOUT TO ITDC	Year 0 2019	Year 1 2020	Year 2 2021	Year 3 2022	Year 4 2023	Year 5 2024	Year 6 2025	Year 7 2026	Year 8 2027	Year 9 2028	Year 10 2029
MAG from the operator	-										
Total Payout to ITDC	-										

TOTAL PAYOUT TO ITDC	Year 11 2030	Year 12 2031	Year 13 2032	Year 14 2033	Year 15 2034	Year 16 2035	Year 17 2036	Year 18 2037	Year 19 2038	Year 20 2039
MAG from the operator										
Total Payout to ITDC										

TOTAL PAYOUT TO ITDC	Year 21 2040	Year 22 2041	Year 23 2042	Year 24 2043	Year 25 2044	Year 26 2045	Year 27 2046	Year 28 2047	Year 29 2048	Year 30 2049
MAG from the operator										
Total Payout to ITDC										

Total NPV is to be calculated for total payout for each year utilizing a discounting factor rate of 11% for a period of 30 years  
 In addition to the above, one-time Upfront Fee shall be paid to ITDC.

**PART D – INTEGRITY PACT**

**[to be executed on non-judicial stamp paper of Rs.100/-]**

## **Appendix D1– Integrity Pact**

### **INTEGRITY PACT**

This Integrity Pact (hereinafter referred to as the Agreement) is made on \_\_\_\_ day of the month of \_\_\_\_\_ 20\_\_\_\_

Between

India Tourism Development Corporation Ltd (ITDC) - a Government of India Undertaking, is a company duly incorporated and existing under the provisions of the Companies Act, 1956, having its registered office at SCOPE Complex, Core 8, 7 Lodi Road, New Delhi-110003 (hereinafter referred to as the Principal, which expression shall unless repugnant to the meaning of context hereof include its successors and permitted assigns).

And

M/s. \_\_\_\_\_ (name and address of the Individual/firm/company/consortium members) through \_\_\_\_\_ [mention details of the duly authorized signatory] (hereinafter referred to as the Bidder/Contractor which expression shall unless repugnant to the meaning of context hereof include its successors and permitted assigns).

#### **Preamble**

Whereas, the Principal has floated a Tender \_\_\_\_\_ [Tender No.] (hereinafter referred to as Tender) and intends to award under laid down procedures, contract(s)/purchase order/work order/ for - \_\_\_\_\_ [name of the contract/order] or items covered under the tender (hereinafter referred to as the Contract).

Whereas, the Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Bidder(s) and /or Contractor(s).

Whereas, in order to achieve these goals, the Principal has appointed competent and credible Independent External Monitor (IEM) for this Pact after approval of Central Vigilance Commission.

Whereas to meet the aforesaid purpose both parties have agreed to enter into this Integrity Pact (hereinafter referred to as the Agreement), the terms and conditions of which, shall be read as an integral part of the tender document and contract between the parties.

Now, Therefore, in consideration of the mutual covenants contained in this Pact, both parties hereby agree as follows:-



## **Section 1- Commitments of the Principal**

1. The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:-

a. No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

b. The Principal will during the tender process treat all Bidder(s) with equity and reason. The Principal will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the process or the contract execution.

c. The Principal will exclude from the process all known prejudiced persons.

2. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there is a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

**Section 2- Commitments of the Bidder(s)/ Contractor(s)** The Bidder(s)/Contractor(s) commit them self to take all measures necessary to prevent corruption. The bidder(s)/Contractors(s) commit them self to observe the following principles during participation in the tender process and during the contract execution.

a. The Bidder(s) / contractor(s) will not, directly or through any other persons or firm, offer promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract.

b. The Bidder(s)/Contractor(s) will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.

c. The Bidder(s)/Contractor(s) will not commit any offence under the relevant IPC/PC Act; further the Bidder(s) /Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of

the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

d. The Bidder(s)/Contractor(s) of foreign origin shall disclose the name and address of the Agents/representatives in India, if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principals, if any. And the details as mentioned in the 'Guidelines on Indian Agents of Foreign suppliers' shall be disclosed by the Bidder(s)/Contractor(s). Further, as mentioned in the Guidelines all the payments made to the Indian agent/representative have to be in Indian Rupee only.

In a tender, either the Indian Agent on behalf of the Principal/OEM or the Principal/OEM itself can bid but both cannot bid simultaneously for the same item/product in the same tender. If an agent submits bid on behalf of the Principal/OEM, the same agent shall not submit a bid on behalf of another Principal/OEM in the same tender for the same item/product.

e. The Bidder(s)/Contractor(s) will, when presenting their bid, disclose any and all payments made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

f. Bidder(s)/Contractors who have signed the integrity pact shall not approach the courts while representing the matter to IEM s and shall wait for their decision in the matter.

2. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

### **Section 3: Disqualification from tender process and exclusion from future contracts**

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process or terminate the Contract, if already executed or exclude the Bidder/Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of the transgression and action will be taken as per the procedure prescribed in the "Guidelines on banning of business dealings" of the Principal.

### **Section 4: Compensation for Damages**

Without prejudice to any rights that may be available to the Principal under law or Contract or its established policies and laid down procedures, the Principal shall have the following rights in case of breach of this Agreement by the Bidder(s)/Contractor(s).

1. If the Principal has disqualified the Bidder(s) from the tender process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to the Earnest Money Deposit / Bid Security Amount of the Bidder/Contractor.

2. If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

### **Section 5: Previous Transgression**

1. The Bidder declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that could justify his exclusion from the tender process.

2. If the bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the as per the procedure mentioned in the "Guidelines on Banning of business dealings" of the Principal.

### **Section 6: Equal treatment of all Bidders/Contractors.**

1. In case of sub-contracting, the principal contractor shall take the responsibility of the adoption of Integrity Pact by the sub-contractor(s).

2. The Principal will enter into Agreements with identical conditions as this one with all bidders, contractors.

3. The Principal will disqualify from the tender process all bidders who do not sign and submit this Integrity Pact along with their Technical Bid for this Tender or violate its provisions at any stage of the tender process.

### **Section 7: Violations of the Integrity Pact**

If the Principal obtains knowledge of conduct of a Bidder, Contractor, or of an employee or a representative or an associate of a Bidder, Contractor which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Chief Vigilance Officer.

### **Section 8: Independent External Monitor/Monitors (IEM)**

1. The Principal will appoint competent and credible Independent External Monitor for this Pact after approval of Central Vigilance Commission.

The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement

2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. The monitor would have access to all contract documents whenever required. It will be obligatory for him/her to treat the information and documents of the bidders/contractors as confidential. He/she reports to the C&MD, ITDC.

3. The Bidder/Contractor accepts that the Monitor has the right to access without restriction to all project documentation of the principal including that provided by the contractor. The contractor will also grant the monitor, upon his/her request and demonstration of a valid interest, unrestricted and unconditional access to their project documentation. The same is applicable to sub-contractors (if any).

4. The Monitor is under contractual obligation to treat the information and documents of the Bidders(s)/ contractor(s)/ sub-contractors(s) with confidentiality. The monitor has also signed declarations on 'Non- Disclosure of Confidential Information' and of 'Absence of conflict of interest'. In case of any conflict of interest arising at a later date, the IEM shall inform C&MD (ITDC) and recuse himself/herself from that case.

5. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.

6. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit nonbinding recommendations. Beyond this, the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.

7. The Monitor will submit a written report to the C&MD, ITDC within 8 to 10 weeks from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

8. If the Monitor has reported to the C&MD, ITDC, a substantiated suspicion of an offence under relevant IPC/PC Act, and the C&MD, ITDC has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

9. The word 'Monitor' would include both singular and plural.

## **Section 9 - Pact Duration**

1. This pact begins when both parties have signed this Agreement. It expires for the Contractor 12 months after the last payment under the contract and for all other bidders 6 months after the contract has been awarded.
2. Any violation of the same would entail disqualification of the bidders and exclusion from future business dealings.
3. If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this Agreement as specified above, unless it is discharged / determined by C&MD of ITDC.

## **Section 10 - Other provisions**

1. This Agreement is subject to Indian Law, the place of performance and jurisdiction is the Registered Office of the Principal i.e. New Delhi.
2. Changes and supplements, as well as termination notices need to be made in writing. Side agreements have not been made.
3. This agreement must be signed by the duly authorized signatory only. If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members. In case of any change in partnership/consortium the new partner or member will have to sign this document.
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
5. Issues like Warranty / Guarantee etc. shall be outside the purview of IEMs.
6. In the event of any contradiction between this Agreement and its annexure, the clause of the Agreement will prevail.

For the sake of brevity, both the parties agree that this Agreement will have precedence over the Tender/Contract documents with regard to any of the provisions covered in this Agreement.

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(For & on behalf of the Principal)  
(Office Seal)

(For & on behalf of the Bidder)  
(Office Seal)

Place: \_\_\_\_\_

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

Witness-1:\_(Signature)

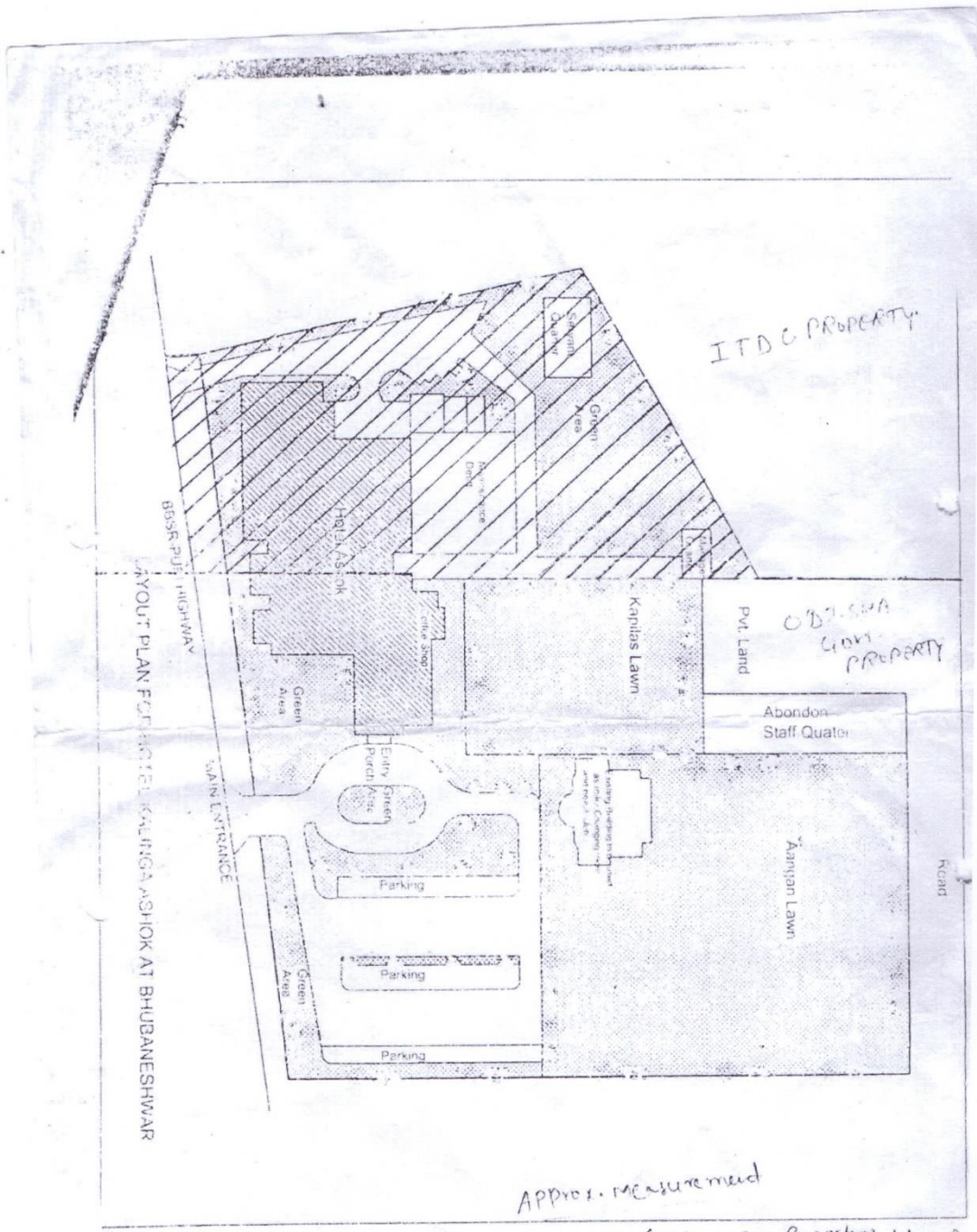
Name: \_\_\_\_\_

Address:\_\_\_\_\_

Witness-2:(Signature)

Name: \_\_\_\_\_

Address:\_\_\_\_\_



APPROX. MEASUREMENT

- Govt hold land, approx 1.89 Acres → ITDC Properties (Approx)
- Lease land, approx 3.71 Acres → Odisha Govt. Properties (1)
- 5.6 Acres

## **PART E -OPERATION AND MAINTENANCE AGREEMENT**



## Appendix E1

### Operation and Maintenance Agreement

THIS **OPERATION AND MAINTENANCE AGREEMENT** ('Agreement') is entered into on this the [•] day of [•] 20[•];

#### BETWEEN

- 1) India Tourism Development Corporation, established under [•], represented by its \_\_\_\_\_ and having its Registered Office at Scope Complex, Core-8, Lodi Road, New Delhi – 110 003 (hereinafter referred to as the "ITDC" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns); of One Part;

#### AND

- 2) [•] Limited, (Selected Bidder / Consortium) incorporated under the provisions of the Companies Act, 1956 / 2013 and having its registered office at [•]., (hereinafter referred to as the "**Operator**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other part

#### WHEREAS:

- A. ITDC is the owner and operator of the Hotel Kalinga Ashok, Bhubaneswar ("**Hotel**").
- B. ITDC had prescribed the technical and commercial terms and conditions and invited bids (the "**Request for Proposal**" or the "**RFP**") along with an amount of Rs. 10,000 (Rupees Ten Thousand Only) as tender fee, for undertaking the Project from interested Bidders vide Request for Proposal dated March 27, 2019.
- C. After evaluation of the bids received, ITDC had accepted the bid of M/s [•] and issued the letter of award numbered [•] dated [•] (hereinafter called the "**LOA**") to M/s [•] requiring, inter alia, the execution of this Agreement within 60 (sixty) days of the date of issue thereof. M/s [•] returned the duplicate copy of the LOA in acknowledgement thereof.

#### In case of Consortium

- D. Selected Bidder/Consortium has promoted and incorporated the Operator as a Special Vehicle Company under the Companies Act, 1956/ 2013 and has requested ITDC to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium under the LOA}, including the

obligation to enter into this Agreement pursuant to the LOA for undertaking, the Project.

- E. By its letter dated [•], the Operator has also joined in the said request of the Selected Bidder/ Consortium to ITDC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Operator has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof.
- F. ITDC has agreed to the said request of the Operator and the Operator has accordingly agreed to enter into this Agreement with the Operator for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.
- G. ITDC acknowledges that as on this day, the Operator has submitted the following to ITDC:
- a) Non-refundable and an irrevocable payment of Rs [•] (Rupees Only) as an Upfront Fee;
  - b) Performance Guarantee
- H. The Operator represents and warrants that it has duly fulfilled all the terms and condition necessary for the execution of this Agreement as per the terms and condition in bid documents and are in a position to execute this Agreement and implement the Project as envisaged in the Bid and this Agreement.

In light of compliance by the Operator of the pre-conditions to the execution of the Agreement, ITDC has agreed to enter into this Agreement vesting the rights for the implementation of the Project with the Operator on the terms, conditions, and covenants hereinafter set forth in this Agreement.

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

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

“**Affected Party**” shall have the meaning as set forth in Article 13.1.1;

**“Agreement”** or **“Agreement”** means this agreement, including the Recitals, Schedules, and documents appended hereto, as amended, supplemented or modified from time to time in accordance with the provisions hereof;

**“Applicable Laws”** means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**“Appointed Date”** means the date on which every Condition Precedent is either satisfied by the Operator or waived by ITDC, as the case may be, in accordance with the provisions of this Agreement;

**“Associate”** or **“Affiliate”** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**“Bid”** means the documents in their entirety comprised in the bid submitted by the selected bidder/Consortium in response to the Request for Proposal in accordance with the provisions thereof;

**“Bid Date”** means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

**“COD”** or **“Commercial Operation Date”** shall mean the Scheduled COD or such other date as may be approved in writing by ITDC;

**“Change in Law”** means the occurrence of any of the following after the Bid Date:

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date.

**“Company”** means the company acting as the Operator under this Agreement;

**“Condition Precedents”** shall have the meaning as set forth in Article 4.1.1;

**“Consortium”** shall refer to a group of entities acting together;

**“Consortium Member”** refers to a member of the Consortium;

**“CP Completion”** means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

**“Cure Notice”** shall mean the notice issued by ITDC to make such alterations to the Project to ensure its conformity with the concept Master plan, Ministry of Tourism guidelines for rating of hotels and this Agreement including but not limited to Schedule B, C & D (**“Cure Notice”**).

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by ITDC, the applicable Cure Period shall be extended by the period taken by ITDC to accord their approval.

**“Damages”** shall have the meaning as set forth in Sub-article (v) of Article 1.2.1;

**“Dispute”** shall have the meaning as set forth in Article 22.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 22;

**“Divestment Requirements”** means the obligations of the Operator for and in respect of Termination as set forth in Article 17.1;

**“Document”** or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**“Effective date”** shall mean the date on which the Agreement has been executed by the Parties;

**“Encumbrances”** means in relation to the Project, any encumbrances such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Project Site

or Third Party claims or rights of any kind attaching to the whole or any part of the Project Site or any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

**"Escrow Account"** means an Account which the Operator shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

**"Escrow Agreement"** shall have the meaning as set forth in Article 10.1.2;

**"Escrow Bank"** shall have the meaning as set forth in Article 10.1.1;

**"Financial Year"** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the signing of Authorization Agreement to the immediately following, 31st March. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date;

**"Force Majeure Event"** shall have the meaning ascribed to it in Article 13.1;

**"Forecasted Revenue"** shall refer to the proposed revenues of the Operator as set out in the business plan submitted by the Operator along with its Bid;

**"GOI"** means the Government of India;

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

**"Government Authority"** or **"Government"** means GoI, or any State Government or Governmental department, Commission, Board, Body, Bureau, Agency, Authority, instrumentality, Court or other Judicial or Administrative Body, Central, State, or local, having jurisdiction over the Operator, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Operator under or pursuant to this Agreement or any portion thereof;

**"Government Instrumentality"** means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority

or statutory body including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

“**Indemnified Party**” means the Party entitled to the benefit if an indemnity pursuant to Article 20.4;

“**Indemnifying Party**” means the Party obligated to indemnify the other party pursuant to Article 20.4;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 11, and includes all insurances required to be taken out by the Operator under Article 11 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.

“**Intellectual Property**” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

“**ITDC Lease**” shall refer to the lease deed dated [•] entered into between ITDC and the State Government of Odisha;

“**LOA**” or “**Letter of Award**” means the letter of award referred in Recital (C).

“**License Fees**” shall have the meaning as set forth in Article 8.1 and shall include the Revenue Share/ Minimum Annual Guarantee and the Upfront Fee;

“**Lock-in Period**” shall have the meaning set forth in Article 3.12.1 (a).

“**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“**Material Breach**” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

“**Minimum Annual Guarantee**” or “**MAG**” shall mean a minimum guaranteed amount payable by the Operator in terms of Clause 8.1.2.

“**Month**” shall have 30 (thirty) days in a month.

**"O&M"** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Fee in accordance with the provisions of this Agreement;

**"O&M Expenses"** means expenses to be incurred by of the Operator for operations and maintenance of the Hotel for the entire Term in order to meet its obligations under Article 3 of this Agreement;

**"Operator Event of Default"** shall have the meaning as set forth in Article 16.2.1.

**"Operator Lock-in Period"** shall have the meaning set forth in Article 3.12.1 (b);

**"Operator's Representative"** means the Person appointed by Operator under Article 3.10.1.

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

**"Payment Default"** shall mean the failure on part of the Operator to make payment of the License Fee, along with the applicable interest thereof or failure to make any payment due to be paid by the Operator to ITDC, by the respective due date.

**"Person"** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity;

**"Performance Security"** shall mean the bank guarantee required to be submitted by the Operator in accordance with the Bid Documents as security /guarantee against any Payment Default in timely payment of consideration, other dues to ITDC and fulfillment of other obligations as per the Agreement including timely completion of the Project;

**"Project"** "or **"Project Facility"** or **"Hotel"** shall mean the Hotel and running, operating, maintaining of the Hotel and any and all services, facilities and provisions related thereto or incidental or ancillary thereto;

**"Project Assets"** shall mean and comprise of all tangible and intangible assets relating to the Project/Project Facilities as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise, (b) each of tangible assets comprising the Project Facilities such as , additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, milestones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, laboratories with equipment, other equipment, technology at the Site/relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, User Fees etc.; (d) rights of the Operator under the agreements relating to the Project entered into by the Operator, (e) proceeds from insurance policies taken by the Operator in relation to the Project Facilities (f) all applicable permits, affiliations and

authorizations relating to or in respect of the project (g) movable assets of the Project/project facilities, movable property, things and goods like equipment, machinery, fittings and fixtures etc.

**“Project Revenue”** means in relation to the Project, the total amount received or to be received from the operation of the said Project as certified by the statutory auditor of the Operator and as accepted by the independent auditors of ITDC. The gross receipts shall include but not be limited to receipts from the Subcontractors, receipts on the rooms, restaurants, banquet parties, pool side snack bar, bar-be-que, room service, public rooms, function room, laundry, shopping area, show cases, and barber and beauty shops and other kiosks or any other earning of like nature or any receipts from commercial usage of Project Assets, Project Site for any purpose whatsoever, whether or not of recurring nature and whether or not treated as revenue in the books of accounts of the Operator. The gross receipt shall also include:

- a) all receipts against the earning of any sub-licensee, or any other party to whom all or any portion of Operator’s rights and obligations under this agreement has been sub-licensed in accordance with the terms of this agreement to any arrangement, whatsoever;
- b) any monies received from sub-licensee and any other parties by the Operator as deposits, refundable or otherwise;

Receipts from the rooms shall be net receipts after adjusting the commissions, rebates or discounts paid or payable to travel agents, tour operators, group leaders or agencies making the booking of the rooms in the Project.

**“Project Site”** or **“Site”** shall have the meaning as set forth in Schedule A;

**“Proposal”** or **“Bid”** means the entire set of technical, financial, qualifying and other documents in their entirety comprised in the proposal or bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof, and accepted by ITDC;

**“RBI”** means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

**“Re.”**, **“Rs.”** Or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

**“Revenue Share”** shall mean a sum in Indian Rupees equal to [•]% (in words) percent of the Project Revenue, which the Operator is required to pay to ITDC as set forth in Article 8;

**“Schedule”** means any of the schedules in the RFP;

**“Scheduled COD”** shall be the date occurring immediately after the expiry of 90 (ninety) days from the Effective Date;

**“Selected Bidder”** shall mean the Operator or in cases where Operator is a Special Purpose Vehicle (SPV) as per the RFP, the Consortium which is



declared as such by ITDC on quoting the highest percentage of Project Revenue as Revenue Share;

“**State**” means the State or the Union Territory, as the case may be, in which the Project is situate and “State Government” means the government of that State or Union Territory;

“**Sub contractor**” means and shall include contractors, Subcontractors, manufacturers, suppliers, vendors of goods and services engaged by the Operator in relation to the Project and includes licensees of restaurants, spaces and other facilities within the Project;

“**Substitution Right**” shall have the meaning set forth it in Article 3.12.1 (b).

“**Taxes**” means any Indian taxes including excise duties, customs duties, GST, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Technical Member**” shall mean the member of the Consortium whose technical capability has been considered by ITDC for selection of the Operator in the bidding process;

“**Term**” shall have the meaning as set forth in Article 7.1;

“**Termination**” means the expiry or termination of this Agreement;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

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

“**Transfer Date**” shall refer to the date when the transfer as per Article 24 is completed in reasonable opinion of ITDC;

“**Upfront Fee**” shall mean a fixed, non-refundable, non-adjustable fee equal to Rs. [•] (Rupees [•] (*in words*)) payable by the Operator to ITDC on or before the execution of this Agreement.

“**User**” means any Person using the Project or any part thereof on payment of User Fee and includes any guest, visitor, user, licensee, Subcontractor, or customer.

“**User Fee**” means the charge levied on and payable by a User for using the Project or a part thereof, in accordance with this Agreement and shall include tariffs, prices, rates, commissions, royalties, rentals, premiums, deposits, license fees and all sources of revenue or amounts of money addressed by any name, payable at any time by a User in respect of the Project.

## **1.2 Interpretation**

1.2.1 **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;
- 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) Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.
- f) 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;
- g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- h) any reference to day shall mean a reference to a calendar day;

- i) Any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- j) references to a **"business day"** shall be construed as reference to a day (other than a Sunday) on which banks in Delhi and Odisha are generally open for business;
- k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l) 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;
- m) words importing singular shall include plural and vice versa;
- n) references to any gender shall include the other and the neutral gender;
- o) **"lakh"** means a hundred thousand (100,000) and **"crore"** means ten million (10,000,000);
- p) **"indebtedness"** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- q) references to the **"winding-up"**, **"dissolution"**, **"insolvency"**, or **"re-organization"** 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, re-organization, dissolution, arrangement, protection or relief of debtors;
- r) save and except as otherwise provided in this Agreement, 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-article(s) shall not operate so as to increase liabilities or obligations of ITDC hereunder or pursuant hereto in any manner whatsoever;

- s) 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;
- t) 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;
- u) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- v) the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");
- w) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

x) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination by any Party, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination shall be in writing under the hand of duly authorized representative of such Party.

1.2.2 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.

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

### **1.3 *Measurements and Arithmetic Conventions***

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

### **1.4 *Priority of agreements and clauses***

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

- a) this Agreement; and
- b) all other agreements and documents / RFP forming part hereof or referred to herein;

i.e. the Agreement at a) above shall prevail over the agreements and documents at b) above.

1.4.2 Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between any value written in numerals and that in words, the latter shall prevail.

## **ARTICLE 2: SCOPE OF THE PROJECT**

### **2.1 *Scope of the Project***

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

- 2.1.1 financing, constructing if required, operating, maintaining and transfer of the Project as per the terms of this Agreement;
- 2.1.2 operation and maintenance of the Hotel during the Term in accordance with the provisions of this Agreement;
- 2.1.3 payment of License Fee / Upfront Fee to ITDC as per terms of this Agreement; and
- 2.1.4 performance and fulfillment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.

## **ARTICLE 3: GRANT OF RIGHTS**

### **3.1 *Operation and Maintenance Rights***

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, ITDC hereby grants to the Operator and the Operator hereby accepts the grant of rights to operate and maintain the Hotel and exercise these rights as per the terms of this Agreement for the Term commencing from the Appointed Date including right to collect User Fee subject to payment of License Fee to ITDC. The Operator covenants to use the Hotel/Project for the

operation of at least a 3 star hotel and for any activities in connection therewith which are customary and usual to such an operation and, as far as shall be feasible, shall conduct such operation efficiently and in accordance with the standards, character and tradition of the Operator. The Operator undertakes to operate and provide in the Hotel, all services normally provided in at least a 3 star hotel. It is agreed that the grant of rights under this Agreement and engagement of the Operator by ITDC is in the nature of a service contract between two independent principals and neither party shall be considered as a partner, employee, principal or agent of the other. The Operator shall, in no manner, be deemed to be the agent or employee of ITDC and shall, notwithstanding anything contained herein, have any rights, interest or entitlement to bind ITDC in any arrangement, agreement or obligation favouring a third party and shall not in any manner act on behalf of ITDC unless specifically approved in writing by ITDC. Nothing contained in this Agreement or any other document executed pursuant to it shall be deemed to give any such rights to the Operator;

- 3.1.2 As regards the Site, Hotel/Project, land lying underneath and constructed portion and any appurtenant thereto including trees, plantation and all other things attached to it, the Operator shall be deemed to be a licensee to use such properties in the capacity of a licensee only and specifically for the purposes of this Agreement and nothing contained herein or elsewhere shall have the effect of handing over legal, constructive, actual or physical possession thereof to the Operator by ITDC. For the removal of doubt, the legal, constructive, actual or physical possession Site, Hotel/Project, land lying underneath and constructed portion and any appurtenant thereto including trees, plantation and all other things attached to it shall exclusively vest in ITDC and shall be subject to the provisions of ITDC Lease;
- 3.1.3 Subject to and in accordance with the terms and conditions set forth in this Agreement, the rights hereby granted shall entitle the Operator to enjoy and oblige the Operator to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the applicable permits and its own cost and consequences:

- a) To complete/repair the Hotel in all respects, to its own satisfaction, for it to commence commercial operation on or before the COD;
- b) To finance, construct if required in terms of this Agreement, market, manage, administer, operate and maintain the Project during the Term;
- c) to manage, operate & maintain the Project and regulate the use thereof by third parties.
- d) demand, collect and appropriate User Fee from users liable for payment of User Fee for using the Project and any part thereof.
- e) The Operator shall relocate the HT/LT power, kitchen, ETP, which are located on the other parcel of land, in the Hotel premises within a period of 6 (six) months from the Effective Date at its own cost and risk. It is however clarified that the Operator shall be entitled to use the existing HT/LT power, kitchen, ETP facilities (located on another parcel of land) until such facilities are relocated in the Hotel premises in terms of this Clause and the Operator shall be liable to make the payment of all the charges, overheads and costs in relation to the operation of the existing facilities including without limitation the electricity bills, water charges payable in connection therewith during such period.
- f) perform and fulfill all of the Operator's obligations under this Agreement.
- g) bear and pay all costs, expenses and charges (including O&M Expenses) in connection with or incidental to the performance of the obligations of the Operator under this Agreement.
- h) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the rights hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.
- i) license/ enter into agreements or arrangement with the Subcontractors which shall be co-terminus with this Agreement through a transparent mechanism on terms and conditions decided on an arm's length basis



and subject to the provisions of this Agreement; provided however that: (i) Operator shall not part with, create any Encumbrance or third party rights on the whole or any part of the Site and/or the Hotel, to or in favor of any person in any form or under any arrangement, device or method. The breach of which shall constitute an Operator Default that shall entitle ITDC to terminate this Agreement.

- j) the Operator has no right to sell or mortgage the title of the Site, Hotel and/or Project Assets or any of the whole or part thereof and it shall, on the Transfer Date, transfer and hand over the Site along with the Project Facilities and Project Assets to ITDC or its nominated agency in accordance with the provisions hereof.
- k) Any part of the O&M Rights (but not the whole of rights) may be sub-contracted by the Operator subject to prior consent of ITDC, which shall not be unreasonably withheld, provided always that notwithstanding the same, the Operator retains overall management, responsibility, obligation and liability in relation to the Subcontracted rights. Any such subcontracting shall not relieve the Operator from any of its obligations in respect of the performance of its obligations under this Agreement. It is clarified that Operator shall remain liable and responsible for any acts, omissions or defaults of any subcontractor, and shall indemnify ITDC in respect thereof.
- l) select, recruit, train and assign duties of all personnel and conduct and maintain training programmes for the training of all Hotel employees in specific work related skills and guest relations, develop and maintain employment and training schemes including apprenticeship schemes for the purpose of attracting and retaining skilled staff for the Hotel, develop and maintain employee induction and orientation training programmes for all new employees at the Hotel etc.
- m) fixation of emoluments of all staff including fringe benefits and welfare schemes other than those of senior expatriate management personnel and to file in its own name applications for work permits and work visas for all expatriate personnel to be employed at the

Hotel.

- n) the formulation and administration of personnel policies including transfer or termination of employment.
- o) institution and supervision of operating policies, principles, systems and procedures for all departments including purchasing, accounting, credit management, sales promotion, public relations, front office, housekeeping, security, kitchens, restaurants, Hotel engineering and maintenance, Fire protection, personnel, etc.
- p) institution of reporting and control systems and procedures for all departments.
- q) the establishment of all prices, price schedules, rates and rate schedules.
- r) entering into agreements with any Governmental Authority, and obtaining from any such Governmental Authority the necessary rights, concessions, licenses, and privileges in respect of the Hotel as per terms of the O&M.
- s) the negotiations and executions in the normal course of Hotel business of licenses and concessionaires in the Hotel.
- t) offer travel related services to the guests and customers of the Hotel either by itself or through its associate company/s or otherwise.
- u) supervision and control of the activities of the Subcontractors and holders of privileges and their employees, including the dispossessing of licensees for non-payment of compensation or other proper cause or the termination of the rights of the holders of privileges for similar proper cause.
- v) installation of suitable books of control and account to be kept in accordance with the applicable accounting policies and systems.
- w) the negotiating and executing of the contracts necessary or desirable in connection with the operation of the Hotel including for appointment of company/persons for providing of any specialized

service/s and/or providing any services required to be rendered herein by the Operator.

- x) purchase of such inventories, provisions, supplies and equipment's as the Operator may deem reasonably necessary in order to maintain and operate the Hotel properly.
- y) right of way, access and license to the Site and the Hotel for the purpose of and to the extent conferred by the provisions of this Agreement.
- z) taking action at law, except in the name of the ITDC, which the Operator shall deem necessary and proper in connection with the operation of the Hotel.
- aa) to make such routine repairs and maintenance to the Hotel carrying out renovations / refurbishments / improvements at the Hotels the Operator may deem reasonably necessary, at its own cost. It being agreed that any repair, maintenance requiring construction or reconstruction of the Hotel or part thereof including construction of additional facilities, structural repairs within the Site shall be undertaken by the Operator only with the prior approval of ITDC and in accordance with ITDC Lease and Applicable Laws. It is, however, clarified that except as stated hereinabove, no construction in or reconstruction of the Hotel, including without limitation construction of any additional rooms, shall be undertaken by the Operator.
- bb) the planning, preparation, contracting and execution of advertising and promotional programmes.
- cc) instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings claims and disputes in which the Hotel is concerned, except where such proceedings involve ITDC.
- dd) receiving and giving effectual receipts and discharge for monies, funds, goods or properties lent to or payable or belonging to the Hotel except where such receipts and discharges are required to be given by ITDC.
- ee) hire independent contractors and/or attorneys to provide such legal, accounting, technical and other

professional services as the Operator deems advisable for the management, operation and maintenance of the Hotel, except where such appointment is required to be undertaken by ITDC.

- ff) installing, operationalizing and thereafter maintaining and supporting latest hotel management software and systems (proprietary or otherwise) at the Hotel.
- gg) to cause the Hotel staff to use all reasonable efforts to collect all User Fee and other charges, rents and other amounts due from Hotel guests, patrons, tenants, sub-tenants, parties providing exclusive services and concessionaries, which efforts shall include where necessary or desirable, the following (i) demanding and giving receipts for charges, rents and other amounts due, (ii) giving notices to quit or surrender space occupied or used, and (iii) subject to this Agreement, suing for and instituting and summary proceedings in connection with any amounts due.
- hh) to cause the appropriate Hotel employees to negotiate with any labour union, lawfully entitled to represent any Hotel employees.
- ii) generally to perform all obligations and duties necessary in connection with the operation of the Hotel in an efficient and proper manner.
- jj) make, or cause to be made, necessary applications to the relevant authority or instrumentalities with such particulars and details, as may be required for obtaining applicable permits and obtain and keep in force and effect such applicable permits in conformity with the Applicable Laws;
- kk) perform its obligations under this Agreement and notify to ITDC forthwith the occurrence of CP Completion;
- ll) obtain and maintain in force on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- mm) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the

Operator's obligations under this Agreement;

- nn) comply with all applicable permits and Applicable Laws in the performance of the Operator's obligations under this Agreement including those being performed by any of the Subcontractors;
- oo) develop, implement and administer a safety program for the Project, the users thereof, and Subcontractors' personnel engaged in the provision of services under any agreement(s), including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Good Industry Practice;
- pp) take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims;
- qq) indemnify ITDC against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Operator in connection with the performance of its obligations under this Agreement;
- rr) hand over the Project to ITDC upon Termination of the Agreement;
- ss) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement; and
- tt) Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not assign or in any manner create an Encumbrance on any Project Asset(s) without prior written approval of ITDC.
- uu) permitting safe, smooth and uninterrupted use of Project during normal operating conditions;
- vv) collecting and appropriating the User Fee;
- ww) minimizing disruption in the event of accidents or other incidents-affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;

- xx) carrying out periodic preventive maintenance of the Project;
- yy) undertaking routine maintenance including prompt repairs of cracks, joints, drains, markings, lighting, signs and other control devices;
- zz) undertaking major maintenance such as repairs to structures, and refurbishment of parking system and other equipment(s);
- aaa) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- bbb) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- ccc) protection of the environment and provision of equipment and materials therefor;
- ddd) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- eee) maintaining a public relations unit to interface with and attend to suggestions from the Users, ITDC agencies, media and other agencies;
- fff) remove promptly from the Project Site all surplus construction/maintenance machinery and materials, waste materials (including hazardous materials and waste water), rubbish, debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, applicable permits and Good Industry Practice;
- ggg) in the event that the Project or any part thereof suffers any loss or damage during the Term from any cause whatsoever, the Operator shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement;
- hhh) The Operator shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to

operate in conformity with the Good Industry Practice and Applicable Laws or as may be permitted in writing by ITDC.

**3.2** Notwithstanding anything to the contrary contained herein, it is agreed between the Parties that the rights granted by ITDC to the Operator under Article 3.1 shall be subject to the provisions of the ITDC Lease.

**3.3** The Operator shall in no instance interfere or deny access to the Site to the authorised representatives of ITDC and to the persons duly authorised by any governmental agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Project Site.

**3.4** The Operator shall ensure that sufficient financial and other resources are available at its disposal for performance of its obligations and duties under this Agreement, the agreements executed with Subcontractors and in general for providing services to the Users and to incur O&M Expenses. Operator covenants that the financial resources shall be procured or arranged by it subject to the terms of this Agreement and in doing so, it shall neither create any third party rights or Encumbrances on the Site or Hotel nor shall it dilute its shareholding beyond what is expressly permitted under this Agreement and/or the bid documents. It is also agreed that nothing contained in this Agreement shall be construed to mean that ITDC shall be liable in any manner whatsoever for any financial obligation or covenant of the Operator, that it has provided or shall provide any assistance, assurance or guarantee to the Operator or to any third party for the benefit of the Operator or the Consortium or any of its members and the Operator shall, and the lead member of the Consortium shall ensure that the Operator does, indemnify and hold ITDC harmless against any claims made by any third party in this regard.

**3.5** ***Employment of foreign nationals***

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its

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

### **3.6 *Employment of trained personnel***

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

### **3.7 *Sole purpose of the Operator***

The Operator (in case of an SPV), has been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, i.e., the implementation, operation and maintenance of the Project. The Operator, being an SPV formed for the sole purpose of implementing the Project, hereby agrees not to have any shareholding interest or otherwise in any entity, or any other form of arrangement with any person, which may allow it to undertake or perform any other business activity. The Operator hereby agrees not to have any subsidiary, except with the previous written consent of ITDC, or be or become directly or indirectly engaged, concerned or interested in any business in relation to this Project.

### **3.8 *Branding of the Project***

The Project or any part thereof shall be branded by the Operator under the brand name "Ashok" or under its own brand name in conjugation with the brand name "Ashok".

### **3.9 *Facilities for differently abled and elderly persons***

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

### **3.10 *Operator's Representative***

3.10.1 The Operator's Representative shall be the person so



designated by the Operator (**"Operator's Representative"**). If at some point of time the Operator is unable to provide the services of the person named the Operator's Representative, and then it shall notify ITDC its reasons for this, and thereafter, provide a substitute person who can be the Operator's Representative.

3.10.2 The person named as the Operator's Representative under this Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Operator's Representative, the Operator shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience, and then obtain the written consent of ITDC to the appointment of the Operator's Representative.

3.10.3 The Operator's Representative shall be exclusively employed or engaged by the Operator to give his whole time to direct the preparation of the operation and maintenance of the Project. Except as otherwise stated in the Agreement, the Operator's Representative shall receive on behalf of the Operator all notices, instructions, consents, approvals, certificates, determinations and other communications under this Agreement.

3.10.4 The Operator's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until ITDC has received prior written notice signed by the Operator's Representative, specifying the powers, functions and authorities being delegated or revoked. Operator's Representative shall notify in writing to ITDC, the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Operator's Representative. Any such delegation shall not relieve the Operator's Representative of its obligation and duties under this Agreement.

### **3.11 Compliance with ITDC's business responsibility policy:**

3.11.1 The Operator undertakes to comply with the following principles pertaining to the human rights in the business

responsibility policy of ITDC:

- a. Operator understands the human rights content of the Constitution of India, national laws and policies and the content of International Bill of Human Rights.
- b. Operator appreciates that human rights are inherent, universal, indivisible and interdependent in nature.
- c. Operator shall integrate the respect for human rights in management systems, in particular through assessing and managing human rights impact of operations, and ensuring that all individuals impacted by the business have access to grievance mechanisms.
- d. Operator agrees to recognize and respect the human rights of all relevant stakeholders and groups within and beyond the workplace, including that of communities, consumers and vulnerable and marginalized groups.
- e. Operator shall, within its sphere of influence, promote the awareness and realization of human rights across its value chain.
- f. Operator shall not be complicit with human rights abuses by a third party.

3.11.2 The Operator further undertakes to comply with the following principles in connection with environmental protection in the business responsibility policy of ITDC:

- a. Operator shall utilize natural and manmade resources in an optimal and responsible manner and ensure the sustainability of resources by reducing, reusing, recycling and managing waste.
- b. Operator shall take measures to check and prevent pollution. It should assess the environment damage and bear the cost of pollution abatement with due regard to public interest.
- c. Operator shall ensure that the benefits arising out of access and commercialization of biological and other natural resources and associate traditional knowledge are shared equitably.
- d. Operator should continuously seek to improve its environmental performance by adopting cleaner production methods, promoting use of energy efficient

and environment friendly technologies and use of renewable energy.

- e. Operator shall develop Environment Management Systems (EMS) and contingency plans and processes that help it in preventing, mitigating and controlling environment damages and disasters, which may be caused due to its operations or that of a member of its value chain.
- f. Operator shall report its environmental performance, including the assessment of potential environmental risks associated with its operations, to the stakeholders in a fair and transparent manner.
- g. Operator shall proactively persuade and support its value chain to adopt these principles.

### **3.12 Shareholding Lock-in (in case of Consortium)**

3.12.1 The Operator undertakes that the following provisions shall be included in the Articles of Association of the Operator:

- a. The lead member of the Consortium shall hold at least 51% of the total paid up share capital of the Operator on a fully diluted basis for a minimum period of 10 (ten) consecutive years commencing from the COD ("**Lock-in Period**"). The Lead Member, however, may dilute its shareholding in the SPV after completion of the Lock-in Period subject to the following conditions:
  - i. At least one member of the Consortium holds not less than 51% of the paid up share capital of the SPV and such member undertakes to assume all the duties and obligations of the Lead Member under the RFP and this Agreement; and
  - ii. the total number of members of the Consortium shall not exceed 5 (Five).
- b. After the expiry of the period of 5 (five) years from the COD ("**Operator Lock-in Period**"), the Lead Member shall be entitled to replace the Technical Member ("**Substitution Right**") subject to an approval from ITDC. The aforesaid Substitution Right shall not be exercised by the Lead Member more than three times during the entire Term.

- c. All other members of the Consortium shall jointly hold the balance paid up share capital of the SPV on a fully diluted basis for a minimum period of 5 (five) years commencing from the COD;
- d. 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) shall require the prior written consent of ITDC; and
- e. Notwithstanding anything to the contrary contained in this Agreement, the exit related provisions contained in this Clause shall only be applicable in case of a Consortium.

## **ARTICLE 4: CONDITIONS PRECEDENT**

### **4.1 *Conditions Precedent***

- 4.1.1 Save and except as expressly provided in this Agreement, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the "**Conditions Precedent**") save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Article 4.1.2 below.
- 4.1.2 The Conditions Precedent required to be satisfied by the Operator prior to the Appointed Date shall be deemed to have been fulfilled when:
  - a. Operator shall have obtained requisite applicable permits and such applicable permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;
  - b. ITDC shall have received from the Operator copies (certified as true copies by an authorised officer of the Operator) of the constitutional documents of the Operator having provisions as per Article 3.12;
  - c. ITDC shall have received copies (certified as true copies by a director of the Operator) of all resolutions adopted by the board of directors of the Operator authorizing the execution, delivery and performance by the Operator of this Agreement;

- d. executed and procured execution of the Escrow Agreement;
- e. Upfront Fee shall have been paid to ITDC;
- f. Performance Guarantee shall have been furnished to ITDC;
- g. Any of the conditions precedent set forth in this Article 4.1.2, save and except condition of (c) thereof, may be waived fully or partially by ITDC at any time in its sole discretion

#### 4.1.3 **Obligations to satisfy Condition Precedents**

- a. The Operator and ITDC shall make all reasonable endeavors to procure the satisfaction in full of the Conditions Precedent set out in Article 4.1.2 above. The Operator shall bear its respective cost and expense of satisfying Conditions Precedent.
- b. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance with the Conditions Precedent (the "**Certificate of Compliance**").

## **4.2 *Deemed Termination upon Delay***

- 4.2.1 In the event that (i) the Operator does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.1.2 within a period of 90 (ninety) days from the Effective Date, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.1.2 or other breach of this Agreement by ITDC, or due to Force Majeure, the Operator shall pay to ITDC, Damages equivalent to an amount calculated at the rate of State Bank of India Prime Lending Rate (SBI PLR) plus 2 % of the Minimum Annual Guarantee for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to Performance Security Value and upon reaching such maximum, ITDC may, in its sole discretion, terminate this Agreement.
- 4.2.2 Without prejudice to the provisions of Article 4.2 , the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within 90 (ninety) days from the Effective Date or the extended period provided in accordance with this Agreement, all

rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Operator, the Performance Security of the Operator shall be encashed and appropriated by ITDC as Damages thereof in addition to any other right or remedy that ITDC may have under law or equity.

Without prejudice to and notwithstanding anything to the contrary set out in the foregoing, the Parties may by mutual agreement in writing, instead decide to extend the time for fulfilling the Conditions Precedent.

## **ARTICLE 5: REPRESENTATIONS AND WARRANTIES**

### **5.1 *Representations and warranties of the Operator***

The Operator represents and warrants to ITDC that:

- 5.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- 5.1.2 It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein;
- 5.1.3 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 and to validly exercise its rights and perform its obligations under this agreement;
- 5.1.4 Along with its Associates, it has the financial standing and capacity to undertake the Project;
- 5.1.5 the obligations of the Operator under this Agreement will be legally valid, binding and enforceable against it in accordance with the terms hereof;
- 5.1.6 It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 5.1.7 All the information furnished in the Bid is, and shall be true and correct as on the Appointed Date and true, correct and

accurate in all respects;

- 5.1.8 The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the memorandum and articles of Association of the Operator or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- 5.1.9 There are no actions, suits, proceedings, or investigations pending or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- 5.1.10 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 governmental agency which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement;
- 5.1.11 It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- 5.1.12 The Operator / Consortium have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- 5.1.13 Each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to, consent to and has validly consented to and requested ITDC to enter

into this Agreement with the Operator pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

5.1.14 All rights and interests of the Operator in and to the Project shall pass to and vest in ITDC on the Transfer/ Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Operator or ITDC and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Operator subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;

5.1.15 No representation or warranty by the Operator contained herein or in any other document furnished by it to ITDC, or to any Governmental agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading; and

5.1.16 It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to any person by way of fees, commission or otherwise for rights granted herein or entering into this Agreement or for influencing or attempting to influence any officer or employee of ITDC in connection therewith.

5.1.17 all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

5.1.18 all undertakings and obligations of the Operator arising from the Request for Proposal or otherwise shall be binding on the Operator as if they form part of this Agreement.

## **5.2 Representations and warranties of ITDC**

ITDC represents and warrants to the Operator that:

5.2.1 ITDC is duly organized and validly existing under the laws of India;

5.2.2 ITDC has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry



out the transactions contemplated hereby;

- 5.2.3 ITDC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- 5.2.4 This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- 5.2.5 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 Instrumentality which may result in any Material Adverse Effect on ITDC's ability to perform its obligations under this Agreement;
- 5.2.6 To the best of ITDC's knowledge and belief, Project Site is free from all Encumbrances and ITDC Lease is in full force and effect and the Hotel has been constructed in accordance with the Applicable Law.
- 5.2.7 To the best of ITDC's knowledge and belief, there are no actions, suits, proceedings or investigations pending against it, at law or in equity, before any court or governmental agency, the outcome of which may result in the breach of or constitute a default of ITDC under this Agreement, or constitute a default of ITDC under this Agreement or under the ITDC Lease or which may result in the termination of the ITDC Lease or result in impairment of ITDC's ability to perform its obligations and duties under this Agreement.
- 5.2.8 it has complied with Applicable Laws in all material respects; and
- 5.2.9 it has the right, power and authority to manage and operate the Project up to the Appointed Date and has power and authority to grant a license in respect thereto to the Operator.

## **ARTICLE 6:       DISCLAIMER**

### **6.1       *Acceptance of Project Site***

- 6.1.1 The Operator acknowledges that it has undertaken a due diligence over the Project Site, and all aspects of the Project. For the purposes of this Agreement, Operator shall be deemed to have:-

- a. inspected Project Site and all buildings thereat and its surroundings;
- b. satisfied itself as to the climatic conditions, noise level, hydrological and general physical conditions of Project Site, the nature of the ground and subsoil, the proposed form and nature of the Project, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement.
- c. satisfied itself as to the means of communication, access to and accommodation at Project Site, it may require or as may be otherwise necessary for the performance of its obligations under this Agreement;
- d. obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement;
- e. has determined the nature and extent of the difficulties, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and for undertaking the Project.

**6.2** Operator further acknowledges that it, or any entity claiming under it, shall have no recourse against ITDC if it is, at a later date, found that the Project Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harbored by the Operator in relation to any of the foregoing provisions of Article 6. If a deficiency is found, Operator acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.

**6.3** Operator acknowledges and hereby accepts the difficulties, inputs, costs, time, resources, risks and hazards associated with the performance of its obligations hereunder and hereby agree that ITDC shall not be liable for the same in any manner whatsoever to Operator, other than as expressly provided in this Agreement.

**6.4** It is clarified that all fossils, antiquities, structures and/or other remains or things either of archaeological or of particular geological interest discovered at Project Site or in the course of carrying out any work shall not be the property of Operator and Operator shall have no right or interest in such fossils, antiquities

and structures.

## **6.5 Deemed Knowledge and Disclaimer**

6.5.1 Subject to the provisions of this Agreement, the Operator shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the financing, commissioning, maintenance, operation, management and development of the Project and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Operator shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, ITDC and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

## **ARTICLE 7: PERFORMANCE GUARANTEE/ SECURITY**

**7.1** The Operation and Maintenance Performance Security: The Successful Bidder shall, simultaneous to the execution of this Agreement, submit the O&M Performance Security in form of the Bank Guarantee. The O&M performance security shall be equivalent to 1.5 (one and a half) times of the Minimum Annual Guarantee (MAG) share payable to the Authority for the respective year and shall be kept valid throughout the Term of 30 (thirty) years ("**Term**").

**7.2** In the event ITDC draws on the Performance Security, in part or in full, to recover the outstanding amount of the License Fee, liquidated damages/ losses, payable/recoverable in accordance with the Agreement, the Operator shall forthwith restore the value of the Performance Guarantee to such value which existed prior to such drawl by ITDC. In the event the Operator fails to restore the Performance Security, ITDC shall be entitled to encash the same and the Operator shall, within the time so granted at the sole discretion of ITDC, shall have to submit a fresh Performance Guarantee.

**7.3** In the event, the Operator is in default in the due and faithful performance of its obligations under this Agreement and failing to

remedy such default within the Cure Notice period of 90 (ninety) days as set out in this Agreement, ITDC shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security as damages for such default. Upon such encashment and appropriation of the Performance Guarantee, ITDC shall grant such time in its sole discretion to the Operator to replenish the said Performance Security.

- 7.4** In the event the Operator fails to replenish or submit a fresh Performance Security to ITDC within the time as aforementioned, ITDC shall be entitled to terminate this Agreement in accordance with the provisions mentioned hereunder.
- 7.5** Upon expiry or earlier termination of this Agreement, if there are any dues payable by the Operator, or in the event of default of payment of any sums determined by ITDC, ITDC shall have the right to encash and apportion such amount due from the Performance Security before returning the same.
- 7.6** In case this Agreement is terminated due to Operator's default, ITDC shall have the right to invoke the Performance Security.
- 7.7** Provided if the Agreement is terminated due to any event other than the Operator's Event of Default or any other reason in which, as per terms hereof, the Performance Security may be invoked, the Performance Security, subject to the ITDC's right to receive amounts, if any, due from the Operator under this Agreement, shall be refunded to the Operator.

## **ARTICLE 8: LICENSE FEE**

### **8.1 License Fee**

- 8.1.1 In consideration of the grant of rights and privileges under this Agreement, the Operator shall pay to ITDC, the License Fee, as per the following details:
- a. Upfront Fee
  - b. Revenue Share/ MAG to be calculated and paid as per Article 8.1.2
- 8.1.2 **Revenue Share:** 80% of the revenue share calculated on the basis of the revenues quoted in the business plan submitted by the Operator alongwith its Bid, shall be Minimum Annual Guarantee (MAG) amount which will be payable to ITDC in four equal quarterly installments payable within 15 (fifteen) days of the start of the relevant quarter, the first quarter beginning from the COD. Balance

Revenue Share amount being the difference between the Revenue Share and the MAG of that year would be payable by the Operator to ITDC within 60 (sixty) days after end of the financial year or a part thereof.

- 8.1.3 In the event ITDC does not receive the payment of Revenue Share or Minimum Annual Guarantee, as the case may be, by the due date specified herein, the amount owed shall bear interest for the period starting on and including the due date for payment and ending on but excluding the date when payment is made, calculated as SBI PLR plus 2%(two percent) per annum. Notwithstanding anything contained herein, the Operator shall at all times be liable to pay the quarterly payments towards MAG in advance on or before the 15<sup>th</sup> day of the relevant quarter.
- 8.1.4 In the event that in any Financial Year if the Project Revenue exceeds the Forecasted Revenue, then the Operator shall pay to ITDC, the additional Revenue Share attributable to such difference within 60 (sixty) days of the commencement of the next Financial Year;
- 8.1.5 It is clarified that in the last year of the Term, the additional Revenue Share attributable to the difference between the Forecasted Revenue and actual Project Revenue based on the reconciliation/verification shall be payable by the Operator or ITDC within 30 (thirty) days at the end of the Term as per the escrow mechanism set forth in this Agreement.
- 8.1.6 The Operator shall not be granted any waiver in the License Fee whatsoever.
- 8.1.7 For the avoidance of doubt, GST or any other tax applicable shall be borne by the Operator over and above the accepted License Fee.
- 8.1.8 Without prejudice to the provisions of Clause 16.2.1 below, ITDC shall be entitled to terminate this Agreement forthwith in the event the Operator commits two consecutive defaults in the payment of the quarterly Minimum Annual Guarantee payments in accordance with the provisions contained in Clause 8.1.2 above.

## **ARTICLE 9: USER FEE**

### **9.1 *Collection and appropriation of User Fee by the Operator***

- 9.1.1 With effect from the COD till the Transfer Date, the Operator shall have the sole and exclusive right to demand, collect, revise and appropriate User Fee from the Users in accordance with Good Industry Practice and more particularly in terms set out under this Agreement.
- 9.1.2 The Operator shall be free to decide on the User Fee structure for the Project and can provide separate customized service or tariff packages or differential rates or special or seasonal discounts for specific, bulk, regular Users or different category of Users or during different parts of the year or for timely or early payment.
- 9.1.3 The Operator shall be free to charge in addition to the User Fee, actual state and central government taxes, duties, levies, cess, etc., but excluding income tax, to be paid by the Operator to the competent Government Authority under Applicable Laws.
- 9.1.4 The Operator acknowledges and agrees that upon payment of User Fee, any User shall be entitled to use the Project Facility and the Operator shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, applicable permit or the provisions of this Agreement. Provided that Operator shall be within its rights to deny or restrict the Users from use of the project facilities if such User , in opinion of the Operator , is likely to cause or has a history of causing mischief.
- 9.1.5 The Operator shall be and remain solely liable and responsible for the collection of User Fee in accordance with this Agreement.

### **9.2 *Revision of User Fee***

The Parties hereto acknowledge and agree that the Operator shall have right to enhance, modify, alter, revise the User Fee at its own discretion.

### **9.3 *Appropriation of User Fee***

On and from the COD and during the operations period, the Operator or its agents or servants shall levy, demand and collect the User Fee in respect of the Project Facilities and apply the same as per the provisions of the Escrow Agreement.

## **9.4 Collection & Handling**

- 9.4.1 The Operator shall be liable for the loss of any User Fee collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.
- 9.4.2 The Operator shall put in place, prior to the receipt of any of the User Fee, security measures necessary for handling, deposit and protection of User Fee from loss, theft or destruction. Notwithstanding such security measures (i) all money being held by the Operator shall at all times be insured against loss due to but no limited to theft, loss, fire and natural disasters and (ii) the Operator shall remain liable for timely payment of Revenue Share and the Minimum Annual Guarantee to ITDC in accordance with the terms of this Agreement.

## **ARTICLE 10: ESCROW ACCOUNT**

### **10.1 Escrow Account**

- 10.1.1 The Operator shall, prior to the Appointed Date, open and establish an Escrow Account with a bank, acceptable to ITDC (the "Escrow Bank") and all funds constituting the financing package for meeting the Project cost shall be credited to such Escrow Account
- 10.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Operator and ITDC, which shall be substantially in the form set forth.

### **10.2 Deposits into Escrow Account**

The Operator shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account.

- 10.2.1 all User Fee and any Project Revenue from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- 10.2.2 all payments by ITDC, after deduction of any outstanding payments due to ITDC.

### **10.3 Withdrawals during the Term**

- 10.3.1 The Operator shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that

deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- a. all taxes due and payable by the Operator for and in respect of the Project;
- b. License Fee, indemnity claims and other payment due and payable to ITDC as per this Agreement;
- c. O&M Expenses and other costs, interest, debt payments and other payments related to the Project;
- d. Any other costs and expenses incurred by ITDC in accordance with the provisions of this Agreement, and certified by ITDC as due and payable to it;
- e. all payments, interests and Damages certified by ITDC as due and payable to it by the Operator and;
- f. balance, if any, in accordance with the instructions of the Operator.

10.3.2 The Operator shall not in any manner modify the order of payment specified in Article 10.3.1, except with the prior written approval of ITDC.

#### **10.4 *Withdrawals upon Termination***

10.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- a. all taxes due and payable by the Operator for and in respect of the Project;
- b. all and any part of the License Fee due and payable to ITDC, whether or not disputed;
- c. all payments and Damages certified by ITDC as due and payable to it by the Operator;
- d. incurred or accrued O&M Expenses;
- e. any other payments required to be made under this Agreement; and
- f. balance, if any, in accordance with the instructions of the Operator.



- 10.4.2 The Operator shall not in any manner modify the order of payment specified in Article 10.4.1, except with the prior written approval of ITDC

## **ARTICLE 11: INSURANCE**

### **11.1 Insurance**

11.1.1 The Operator shall effect and maintain at its own cost such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice or may be desired as feasible by ITDC. The Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on ITDC as a consequence of any act or omission of the Operator during the Term. The Operator shall procure that in each insurance policy, ITDC shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

#### **11.1.2 Insurance during Operation Period**

Prior to the COD, the Operator shall obtain and maintain at no cost to ITDC in respect of the Project and its operations such insurance as may be required under the Applicable Laws and such insurance as the Operator may reasonably consider necessary or desirable in accordance with Good Industry Practice or may be desired as feasible by ITDC. The Operator shall procure that in each insurance policy, ITDC shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Operator pursuant to this Article 11 are herein referred to as the "Insurance Cover".

### **11.2 Insurance Cover**

The Operator shall, during the Term, procure and maintain Insurance Cover including but not limited to the following:

- 11.2.1 loss, damage or destruction of the Project Assets, including assets handed over by ITDC to the Operator, at replacement value, cash handling ;
- 11.2.2 comprehensive third party liability insurance including injury to or death of personnel of ITDC or others caused by

the Project;

11.2.3 the Operator's general liability arising out of this Agreement;

11.2.4 liability to third parties for goods or property damage;

11.2.5 workmen's compensation insurance; and

11.2.6 any other insurance that may be necessary to protect the Operator and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in 11.2.1 to 11.2.5 above or as may be required by ITDC.

### **11.3 *Evidence of Insurance Cover***

All insurances obtained by the Operator in accordance with this Article 11 shall be maintained with insurers on terms consistent with Good Industry Practice. The Operator shall furnish to ITDC, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration.

### **11.4 *Remedy for failure to insure***

If the Operator fails to effect and keep in force all insurances for which it is responsible pursuant hereto, entire responsibility shall be that of the Operator in case of any consequence. ITDC shall have the option to either keep in force any such insurance, and pay such premium and recover the costs thereof from the Operator as an acknowledged debt.

### **11.5 *Waiver of subrogation***

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

### **11.6 *Application of insurance proceeds***

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Article 10.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project.

## **ARTICLE 12: ACCOUNTS AND AUDIT**

### **12.1 Audited accounts**

12.1.1 The Operator shall maintain separate books of accounts with respect to the Project in compliance with generally applicable accounting principles in India, which books of accounts shall be duly audited by a statutory auditor in accordance with the requirements of Applicable Law. Copies of such books of accounts shall be provided to ITDC upon written request from ITDC and shall also be available for audit as and when required.

### **12.2 Appointment of auditors**

12.2.1 The Operator shall appoint and have during the subsistence of this Agreement as its statutory auditors, a firm chosen by it from the mutually agreed reputable firms of chartered accountants. All fees and expenses of the statutory auditors shall be borne by the Operator.

12.2.2 Notwithstanding anything to the contrary contained in this Agreement, ITDC shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "Additional Auditors") and verify all those matters, expenses, costs, realizations and things which the statutory auditors are required to do, undertake or certify pursuant to this Agreement.

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

12.3.1 Any claim or document provided by the Operator to ITDC in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its statutory auditors.

## **ARTICLE 13: FORCE MAJEURE**

### **13.1 Force Majeure Event:**

13.1.1 The Operator or ITDC, as the case may be, shall be entitled

to initially suspend the performance of its respective obligations under the Agreement to the extent that the Operator or ITDC ("Affected Party"), as the case may be, is unable to render such performance due to a force majeure event.

13.1.2 In the Agreement, no event or circumstance and/or no combination of events and circumstances shall be treated as a Force Majeure Event unless it satisfies all the following conditions:

- a. materially and adversely affects the performance of an obligation;
- b. are beyond the reasonable control of the Affected Party;
- c. such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- d. do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- e. which, by itself or consequently, has an effect described in Article 13.1.1.

13.1.3 Force majeure event ("**Force Majeure Event**") includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Article 13.1.2:

- a. war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the Site;
- b. revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within the Site or near vicinity;
- c. nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/or the Project Assets, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Site by the Operator or any affiliate of the Operator or any Subcontractor of the Operator or any of their respective employees, servants or agents;

- d. strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Site;
- e. any effect of the natural elements, including lighting, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within the Site or near vicinity;
- f. explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Site or near vicinity;
- g. epidemic or plague within the Site or near vicinity; and
- h. Any event or circumstances of a nature analogous to any events set forth in a. to g. above, within the Site or near vicinity.

### **13.2 Procedure for Force Majeure:**

13.2.1 If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail: (i) the Force Majeure Event(s) that has occurred; (ii) the obligation(s) affected as described in this Article 13 (iii) the dates of commencement and estimated cessation of such event of Force Majeure; and (iv) the manner in which the Force Majeure Event(s) affect the Party's ability to perform its obligation(s) under the Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above. The Parties expressly agree that payment of Annual Revenue Share shall not be suspended during the pendency of Force Majeure Event and/or its effect.

13.2.2 The Affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 13.2.1 above, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with Article 13.2.1 above. The Affected Party, to the extent rendered unable to perform its obligations or part thereof under the Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance

shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

13.2.3 The time for performance by the Affected Party of any obligation or compliance by the Affected Party with any time limit affected by Force Majeure Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the Affected Party to achieve the level of activity prevailing before the event of Force Majeure Event.

13.2.4 Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.

13.2.5 The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of Dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 13.2.

### **13.3 *Mitigation of Force Majeure:***

The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The Affected Party shall also make efforts to resume performance of its obligations under the Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing. Further, each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event and the time for performance by the Affected Party of any obligations or compliance by the affected Party with any time limit affected by Force Majeure Event and for the exercise of any right Affected thereby, shall be extended as may be decided by ITDC by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the Affected Party to achieve the level of activity prevailing before the Force Majeure Event, provided the expiry of term remains as it is.

## **ARTICLE 14: COMPENSATION FOR BREACH OF AGREEMENT**

### **14.1 *Compensation for default by Operator***

In the event of Operator being in material default of this Agreement and such default is cured before Termination, the Operator shall pay to ITDC as compensation, all direct additional costs suffered or incurred by ITDC arising out of such material default by the Operator, in one lump sum within 90 (ninety) days of receiving the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 14.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by ITDC.

#### **14.2 *Mitigation of costs and damage***

The ITDC shall make all possible efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the Operator.

### **ARTICLE 15: SUSPENSION OF OPERATOR'S RIGHTS**

#### **15.1 *Suspension upon Operator Event of Default***

Upon occurrence of an Operator Event of Default, ITDC shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Operator under this Agreement including the Operator's right to collect User Fee, and other revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by ITDC to the Operator. ITDC may extend the period of suspension at its sole discretion for further period as it may deem fit.

#### **15.2 *ITDC to act on behalf of Operator***

15.2.1 Subject to Article 15, ITDC shall have the right to utilise the proceeds of User Fees and other revenues for meeting the costs incurred by ITDC to remedy and rectify the cause of such Suspension and for defraying the O&M Expenses during such Suspension period. Provided, however, that if the Operator is making diligent efforts to remedy and rectify such cause, then ITDC shall allow the Operator reasonable time and opportunity for such remedy or rectification.

15.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Operator in accordance with the

provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by ITDC for discharging the obligations of the Operator under and in accordance with this Agreement and other agreements in relation to the Project, shall be deemed to have been done or taken for and on behalf of the Operator and the Operator undertakes to indemnify ITDC for all costs incurred during such period. The Operator hereby licenses and sub-licenses respectively, ITDC or any other person authorized by it under Article 15.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Operator with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Operator in performing its obligations under the Agreement.

### **15.3    *Revocation of Suspension***

15.3.1 The suspension of the rights of the Operator by ITDC pursuant to Article 15.1 above shall be revoked by ITDC forthwith upon the Operator having remedied or removed the cause of suspension within a period not exceeding 90 (ninety) days from date of suspension to the satisfaction of ITDC unless in the meantime this Agreement has been terminated by ITDC in accordance with Article 16.

### **15.4    *Termination***

15.4.1 At any time during the period of Suspension under this Article 15, the Operator may by notice require ITDC to revoke the Suspension and issue a Termination Notice. ITDC shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 16.

15.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 15.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by ITDC upon occurrence of an Operator Event of Default.



## **ARTICLE 16: TERMINATION**

**16.1** This Agreement shall automatically terminate on termination of the ITDC Lease.

### **16.2 *Termination for Operator Default***

16.2.1 Each of the following events or circumstances, to the extent not caused by a default of ITDC or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Operator ("**Operator Event of Default**") which, if not remedied within the Cure Period set forth below, or where no Cure Period is specified, within 90 (ninety) days, upon receipt of written notice from ITDC, shall provide ITDC the right to terminate this Agreement in accordance with Article 16.2.2:

- a. The Operator fails to finance the Project CP Completion;
- b. The Operator abandons the operations of the Project for any period;
- c. commercial operation of the Project does not occur within the period of 90 (ninety) days from Scheduled COD;
- d. The Operator creates any Encumbrance, charges or lien in favor of any person;
- e. Breach of any material obligation or covenant of this Agreement of the Operator including payment obligations and relocation of HT/LT Power, Kitchen, ETP etc. by the Operator;
- f. the Operator is adjudged bankrupt or insolvent or insolvency resolution professional has been appointed under the Insolvency and Bankruptcy Code 2016, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its Project Assets that has a material bearing on the Project;
- g. a resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by a court or tribunal and a provisional liquidator or receiver is appointed and such order has not been set aside or the Operator is ordered to be wound up by Court, except for the purpose of amalgamation or reconstruction which has been commenced or undertaken without prior written consent of ITDC

- h. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the agreements related to the Project, or of (ii) all or part of the Project Assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- i. a resolution is passed by the shareholders of the Operator for the voluntary winding up of the Operator;
- j. the Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- k. the Operator suffers an execution being levied on any of its Project Assets/ equipment causing a Material Adverse Effect on the Project;
- l. the Operator has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days irrespective of whether the interest is payable on such delay or not;
- m. an Escrow default has occurred and the Operator fails to cure the default within a Cure Period of 90 (ninety)days;
- n. the Performance Security has been encashed and appropriated in accordance with Article7.2 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 90 (ninety)days;
- o. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article7.2, the Operator fails to meet any Condition Precedent or cure the Operator Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (ninety)days;
- p. the Operator has failed to make any payment to ITDC within the period specified in this Agreement.

16.2.2 Without prejudice to any other rights or remedies which ITDC may have under this Agreement, upon occurrence of an Operator Event of Default, ITDC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator.

### **16.3 Termination for ITDC Default**

16.3.1 The Operator may after giving 90 (ninety) days' notice in

writing to ITDC terminate this Agreement upon the occurrence and continuation of any of the following events (each a “**ITDC Event of Default**”), unless any such ITDC Event of Default has occurred as a result of Operator Event of Default or due to a Force Majeure Event.

- a. ITDC is in breach of this Agreement and such breach has a Material Adverse Effect on the Operator and ITDC has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Operator;
- b. ITDC repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- c. ITDC is in breach of any representation or warranty made under this Agreement.
- d. Any defect in the leasehold rights or possession of ITDC with respect to the Project Site attributable to ITDC and not the State Government of Odisha.

**16.4 Deleted**

**16.5 Survival of rights**

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

**ARTICLE 17: DIVESTMENT OF RIGHTS AND INTEREST**

**17.1 Divestment Requirements**

17.1.1 Upon Termination or earlier expiry of the ITDC Lease, the Operator shall comply with and conform to the following Divestment Requirements:

- a. notify to ITDC forthwith the location and particulars of all Project Assets;

- b. vacate the Project, it being agreed that the legal, actual, physical and constructive possession of the Project and the Site is and shall always, during the term of the Agreement and thereafter, remain vested with ITDC subject to ITDC Lease;
- c. cure all Project Assets, of all defects and deficiencies of the Project, if any;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' drawings as on the Transfer Date. For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to ITDC free of any liability, Encumbrance;
- e. transfer and/or deliver all applicable permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as ITDC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to ITDC, absolutely unto ITDC or its nominee; and
- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, liabilities absolutely unto ITDC or to its nominee.

17.1.2 Subject to the exercise by ITDC of its rights under this Agreement or under any of the agreements related to the Project to perform or procure the performance by a third party of any of the obligations of the Operator, the Parties shall continue to perform their obligations under this

Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

## **17.2 Cooperation and assistance on transfer of Project**

17.2.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

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

## **17.3 Divestment costs etc.**

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

## **ARTICLE 18: ASSIGNMENT AND CHARGES**

### **18.1 Restrictions on assignment and charges**

18.1.1 Subject to Article 18.2, this Agreement shall not be assigned by the Operator to any person, save and except with the prior consent in writing of ITDC, which consent ITDC shall be entitled to decline without assigning any reason and the denial shall not be subject to test of reasonability.

18.1.2 Subject to the provisions of Article 18.2, the Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and

benefits under this Agreement or any Agreements related to the Project to which the Operator is a party except with prior consent in writing of ITDC, which consent ITDC shall be entitled to decline without assigning any reason and the denial shall not be subject to test of reasonability.

## **18.2 *Assignment by ITDC***

Notwithstanding anything to the contrary contained in this Agreement, ITDC may, after giving 10 (ten) days' notice to the Operator, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of ITDC, capable of fulfilling all of ITDC's then outstanding obligations of the Agreement.

## **ARTICLE 19: CHANGE IN LAW**

**19.1** In the event of a Change in Law results in a Material Adverse Effect, ITDC or the Operator may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Operator and ITDC shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure. It is hereby clarified that the parties shall continue to fulfill their obligations under this agreement during pending resolution of any Dispute under this Article.

**19.2** For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax or imposition of an existing Tax to items on which the same is not applicable as on Appointed Date shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

## **ARTICLE 20: LIABILITY AND INDEMNITY**

### **20.1 *Liability in respect of the Project***

Operator shall be solely responsible for the construction, if any, operation and maintenance of the Project, and shall have the overall responsibility and liability with respect to the Project and all Projects Assets located upon the Project Site. In no event shall ITDC have any liability or be subject to any claim for damages arising out of the design, development, financing, construction,

operation, maintenance or management of the Project and the Project Assets located upon the Project Site.

## **20.2 General indemnity**

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

## **20.3 Indemnity by the Operator**

20.3.1 Without limiting the generality of Article 20.2, the Operator shall fully indemnify, hold harmless and defend ITDC and ITDC Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Operator to comply with Applicable Laws and applicable permits;
- b. payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator's contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors;
- d. breach of provisions of the ITDC Lease or any directions or instructions of the State Government provided in any manner whatsoever related to the ITDC Lease or subject matter thereof.

20.3.2 Without limiting the generality of the provisions of this Article 20, the Operator shall fully indemnify, hold harmless and defend ITDC Indemnified Persons from and against any

and all suits, proceedings, actions, claims, demands, liabilities and damages which ITDC Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of any accidents, consumer complaints, claims by regulatory bodies including without limitation claims under the Legal Metrology Act, 2009 and the Food Safety And Standards Act, 2006, claims of employees, union, third party claims, claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator's contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for ITDC a license, at no cost to ITDC, authorizing continued use of the infringing work. If the Operator is unable to secure such license within a reasonable time, the Operator shall, at its own expense, and without impairing the specifications and standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

#### **20.4 Notice and contest of claims**

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



Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

**20.5 *No consequential claims***

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

**ARTICLE 21: RIGHTS AND TITLE OVER THE SITE**

**21.1 *License rights***

For the purpose of this Agreement, the Operator shall have rights to the use of the Site as licensee subject to and in accordance with and for the purposes of this Agreement.

**21.2 *Access rights of ITDC and others***

The Operator agrees that ITDC and its representatives shall have complete, uninterrupted and free access to the Site and Hotel at all times for the authorised representatives and vehicles of ITDC, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

**21.3 *Taxes and charges***

The Operator shall:

21.3.1 Pay all property taxes or any such taxes under Applicable Laws on the site shall be payable by the Operator after the Appointed Date, which shall not be reimbursed or payable by ITDC. Any pending payment, pertaining to property tax or any such taxes under Applicable Laws on the Site, prior to handover of the Site shall be payable by ITDC.

21.3.2 Pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by ITDC or its contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure

avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

#### **21.4 Restriction on sub-letting**

The Operator shall not, sublet the whole or any part of the Site or create any third party rights, title or interest or any encumbrance whatsoever, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Operator to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project as per terms of this Agreement.

### **ARTICLE 22:**

#### **22.1 Dispute Resolution**

22.1.1 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 in accordance with the conciliation procedure set forth in Article 22.2.

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

#### **22.2 Arbitration**

Any difference or dispute arising out of or relating to this agreement will be referred to the Chairman & Managing Director of ITDC 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 Delhi.

The laws of India shall govern this agreement. The courts in Delhi shall have exclusive jurisdiction.

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

### **22.3 *Continued performance***

While any Dispute under this Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Article 22.

## **ARTICLE 23: DISCLOSURE AND CONFIDENTIALITY**

### **23.1 *Confidentiality***

23.1.1 Each Party hereby agree and undertake to keep all information received by the other Party (and/or its employees, directors, officers or authorized representatives), confidential.

23.1.2 Further, each Party hereby agrees that this Agreement and/or all Agreements related to the Project or the contents thereof shall not be disclosed by either Party to any third party without the prior written consent of the other Party.

### **23.2 *Disclosure***

23.2.1 Provided however that nothing contained hereinabove, shall apply to any disclosure by either Party of any information received from the other Party if:

- a. Such disclosure is required by Applicable Law or requested by Governmental ITDC or required to be made under the agreement; or
- b. Such information being available in the public domain, other than by a breach of the Agreement by the party seeking to make such disclosure;
- c. Such information being made available to the consultants and professional advisers of either Party; or
- d. Such information is disclosed by a Party with the prior written consent of the other Party. Provided the disclosure is made strictly in accordance with such written consent.

## **ARTICLE 24: TRANSFER PROVISIONS**

**24.1** Upon termination of this Agreement and consequent obligation/right of ITDC to acquire the Project Assets without ITDC required to pay any amount to the Operator, the Operator shall ensure that on the Transfer Date the interest of Operator in:

- a. all immovable property, assets, structures, buildings, edifices, court- areas, ways, walls, compounds relating to the Project Assets shall be transferred to ITDC or its nominee, clear of any Encumbrances and with good title (other than any encroachments existing on the date hereof), except to the extent such encroachments have been removed after Effective Date;
- b. the rights and obligations under or pursuant to all contracts relating to the Project Assets and other arrangements entered into in accordance with the provisions of this Agreement between Operator and any third party shall (in consideration of ITDC's assumption of the obligations under or pursuant to the contracts and other arrangements), at the option of ITDC, be vested in ITDC or its nominee, clear of any Encumbrance and with good title. The Operator shall ensure such rights of ITDC are incorporated in all contracts between Operator and third party(parties) with a specific obligation on the parties to such contracts to enter into novation agreement with ITDC upon exercise of its option by ITDC; and
- c. Notwithstanding anything contained in Article 26.1 (a) and (b), prior to any transfer of the Project Assets, ITDC shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of ITDC are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to ITDC, no third entity, including the counter-party of such contract shall have any right, license title, interest, benefit, claim or demand against or over any Project Assets and such Project Assets shall be transferred to ITDC or its nominee, clear of any Encumbrance and with good title.

**24.2** ITDC at its own discretion may allow the sub-licensees/tenants/and users to continue on mutually negotiable terms and conditions.

## **ARTICLE 25: MISCELLANEOUS**

### **25.1 *Governing Law and jurisdiction***

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article 22 (*Dispute Resolution*) the courts at Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement

### **25.2 *Entire Agreement***

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

### **25.3 *Severability***

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

### **25.4 *No partnership***

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

act as or be an agent or representative of, or to otherwise bind, the other Party.

**25.5 *Third parties***

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

**25.6 *Successors and assigns***

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

**25.7 *Notices***

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

- a) in the case of the Operator, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to ITDC; provided that notices or other communications to be given to an address outside New Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Operator may from time to time designate by notice to ITDC.

Attention:

{Designation:

Address:

Fax No:

Email:}

- b) in the case of ITDC, be given by e-mail and by letter delivered by hand at the address given below and be addressed to the Chairman of ITDC with a copy delivered to ITDC Representative or such other person as ITDC may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in ..... it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Address:

Fax No:

Email:}

- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

**25.8    *Language***

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

**25.9    *Counterparts***

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS

OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
ITDC by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

((e-mail address)

The common seal Of Operator has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof \$:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

- 1.
- 2.

---

<sup>\$</sup>To be affixed in accordance with the articles of association of the Operator and the resolution passed by its Board of Directors.