

Odisha Tourism  
Paryatan Bhawan, Lewis Road  
Bhubaneswar-751014  
Fax No.+91 674 2430887  
E-mail: info@odishatourism.gov.in



ଓଡ଼ିଶା ସରକାର  
ପର୍ଯ୍ୟଟନ ବିଭାଗ

Government of Odisha  
Tourism Department



ଓଡ଼ିଶା ପର୍ଯ୍ୟଟନ  
ପର୍ଯ୍ୟଟନ ଭବନ, ଲୁଇସ ରୋଡ଼,  
ଭୁବନେଶ୍ୱର-୭୫୧୦୧୪

No. 3929 / TSM, Bhubaneswar, Dated 31.03.21  
TCT-COOD-MISC-0033-2020

**REQUEST FOR PROPOSAL FOR LEASING-CUM-DEVELOPMENT /  
UPGRADATION, OPERATION & MANAGEMENT OF TOURISM PROPERTIES  
OF DEPARTMENT OF TOURISM, ODISHA**

Department of Tourism (DoT) invites proposals from prospective applicant(s) for leasing-cum-development / upgradation, operation & management of tourism properties of Department of Tourism, Odisha in accordance with the conditions and manner prescribed in the Request for Proposal (RFP) document.

The Proposals should be submitted by interested parties to the Director Tourism, Paryatan Bhawan Lewis Road, Bhubaneswar-751014 on or before 03.05.2021 upto 12:00 Hrs. The detail terms of RFP may be downloaded from our website: <https://dot.odishatourism.gov.in/?q=tender>.

**Joint Secretary to Govt.**

**Government of Odisha  
Department of Tourism**



**REQUEST FOR PROPOSAL  
FOR  
LEASING-CUM DEVELOPMENT/  
UPGRADATION, OPERATION & MANAGEMENT  
OF TOURISM PROPERTIES OF DEPARTMENT  
OF TOURISM, ODISHA**

Department of Tourism

Paryatan Bhawan, Lewis Road, Bhubaneswar 751014 Phone: (0674) 243  
2177 | Fax: (0674) – 243887

<https://dot.odishatourism.gov.in>

Email: [pmu@odishatourism.gov.in](mailto:pmu@odishatourism.gov.in) ; [info@odishatourism.gov.in](mailto:info@odishatourism.gov.in)

## **DISCLAIMER**

The information contained in this RFP document or subsequently provided to Bidders, whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisers, is provided to Bidders 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 not an agreement or an offer by the Authority 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 the Authority. 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 the Authority, its employees or advisers to consider the objectives, technical expertise 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 and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidders may be 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. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

The Authority, its employees and advisers make no representation or warranty and shall have no liability 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, reliability or completeness 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 in this Selection Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise however caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever and cancel the entire bidding process.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Bidder in preparation for submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

## Table of Contents

### Contents

DISCLAIMER .....	2
1. Introduction.....	5
2. Scope of Work.....	7
3. Eligibility Criteria .....	11
4. Submission of Proposal .....	15
5. Bid Evaluation Criteria .....	17
Annexures.....	23

### Schedule of Bidding Process

Department of Tourism, Govt. of Odisha (“DoT”) invites proposals from prospective bidders for Lease-cum-development/Upgradation, Operation & Maintenance of Tourism Accommodation Units/ Tourism Properties including Panthika, Panthanivas, Yatrivas, etc. in Odisha under Department of Tourism (DoT) on Public Private Partnership (PPP) basis in accordance with the conditions and manner prescribed in the RFP document.

Prospective bidders are advised to carefully study the RFP document available at <https://dot.odishatourism.gov.in/?q=tender>, and visit the properties offered in this RFP, before submitting their proposals in response to the RFP. Submission of proposal in response to this RFP shall be deemed to have been done after careful study and examination of this document and visiting of the property.

**Table 1: Important Dates and Information**

Sl.	Information	Details
1	Date of Issue of RFP Document	31/03/2021
2	Site Visit	01/04/2021 to 15/04/2021
3	Last date for submission of written/online queries for clarification	16/04/2021 upto 17:00 Hrs.
4	Pre-Bid Meeting	19/04/2021, 12:00 Hrs.
5	Last date of proposal submission	03/05/2021, 12:00 Hrs.
6	Technical Bid Opening	03/05/2021, 15:30 Hrs.
7	Technical Presentation	To be intimated later
8	Financial Bid Opening	To be intimated later

## 1. Introduction

- 1.1 Department of Tourism, Government of Odisha (hereinafter referred to as “DoT” or “Lessor”) owns accommodation units/ tourism properties including Panthika, Panthanivas, Yatrinivas, etc. at several locations across the state. DoT proposes to develop/ upgrade, operate, maintain and manage the selected properties, as given in Table 2, under Public Private Partnership mode (the “Project”), without transfer of any manpower from DoT.
- 1.2 Pursuant to the above, DoT intends to invite proposals from prospective bidders for development/ upgradation, operation and maintenance of the tourism properties on Public Private Partnership (PPP) basis. The eligibility of the bidders to bid in the RFP stage will depend upon their meeting in entirety the Eligibility Criteria as laid down in this RFP document under Clause 3.
- 1.3 Details of the Properties being leased out (“Property”):

DoT has selected 7 properties/ accommodation units in various locations across the State for development/ upgradation, augmentation, operation and maintenance through Public Private Partnership. All the properties, as stated below, are operational on the date of issuance of this RFP. The Lessee shall be handed over the movable and immovable assets at the respective properties on “as is where is” basis (Project Assets”). List of the properties being leased out are as below (Table 2):

**Table 2: List of Properties for Lease**

Sequence of Bid Opening	Name of Property	District	Number of Rooms (Existing Facility)	Approx. Plot Area (in Acres)
1	Yatrinivas, Satapada	Puri	26 Rooms + 1 Office + 1 Store Room + 6 Staff Room + 2 Restaurants	3.5
2	TRC Jharsuguda	Jharsuguda	4 Rooms + 1 Kitchen + 1 Conference Hall + 1 Cafeteria	3.00
3	Panthanivas, Panchalingeswar	Balasore	28 Rooms + 1 Store + 1 Office	2.0
4	Yatrinivas, Konark (Part*)	Puri	28 Rooms	5.0
5	Tourist Complex, Daringbadi (Part*)	Kandhamal	4 Rooms + 1 Kitchen + 1 Staff Quarter	5.0
6	BN Palace, Paralakhemundi	Gajapati	30 Rooms	21.06
7	Panthika, Dhauli	Khorda	3 Rooms	0.223

**Link for other details of the Properties: Engineering Drawings and Photographs**

<https://drive.google.com/drive/folders/1Zzt969bkFSSSdh3Aa7C0SLqGn57YKwjn?usp=sharing>

*\*Note: In the link, the area being leased out for Yatrivas Konark and Tourist Complex Daringbadi is marked in red in the map.*

## 2 Scope of Work

### 2.1 Responsibility of Lessee (hereinafter referred to as “Lessee” or “Operator” or “Bidder”):

- 2.1.1 Lessee shall design, redevelop, upgrade, augment, finance, manage, market, operate, maintain, manage and repair/ refurbish the Property and Project Assets at its own cost and expense in accordance with the provisions of this RFP, standards and specifications, applicable laws, terms of applicable permits and good industry practices.
- 2.1.2 Lessee, if required, may demolish a part or whole of the property, other than BN Palace, Paralakhemundi, for re-development purposes with prior approval from DoT.
- a. For BN Palace, the lessee shall develop the Palace into a Heritage Hotel without compromising the heritage nature of the property and in compliance with the norms specified in Guidelines for Classification of Heritage Hotels issued by Ministry of Tourism, Govt. of India. The construction of any new component shall be in compliance with the prevailing by-laws and other regulatory frameworks being stipulated by various governing authorities and development authorities from time to time over the construction phase/ Minimum Development Obligation Period. All planning, designing and other interventions shall be done with prior approval from DoT or a DoT appointed committee.
- 2.1.3 Lessee shall obtain and maintain all applicable permits, in conformity with the applicable laws and in compliance therewith.
- 2.1.4 Lessee shall co-brand the property along with Odisha Tourism. The final branding of the property shall be approved by DoT.
- 2.1.5 Lessee shall maintain the property during the entire lease period subject to standards approved by DoT.
- 2.1.6 Lessee shall provide to the Lessor reports on a regular basis during the Lease Period on the refurbishment, renovations, addition of assets carried out and at all times provide the Lessor such information, data and documents that the Lessor may reasonably require. Lessee must submit the annual financial statements to Lessor. DoT may undertake periodic physical inspections of the leased properties. The lessee shall co-operate with DoT officials/ appointed agency for the same.
- 2.1.7 Lessee shall pay, in a timely manner, all taxes, duties, levies and other charges in respect of the operation of the Property and its business, including but not limited to income tax, Goods and Services Tax (GST), excise duty, customs duty that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project. Lessee shall furnish relevant clearance certificates/ proof of payment annually to DoT in this regard.
- 2.1.8 Lessee shall pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Lessee 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.
- 2.1.9 Lessee shall promptly remove all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris from the Property and keep the Property in a neat and clean



condition and in conformity with the applicable laws, applicable permits and in accordance with good industry practices.

- 2.1.10 Lessee shall be liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the Property.
- 2.1.11 Lessee shall maintain requisite insurance of the property wherein both the parties can be beneficiary in accordance with the investment. Lessee shall ensure that there is no damage or loss to Property, Project Assets and developed project facilities ("Project Facilities").
- 2.1.12 Lessee shall provide or arrange, at its cost during the Lease Period, power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the implementation, operation and maintenance of the Project and be in compliance to the requirements relating thereto under the applicable laws, applicable permits and good industry practices.
- 2.1.13 Lessee shall arrange, procure and provide, at its cost, all the infrastructure facilities, services and requirements, all goods, materials, consumable and things required for the implementation, operation and maintenance of the Property during the Lease Period.
- 2.1.14 Lessee shall employ qualified persons to efficiently operate and manage the Project. Lessee shall make available all necessary financial, managerial, technical and other resources for effective execution of the Project.
- 2.1.15 Lessee shall ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project and the revenues earned thereof.
- 2.1.16 Lessee shall comply with all applicable laws/ rules including those relating to local building regulations, safety, health, sanitation, environment, labour and hazardous/ dangerous materials while execution of the Project. Lessee shall follow the building bye laws and regulations of the nearest Urban Area for additional construction/ development in case the Property is in Rural Area. Further, Lessee shall ensure non-violation of all applicable environmental standards and pollution control norms as laid down by Central/ State Pollution Control Board and other Government Agencies.
- 2.1.17 The Property, Project Assets and Project Facilities under consideration shall be used only for providing hospitality/ tourism services.
- 2.1.18 Lessee shall promptly and diligently repair, replace/ restore the Property, Project Assets and Project Facilities or part thereof which may be lost or damaged.
- 2.1.19 Lessee shall be required to state their investment plan before execution of the Project.
- 2.1.20 During the Lease Period, the Lessee has to improve the Property, Project Assets and Project Facilities. Lessee shall provide improved hospitality/ tourism services such as:
- a. Increase/ provide well furnished Rooms/ Keys based on the market demand notwithstanding the requirements under Minimum Development Obligation.
  - b. Provide additional leisure services and/ or tourism facilities that may enhance the cultural, historical, and social attraction of the place.
  - c. Provide tours and ancillary services for tourists, including development of package holidays.
  - d. Provide well defined area for parking of vehicles.

- e. Maintain overall environment of the property, without disturbing the local flora & fauna, through well-developed landscaped/ green area, drainage system, lighting system, etc.

**2.2 Responsibility of the Lessor:** The Lessor shall comply with the following as its responsibilities during the Lease Period:

- 221 Provide the Lease Property, free from encumbrances, to the Lessee for the Lease period on as-is-where-is basis.
- 222 Shall provide incentives as per applicable Tourism Policy for capital investments made over and above that prescribed in the Minimum Development Obligation, upon application through the single window. The definition of ‘Expansion Project’ in the Tourism Policy shall be applicable.

**2.3 Duration of the Contract:**

- 231 The period of leasing (“Lease Period”) shall be as Table 3 commencing from the date of the signing of the agreement. Upon completion of the Lease period, the Lessee shall hand over the property on as-is-where-is basis to the Lessor.

**Table 3: Lease Period**

Sl. No.	Name of Property	Lease Period
1	Yatrinivas, Satapada	30 Years
2	TRC Jharsuguda	30 Years
3	Panhanivas, Panchalingeswar	30 Years
4	Yatrinivas, Konark (part)	30 Years
5	Tourist Complex, Daringbadi (part)	30 Years
6	BN Palace, Paralakhemundi	30 Years
7	Panthika, Dhauli	30 Years

- 232 The Lease Period can further be extended by another 30 years subject to mutual agreement between DoT and Lessee. Six months prior to the end of the Lease Period (30 years), the Lessee and DoT may mutually agree to extend the lease period by another 30 years. Lessee will not be required to pay any additional premium for such extension. Only, the rate of biennial escalation in the Annual Lease Rental shall be negotiated for the additional lease period.

**2.4 Upfront Payment (“Upfront Fee”) and Annual Lease Rental**

- 241 Highest Upfront Payment to the Lessor shall be the financial bid parameter for award of the Rights of Development, Augmentation, Upgradation, Operation & Maintenance of the Project. Upfront Payment shall be payable to the Lessor by the Lessee as per Clause 5.4.4 of the RFP. GST shall be paid extra on Upfront Payment by Lessee at applicable rate.
- 242 The Annual Rental Fee will be 10% of the Upfront Payment, which shall be increased by 10% on compounded basis after every two years.

The annual lease rental shall be paid as below:

- i. For the first year: The lease rental shall be paid at the time of signing of the

agreement

- ii. For subsequent years: The lease rental shall be paid within 7 days from the starting date (DD/MM) of the corresponding year of the Agreement
- iii. GST shall be paid extra by Lessee at applicable rate

**2.5 Minimum Development Obligation of the Lessee (“Minimum Development Requirement” or “MDO”)**

The Lessee shall meet the following minimum development obligations:

- a. Lessee shall carry out new construction for providing additional rooms and additional facilities, as required, in the Property with prior approval from DoT. Existing local development controls, if any, will be binding if they are more limiting than the RFP conditions.
- b. Lessee shall create an adequate waste disposal system for management and disposal of the waste generated during the execution of Project.
- c. Lessee shall be responsible for maintaining hygiene and quality standards at the Property and Project Facilities and providing quality services to tourists.
- d. Lessee shall be responsible for providing adequate safety & security of the tourists visiting the Property.

The details of Minimum Development Obligations are in Table 4 as below:

**Table 4: Minimum Development Obligations**

Sl.	Name of Property	Minimum Development Obligations
1	Yatrinivas, Satapada	Redevelop/ Renovate, Augment, Furnish and Operate Lessee shall develop at least <b>60 lettable rooms</b> with at least 3-Star Hotel facilities and certification, within a period of 36 months from the date of signing of the Agreement
2	TRC Jharsuguda	Redevelop/ Renovate, Augment, Furnish and Operate Lessee shall develop at least <b>50 lettable rooms</b> within a period of 36 months from the date of signing of the Agreement
3	Panthanivas, Panchalingeswar	Redevelop/ Renovate, Augment, Furnish and Operate Lessee shall develop at least <b>40 lettable rooms</b> within a period of 24 months from the date of signing of the Agreement
4	Yatrinivas, Konark (part)	Redevelop/ Renovate, Augment, Furnish and Operate Lessee shall develop at least <b>75 lettable rooms</b> with at least 3-Star Hotel facilities and certification, within a period of 36 months from the date of signing of the Agreement

Sl.	Name of Property	Minimum Development Obligations
5	Tourist Complex, Daringbadi (part)	Develop and Operate Lessee shall develop at least <b>50 lettable rooms</b> within a period of 36 months from the date of signing of the Agreement
6	BN Palace, Paralakhemundi	Redevelop/ Renovate, Augment, Furnish and Operate Lessee shall develop at least <b>50 lettable rooms</b> within a period of 36 months from the date of signing of the Agreement
7	Panthika, Dhauri	Redevelop/ Renovate, Augment, Furnish and Operate Lessee must develop at least <b>one multi-cuisine restaurant</b> with a minimum capacity of 60 pax within a period of 12 months of the signing of the Agreement

### 3. Eligibility Criteria

#### 3.1 Eligibility Criteria

- 3.1.1 The bidder must be a company/ firm registered under the Companies Act, 2013 or under the Indian *Partnership Act, 1932* or a Limited Liability Partnership registered under the LLP Act, 2008 or a Sole Proprietorship firm or a Consortium. The bidder must submit a Proof of Registration of the legal entity (Certificate of Incorporation, GSTIN, Udyog Aadhar, etc.)
- 3.1.2 Bidders can submit bids for multiple properties, provided they cumulatively satisfy the criteria of net worth mentioned in clause 3.1.3, against each property being applied for. *[The sequence of opening of bids would be in accordance with Table 2. In case a bidder has submitted bids for multiple properties, however, does not meet the required cumulative net-worth requirement, then DoT may reject all the bids from that bidder in entirety or accept only those bids for which the net-worth requirement is met respecting the order of opening of bids as per Table 2].*
- 3.1.3 The Bidder must meet either **Eligibility Condition A** (bidders with prior experience in hospitality industry) **OR Eligibility Condition B** (bidders without any prior experience in hospitality industry) as stated below in Clause 3.1.3.1 and Clause 3.1.3.2, respectively:
- 3.1.3.1 **Eligibility Condition A:** Bidders having prior experience in hospitality industry shall meet the eligibility conditions as given in Table 5.1 & 5.2 below.
- 3.1.3.1.1 The bidder should be in existence for at least 5 years before proposal submission due date as given in this RFP.
- 3.1.3.1.2 In case of a Consortium, the Lead Partner (as defined in clause 3.3 of this RFP) must satisfy the Eligibility Condition A as given in Table 5.1 and the Consortium must satisfy the Eligibility Condition A as given in Table 5.2.

**Table 5.1: Experience Requirement under Eligibility Condition A**

Sl.	Name of Properties	Minimum 5 years' Operational Experience of
1	Yatriniwas, Satapada	Hotel with minimum 40 lettable rooms
2	TRC Jharsuguda	Hotel with minimum 40 lettable rooms
3	Panthanivas, Panchalingeswar	Hotel with minimum 20 lettable rooms
4	Yatriniwas, Konark (part)	Hotel with minimum 40 lettable rooms
5	Tourist Complex, Daringbadi (part)	Hotel with minimum 20 lettable rooms
6	BN Palace, Paralakhemundi	Hotel/ Resort/ Heritage Property with minimum 40 lettable rooms
7	Panthika, Dhauli	Restaurant with minimum capacity of 60 pax

**Table 5.2: Net worth Requirement under Eligibility Condition A**

Sl.	Name of Properties	Minimum net-worth (not before 31 March 2020 in INR Crore) CA Certificate must be furnished
1	Yatriniwas, Satapada	20
2	TRC Jharsuguda	20
3	Panthanivas, Panchalingeswar	10
4	Yatriniwas, Konark (part)	20
5	Tourist Complex, Daringbadi (part)	10
6	BN Palace, Paralakhemundi	20
7	Panthika, Dhauli	5

3.1.3.2 **Eligibility Condition B:** Bidders not having prior experience in hospitality industry shall meet the eligibility conditions as given in Table 6 below.

**Table 6: Net worth Requirement under Eligibility Condition B**

Sl.	Name of Properties	Minimum net-worth (not before 31 March 2020 in INR Crore) CA Certificate must be furnished
1	Yatriniwas, Satapada	40
2	TRC Jharsuguda	40
3	Panthanivas, Panchalingeswar	20

Sl.	Name of Properties	Minimum net-worth (not before 31 March 2020 in INR Crore) CA Certificate must be furnished
4	Yatriniwas, Konark (part)	40
5	Tourist Complex, Daringbadi (part)	20
6	BN Palace, Paralakhemundi	40
7	Panthika, Dhauli	10

### 3.2 Exemption from Eligibility Criteria:

3.2.1 Bidders with prior experience of operating the Lessor's properties shall be exempted from eligibility criteria as specified in Clause 3.1.3 subject to satisfying all the following criteria:

3.2.1.1 Successful operation of Lessor's property for a consecutive period of at least 2 years

3.2.1.2 Fulfilment of Minimum Development Obligations (MDOs)

3.2.1.3 No default in payment to Lessor or any other Government agency/ statutory authority, vide a self-declaration on a non-judicial stamp paper of INR 100/-.

### 3.3 Consortium

3.3.1 The Bidders are allowed to form consortium for participating in the project.

3.3.2 The number of members in a consortium can be a maximum of 2 (two) including Lead Partner.

3.3.3 The Proposal should contain all and every information required for each member of the Consortium in accordance with the formats provided in this RFP.

3.3.4 The parties to a Consortium shall be required to form a Special Purpose Company (the "SPC"), incorporated under the Indian Companies Act, 2013, in due course. The SPC shall sign the Agreement with the Lessor.

3.3.5 The Members of the Consortium shall nominate one member as the "Lead Partner" who shall be the point of contact throughout the Bidding Process.

3.3.6 The Lead Partner shall have an equity share of at least 51% (fifty-one per cent) in the SPC for at least 3 years from the date of signing the Agreement and a minimum equity share of 26% in the Consortium for at least 10 years from the above date. The nomination(s) shall be supported by a Power of Attorney, as per the format provided in the Form-3 of the RFP, signed by all the other members of the Consortium.

3.3.7 The minimum shareholding for the consortium members in the SPC shall not be permitted to go below 5% during the Lease Period.

3.3.8 The Bidder should include a brief description of the roles and responsibilities of individual consortium members, particularly with reference to financial, technical and O&M obligations.

3.3.9 A member of a Consortium cannot be a member of any other Consortium bidding for the same property. Members of the Consortium shall enter into a binding Agreement (the "Joint Bidding Agreement") for the purpose of submitting the Bid. The Joint Bidding Agreement shall, inter alia:

3.3.9.1 Convey the intent to form an SPC in accordance with this RFP, with shareholding ownership equity commitment(s) and that the SPC would enter into the Agreement and subsequently carry out all the responsibilities as the Lessee, in case the Consortium is selected as the preferred bidder for the concerned property;

3.3.9.2 Clearly outline the proposed roles and responsibilities of each member at each stage;

3.3.9.3 Commit the minimum equity stake to be held by each member; and

3.3.9.4 Include a statement to the effect that all members of the Consortium shall, till such time they incorporate an SPC and provide the specified performance security or bond, be liable jointly and severally in accordance with the terms & conditions of the RFP.

A copy of the Joint Bidding Agreement should be submitted along with the Technical Proposal. The Joint Bidding Agreement entered into between the members of the Consortium should be applicable to all the Properties bid for by the Consortium and should fulfill all the criteria detailed in clause 3 of this RFP, failing which the Bid shall be considered Non-Responsive.

#### **3.4 Bid Application Fee & Bid Security Declaration:**

3.4.1 Bid Application Fee: The proposal shall be accompanied by non-refundable Bid Application Fee in the form Demand Draft in favour of “Director Tourism” payable at Bhubaneswar. The bid application fee shall be applicable as prescribed in Table 7. Any Proposal submitted without Bid Application Fee in the form as specified in the RFP document shall be summarily rejected.

**Table 7: Bid Application Fee**

<b>Sl.</b>	<b>Name of Properties</b>	<b>Bid Application Fee (INR)</b>
1	Yatriniwas, Satapada	25,000/-
2	TRC Jharsuguda	20,000/-
3	Panthanivas, Panchalingeswar	20,000/-
4	Yatriniwas, Konark (part)	25,000/-
5	Tourist Complex, Daringbadi (part)	20,000/-
6	BN Palace, Paralakhemundi	20,000/-
7	Panthika, Dhauli	10,000/-

3.4.2 Bid Security Declaration: Bidders shall submit Bid Security Declaration in lieu of Bid Security Deposit. The declaration is to be furnished by the bidding agency along with the proposal. Without the requisite Bid Security Declaration, the bid shall be treated as non-responsive and rejected. The format for Bid Security Declaration has been provided in Form 6.

#### **3.5 Performance Security**

3.5.1 The Selected Bidder shall submit a Performance Security prior to the signing of the Agreement in the form of an irrevocable & unconditional Bank Guarantee from a Scheduled Commercial bank. The Performance Security shall be for an amount equivalent to 2 (two) times of the Annual Lease Rent for the first year. The amount shall be retained till the fulfilment of the Minimum Development Obligation (“Implementation Phase”).

- 3.5.2 The Performance Security shall be forfeited at the sole discretion of the Lessor towards any liquidated damages that may be payable by the Selected Bidder to the Lessor and/or against termination eventualities attributed to the Selected Bidder, under the terms of the Agreement.
- 3.5.3 The Preferred Bidder shall submit the performance security in favour of 'Managing Director, OTDC Ltd.' within 15 (fifteen) days from the date of issuance of LoA.

### **3.6 Due Diligence, Inspection and Investigation**

The Bidders shall be deemed to have conducted a due diligence exercise with respect to all aspects of the properties, including visiting the properties mentioned in the RFP and ascertaining for themselves the conditions, traffic, location, surroundings, climate, access and other data with, applicable laws and regulations or any matter considered relevant by them.

### **3.7 Validity of Proposal**

- 3.7.1 The Proposal shall remain valid for a period not less than 180 (One Hundred and Eighty) days from the due date of submission ("Proposal Validity Period"). DoT reserves the right to reject any Proposal that does not meet this requirement. Validity of Proposal shall be extended for a specified additional period at the request of DoT with same terms & condition.
- 3.7.2 A Bidder agreeing to the request will not be allowed to modify his Proposal but would be required to extend the validity of his Bid Security for the period of extension.
- 3.7.3 The Proposal Validity Period of the Successful Bidder shall be extended till the date of execution of the Agreement.

### **3.8 Right to Reject the Proposal**

Notwithstanding anything contained in this RFP Document, DoT reserves the right to reject any/ all proposals including the highest proposal or withdraw the invitation of the proposal at any stage without citing any reason. Nothing contained herein shall confer any right upon a bidder or create any obligation/ liability upon of any type whatsoever.

### **3.9 Interpretation**

In case of any ambiguity in the interpretation of the conditions of the selection and scale of charges, the interpretation of the Director Tourism will be final and binding on the parties to the conditions of selection.

### **3.10 Proprietary Data**

All documents and other information provided by Lessee to Lessor shall remain or become the property of DoT. The lessee shall treat all information as strictly confidential and will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Bidder to DoT in relation to the Service shall be the property of DoT.

## **4. Submission of Proposal**

Bidders may send their queries in writing to [pmu@odishatourism.gov.in](mailto:pmu@odishatourism.gov.in) during the period as mentioned in the Schedule of RFP. All the Bidders will be sent clarification to queries received within the stipulated date. The queries received after the prescribed date will not be entertained by DoT.

### **4.1 Pre-Bid Meeting**



- (a) The purpose of the Pre-Bid Meeting will be to clarify and discuss issues with respect to the Project, the RFP document or any other related issues.
- (b) The Bidders designated representatives are invited to attend the Pre-Bid Meeting at their own cost, to be held on the specified date and place as mentioned in the Schedule of the RFP.
- (c) Pre-bid meeting may happen through video conferencing mode.
- (d) The bidders are advised to visit the property(s) in order to familiarize themselves with it before the pre-bid meeting.

#### 4.2 Amendment of RFP

At any time prior to the Proposal Due Date, DoT may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP through the issuance of Addendum/ Corrigendum. This will be uploaded to the web site (<https://dot.odishatourism.gov.in/?q=tender>) which will also be treated as part of the RFP document.

#### 4.3 Preparation and Submission of Proposal

The Bidders are to submit the Bid Security Declaration, Bid Application Fee, and Technical & Financial Proposal in separately sealed covers and all the covers packed in one sealed packet mentioning the name of the Property(s) applied for. Bid Proposals shall be submitted on or before the specified date and time at the address given below.

Director Tourism,  
Paryatan Bhawan, Museum Campus, Lewis Road,  
Bhubaneswar - 751014, Odisha

#### 4.4 Language and Currency

The Proposal and all related correspondence and documents shall be written in English language. The currency for the purpose of the Proposal shall be INR.

#### 4.5 Sealing and Marking of Proposal

The proposals shall be sealed, marked and submitted as explained below:

- (a) **Envelope No.1** containing the bid security declaration and bid application fee shall be marked as “**Bid Security Declaration & Bid Application Fee**” for **Leasing-cum-development/ upgradation, operation & management of tourism properties of Department of Tourism, Odisha - \_\_\_\_\_ [Name of Property(s)]**”. The Envelope 1 shall contain the following:
  - i. Bid Security Declaration as prescribed in this RFP
  - ii. Bid Application fee as prescribed in this RFP
- (b) **Envelope No. 2** duly marked as “**TECHNICAL PROPOSAL for Leasing-cum-development/ upgradation, operation & management of tourism properties of Department of Tourism, Odisha - \_\_\_\_\_ [Name of Property(s)]**” and shall contain the following:
  - Covering Letter as per format provided (Form annexed)

- Details of bidder (Form annexed)
- List of relevant experience (Form annexed)
- Power of Attorney for signing of proposal (Form annexed)
- Copy of registration/ incorporation certificate of the company/ firm/ proof of legal entity
- Proof of Net worth Certificate not before 31<sup>st</sup> March 2020, duly certified by Chartered Accountant.
- Other relevant documents as applicable as per this RFP

(c) **Envelope No. 3**, duly marked as “**FINANCIAL PROPOSAL for Leasing-cum-development/ upgradation, operation & management of tourism properties of Department of Tourism, Odisha - \_\_\_\_\_ [Name of Property]**” and clearly written on top of the Envelope “Do Not open with Technical Proposal” and shall contain the Financial Proposal in the given format (Form annexed)

**Note:** In case a bidder is applying for multiple properties, the bidder should submit **SEPARATELY SEALED FINANCIAL PROPOSALS FOR EACH PROPERTY** being applied for.

(d) Both the Technical and Financial Bid shall be placed within an Outer Envelope on which it shall be clearly written “**RFP for Leasing-cum-development/ upgradation, operation & management of tourism properties of Department of Tourism, Odisha - \_\_\_\_\_ [Name of Property(s)]**”.

(e) If the envelope is not sealed and marked, as instructed above, Department of Tourism assumes no responsibility for the misplacement or premature opening of the Proposal submitted.

(f) The Bids shall be received at the below address until proposal Due Date. Bidders shall submit their Proposals by registered post/ speed post/ courier or by hand only so as to reach the designated address by the Proposal Due Date. For submission of Proposals, there will be a drop box facility available and hand delivery is allowed. Proposals submitted by fax or e-mail shall not be entertained and shall be rejected.

Address: Director Tourism,  
Paryatan Bhawan,  
Lewis Road, Bhubaneswar-751014, Odisha

## 5. Bid Evaluation Criteria

Only those Bidders who meet the eligibility conditions, Clause 3.1, shall qualify for evaluation of their Technical and Financial Bids.

### 5.1 Evaluation for Properties: *[Properties being leased out through H1 method]*

- **Panthanivas Panchalingeswar (Balasore);**
- **Tourist Complex, Daringbadi (Kandhamal) (part);**
- **Panthika Dhauli;**

- 5.1.1 The Bidders found eligible under Clause 3.1: Eligibility Criteria shall qualify for their Financial Bid Opening. The Upfront Payment will be the financial bid parameter.
- 5.1.2 The bidding parameter for selection of the Bidder would be the Upfront Payment to be quoted by the Bidder in INR. The format for financial proposal is given in Form – 8
- 5.1.3 DoT shall first tabulate the Upfront Payment quoted by each qualified Bidder that has submitted a substantially responsive Financial Proposal. In the course of evaluation, if DoT finds a discrepancy between words and figures quoted for the upfront fee, then the amount in words shall prevail.
- 5.1.4 Once the Upfront Payment by each eligible Bidder in a substantially responsive Financial Proposal have been tabulated, DoT shall rank the eligible Bidders based on the Upfront fee tabulated by DoT. The eligible Bidder who has quoted the highest upfront fee shall be the Preferred Bidder H1; the eligible Bidder that has quoted the second highest upfront fee will be the H2 bidder.
- 5.1.5 If 2 (two) or more qualified Bidders are ranked the Preferred Bidder, then DoT, in its sole discretion, may take any measures as it deems fit, including inviting fresh Financial Proposals or selecting the Bidder with the higher net worth.
- 5.1.6 If the H1 Bidder is disqualified or rejected for any reason whatsoever, then the DoT reserves the right to-
- (a) select the H2 Bidder as the preferred Bidder for the Project; or
  - (b) take any such measure as may be deemed fit in the sole discretion of DoT, including inviting fresh Financial Proposals from the qualified Bidders or annulling the entire Bid Process.
- 5.1.7 In case, DoT selects the H2 bidder as preferred bidder then H2 bidder shall be asked to match the upfront fee quoted by him with upfront fee quoted by H1 bidder. In case H2 bidder does not match with the H1 bidder proposal, then DoT shall have right to take any such measure as may be deemed fit in the sole discretion of DoT.

**5.2 Evaluation for Properties: *[Properties being leased out through QCBS method]***

- **Yatrinivas Satapada;**
- **TRC Jharsuguda;**
- **Yatrinivas Konark (part)**
- **BN Palace, Paralakhemundi;**

- 5.2.1 The Bidders found eligible under Clause 3.1: Eligibility Criteria shall qualify for further evaluation.
- 5.2.2 Evaluation of the Technical and Financial proposals will be based on Quality cum Cost Based Selection (QCBS) mode with weightage of 70% and 30% for technical and financial proposals, respectively.
- 5.2.3 Technical Score (T): The Technical Score shall be awarded based on technical evaluation as per the Table(s) below (Table 8, Table 9 and Table 10). The bidder scoring more than or equal to 70% in the technical evaluation ( $\geq 70/100$ ) will be shortlisted for financial evaluation.

**Table 8: Technical Evaluation Criteria (For Bidders satisfying Eligibility Condition A as per Clause 3.1.3 of the RFP)**

Sl.	Parameters	Maximum Marks
1	Minimum Net worth (not before 31 March 2020): <ul style="list-style-type: none"> <li>• INR 20 Crore up to INR 30 Crore (10 marks)</li> <li>• More than INR 30 Crore &amp; up to INR 40 Crore (15 marks)</li> <li>• More than 40 Crore (20 marks)</li> </ul>	20
2	Minimum 5 years of operational experience of Hotel (Hotel/ Resort/ Heritage Property for BN Palace) with minimum 40 lettable rooms - 20 Marks for 1 project  For in each additional hotel experience - 5 Marks	40
3	Technical Presentation on development, augmentation, renovation, furnishing, upgradation, operation and management of the property.  <i>Indicative parameters to be covered: Investment Plan, Project Cost, Built up area, Ground Coverage, proposed room (area &amp; quantity), restaurant (area &amp; capacity), any other facilities (with dimensions);</i>	40
Total Marks		100

**Table 9: Technical Evaluation Criteria (For Bidders satisfying Eligibility Condition B as per Clause 3.1.3 of the RFP)**

Sl.	Parameters	Maximum Marks
1	Minimum Net worth (not before 31 March 2020): <ul style="list-style-type: none"> <li>• INR 40 Crore up to INR 60 Crore (20 marks)</li> <li>• More than INR 60 Crore &amp; up to INR 80 Crore (30 marks)</li> <li>• More than INR 80 Crore (40 marks)</li> </ul>	40
2	Technical Presentation on development, augmentation, renovation, furnishing, upgradation, operation and management of the property.  <i>Indicative parameters to be covered: Investment Plan, Project Cost, Built up area, Ground Coverage, proposed room (area &amp; quantity), restaurant (area &amp; capacity), any other facilities (with dimensions);</i>	60
Total Marks		100

**Table 10: Technical Evaluation Criteria (For bidders exempted under Clause 3.2 of the RFP)**

Sl.	Parameters	Maximum Marks
1	Technical Presentation on development, augmentation, renovation, furnishing, upgradation, operation and management of the property. <i>Indicative parameters to be covered: Investment Plan, Project Cost, Built up area, Ground Coverage, proposed room (area &amp; quantity), restaurant (area &amp; capacity), any other facilities (with dimensions);</i>	100
Total Marks		100

- 5.2.4 Financial Score (F): The bidder quoting highest upfront fee (H1) will get 30 marks and others will get marks in proportion to H1 score. Thus, if the quote of H1 is INR X and H2 is INR X/2, then H2 will get 15 marks.
- 5.2.5 Combined Score (S): Combined score (technical score plus financial score) shall be calculated based on Technical and Financial scores of the Bidder as per QCBS system. (S=T+F)
- 5.2.6 Selection of Bidder: The Bidder securing the highest combined score (S) would be the preferred Bidder. The Second and third Ranked Bidder shall be kept in reserve and may be invited for negotiations in case the first ranked bidder withdraws or fails to comply with the requirements specified in the RFP document.
- 5.2.7 If 2 (two) or more Bidders are ranked the Preferred Bidder, then DoT, in its sole discretion, may take any measures as it deems fit, including inviting fresh Financial Proposals or selecting the Bidder with the higher net worth.

### 5.3 Other Terms:

- 5.3.1 If any Bidder is found to be disqualified in accordance with the terms of the RFP or the Technical Proposal is found to be non-responsive or the Bidder does not meet the eligibility criteria, then the Proposal submitted by such Bidder will be rejected.
- 5.3.2 In order to determine whether the Bidder satisfies the eligibility criteria, DoT will examine the documentary evidence of the Bidder's eligibility and qualification submitted by the Bidder and any additional information which DoT receives from the Bidder upon request by DoT. Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, DoT reserves the right to reject the Proposal.
- 5.3.3 Upon completion of evaluation of the Technical Proposals, DoT will notify the Bidders on the date specified in the Bid Schedule, whether they are qualified and eligible for opening of their Financial proposal. The Financial Proposals of those Bidders who do not qualify will not be opened.

### 5.4 Award of the Project

- 5.4.1 After completing the evaluation of the Financial Proposals and identifying the Preferred Bidder, DoT shall issue the Letter of Award ("LOA") to the Preferred Bidder, indicating its

intention for signing of the agreement. The Preferred Bidder shall ordinarily be the Selected Bidder.

- 5.4.2 Within 7 (seven) days upon issuance of such LOA to the Selected Bidder, the Selected Bidder shall be required to sign and stamp the LOA and send it to Lessor as acknowledgement of the LOA. In the event the duplicate copy of the LOA duly signed by the selected bidder is not received by the stipulated date, unless it consents to extension of time for submission thereof, the right to signing of the agreement shall be forfeited.
- 5.4.3 An Agreement will be drawn up between DoT and the Selected Bidder. The Lease-cum-Development Agreement (“LDA” or “Agreement”) format shall be provided to the Lessee by Lessor before execution of the same. The selected bidder will enter into the Agreement with the Lessor for the operation, maintenance, development, design, construction, upgradation, renovation, restoration, furnishing, financing and management of the property Agreement within 30 (thirty) days of the issuance of the LOA by DoT. The Lessee shall commence the Services as per the assignment within 7 (seven) days from the date of the signing of the Agreement or such other date as may be mutually agreed.
- 5.4.4 The Selected Bidder shall be required to:
- (a) make the Upfront Payment in lumpsum at the time of signing of the Agreement.
- OR**
- (b) make the Upfront Payment in three equal installments (upfront fee + applicable interest) within two years of signing of the Agreement. The interest rate shall be 7% per annum. The first installment shall be deposited on the date of signing the Agreement. The remaining two installments shall be deposited on or before the starting date (DD/MM) of the corresponding year of the Agreement.

The selected bidder shall be required to pay the upfront fee in the form of Demand Draft in favour of “**Managing Director, OTDC Ltd.**” issued by Scheduled Commercial Bank payable at Bhubaneswar.

- 5.4.5 If the Selected Bidder fails to satisfy the conditions specified in the RFP or fails to execute the Agreement on or before the date stipulated in the LOA, DoT may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA. Also, the bid security may be forfeited. If DoT elects to disqualify such Bidder and revoke the LOA, then the procedure set out in the RFP shall follow. The bidder, including the promoters of the bidding firm, may also be blacklisted from participating in any further tendering process of DoT.
- 5.4.6 The cost of execution of agreement and any other related legal documentation charges and incidental charges will be borne by the Selected Bidder.

## **5.5 Financing:**

Selected bidders may obtain finance from financial institutions through suitable debt in order to comply with their obligation under the Minimum Development Obligation and any further development in the leased property. The financial institutions may be given a right of substitution by execution of the Substitution Agreement.

## **5.6 Event of Default by Lessee**

In case of any default in payment by Lessee as per the terms under clause 2.4 of this RFP, the

Upfront Payment and the Performance Security shall stand forfeited along with cancellation of the Agreement.

## **5.7 Disputes**

- 5.7.1 All disputes between the Successful Bidder and Lessor shall be settled as per the Dispute Resolution procedure elaborated in the Draft Lease cum Development Agreement. During the bidding process no dispute of any type would be entertained. Even in such cases where DoT ask for additional information from any Bidder, the same cannot be adduced as a reason for citing any dispute.
- 5.7.2 The courts at Bhubaneswar shall have the exclusive jurisdiction to try all the cases arising out of this RFP document.

## Annexures

### Form-1

#### Covering Letter

(on the letter head of the Bidder)

Date-

To  
Director Tourism,  
Department of Tourism  
Paryatan Bhawan,  
Bhubaneswar - 751014,  
Odisha

**Ref: “RFP for Lease-cum-Development/ Upgradation, Operation & Maintenance of Tourism Properties of Department of Tourism, Odisha”**

Sir,

Being duly authorized to represent and act on behalf of ..... (herein after referred to as “the Bidder”), and having reviewed and fully understood all of the Bid requirements and information provided and collected, the undersigned hereby submits the Bid on behalf of (Name of Bidder) for Lease-cum-Development/ Upgradation, Operation & Maintenance of Tourism Properties, Odisha with the details as per the requirements of the RFP.

We confirm that our Bid is valid for a period as specified in the subject RFP from the date of opening of bids. We also hereby agree and undertake as under:

Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Bid we hereby represent and confirm that our Bid is unqualified and unconditional in all respects and we agree to the terms of the RFP and Scope of Work, a part of the RFP document provided to us.

We are bidding for the Property(s):

Sl.	Name of Property	Submitting Application under Eligibility Condition A/ B/ Exemption (Clause 3.1.3 & 3.2)	Yes/ No
1	Yatriniwas, Satapada		
2	TRC Jharsuguda		



Sl.	Name of Property	Submitting Application under Eligibility Condition A/ B/ Exemption (Clause 3.1.3 & 3.2)	Yes/ No
3	Panthanivas, Panchalingeswar		
4	Yatriniwas, Konark (part)		
5	Tourist Complex, Daringbadi (part)		
6	BN Palace, Paralakhemundi		
7	Panthika, Dhauli		

Note:

- (i) "Yes" means that the bidder is bidding for that particular property.
- (ii) "No" means that the bidder is not bidding for that particular property.

Yours faithfully,

For and on behalf of (Name of Bidder)

Duly signed by the Authorized Signatory of the Bidder  
(Name, Title and Address of the Authorized Signatory)

**Form-2**  
**Bidder - Profile**

Sl. No	Particular	Compliance
1	Name of the Bidder	
2	Status of the Firm (i.e. Company, Partnership or Proprietorship)	
3	Registered Office Address with telephone, fax, website and email:	
4	Date of Incorporation (Please attach copy of certificate of incorporation/ registration):	
5	Company profile (include background of company, organization structure, background of promoters, business of company, years in similar line of business, experience and details of current activities) (Attach supporting documents such as Company brochures, etc.)	
6	Particulars of individual(s) who will serve as point of contact/ communication with contact number, fax and email-id.	
7	Has the bidder been barred by the Central/ State Govt. or any entity from participating in any project?	
8	If yes, does the bar subsist on the date of application?	
9	Has the bidder been penalized due to delay as per contract or for any other reason in relation to execution of a contract in the last three years (Yes/No)	
10	Nature & details of experience in similar field ( Please attach relevant documentary evidence ):	

- In case of a Consortium
  - a. The information required above (1-4) should be provided for all members of the Consortium
  - b. A copy of the Joint Bidding Agreement should be attached
  - c. Information regarding each member of the Consortium should be provided as per the table below:

	Name of Member	Role *	Percentage of equity to be held in the SPC

*\*the role of each member as either Lead Partner, Technical Member or Other Member*

For and on behalf of:

Organization Seal

Signature:

Name:

Designation:

(Authorized Representative and Signatory)

**Form-3**

**Format for Power of Attorney for Signing of Bid**

(on Stamp Paper of relevant value)

**POWER OF ATTORNEY**

Know all men by these presents, We,..... (name of firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of ..... as our attorney (hereinafter referred to as “Authorized Representative”) to do in 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 proposal in response to the **“RFP for Lease-cum-Development/Upgradation, Operation & Maintenance of Tourism Properties of Department of Tourism, Odisha”** floated by Department of Tourism, Government of Odisha (hereinafter referred to as “DoT”) including but not limited to signing and submission of all documents and providing information/responses to DoT, representing us in all matters in connection with our Bid for the above said project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Dated this \_\_\_\_\_ Day of 2021.

For \_\_\_\_\_

(Name and designation of the person(s) with authority to authorize).

Accepted

\_\_\_\_\_

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

(Name, Title and Address of the Attorney)

**Form-4**  
**Format of Bid Affidavit**

*(To be furnished by the bidder on a INR 100- non-Judicial Stamp Paper and attested by Notary)*

I, the undersigned, do hereby certify that all statements made in the Proposal are true and correct to the best of my belief and knowledge.

The undersigned hereby authorize(s) and request(s) any bank, person, firm or corporation to furnish pertinent information deemed necessary and requested by the DoT to verify this statement or regarding my (our) competence and general reputation.

The undersigned understands and agrees that further qualifying information may be requested and agrees to furnish any such information at the request of DoT.

Deponent

(Signed by Authorized Signatory)

(Title of the Signatory)

(Name of the Organization)

(Date)

**Form-5**  
**Format of Bid Undertaking**

Date-:

To,  
Director Tourism  
Department of Tourism Paryatan  
Bhawan,  
Lewis Road Bhubaneswar - 751 014

**Ref: RFP for Lease-cum-Development / Upgradation, Operation & Maintenance of Tourism Properties of Department of Tourism, Odisha.**

Dear Sir,

We have examined in detail and have understood the terms and conditions stipulated in the RFP issued by DoT and in any subsequent communication sent by DoT. Our Proposal is consistent with all requirements of submission as stated in the RFP or in any of the subsequent communication issued by the DoT. We would be solely responsible for any errors or omissions in our Proposal.

We hereby declare that we have read and understood the rules governing the development of the Tourism Accommodation Units as given above , examined and understood and satisfied ourselves regarding the content of the various agreements, declarations and deeds to be executed and do hereby undertake to execute them when called upon to do so, and commit in unequivocal terms, in letter and spirit, that the Tourism Accommodation Units shall be implemented as per the comprehensive stipulations and requirements that have been spelt out by the DoT, in this RFP and Bidding Documents including adherence to the areas / capacities / specifications / regulations as have been detailed by the DoT in this regard.

We also undertake to present the Project Up-gradation & Operation Plan for any Project within 90 days of issuance of the Letter of Award for that Project by DoT. We agree to incorporate in the Project Up-gradation & Operation Plan all comments and suggestions provided by DoT.

We also commit to abide by the decision of DoT on all matters relating to the implementation of the Project and thereafter, the Operations and Maintenance of the Projects.

For and on behalf of:

(Signature of the Authorized Signatory)

Name of the person:

Designation:

Signed by the Bidder

**Form-6**

(To be submitted on letter head of the applicant duly signed by authorized signatory)

**Date:**

To,

**The Director**

**Department of Tourism**

**Paryatan Bhawan**

**Lewis Road, Bhubaneswar - 751014, Odisha**

**Sub: Bid Security Declaration for RFP for Leasing-cum-Development/ Upgradation, Operation & Management of Tourism Properties of Department of Tourism, Odisha**

Sir,

I/We, the undersigned, declare that:

I/We understand that, according to your conditions, bids must be supported by a Bid Security Declaration.

I/We accept that I/We may be **blacklisted from bidding for any contract with Department of Tourism, Government of Odisha for a period of 5 years** from the date of notification if I am/ we are in breach of any obligation under the bid conditions, I/We

- a. have withdrawn/ modified/ amended, impairs or derogates from the tender, my/ our Bid during the period of validity specified in the form of Bid; or
- b. having been notified of the acceptance of our Bid by Department of Tourism, Government of Odisha during the period of bid validity (i) fail or refuse to execute the contract/ agreement, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the subject RFP conditions.

The bid security declaration shall be valid for a minimum period of 180 days from the proposal submission due date or till the date of selection of the preferred bidder, whichever is later. On request from DoT, the Bidders would be required to extend the validity of the Bid Security Declaration on the same terms and conditions.

I/We understand that this Bid Security Declaration shall cease to be valid if I am/ we are not the successful bidder, upon the earlier of (i) the receipt of your notification of the name of the successful bidder; or (ii) thirty days after the expiration of the validity of my/ our Bid Proposal.

Yours Faithfully,

Signature of Authorized Person and seal

Name & designation:

Name of the Bidding Entity/ Firm

**Form-7**  
**Format for Net Worth**

**Format for Net Worth**

(In case of sole bidder)

Financial Year	Amount (INR)
As on 31 March 2020	

(in case of Consortium)

Financial Year	Lead Partner (INR)	Consortium Member-1 (INR)	Total (INR)
As on 31 March 2020			

**Calculation of Net Worth**

The Bidder shall provide an Auditors certificate specifying the Net Worth of the Bidder. The Net Worth shall be calculated either as per Method 1 or Method 2 as prescribed below. Only one of the methods shall be used for the purposes of calculation of Net Worth.

## 1. Method 1- for corporate entity

The Net Worth shall mean (Subscribed and Paid up Equity + Reserves) less (Revaluation Reserves + miscellaneous expenditure not written off).

## 2. Method 2- for an individual / partnership firm

The methodology for calculation of Net Worth is given in the following table.

Sl.	Particulars	In INR
1.	Listed (quoted) investments at market value (detailed list to be enclosed)	
2.	Less: 30% margin on the above	
3	Net Value of Listed Shares (1-2)	
4.	<i>Investment in unlisted companies *</i>	
5.	Other investments at cost (PPF, NSC, NBFC, bank fixed deposits, deposits with exchanges etc.)	



6.	Total Net Investment (3+4+5)	
7.	Market value of land and building	
8.	Debtors not exceeding 3 months	
9.	Cash and Bank balance	
10.	Other liquid assets, if any, (need to be specified) which are used for the purposes of business	
11.	Total Assets (6+7+8+9+10)	
12.	Current liabilities	
13.	Long term liabilities	
14.	Total Liabilities (12+13)	
15.	Net Worth (11-14)	

*\* This should be either book value or based on an independent valuation of the investment with supporting valuation reports.*

*The market value of land and building shall be certified by a government approved valuer for which the valuation carried out should not be more than 2 years previous to Bid Due Date. Only those items of land and building that are in the name of the Bidder as well as in the possession of the Bidder shall be considered. The details provided should also include survey number, location, address, extent of land and building.*

Details of items comprising investments, current assets, current liabilities and long-term liabilities used in the above calculation should be given separately.

The details should be provided as prescribed in this RFP or in case of this date being a holiday, the previous business day.

**Form- 8**  
**Financial Proposal**

To,  
Director Tourism  
Paryatan Bhawan, Lewis Road,  
Bhubaneswar, Pin-751014  
Odisha

**Sub:** Financial Proposal for “RFP for Lease-cum-Development/ Upgradation, Operation & Maintenance of Tourism Properties of Department of Tourism in Odisha – \_\_\_\_\_ [Name of property]”

Sir,

With reference to the subject RFP document dated\_\_\_I/ we have examined the Bidding Documents and understood their contents,

I/ we offer to upgrade / develop, operate, maintain and manage the Property at \_\_\_\_\_ [insert name of the Property] in accordance with the stipulated terms and conditions and other particulars therein as defined in this RFP.

I / we hereby offer and agree to pay the following as Upfront Payment for the below mentioned Property:

Name of Property	Upfront Payment (INR)	Upfront Fee in Words

Note: The above amount is exclusive of GST. GST shall be paid separately, as applicable.

I / we understand that DoT is not bound to accept the highest or any Financial Bid(s) received. I/ we agree that my/ our Financial Bid shall remain valid for a period as mentioned in this RFP from the Bid Due Date prescribed for submission of Proposal. I / we confirm that our Financial Bid is unconditional and that we accept all terms and conditions specified in the RFP. I / we agree to be bound by this offer if we are the Selected Bidder for the aforementioned Project. There will be no grant, positive or negative from DoT.

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Firm:

Address

Date

**Signature**  
**Authorized Signatory with Official Seal**

**Form- 9**

**Performance Security (Bank Guarantee Format)**

**UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE**

**Bank Guarantee No.:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

In accordance with Letter of Award bearing letter No. \_\_\_\_\_, Dated \_\_\_\_\_ ( hereinafter referred to as "LOA") and RFP No. \_\_\_\_\_, Dated \_\_\_\_\_ on Request for Proposal for "RFP for Lease-cum-Development/ Upgradation, Operation & Maintenance of Tourism Properties of Department of Tourism in Odisha" (hereinafter referred to as "RFP"), M/s \_\_\_\_\_ Address \_\_\_\_\_ (hereinafter referred to as Lessee) wishes to participate in the said RFP and a Bank Guarantee for the sum of INR \_\_\_\_\_ valid for a period of \_\_\_\_\_ days (in words) is required to be submitted by the Lessee towards the Performance Security.

1. We, the \_\_\_\_\_ [indicate the name of the Bank] (Hereinafter referred to as 'the Bank') at the request of the Lessee do hereby unequivocally and unconditionally guarantee and undertake to pay during the above said period, on written request by Department of Tourism, Government of Odisha (hereinafter referred to as "DoT") an amount not exceeding INR \_\_\_\_\_ to the DoT, without any reservation. The guarantee would remain valid up to \_\_\_\_\_ [date] and if any further extension to this is required, the same will be extended on receiving instructions from the Lessee on whose behalf this guarantee has been issued.
2. We the \_\_\_\_\_ [indicate the name of the Bank] do hereby further undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the DoT stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the DoT by reason of any breach by the said Lessee of any of the terms or conditions or failure to perform the said LOA and RFP. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding INR \_\_\_\_\_ (in words).
3. We, the \_\_\_\_\_ [indicate the name of the Bank] undertake to pay DoT any money so demanded notwithstanding any dispute or disputes so raised by the Lessee in any suit or proceeding instituted/ pending before any Court or Tribunal relating thereto, our liability under this agreement being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Lessee shall have no claim against us for making such payment.
4. We, the \_\_\_\_\_ [indicate the name of the Bank] further agree that the guarantee herein contained shall remain in full force and effect during the aforesaid period of \_\_\_\_\_ days and that it shall continue to be enforceable till all the dues of the DoT under or by virtue of the said LOA and RFP have been fully paid and its claims satisfied or discharged or till DoT certifies that the terms and conditions of the said LOA and RFP have been fully and properly carried out by the said Lessee and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before the \_\_\_\_\_ [date], we shall be discharged from all liability under this Guarantee thereafter.
5. We, the \_\_\_\_\_ [indicate the name of the Bank] further agree that DoT shall have the fullest liberty without our consent and without affecting in any manner our obligations

here under to vary any of the terms and conditions of the said LOA and RFP or to extend time of performance by the said Lessee from time to time or to postpone for any time or from time to time any of the powers exercisable by the DoT against the said Lessee and to forbear or enforce any of the terms and conditions relating to the said LOA and RFP and we shall not be relieved from our liability by reason of any such variation, postponement or extension being granted to the said Lessee or for any forbearance act or omission on the part of DoT or any indulgence by DoT to the said Lessee or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the name, style and constitution of the Bank or the Lessee.
7. We, the \_\_\_\_\_ [indicate the name of the Bank] further agree that this guarantee shall also be invocable at our place of business at Bhubaneswar in the State of Odisha.
8. We, the \_\_\_\_\_ [indicate the name of the Bank] lastly undertake not revoke this Guarantee during its currency except with the previous consent of DoT in writing.

For .....

Name of Bank:

Seal of Bank

Dated, the \_\_\_\_\_ day of \_\_\_\_\_ 2021

(Signature, names & address, designation of the authorized signatory)

NOTE:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch

**Form- 10**  
**Lease cum Development Agreement**

**Government of Odisha  
Department of Tourism**

**Lease cum Development Agreement of  
Tourism Accommodation Units/ Tourism  
Property**

**2021**

**LEASE cum DEVELOPMENT AGREEMENT**

**Between**

**The Governor of Odisha**

**And**

---

**For Tourism Property at**

---

## LEASE cum DEVELOPMENT AGREEMENT

This Agreement is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 at Bhubaneswar.

### BETWEEN

**The Governor of Odisha**; represented through Department of Tourism, Government of Odisha, (hereinafter referred to as "**DOT**"), which term shall unless repugnant to the context include its successors, assignees and legal representatives) of the one Part

### AND

\_\_\_\_\_, a company/ firm duly registered under the Companies Act 2013 [*or under the Indian Partnership Act, 1932 or a Limited Liability Partnership registered under the LLP Act, 2008 or as a Sole Proprietorship firm*] having its registered office at \_\_\_\_\_, represented through its authorised representative, \_\_\_\_\_(hereinafter referred to as the "**Lessee**" which expression shall unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the other Part.



## INTRODUCTION

Whereas:

- A. DOT is a department under Government of Odisha and is engaged in developing and promoting tourism activities in the state of Odisha;
- B. DOT had invited bids for upgrading, developing, operating, maintaining, managing, and transferring (the “**Project**”) of Tourist Accommodation Unit / Tourist facility at \_\_\_\_\_ as specified in RFP No. \_\_\_\_/\_\_\_\_, dt. \_\_/\_\_/2021 for Leasing-Cum Development/ Upgradation, Operation & Management of Tourism Properties of Department of Tourism, Odisha and Corrigenda. Pursuant to the evaluation of the bids received, the bid of {name of firm}\_\_\_\_\_ was selected and accordingly, issued a Letter of Award (hereinafter called the “LoA”) and attached in Schedule I – Letter of Award, requesting the selected Bidder to ensure the execution of this Agreement within 30 (Thirty) days of the date of issue of the LoA, which the Selected Bidder has acknowledged;
- C. This Agreement is executed to transfer the rights on the assets delineated in Schedule II – Project Assets of this Agreement and assigns the Lessee its rights and obligations with regard to the Project and has agreed to enter into this Agreement with the Lessee, subject to and on the terms and conditions set forth hereinafter.

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

### DEFINITIONS AND INTERPRETATIONS

#### 1.1 **Definitions-**

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

- 1.1.1 “**Agreement**” refers to this Lease cum Development Agreement and the provisions included in this Agreement including amendments thereto;
- 1.1.2 “**Annual Lease Rental**” shall mean the annual rental payable to DOT as defined in clause 1.37 of this Agreement;
- 1.1.3 “**Applicable Law**” shall mean all statutes, laws, ordinance, in force and effect as on date hereof and which maybe promulgated or brought into force and effect

hereinafter in India by the Government of India (GoI) or Government of Odisha (GoO or State Government) or any other government authority having jurisdiction over the matter in question including regulations and rules, directives, guidelines, policy made there under, and all judgements, orders, decrees, injunctions, writs and orders of any court or judicial body, as may be in force and effect during the subsistence of this Agreement or thereafter and applicable to the Project/ the Lessee in relation to the Project;

- 1.1.4 “**Appointed Date**” is the date from which the obligations of the Parties in this Agreement shall commence;
- 1.1.5 “**Applicable Permits**” means all notifications, clearances, permits, authorisations, licenses, consents, permissions, rulings, exemption, approvals or any other permit of whatsoever nature which is required to be obtained and maintained by the Lessee under or pursuant to Applicable Law, or any registration or filing with, any authority under Applicable Law for or in respect of this Agreement including for performance of any obligation or exercise of any right by a Party, in connection with the Project during the subsistence of this Agreement;
- 1.1.6 “**Bid**” means the documents in their entirety in the bid submitted by the Selected Bidder in response to the Bidding notice issued by DOT for the Project;
- 1.1.7 “**Bidding Documents**” means the Request for Proposal (RFP No.\_\_\_\_/\_\_\_\_, dt.\_\_\_\_/\_\_\_\_/2021) for Leasing-Cum Development/ Upgradation, Operation & Management of Tourism Properties of Department of Tourism, Odisha), all the Appendices, Corrigenda and Addenda thereof issued by DOT as part of the Bidding Process for this Project;
- 1.1.8 “**Business Day**” means a day, except Saturdays, Sundays and government holidays, on which banks are generally open for business in Bhubaneswar, Odisha;
- 1.1.9 “**Clearance**” means the written consent, licence, approval, permit, rulings, exemption, notification, no objection certificate or other authorisation or permission of whatsoever nature which is required to be obtained from any authority, from time, to time in connection with the Project;
- 1.1.10 “**Commercial Operations Date or COD**” means the date on which the Lessee obtains the Completion Certificate. It cannot be later than Implementation Completion Date.
- 1.1.11 “**Completion Certificate**” shall have the meaning as defined in Clause 1.34;
- 1.1.12 “**Encumbrance**” means any encumbrance such as mortgage, sub-lease, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include, without limitation, any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims

for any amount due on account of taxes, cesses and encroachments on the Project Assets;

- 1.1.13 **“Force Majeure”** shall have the meaning ascribed thereto in Clause 1.46;
- 1.1.14 **“Gol”** means the Government of India and any of its duly authorised agency, authority, department, inspectorate, ministry or person (whether autonomous or not);
- 1.1.15 **“GoO”** means the Government of Odisha and any of its duly authorised agency, authority, department, inspectorate, ministry or person (whether autonomous or not) under the lawful and effective control and direction of GoO;
- 1.1.16 **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them for a project similar to that of this Project;
- 1.1.17 **“Implementation Phase”** means the period commencing from the Appointed Date and ending on COD;
- 1.1.18 **“Lease Period”** shall have the meaning ascribed under Clause 1.6.1 of this Agreement
- 1.1.19 **“LoA”** means the Letter of Award issued to the Lessee by DOT;
- 1.1.20 **“Material Adverse Effect”** means material adverse effect on (a) the ability of the Selected Bidder to exercise/ perform / discharge any of its duties/ obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;
- 1.1.21 **“Material Breach”** means a breach by either Party of any of its obligations under this Agreement which has or is likely to have an Adverse Effect on the Project and which it shall have failed to cure within the Consultation Period;
- 1.1.22 **“O&M”** means the Operation and Maintenance of the Project during the Lease Period and includes but is not limited to functions of operation, maintenance and performance of other services incidental thereto;
- 1.1.23 **“Operations Phase”** means the period commencing from COD and ending on the Transfer Date;
- 1.1.24 **“Parties”** mean the parties to this Agreement collectively and **“Party”** means any of the Parties to this Agreement individually;
- 1.1.25 **“Performance Security”** shall have the meanings ascribed thereto;
- 1.1.26 **“Minimum Development Requirements”** or “Minimum Development Obligation” for any project shall mean that which the Lessee is, by virtue of this agreement, obliged to meet as detailed in Schedule III;
- 1.1.27 **“Project”** means up-gradation / development of Tourism Accommodation Unit at \_\_\_\_\_ [*insert location*] as per the Minimum Development

Requirements and time-lines prescribed in Schedule III: Minimum Development Requirements of this Agreement and operation, maintenance, management, sharing & transferring of the Project Assets and Project Facilities as per the provisions of this Agreement;

- 1.1.28 **"Project Agreement"** means any agreement other than this Agreement which the Lessee enters into with any third-party in relation to this Project;
- 1.1.29 **"Project Assets"** means the assets leased to the Lessee by DOT in accordance with the provisions of the Agreement and as detailed in Schedule II – Project Assets of this Agreement;
- 1.1.30 **"Project Facility"** or **"Project Facilities"** mean all the assets to be developed as per the Minimum Development Requirements for the Project;
- 1.1.31 **"Rs." or "Rupees" or "INR"** refers to the lawful currency of the Republic of India;
- 1.1.32 **"SBI PLR"** means the prime lending rate per annum for loans with 1 (one) year maturity as fixed, from time to time by State Bank of India, and in the absence of such rate, the average of the prime lending rates for loans with 1 (one) year maturity fixed by Bank of India and Bank of Baroda and failing that any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties;
- 1.1.33 **"Implementation Completion Date"** means the latest date by which all the Minimum Development Requirements as detailed in Schedule III: Minimum Development Requirements be met by the Lessee;
- 1.1.34 **"Specifications and standards"** mean the specifications and standards relating to the quality, capacity, facilities and other requirements for the Project Assets as mutually agreed between the Parties and given in Schedule II- Project Assets.
- 1.1.35 **"Tax or Taxes"** shall mean and include all taxes, duties, cess, levies that may be payable by the Lessee under Applicable Law;
- 1.1.36 **"Termination"** means termination of this Agreement hereunder pursuant to the delivery or deemed delivery of a Termination Notice or otherwise in accordance with

the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement in the normal course;

- 1.1.37 "**Termination Date**" means the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement;
- 1.1.38 "**Termination Notice**" means a communication in writing by a Party to the other Party seeking Termination in accordance with the applicable provisions of this Agreement;
- 1.1.39 "**Termination Payment**" means the amounts payable by a Party to the other Party under this Agreement upon the Termination of this Agreement;
- 1.1.40 "**Transfer Date**" means date on which this Agreement and the Lease hereunder expires pursuant to the provisions of this Agreement or is terminated, whichever is earlier.

## **1.2 Interpretation -**

In this Agreement, unless the context otherwise requires: -

- 1.2.1 any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to or is capable of being applied to any transaction entered into hereunder;
- 1.2.2 references to laws of Odisha, laws of India or Indian law or regulations 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;
- 1.2.3 reference 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;
- 1.2.4 reference to an individual shall include his legal representative, successor, legal heir, executor and administrator;
- 1.2.5 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;
- 1.2.6 the words importing singular shall include plural and vice versa;
- 1.2.7 terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed hereto and the terms and words defined in the Clauses/Articles/Schedules and used therein shall have the meaning ascribed in the Clauses/Articles/Schedules; and the words beginning with capital letters but not

defined in this Agreement shall have the meaning ascribed to it in the Bidding Documents;

- 1.2.8 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;
- 1.2.9 any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.2.10 any reference to ‘day’ shall mean calendar day;
- 1.2.11 reference to a “**business day**” shall be construed as a reference to a day (other than Sunday) on which banks in Bhubaneswar are generally open for business;
- 1.2.12 any reference to month shall mean calendar month as per the Gregorian calendar;
- 1.2.13 the Schedules to this Agreement and any amendment(s) thereto, 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 and in the event of any conflict between any provision of an Article/Clause of this Agreement and any provision of a Schedule to this Agreement, provision of the Clause shall prevail;
- 1.2.14 any reference at any time to any agreement, deed, instrument, lease or document of any description shall be construed as reference to that agreement, deed, instrument, lease or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this sub-clause shall not operate so as to increase liabilities or obligations of DOT hereunder or pursuant hereto in any manner whatsoever;
- 1.2.15 references to Recitals, Articles, Clauses, Sub-Clauses, Paragraphs in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-Clauses, Paragraphs, and of or to this Agreement;
- 1.2.16 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- 1.2.17 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;
- 1.2.18 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**”);

- 1.2.19 reference to any gender shall include the other and the neutral gender;
- 1.2.20 “**Lakh**” means a hundred thousand (100,000) and “**Crore**” means ten million (10,000,000);
- 1.2.21 “**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;
- 1.2.22 references to the “**winding-up**”, “**dissolution**” “**insolvency**” or “**reorganisation**” of a company or corporation shall be construed so as to include and 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.2.23 any documentation required to be provided or furnished by the Lessee to DOT shall be provided free of cost and in three copies and if DOT is required to return any such documentation with their comments and/or approval, then it shall be entitled to retain two copies thereof;
- 1.2.24 the rule of construction, if any, that a contract should be interpreted against the parties responsible for drafting and preparation thereof, shall not apply; and
- 1.2.25 any word or expression used in this Agreement shall, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 *Measurements and arithmetic conventions -***

- 1.3.1 All measurements and calculations shall be in metric system and calculations done up 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 contract documents and errors / discrepancies-***

- 1.4.1 This Agreement, and all other agreements forming part of this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other

documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- (i) this Agreement
  - (ii) Schedules, Annexure and Appendices of this Agreement
  - (iii) Bidding Documents
  - (iv) LoA and other communication issued by DOT to the Selected Bidder/ Lessee.
  - (v) all other documents forming part of this Agreement
- 1.4.2 The Agreement at (i) above shall prevail over the agreements and documents at (ii) to (v) above.
- 1.4.3 Subject to clause 1.4.1, in case of ambiguities or discrepancies within this Agreement the following shall apply:-
- (I) between two or more articles and or clauses of this Agreement, the provisions of the specific article and or clause relevant to the issue under consideration shall prevail over those in other articles or clauses;
  - (II) between any value written in numerals and that in words, the higher value shall prevail, whether written in words or numerals.
  - (III) between the clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

## **PROJECT SCOPE**

- 1.4.4 The scope of the Project (the “**Project Scope**”) during the Lease Period shall mean and include but not be limited to:-
- (i) up-gradation, development, operation, maintenance, management, and transfer of the Project Assets
  - (ii) Schedule II – Project Assets & Project Facilities in accordance with the provisions of the Agreement as per the phases and timelines prescribed in Schedule III: Minimum Development Requirements;
  - (iii) performance and fulfilment of all other obligations of the Lessee in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all the obligations of the Lessee under this Agreement; and
  - (iv) any variation in the Project Scope subsequent to the date of this Agreement which shall be subject to Applicable Law and /or mutual agreement of the Parties.



## GRANT OF RIGHTS

### 1.5 *Rights -*

- 1.5.1 The Project Assets shall be the registered property of DOT and the Lessee shall execute the Project on upgrade, develop, operate, maintain, and transfer basis. The lessee shall use the Project Assets and Project Facilities only for tourism purposes i.e., offering of bona fide tourism and hospitality related services to guests/ tourists ("Tourism Purposes").
- 1.5.2 Subject to and in accordance with the provisions of this Agreement, Applicable Law and Applicable Permits, DOT hereby grants to the Lessee, for the Project Assets, the exclusive right and lease during the subsistence of this Agreement to upgrade, develop, operate and maintain and manage the Project [the "**Lease cum Development Right**" (LDR)] for the entire duration of the Lease Period or until the earlier termination of the Agreement in accordance with the provisions of this Agreement. The Lessee hereby accepts the LDR and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 1.5.3 Subject to and in accordance with the provisions of this Agreement, Applicable Law and Applicable Permits, the LDR hereby granted shall oblige and/ or entitle (as the case may be) the Lessee to undertake the following:-
- (i) Upgrade, develop, operate and maintain the Project Assets for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (ii) Demand, collect and appropriate tariff (fee) from users for using the Project Assets and Project Facilities in accordance with Clause 1.38;
  - (iii) Perform and fulfil all Lessee's obligations under and in accordance with this Agreement;
- 1.5.4 Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Lessee under this Agreement;
- 1.5.5 Not to assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Lease hereby granted or on the whole or any part of the Project Assets or Project Facilities nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement;
- 1.5.6 Not to use the Project Assets or Project Facilities for any purpose other than the purpose of the Project and purposes incidental or ancillary to, as permitted under this Agreement.

## TERM, REVERSION AND RE-ENTRY

### 1.6 *Lease Period -*

- 1.6.1 Total period of lease shall be of 30 years from the Appointed Date ("Lease Period"), subject to the condition that the Lessee shall qualify all the following parameters.
- a) Fulfillment of Minimum Development Requirements
  - b) Use of the property for Tourism Purposes
  - c) Timely payment of Annual Lease Rental

- 1.6.2 Six months prior to the end of the Lease Period (30 years), the Lessee and DOT may mutually agree to extend the lease period by another 30 years. Lessee will not be required to pay any additional premium for such extension. Only, the rate of biennial escalation in the Annual Lease Rental shall be negotiated for the additional lease period.
- 1.6.3 In the event that the Lessee and DOT are not able to arrive at mutually agreeable terms & conditions for the renewal of the Lease Period, then DOT shall have the right to invite fresh bids from interested parties to operate and manage the Project Assets.
- 1.6.4 The Lessee shall have the first right of refusal, i.e. the right to match the highest financial bid received by DOT, provided DOT is satisfied with the Lessee with regard to observance of the terms and conditions of this Agreement during the Lease Period.
- 1.6.5 The Lessee shall pay the Upfront Fee (hereinafter referred to as “Upfront Payment”) & Annual Lease Rental as specified in the Agreement.
- 1.6.6 The Project Assets shall not be used by the Lessee for any purpose other than the purpose specified under this Agreement. The Lessee shall take possession of the Project Assets on “**as is**” condition.

## **1.7 Reversion -**

- 1.7.1 On the expiry of the Lease Period or early termination of this Agreement, for any reason whatsoever, the Lessee shall surrender on as is – where is basis to DOT, the Project Assets and Project Facilities with all assets, fixtures, all or any singular rights, liberties, privileges, easements and appurtenances belonging to or in any way appurtenant thereto or enjoyed therewith, as constituting the Project Assets, without any encumbrances.

## **CONDITIONS PRECEDENT**

### **1.8 Conditions Precedent -**

- 1.8.1 Save and except as expressly provided 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 clause (the “Conditions Precedent”).
- 1.8.2 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 1.8.3 The date on which both the Parties fulfil the Conditions Precedent, as jointly certified in writing by the authorised representatives of the Parties, shall be the “**Appointed Date**” whereupon the obligations of the Parties under this Agreement shall

commence. The Appointed Date shall necessarily not be more than 3 (three) months from the date of signing the Agreement.

## **1.9 Conditions Precedent for Both Parties -**

### **1.9.1 Condition Precedent for DoT -**

- (i) The Conditions Precedent required to be satisfied by DOT prior to the Appointed Date shall be deemed to have been fulfilled when DOT shall have issued a letter to the Lessee announcing its intent and readiness to hand over the Project Assets for carrying out the Project as per the provisions of this Agreement, subsequent to the Joint Verification and finalisation of Project Assets to be handed over and indicated in Schedule II of this Agreement. The date of the letter shall be the “**Handover Date**”.

### **1.9.2 Conditions Precedent for Lessee -**

- (i) The Conditions Precedent required to be satisfied by the Lessee prior to the Appointed Date shall be deemed to have been fulfilled when the Lessee shall have-
  - 1.9.2.i.1 provided Performance Security to DOT;
  - 1.9.2.i.2 paid Upfront Payment and Annual Lease Rental for the first year of the Lease Period;
  - 1.9.2.i.3 met all other requirements under this Agreement;
  - 1.9.2.i.4 procured all necessary applicable permits, unconditionally, and ensured that such applicable permits are in full force and effect;
- (ii) The Lessee shall confirm in writing that all representations and warranties of the Lessee set forth in the bid by the Selected Bidder and this Agreement are true and correct as on the date of execution of this Agreement and as on the Appointed Date.

Provided that upon request in writing by the Lessee, DOT may, in its discretion, waive any of the Conditions Precedent set forth in clause 1.9.2 (i).

### **(iii) Financial Closure:**

- 1.9.2.iii.1 The Lessee hereby agrees and undertakes that it shall achieve Financial Closure & execute Financing Documents & deliver to DOT three copies thereof attested by a Director or the Authorized Signatory of the Lessee by the Appointed Date, and in the event of delay it shall be entitled to a further period not exceeding 90 (ninety) days. In the event of Financial Close not being achieved even within 90 days of Appointed Date, the Lessee shall be entitled to a further period not exceeding 60 days subject to payment of damages to DOT in a sum of Rs.10,000 (Rs. Ten thousand only) for each day of delay.
- 1.9.2.iii.2 Provided that the damages specified herein shall be payable every week in advance and the period beyond 90 days from Appointed Date shall be granted only to the extent of damages so paid, provided further that no damages shall be payable if such delay in Financial Close has occurred

solely as a result of any default or delay by DOT in satisfaction of the Conditions Precedent specified in this Agreement.

1.9.2.iii.3 The Lessee shall, upon occurrence of Financial Close, notify DOT forthwith, and provide to DOT, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financing Documents including the Financial Package and the financial model duly attested by a Director or the Authorised Signatory of the Lessee.

1.9.2.iii.4 For Institutional Finance, the Lessee may apply to Department of Tourism for availing loan by mortgaging the Lessee right arising out of this Agreement. For this purpose, Department of Tourism may sign the Substitution Agreement.

## **1.10 Termination of this Agreement on account of non-fulfilment of Conditions Precedent -**

1.10.1 In the event of non-fulfilment of Conditions Precedent by the Lessee by the Appointed Date, this Agreement shall be terminated, and DOT shall retain the Performance Security, as damages.

1.10.2 In the event this Agreement is terminated due to non-fulfilment of DOT's Conditions Precedent by the Appointed Date, the Lessee may terminate this Agreement, in accordance with the provisions of this Agreement and require DOT to return / refund in full the Performance Security paid by the Lessee, along with the Upfront Payment and Annual Lease Rental, if any paid by the Lessee, till the date of Termination.

Provided there are no outstanding claims of DOT on the Lessee.

1.10.3 Provided further that, instead of this Agreement being terminated, the Parties may, by mutual consent, extend the time for fulfilling the Conditions Precedent.

## **1.11 Termination due to failure to achieve Financial Closure**

1.11.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in Clause 1.9.2.(iii), all rights, privileges, claims and entitlements of the Lessee under or arising out of this Agreement shall be deemed to have been waived by and deemed to have ceased with the concurrence of the Lessee, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

1.11.2 Upon Termination under Clause 1.11.1, DOT shall be entitled to encash the Performance Security and appropriate the proceeds thereof as damages, provided however, if Financial Close has not occurred solely as a result of Lessee being in

default of any of its obligations under this Agreement, DOT shall upon termination, return the Performance Security forthwith.

## **OBLIGATIONS OF THE PARTIES**

### **1.12 General Obligations of the Lessee**

- 1.12.1 Subject to and on the terms and conditions of this Agreement, the Lessee shall at its cost and expense implement the Project.
- 1.12.2 The up-gradation concept, design and layout for up-gradation are to be developed in consultation with DOT and as per the provisions of Clauses 1.24, 1.25 & 1.26 of this Agreement.
- 1.12.3 The Lessee shall comply with the provisions of Applicable Law and procure Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 1.12.4 Subject to Clauses 1.12.1 and 1.12.3, the Lessee shall discharge its obligations in accordance with Good Industry Practice in a reasonable and prudent manner.
- 1.12.5 The Lessee shall operate the Project on the principle of minimal discharge of effluents into the air and water streams / water bodies and ensure the management and disposal of the waste generated by the Project.
- 1.12.6 The Lessee would operate the Project for the Lease Period as per the provisions of this Agreement including the responsibility for the internal furnishing of the Project Assets and the Project Facilities.
- 1.12.7 The Lessee shall maintain the Project Assets handed over by DOT and the Project Facilities in excellent working condition for the entire Lease Period and bear all costs / expenses for doing the same.
- 1.12.8 The Lessee shall, at all times, operate and maintain the Project Assets in accordance with the provisions of the Agreement, Applicable Law, Applicable Permits and Good Industry Practice.
- 1.12.9 The Lessee shall be responsible for providing quality services to tourists.
- 1.12.10 The Lessee shall be responsible for procuring all necessary equipment(s) for the Project as well as for other activities proposed at the Project Site.
- 1.12.11 The Lessee shall be responsible for providing adequate security to the tourists using the Project Facilities and for ensuring that there is no damage or loss to Project Assets or Project Facilities.
- 1.12.12 The Lessee shall be responsible for provision and maintenance of emergency services including ensuring security and safety of the Project Assets;
- 1.12.13 The Lessee shall be responsible for ensuring that the employees engaged by it, in fulfilment of its obligations under the Lease cum Development Agreement, are at all

times properly trained for their functions and that all statutory requirements relating to the employees in the Project are met.

- 1.12.14 The Lessee ensure the logo & name of Department of Tourism, Govt of Odisha has been prominently displayed in the signage, billboard and reception of the property.
- 1.12.15 The Lessee would be permitted to sub-contract / franchise activities related to the Project. In the event of such sub-contracting or franchise agreement with any other agency, a copy of the agreement must be submitted to DOT, for its records within 30 days of signing of such agreement. However, at all times, the Lessee would be responsible for discharging its obligations under this Agreement with DOT, without any reference to any other party operating the premises. **Sub-leasing of the Project Site / Project Assets / Project Facilities by the Lessee is not permitted.**
- 1.12.16 The Lessee shall be responsible for meeting the following hygiene and quality standards -
- (a) The storage, handling of water, raw materials and cooking etc. will have to be in extreme hygienic conditions;
  - (b) The provisions of the Prevention of Food Adulteration Act, 1954, and any law relating to hygiene and quality shall be binding;
  - (c) DOT reserves the right to get the food samples/ raw materials tested at authorised/ certified laboratories at the cost of the Lessee;
  - (d) The Lessee shall be duly bound to reveal the source of procurement of raw material for any food-item if asked by DOT;
  - (e) The Lessee shall maintain the Project Site, Project Assets and surrounding areas in proper cleanliness and hygienic conditions at its own cost and shall also be bound to follow such directions of DOT issued from time to time in this respect; and
  - (f) The Lessee shall ensure clearance of all the rubbish and waste generated by the Project and ensure safe, quick and scientific disposal of all such material and will also coordinate with concerned civic agencies for disposal of garbage even outside the Project Site.
- 1.12.17 In case the Lessee fails to maintain the applicable hygienic standards as listed in Clause 1.12.16, the Lessee shall pay a penalty of Rs 500/day for the first 10 days and Rs 1000/day subsequently to DOT till such time the hygienic conditions are met. The penalty will be payable ten days after issue of written notice by DOT.
- 1.12.18 The Lessee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement -
- (i) make, or cause to be made, necessary applications to relevant Government instrumentalities with such particulars and details, as may be required for obtaining

all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Law;

- (ii) make such financing arrangements as would be necessary to implement the Project;
- (iii) procure, as required, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project;
- (iv) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it in connection with the performance of its obligations under this Agreement;
- (v) not do or omit to do any act, deed or thing which may, in any manner, violate any of the provisions of this Agreement;
- (vi) support, cooperate with and facilitate DOT in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (vii) perform any other activities that may be required for the Project subject to Applicable Laws and Applicable Permits and other conditions of this Agreement;
- (viii) pay all taxes, charges, surcharges, levies and duties which may be levied by any competent authority with regard to execution of this Agreement and all other Project Agreements;
- (ix) provide adequate security for protecting the Project Assets and ensuring that there are no damage to or loss of Project Assets;
- (x) pay to DOT / concerned authority all amounts due as per the provisions of this Agreement;
- (xi) not assign or create any lien or encumbrance in the Project Assets except as allowed in this Agreement;
- (xii) provide to DOT periodic reports as per the provisions of the Lease-cum-Development Agreement;
- (xiii) 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; and

1.12.19 The Lessee shall transfer the Project Assets to DOT upon termination of this Agreement, in accordance with the provisions of this Agreement.

1.12.20 The Lessee shall provide access to personnel from DOT and all its representatives, assigns, successors, undertakings and their subsidiaries, for inspecting whether all the provisions of the Agreement are being fulfilled by the Lessee.

1.12.21 The Lessee shall not be considered in breach of its obligations under this Agreement if any part of the Project Assets is not available for operation on account of any of the following for the duration thereof:-

- (a) Force Majeure Event;

- (b) measures taken to ensure the safe use of the Project Assets except when unsafe conditions occurred because of failure of the Lessee to perform its obligations under this Agreement; or
  - (c) Compliance with a request from DOT or directions of any Government Agency, the effect of which is to cease operation of the Project Assets
- 1.12.22 It is expressly agreed that the Lessee shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement shall excuse the Lessee from its obligations or liability hereunder.
- 1.12.23 Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Lessee shall submit to DOT a true copy thereof, duly attested by a Director/ Partner/ Proprietor of the Lessee.
- 1.12.24 The Lessee shall ensure that each of the Project Agreements contain provisions that entitle DOT to step into such agreement, in its sole discretion, in substitution of the Lessee in the event of termination or suspension of the Project Agreement.
- 1.12.25 The Lessee shall use the Project Assets for the sole purpose of this Project and shall not, except with the previous consent of DOT, use the Project Assets directly or indirectly for any business other than this Project.

### **1.13 Obligations of Lessee related to Lock-in-Period**

- 1.13.1 Subject to and according to the terms and conditions set forth in this Agreement, the Lessee agrees to the following lock-in restrictions, namely:-
- 1.13.2 The period commencing from Appointed Date and ending on expiry of 3 (three) years from the COD shall be the lock-in-period (the "**Lock-in-Period**") during which neither Party shall have the right to terminate the Agreement. Notwithstanding the above, DOT shall have the exclusive right to terminate this Lease cum Development Agreement within the Lock-in-Period in the event of a breach by the Lessee of the provisions of the Agreement or Applicable Law.
- 1.13.3 In the event of the Lessee being a Special Purpose Company formed by a Consortium, the Lead Member of the consortium shall have a minimum equity share of 51% in the Lessee for the period commencing from Appointed Date to the period expiring at the end of 3 years from COD and a minimum equity share of 26% for the



period commencing from Appointed Date to the period expiring at the end of 10 years from COD.

- 1.13.4 In the event of the Lessee being a consortium, no change in composition of the consortium shall be permitted for the period commencing from Appointed Date to the period expiring at the end of 3 years from COD.

## **1.14 Obligations of DOT**

- 1.14.1 DOT shall provide the Project Site for the duration of the Lease Period along with the Project Assets developed by DOT at the Project Site. The lists of assets handed over by DOT are provided in Schedule II – Project Assets
- 1.14.2 DOT agrees to provide support to the Lessee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Law, the following –
- (i) Hand over physical possession of the Project Assets as specified in Clause 1.9.1 free from any encumbrance as per the provisions of this Agreement;
  - (ii) Provide all reasonable support and assistance to the Lessee – upon written request from the Lessee, and subject to the Lessee complying with Applicable Law – in procuring Applicable Permits required from any Government instrumentality for implementation and operation of the Project;
  - (iii) Not do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
  - (iv) Support, cooperate with and facilitate the Lessee in implementation of the Project in accordance with the provisions of this Agreement;
  - (v) Ensure peaceful use of the Project Assets by the Lessee under and in accordance with the provisions of this Agreement without any undue hindrance from DOT.

## **REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **1.15 Representations and warranties of the Lessee**

- 1.15.1 The Lessee represents and warrants to DOT that –
- a) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
  - b) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and the obligations under this

Agreement will be legally valid, binding and enforceable obligations against the Lessee in accordance with the terms hereof;

- c) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- d) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement
- e) 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 Applicable Law or any covenants, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected. There are no actions, suits, proceedings or investigations pending or, to its 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 this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

1.15.2 It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court of any legally binding order of any Government instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement

1.15.3 It has complied with Applicable Law in all material respects and has not been subject to fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement

1.15.4 In the event of the Lessee being a Special Purpose Company (“**SPC**”) formed by a consortium, the shareholding pattern of its issued, subscribed and paid up equity capital conforms to the representations made by the Selected Bidder as part of the Bid and that as on the date of this Agreement, shareholding pattern of its issued, subscribed and paid up equity capital is as follows:

[\*\*\*\*] (The “**Lead Member**”) \_\_\_\_\_%

[\*\*\*\*] \_\_\_\_\_%

1.15.5 The shareholding of the members, in case of consortium shall not transfer either direct and/ or indirect legal or beneficial ownership of any shares or securities convertible into shares that causes any violation of the lock in restrictions specified in Clause 1.13.

1.15.6 In the event of the Lessee being a Special Purpose Company (“**SPC**”) formed by a consortium, the members of the consortium shall ensure that the individual shareholding of the consortium members in the issued, subscribed and paid up equity capital of the SPC shall not fall below 5% during the Lease Period.

1.15.7 All rights and interests in the Project Assets shall pass to and vest in DOT on the Transfer Date, free and clear of all encumbrances, without any further act or deed

on its part or DOT, and that none of the Project Assets shall be acquired by it, subject to such agreement under which a security interest or lien or encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- 1.15.8 No representation or warranty by the Lessee contained herein or in any other document furnished to DOT or to any government agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- 1.15.9 No sums, in cash or kind, have been paid or will be paid, by or on its behalf, to any person by way of fees, commission or otherwise for securing the lease or entering into this Agreement or for influencing or attempting to influence any officer or employee of DOT in connection therewith.

## **1.16 Representation and warranties of DOT**

- 1.16.1 DOT represents and warrants to the Lessee that -
- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations under this Agreement;
  - b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
  - c) it has the financial standing and capacity to perform its obligations under this Agreement;
  - d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
  - e) there are no actions, suits, proceedings or investigations pending or, to its 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
  - f) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement;
  - g) it has complied with Applicable Law in all material respects; and
  - h) upon the Lessee paying the Upfront Payment, Annual Lease Rental, Performance Security and performing the covenants herein, it shall not at any time during the

Lease Period hereof, interfere with the peaceful exercise of the rights and discharge of the obligations by the Lessee, in accordance with this Agreement.

### **1.17 Disclosure**

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

## **DISCLAIMER**

### **1.18 Disclaimer**

- 1.18.1 The Lessee acknowledges that prior to the execution of this Agreement, the Lessee has, after a complete and careful examination, made an independent evaluation of the Bidding Documents, and all the information provided by DOT or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by it in course of performance of its obligations hereunder. Save as provided in Clause 1.16, DOT makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and /or completeness of the information provided by it and the Lessee confirms that it shall have no claim whatsoever against DOT in this regard.
- 1.18.2 The Lessee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in the above and hereby acknowledges and agrees that DOT shall not be liable for the same in any manner whatsoever to the Lessee, constituting members of the Lessee and their associates or any person claiming through or under any of them.

## **PERFORMANCE SECURITY**

### **1.19 Performance Security**

- 1.19.1 The Lessee shall, for due and faithful performance of its obligations during the Lease Period deliver to DOT, performance security in favour of '**Managing Director, OTDC Ltd.**' payable at Bhubaneswar, of an amount of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) ("**Performance Security**").
- 1.19.2 The Performance Security shall be provided to DOT on or before the date of signing of the Agreement.
- 1.19.3 The Performance Security shall be retained till the fulfilment of the minimum development obligation. The Performance Security shall be released by DOT within

30 days of the issue of the Completion Certificate for the fulfilment of the Minimum Development Requirements.

## **1.20 Appropriation of Performance Security**

- 1.20.1 Upon occurrence of a Lessee Event of Default, DOT, without prejudice to its other rights and remedies hereunder or in law, is entitled to appropriate relevant amounts from the Performance Security as damages for such Lessee Event of Default. Upon such encashment and appropriation from the Performance Security, the Lessee shall within 1 (one) month thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security as aforesaid, failing which DOT shall be entitled to terminate this Agreement;

Provided that if the Agreement is terminated due to any event other than Lessee Event of Default, the Performance Security, subject to DOT's right to receive amounts, if any, due from the Lessee under this Agreement, shall be refunded to the Lessee.

## **POSSESSION OF PROJECT ASSETS**

### **1.21 Project Assets**

- 1.21.1 The Project Assets shall comprise the assets described in **Schedule II** and shall be provided and granted by DOT to the Lessee under and in accordance with this Agreement.

### **1.22 Lease**

- 1.22.1 DOT hereby grants to the Lessee access rights, in accordance with the terms and conditions of the Agreement, in respect of the Project Assets which are described and delineated in
- 1.22.2 Schedule II – Project Assets hereto, on “**as is where is**” basis, free of all encumbrances, for implementation of the Project, for the duration of the Lease Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 1.22.3 It is expressly agreed that the lease granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by DOT to terminate the lease, upon the termination of this Agreement for any reason whatsoever.
- 1.22.4 On and after signing this Agreement and until the date of termination / expiry of the Agreement, the Lessee shall maintain round-the-clock vigil over the Project Assets and shall ensure adequate security.

### **1.23 Access to DOT**

- 1.23.1 The lease and right to the Project Assets granted to the Lessee hereunder shall always be subject to the right of access of DOT and their employees and agents for

inspection and viewing of the Project Assets – for exercise of their rights and enforcement of the obligations of the Lessee under this Agreement.

## **IMPLEMENTATION OF PROJECT**

### **1.24 Obligations prior to commencement of Implementation Phase**

- 1.24.1 Prior to commencement of Implementation Phase, the Lessee shall –
- (i) submit to DOT and / or any other official / agency designated by DOT for the purpose of monitoring - the detailed Project Up-gradation Plan incorporating the detailed design and construction time schedule for completion of the Project as per the provisions of the Lease cum Development Agreement within 90 days of the issue of the Letter of Award by DOT to the Lessee;
  - (ii) have requisite organisation and it shall designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project and to deal with DOT and/ or to deal with any other official/ agency designated by DOT for the purpose of monitoring and be responsible for all necessary exchange of information required pursuant to this Agreement;
  - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of implementation of the Project under and in accordance with this Agreement, Applicable Law and Applicable Permits.

### **1.25 Design and drawings**

- 1.25.1 The Lessee shall, subject to the Minimum Development Requirements prescribed for the Project in the Lease cum Development Agreement, at its cost, charges and expenses cause drawings [**“Drawings”**] to be prepared showing the proposed up-gradation / development / new construction applicable for the Project and submit copies of the drawings to DOT and / or any other official / agency designated by DOT, before the commencement of Implementation Phase, for the purpose of monitoring;

Provided that, the Lessee shall in any event, be solely responsible for the adequacy of the Drawings.

- 1.25.2 Drawings relating to the Project shall be subject to review by DOT and / or any other official / agency designated by DOT for the purpose of monitoring hereinafter provided in the succeeding clause.
- 1.25.3 By forwarding the Drawings for review to DOT and / or any other official / agency designated by DOT for the purpose of monitoring - the Lessee represents that it has determined and verified that the design and related aspects of the Project are in conformity with the Minimum Development Requirements set forth in the Lease cum Development Agreement.

### **1.26 Review and approval of drawings**

- 1.26.1 The Lessee shall, promptly and in such sequence as is consistent with the detailed Project Up-gradation Plan, development guidelines and Minimum Development

Requirements, submit Drawings to DOT and / or any other official / agency designated by DOT for the purpose of monitoring.

- 1.26.2 DOT and / or any other official / agency designated by DOT for the purpose of monitoring - shall review the Drawings within 15 (Fifteen) days of their receipt and convey comments/ observations thereon to the Lessee – with particular reference to the conformity or otherwise of the Drawings with the Minimum Development Requirements and development guidelines applicable to the Project. If the Drawings are not in conformity with the above provisions of the Lease cum Development Agreement, such Drawings shall be revised by the Lessee within 15 (fifteen) days of being intimated by DOT or any other official / agency designated by DOT for the purpose of monitoring, to the extent necessary and re-submitted to DOT and / or any other official / agency designated by DOT for the purpose of monitoring for further review. DOT or any other official / agency designated by DOT for the purpose of monitoring shall give their observations and comments, if any, within 15 (Fifteen) days of the receipt of such revised Drawings which shall be taken into account by the Lessee while finalising the Drawings.
- 1.26.3 If DOT and / or any other official / agency designated by DOT for the purpose of monitoring does not object to the Drawings submitted by the Lessee within the period stipulated in clause 1.26.2 of the Lessee shall be entitled to proceed with the Project accordingly subject to clearance from the development authority having jurisdiction over the Project area.
- 1.26.4 It is expressly agreed that notwithstanding any review or failure to review by DOT and / or any other official / agency designated by DOT for the purpose of monitoring - or any comments/ observations of DOT and / or of any other official / agency designated by DOT for the purpose of monitoring, the Lessee shall be solely responsible for the adequacy of the Drawings and their conformity with the Minimum Development Requirements and other provisions of this Agreement and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.
- 1.26.5 The Lessee shall be liable for delays in the Project and consequences thereof, caused by reason of any Drawings not being in conformity with the Minimum Development Requirements and other provisions in this Agreement and shall not be entitled to seek any relief in this regard from DOT. If there is any delay in execution of the project due to DOT and / or any other official / agency designated by DOT for the purpose of monitoring - not being able to review and / or sanction the drawings and provide his comments, then the timelines for the Project shall be accordingly extended in accordance with the number of days during which DOT and / or any other official / agency designated by DOT for the purpose of monitoring - does not provide comments and / or sanction Drawings subject to a maximum of 3 months, provided that the delay has not been caused due to any action of the Lessee.

## **1.27 Construction**

- 1.27.1 For Projects where construction is required as per the Minimum Development Requirements stated in Schedule III: Minimum Development Requirements, the Lessee may undertake the construction of the Project Facility at any time after the Appointed Date as per the provisions of this Agreement and the provisions of Applicable Law.
- 1.27.2 If any new construction has been undertaken for the Project to meet the Minimum Developmental Requirements, the Lessee shall furnish to DOT three copies of "as

built" Drawings reflecting the layout of the Project Facility as actually designed, engineered and constructed, including without limitation an "as built" surveys illustrating the layout of the Project Facility and setback lines, if any, of the buildings and structures forming part of Project Facility.

- 1.27.3 In the event that the Lessee fails to finish the construction of the required Project Facility as prescribed in Schedule III: Minimum Development Requirements - within a period of 30 (thirty) days from the Implementation Completion Date, unless such failure has occurred due to reasons solely attributable to DOT, it shall pay damages to DOT equivalent to a sum of INR 5,000 (Rupees five thousand only) for delay of each day until the Minimum Development Requirements is achieved.
- 1.27.4 For avoidance of doubt it is agreed that recovery of damages under this clause shall be without prejudice to the rights of DOT under this Agreement, including the right of termination thereof.
- 1.27.5 DOT may either recover such damages from the Performance Security or demand payment thereof from the Lessee. The Lessee shall make such payment within 7 (seven) days of receiving such demand from DOT and any delay in making such payment shall attract interest @ SBI Prime Lending Rate plus 2% (two per cent).

## **1.28 *Extension of implementation milestones***

- 1.28.1 DOT may consider the request of the Lessee and revise the Implementation Completion Date as it deems appropriate. The decision of DOT in this regard would be final.

## **MONITORING OF IMPLEMENTATION PHASE**

### **1.29 *Quarterly Progress Report***

- 1.29.1 During Implementation Phase, the Lessee shall, not later than 7 (seven) days from the close of each quarter, furnish to DOT and any other official or agency designated by DOT for the purpose of monitoring- a report on the progress of the Implementation Works and shall promptly give such other relevant information as may be required by DOT or any other official or agency designated by DOT for purpose of monitoring.

### **1.30 *Inspection***

- 1.30.1 During the Implementation Phase, DOT or any other official or agency designated by DOT for the purpose of monitoring – shall have the right to inspect the Project Facility at least once in six months and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project including but not limited to the Minimum Development Requirements. DOT or any other official or agency designated by DOT for the purpose of monitoring - shall send a copy of the Inspection Report to the Lessee within 7 (seven) days of such inspection and upon receipt thereof, the Lessee shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the DOT or any other official or agency designated by DOT for the purpose



of monitoring - shall not relieve or absolve the Lessee of its obligations and liabilities hereunder in any manner whatsoever

### **1.31 Delays during implementation**

- 1.31.1 For Projects where new construction is required as per this Agreement, if DOT or any other official or agency designated by DOT for the purpose of monitoring - shall have reasonably determined that the rate of progress of construction is such that implementation of the Minimum Development Requirements are not likely to be achieved by the Implementation Completion Date, it shall notify the Lessee to this effect and the Lessee shall, within 15 (fifteen) days of such notice, by a communication inform DOT and any other official or agency designated by DOT for the purpose of monitoring - in reasonable detail about such steps it proposes to take to expedite progress and the period within which it shall achieve COD.

### **1.32 Video recording**

- 1.32.1 During the Implementation Phase, the Lessee shall provide to DOT every six months, a video recording which will be compiled into a 30 (thirty) minute compact disc/ digital video, as the case may be, covering the status and progress of implementation in that period.

### **1.33 Inspection**

- 1.33.1 At least 15 (fifteen) days prior to the likely completion of the Minimum Development Requirements for the Project, the Lessee shall notify DOT of the same and shall give notice to DOT requesting it to conduct inspection of the Project Facility by DOT or any other official or agency designated by DOT for the purpose of monitoring. DOT shall give notice of its intention to conduct inspection at least 7 (seven) days prior to the actual date of inspection. Further, the Lessee shall arrange inspections of the Project Facility in accordance with Applicable Law and Applicable Permits.
- 1.33.2 DOT shall have the right to suspend or postpone any inspection if it is reasonably anticipated or determined during the course of the inspection that the design, quality or any other aspect of the Project Facility or any part thereof does not meet the development guidelines for the phase in consideration or is not in compliance with Applicable Law or the provisions of this Agreement.
- 1.33.3 The official or agency designated by DOT for the purpose of monitoring shall record results of the inspection(s) to determine the compliance of the Project Facility with the Minimum Development Requirements, Applicable Law and provisions of this Agreement.

### **1.34 Completion Certificate**

- 1.34.1 During Implementation Phase, DOT or any other official or agency designated by DOT for the purpose of monitoring – may, at the request of the Lessee issue a provisional certificate of completion (the "**Provisional Certificate**") if the inspection reveals that the parts of Project Facility as required can be legally, safely and reliably opened for commercial operation or use though certain works forming part thereof are not yet complete. In such an event, Provisional Certificate shall have appended thereto a list of outstanding items hereinafter referred to as the Punch List signed jointly by the official or agency designated by DOT for the purpose of monitoring and the Lessee. All items within the Punch List shall be completed by the Lessee within

120 (one hundred and twenty) days of the date of issue of such Provisional Certificate. Upon completion of all activities in the Punch List to the satisfaction of the DOT, DOT shall issue a completion certificate to the Lessee certifying the completion of construction or implementation or development activities as applicable and that all parts of Project Facility for which the Provisional Certificate had been issued - can be legally, safely and reliably opened for commercial operation or use (the "**Completion Certificate**") under intimation to DOT. In the event of the Lessee's failure to complete the items in the Punch List within the said period of 120 (one hundred and twenty) days, DOT may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk of and cost to the Lessee. The Lessee shall reimburse to DOT on demand the entire costs incurred by DOT in completing the items in the Punch List.

- 1.34.2 Upon successful completion of inspections, DOT will forthwith issue to the Lessee a Provisional Certificate or Completion Certificate, as the case may be.
- 1.34.3 The Lessee shall bear all the expenses relating to all inspections under this Agreement.

## **COMMERCIAL OPERATIONS**

### **1.35 Commercial Operation Date**

- 1.35.1 The Minimum Development Requirements ("Minimum Development Obligation") shall be deemed to be complete when the Completion Certificate for the same is issued under the provisions of clause, and accordingly the commercial operations date shall be the date on which such Completion Certificate is issued ("**COD**"). The Project Facilities as required by the Minimum Development Requirements shall be open for commercial operations on COD.
- 1.35.2 Commercial operations shall commence not later than the applicable Implementation Completion Date.
- 1.35.3 Subject to the provisions in this Agreement, in case of delay in commencement of commercial operations, unless the delay is on account of reasons solely attributable to DOT or due to Force Majeure, the Lessee shall pay damages to DOT calculated at the rate of INR 5,000 (Rupees Five thousand) for delay of each day until start of commercial operations is achieved.

## PAYMENTS

### 1.36 Upfront Payment

1.36.1 The upfront consideration in respect of Project Assets (the “**Upfront Fee**” or “**Upfront Payment**”) is Rs. \_\_\_\_\_ (Rupees

\_\_\_\_\_) Only.

DOT acknowledges the payment of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by the Lessee, towards Upfront Payment on \_\_\_\_\_, 2021 through DD Bearing No. \_\_\_\_\_ dated \_\_\_\_\_ of \_\_\_\_\_ Bank. This payment will be in the form of a demand draft in favour of ‘**Managing Director, OTDC Ltd.**’, drawn on a scheduled bank that is not a Gramin Bank and payable at Bhubaneswar.

1.36.2 GST shall be paid extra by Lessee as applicable rate

1.36.3 The Selected Bidder shall be required to:

(i) pay the upfront fee in lumpsum at the time of signing of the Agreement

OR

(ii) pay the upfront fee in three equal instalments (upfront fee + applicable interest for 3 years) within three years of signing of the Agreement. The interest rate shall be the 7% per annum. The first instalment shall be deposited on the date of signing the Agreement. The remaining two instalments shall be deposited on or before the starting date (DD/MM) of the corresponding year of the Agreement.

### 1.37 Annual Lease Rental

1.37.1 The annual consideration in respect of the Project Assets over and above the Upfront Payment (the “**Annual Lease Rental**”) is Rs \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) for the first year of the Lease Period.

DOT acknowledges the payment of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) by the Lessee, towards the Annual Rental for the first year on \_\_\_\_\_, 2021 through DD bearing No \_\_\_\_\_ dated \_\_\_\_\_ of \_\_\_\_\_ Bank \_\_\_\_\_. This payment will be in the form of a demand draft in favour of ‘**Managing Director, OTDC Ltd.**’, drawn on a scheduled bank that is not a Gramin Bank and payable at Bhubaneswar.

1.37.2 For the first year, the Annual Lease Rental shall be payable on the date of signing of the Agreement.

1.37.3 The Annual Lease Rental for each subsequent year shall be payable in advance on the anniversary of the Appointed Date. In case the Lessee failed to pay the annual rent within 7 days from the date of anniversary of the Appointed Date, interest @

18% shall be charged per annum for period of delay apart from the right to terminate the agreement under this agreement.

- 1.37.4 The Annual Lease Rental for the first year shall be calculated as 10% of the Upfront Payment.
- 1.37.5 The Annual Lease Rental for subsequent years shall be escalated every 2 (two) years by 10% on compounded basis.
- 1.37.6 GST shall be paid extra by Lessee as applicable rate.

## **USER CHARGES**

### **1.38 Collection and appropriation of fee**

- 1.38.1 The Lessee shall have the sole and exclusive right to demand, collect and appropriate tariff ("**Fee**") from the tourists ("**Users**") using the services of the Project Assets and the Project Facilities for the duration of the Lease Period or till the date of termination in accordance with this Agreement.
- 1.38.2 The Lessee acknowledges and agrees that upon payment of tariff ("**Fee**"), any User shall be entitled to use the Project Assets and Project Facilities and the Lessee shall not place, or cause to be placed, any restriction on such use, except to the extent specified in the Applicable Law, Applicable Permits or provisions of this Agreement
- 1.38.3 Lessee shall honour the bookings/ room reservations done by DOT/ OTDC Ltd. for dates after the signing of the Agreement as long as such bookings are done prior to the Appointed Date. The cost for such bookings shall be reimbursed by DOT to Lessee.

## **INSURANCE COVERAGE**

### **1.39 Insurance during the Lease Period**

- 1.39.1 The Lessee shall effect and maintain at its own cost, during the Lease Period, all such insurances for such maximum sums as may be required under the Financing Documents, Applicable Law and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "**Insurance Cover**"). The Lessee shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on DOT as a consequence of any act or omission of the Lessee during the Lease Period.
- 1.39.2 DOT will not be held liable for any incidents or accidents during operations of the Project.

### **1.40 Notice to DOT**

- 1.40.1 The Lessee shall by notice furnish to DOT, in reasonable detail, information in respect of the insurance that it proposes to avail and maintain, not later than 45 days prior to the commencement of Implementation Phase. Within 30 (thirty) days of receipt of such notice, DOT may require the Lessee to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any

difference or disagreement relating to any such insurance, the Dispute Resolution Mechanism under this Agreement shall apply.

#### **1.41 Evidence of Insurance Cover**

- 1.41.1 The Lessee shall, from time to time, provide to DOT copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with this Agreement.

#### **1.42 Application of insurance proceeds**

- 1.42.1 All proceeds received under insurance policies except life and injury shall be promptly applied by the Lessee towards repair or renovation or restoration or reinstatement of the Project Assets, Project Facility or any part thereof, which may have been damaged or destroyed and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents and Project Agreements.

#### **1.43 Validity of the Insurance Cover**

- 1.43.1 The Lessee shall pay the premium payable on such insurance policy (or policies) so as to keep the policy (or policies) in force and valid throughout the Lease Period and furnish copies of the same to DOT. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 60 days' clear notice of cancellation is given to DOT in writing. If at any time the Lessee fails to purchase and maintain in full force and effect any or all of the insurances required under this Agreement, DOT may at its option (but not being obliged to do so) purchase and maintain such insurance and all sums incurred by DOT thereof shall be reimbursed by the Lessee forthwith on demand together with interest thereon at 2% over SBI Prime Lending Rate per annum, from the date the respective sums were incurred by DOT. Lessee shall, within 7 (seven) days from the date of receipt of claim in respect thereof settle the amount.

#### **1.44 Waiver of subrogation**

- 1.44.1 All insurance policies in respect of the insurance obtained by the Lessee pursuant to this article shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, DOT 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 or insurance.

#### **1.45 Lessee's waiver**

- 1.45.1 The Lessee hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia DOT and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Lessee may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Lessee pursuant to this Agreement (other than

third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policy of insurance.

## **FORCE MAJEURE**

### **1.46 Force Majeure**

- 1.46.1 Force Majeure shall mean an event which cannot be foreseen and is beyond the control of a Party, and not involving a Party's fault or negligence. Such events (**Force Majeure Events**) may include –
- a) Civil disorders, riots, war, terrorist attack, cyclones, floods, storms, lightning, earthquakes, washouts, high water, fire, tsunami, power blackout and other acts of God.
  - b) Any judgement or order of any court of competent jurisdiction or statutory authority made against the Lessee in any proceedings for reasons other than (i) failure of the Lessee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by DOT;
  - c) Any event or circumstances of a nature analogous to any of the foregoing
- 1.46.2 In no event would there be any financial outlay from DOT or liability of DOT for a Force Majeure Event.
- 1.46.3 The Lessee shall give notice to DOT of any Force Majeure Event as soon as it is reasonably practicable, but not later than 1 (one) month after the date on which the Lessee knew or should have reasonably known the commencement of the Force Majeure Event. The Lessee should give the following in reasonable detail –
- i) The nature of such Force Majeure Event and the estimated period;
  - ii) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - iii) The measures which the Lessee has taken, or proposes to take to alleviate the impact of the Force Majeure Event or mitigate the damage and to resume performance of such of its obligations affected thereby and any other relevant information.
- 1.46.4 Failure by the Lessee to give notice to DOT within the time period specified above shall not prevent the Lessee from giving such notice at a later time, provided however that in such case the Lessee shall not be eligible for the remedies for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice has been given.
- 1.46.5 The Force Majeure Event shall not absolve the Lessee from the obligation of payments in respect of liabilities incurred prior to the occurrence of the Force Majeure Event.
- 1.46.6 For as long as the Lessee continues to claim to be affected by a Force Majeure Event, the Lessee shall provide DOT with regular (and not less than fortnightly)

written reports containing the information sought above or any such other information requested by DOT.

#### **1.47 Remedies for Force Majeure**

- 1.47.1 If the Lessee has, at all times since the occurrence of the Force Majeure Event complied with the obligations of mitigation as provided above and continues to comply with them, then the Lessee shall be entitled to the following relief:
- a) The obligations of the Lessee to the extent they are affected shall be suspended for the period of the Force Majeure Event;

#### **1.48 Dispute resolution**

- 1.48.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution Mechanism of this Agreement;

Provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/ or excuse on account of such Force Majeure Event.

### **LESSEE EVENT OF DEFAULT**

#### **1.49 Lessee Event of Default**

- 1.49.1 The following events shall be considered as events of default on the part of the Lessee;
- a) The Lessee fails to meet the Conditions Precedent as specified in Clause 1.9.2.2;
  - b) The Performance Security has been encashed and appropriated in accordance with Clause 1.20 and the Lessee fails to replenish or provided fresh Performance Security within the period specified in Clause 1.20;
  - c) Subsequent to the replacement or furnishing of fresh Performance Security in accordance with Clause 1.20, the Lessee fails to cure within a period of 3 (three)

- months the Lessee Event of Default for which whole or part of the Performance Security was appropriated;
- d) The Lessee utilises the property for purposes other than for which it was leased out;
  - e) The Lessee fails to adhere to the Minimum Development Requirements, Operation & Management requirements and has failed to remedy the same within 2 (two) months;
  - f) The Lessee commits any material breach, or is otherwise in violation of any of its obligations / provisions, under this Agreement;
  - g) The Lessee does not pay any or all applicable taxes, charges, surcharges, levies and duties which may be levied by any competent authority with regard to execution of this Agreement and all other Project Agreements;
  - h) The Lessee repudiates the Agreement or otherwise expresses an intention not to be bound by this Agreement;
  - i) The Lessee is in breach of the maintenance requirements in the Agreement;
  - j) The Lessee has failed to make any payment to DOT within the period specified in the Agreement including Annual Lease Rental;
  - k) An order is made or a resolution is passed for the liquidation, bankruptcy, dissolution or appointment of a receiver of the Lessee which is not, if capable of being so, discharged or, as the case may be, revoked within 3 (three) months thereafter;
  - l) The Lessee has created any encumbrance on the Project Assets or Project Facility in favor of any entity save as otherwise expressly permitted under this Agreement;
  - m) Any assets or share of the Lessee are expropriated, confiscated, compulsorily acquired or nationalized by any Government, authority, entity or agency due to an act or omission of the Lessee or its shareholders;
  - n) A breach of any representation or warranty by the Lessee which materially adversely affects the Lessee's ability to perform its obligations under this Agreement;
  - o) The Lessee abandons the operations of the Project Facility for more than 15 (fifteen) consecutive days without the prior consent of DOT.

## **1.50 Suspension upon Lessee Event of Default**

- 1.50.1 Upon occurrence of a Lessee Event of Default, DOT 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 Lessee under this Agreement including the Lessee's right to collect tariff, and other revenues pursuant hereto, and
  - b) exercise such rights itself or authorize any other person to exercise the same on its behalf during such suspension. Suspension hereunder shall be effective forthwith



upon issue of notice by DOT to the Lessee and may extend up to a period not exceeding 6 (six) months from the date of issue of such notice.

### **1.51 DOT to act on behalf of Lessee**

- 1.51.1 During the period of suspension, DOT shall, on behalf of the Lessee, run the Project and collect the Fee, under and in accordance with this Agreement and DOT shall be entitled to make use of the revenues collected as above for meeting the costs incurred by it for remedying and rectifying the cause of suspension.
- 1.51.2 During the period of suspension hereunder, all liabilities in relation to the Project shall continue to vest with the Lessee and all actions taken, including expenditure incurred by DOT for discharging the obligations of the Lessee under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Lessee and the Lessee undertakes to indemnify DOT for all costs incurred during such period.

### **1.52 Revocation of suspension**

- 1.52.1 In the event DOT rectifies or removes the cause of suspension within a period not exceeding 2 (two) months from the date of suspension, DOT shall revoke the suspension forthwith and restore all rights of the Lessee under this Agreement.
- 1.52.2 In the event the Lessee cures the Lessee Event of Default within a period not exceeding 3 (three) months from the date of suspension, DOT shall revoke the suspension forthwith and restore all rights of the Lessee under this Agreement.

### **1.53 Termination**

- 1.53.1 At any time during the period of suspension under this clause, the Lessee may by notice require DOT to revoke the suspension and issue a termination Notice. DOT shall within 2 (two) months of receipt of such notice, terminate this Agreement under and in accordance with clause.
- 1.53.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 3 (three) months from the date of Suspension hereunder as set forth in this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as

if a termination Notice had been issued by DOT upon occurrence of a Lessee Event of Default.

## **DOT EVENT OF DEFAULT**

1.53.3 The following events shall be considered as events of default on the part of DOT namely:-

- a) DOT fails to meet the Conditions Precedent as per Clause 1.9.1; or
- b) DOT unlawfully repudiates or expresses an intention not to be bound by the provisions of this Agreement:

Provided that any of the aforesaid is not caused due to a Lessee Event of Default under this Agreement or due to the occurrence of Force Majeure Events.

## **TERMINATION OF AGREEMENT**

### ***1.54 Termination by DOT***

1.54.1 DOT shall be entitled to terminate this Agreement on occurrence of any or all of the Lessee Event of Default.

### ***1.55 Termination by Lessee***

1.55.1 The Lessee shall be entitled to terminate this Agreement on occurrence of any or all of DOT Event of Default.

### ***1.56 Termination procedure***

1.56.1 **Issue of Termination Notice:** On the occurrence of any Event of Default, the non-defaulting Party may initiate termination of this Agreement by issuing a termination Notice to the defaulting Party setting out in detail the underlying Event of Default and the estimated payment on termination, including the details of computation thereof. A notice period of 3 (three) months should be provided when issuing the termination Notice.

1.56.2 **Consultation Period:** Following the issue of the termination Notice, and subject to the above clauses, the Parties shall consult for a period of 2 (two) months or for such period as the Parties mutually agree to determine the steps that are proposed to be taken to rectify or remedy the cause of the issue of the termination Notice. During the Consultation Period, both Parties shall continue to perform their respective obligations under this Agreement.

1.56.3 **Withdrawal of termination Notice:** If the defaulting Party rectifies or remedies the default within the Consultation Period to the satisfaction of the non-defaulting Party or suitable steps are taken towards rectification or the Event of Default ceases to exist, the termination Notice shall be withdrawn.

1.56.4 **Termination:** If the defaulting Party does not rectify or remedy the default within the Consultation Period to the satisfaction of the non-defaulting Party, the Agreement shall be terminated on expiry of the Consultation Period.

1.56.5 In the event of expiry of the Consultation Period as given in Clause 1.56.2, DOT shall be entitled to issue a notice which shall be deemed to mean an immediate

expiry of this Agreement and an immediate transfer of the Project Assets and Project Facility to DOT.

## **PROCEDURE AFTER TERMINATION**

- 1.56.6 DOT shall, at its discretion, substitute the Lessee by selecting another competent party to assume the rights and obligations of the Lessee as per the provisions of the Agreement, within a period of 3 (three) months of termination or take any other measures.
- 1.56.7 The Lessee shall, upon termination, hand over the Project Assets and the Project Facility to DOT within 1 (one) month of termination.

## **COMPENSATION ON TERMINATION**

### ***1.57 Termination before Appointed Date***

- 1.57.1 In case the Agreement is terminated due to Lessee Event of Default, DOT shall not be liable to make any payment to the Lessee.
- 1.57.2 In case the Agreement is terminated by the Lessee due to DOT Event of Default, the Lessee shall be reimbursed the amount advanced to DOT including Upfront Payment, Annual Lease Rental for first year and Performance Security shall be returned to the Lessee. The Lessee shall not be entitled to any interests on the amount advanced.

### ***1.58 Termination after Appointed Date and during Implementation Phase***

- 1.58.1 In case the Agreement is terminated due to Lessee Event of Default, DOT shall not be liable to make any payment to the Lessee. The Performance Security shall be forfeited and shall be utilised by DOT to settle any outstanding dues and other claims of DOT on the Lessee.
- 1.58.2 In case the Agreement is terminated by the Lessee due to DOT Event of Default, DOT shall release the Upfront Payment, Performance Security and part of the Annual Lease Rental in proportion to the remaining days of operation in that Agreement year to the Lessee without interest.

### ***1.59 Termination after Implementation Phase is over***

- 1.59.1 In case the Agreement is terminated due to Lessee Event of Default, DOT shall not be liable to make any payment to the Lessee.
- 1.59.2 In case the Agreement is terminated by the Lessee due to DOT Event of Default, DOT shall release the part of the Upfront Payment in proportion to the remaining

lease period and part of the Annual Lease Rental in proportion to the remaining days of operation in that Agreement year to the Lessee without interest.

## **DIVESTMENTS OF RIGHTS AFTER TERMINATION**

- 1.59.3 Upon termination, the Lessee shall comply with and conform to the following divestment requirements namely:-
- i) Deliver forthwith the actual, or possession of the Project Assets and Project Facility, on “**as is where is**” basis after bringing them to a safe condition free and clear of encumbrances;
  - ii) Deliver relevant records and reports pertaining to the Project and its operation and maintenance, including all programs and manuals pertaining thereto and maintenance certificates obtained hitherto, as on the date of termination;
  - iii) Transfer or deliver all applicable Permits to the extent permissible under Applicable Law;
  - iv) Execute such deeds of conveyance, documents and other writings as DOT may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Lessee in the Project including the right to receive outstanding insurance claims to the extent due and payable to DOT, absolutely unto DOT or its nominee;
  - v) Comply with all other requirements as may be prescribed or required under Applicable Law, for completing the divestment and assignment of all rights, title and interest of the Lessee in the Project, free from all encumbrances, absolutely unto DOT or to its nominee.
  - vi) The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the divestment requirements have been fulfilled, and DOT shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in
  - vii) Vesting Certificate which will have the effect of constituting evidence of divestment by the Lessee all of its rights, title and interest in the Project, and their vesting in DOT pursuant hereto.
  - viii) It is expressly agreed that any defect or deficiency in the divestment requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by DOT or its nominee on, or in respect of, the Project on the footing that all divestment requirements have been complied with by the Lessee.
- 1.59.4 The Lessee shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Lessee in the Project in favour of DOT upon termination,

save and except that all stamp duties payable on any deeds or documents executed by the Lessee in connection with such divestment shall be borne by DOT.

- 1.59.5 The Lessee shall not make any modifications to the Project Assets or Project Facilities which could have an adverse impact on the operations of or on the value of the assets at the Project Facility during the last 5 (five) years of the Lease Period.
- 1.59.6 No demolition of the Project Facility – in part or full – shall be allowed during the last five (5) years of the Lease Period unless specifically approved by DOT. In the last 5 (five) years of the Lease Period, the Lessee shall not remove or cause removal of any movable assets from the Project Facility without prior permission of DOT.
- 1.59.7 The Lessee agrees that at least 12 months prior to the expiry by efflux of time of the Lease Period it shall cause to be conducted at its cost by an expert – appointed by both Parties on mutual consent – a condition survey and an inventory of the entire Project Site & Project Facility / Assets. If, as the result of such survey, the expert observes that the Project Facilities have not been operated and maintained in accordance with the requirements of this Agreement (over and above normal wear & tear), the Lessee shall, at its cost & expense, take all necessary steps to ensure that the Project Facilities are in good working condition well before the Transfer Date. In the event the Lessee fails to comply with this provision, DOT shall itself cause the condition survey and the inventory of the Project Assets & Project Facilities to be conducted and remove any defect or deficiency observed in the survey. DOT shall be promptly reimbursed by the Lessee for costs incurred in conducting such survey, preparation of inventory and curing of Project Assets & Project Facilities.
- 1.59.8 If the Lessee fails to handover the peaceful possession of the Project Facility within one month of termination, DOT shall have the right to charge for illegal use and occupation of the premises, a daily amount equivalent to 2% (two percent) of the Annual Lease Rental payable at the time of termination till such time the premises is vacated by the Lessee.
- 1.59.9 In the event of any dispute relating to the matters covered by this clause, the Dispute Resolution Mechanism of this Agreement shall apply.

## **TRANSFER OF PROJECT ASSETS UPON EXPIRY OF LEASE PERIOD**

- 1.59.10 On the expiry of the Lease Period, the Lessee shall hand over to DOT, free of cost the Project Assets and Project Facility on as is where is basis on the date of expiry of the Lease Period.

## **LIABILITY & INDEMNITY**

### **1.60 General Indemnity**

- 1.60.1 The Lessee shall indemnify, defend and hold DOT harmless against any and all proceedings, actions and third party claims arising out of a breach by Lessee of any of its obligations under this Agreement except to the extent that any such claim has arisen due to DOT Event of Default.
- 1.60.2 DOT will, indemnify, defend and hold harmless the Lessee against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of DOT and/or arising out of a breach by DOT, its officers, servants and agents of any obligations of DOT

under this Agreement except to the extent that any such claim has arisen due to Lessee Event of Default.

- 1.60.3 Without limiting the generality of this Article, the Lessee shall fully indemnify, hold harmless and defend DOT including its officers, servants, agents and subsidiaries from and against any and all loss as and damages arising out of or with respect to
- i) failure of the Lessee to comply with Applicable Law and Applicable Permits;
  - ii) payments of taxes relating to the Lessee's contractors, suppliers and representatives' income or other taxes required to be paid by the Lessee without reimbursement hereunder;
  - iii) non-payment of amounts due as a result of materials or services furnished to the Lessee or any of its contractors which are payable by the Lessee or any of its contractors;
- 1.60.4 Without limiting the generality of the provisions of this Clause, the Lessee shall fully indemnify, hold harmless and defend DOT from and against any and all damages which DOT may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any material, information, design or process used by the Lessee or by the Lessee's Contractors in performing the Lessee's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Lessee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit 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 Lessee shall promptly make every reasonable effort to secure for DOT a license, at no cost to DOT, authorizing continued use of the infringing work. If the Lessee is unable to secure such license within a reasonable time, the Lessee 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 parts or process, or modify the same so that it becomes non-infringing.
- 1.60.5 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article, it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party - such approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any cost involved to its reasonable satisfaction.

## **1.61 *Defence of claims***

- 1.61.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article, the

Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.

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

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

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

Provided that if sub-clauses (b), (c) or (d) of Clause 1.61.3 shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and

the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## **MISCELLANEOUS**

### **1.62 *Governing law and jurisdiction***

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

### **1.63 *Assignment and charges***

1.63.1 The Lessee shall not assign this Agreement or its rights, benefits and obligations, to any person, save and with the prior consent in writing of DOT.

1.63.2 The Lessee shall not create or permit any encumbrance or otherwise transfer or dispose any or all of its rights and benefits under this Agreement except with the prior consent in writing of DOT.

### **1.64 *Amendments***

1.64.1 This Agreement and the Schedules, Annexure and Appendices thereof together with the Bidding Documents and its Schedules, Annexure, Appendices and Addenda and other communication between DOT and the Lessee constitute a complete and exclusive understanding of the agreement terms between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

### **1.65 *Time***

1.65.1 Any date or period as set out in any Clause of this Agreement may be extended with the written consent of DOT failing which time shall be the essence.

### **1.66 *Confidentiality***

1.66.1 The Lessee, for themselves and their affiliates, agents, sub-contractors, employees, and retained professionals, agree to keep the provisions of this Agreement confidential from third parties and not to make any public announcements or public disclosures or communicate with any news media with respect to the subject matter hereof without the written consent of DOT;

Provided that such disclosure:

(a) is required pursuant to any relevant statutory or regulatory requirements or duties or any relevant terms of the Applicable Law; or (b) relates to information which is



already in the public domain, other than as a result of breach of this clause by the Lessee.

### **1.67 *No partnership***

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

### **1.68 *Third parties***

1.68.1 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, or any liability to, any person not a Party to this Agreement.

### **1.69 *Language***

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

### **1.70 *Waiver***

1.70.1 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same of any other provisions hereof. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.

### **1.71 *Severability***

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

### **1.72 *Liability and indemnity***

1.72.1 The Lessee will indemnify and hold harmless DOT and its nominees / successors / assigns against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense arising out of any breach of provisions of the Agreement by the Lessee or on account of any deficiency in provision of services by the Lessee to any User.

### **1.73 *Immunity to DOT***

1.73.1 If any accident – pursuant to the utilisation of the Project Assets and the Project Facilities under this Agreement – results in injury or death of any person, including the employees of the Lessee, the Lessee hereby undertakes that all liability, civil

and criminal, will be to the account of the Lessee unless it is covered by the Insurance Cover. In addition, the Lessee undertakes that all liability, civil and criminal, will be to the account of the Lessee in case the Project Assets or Project Facilities are utilised for any activities proscribed by Applicable Law. The Lessee holds harmless DOT and its nominees / successors / assigns against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense arising out of the events mentioned above, either caused on account of any deficiency in provision of services by the Lessee or caused by any third party. In the event of the Lessee not meeting the liabilities resulting from the above, the Performance Security may be utilised in meeting the liabilities resulting from the above.

## **DISPUTE RESOLUTION MECHANISM**

### **1.74 Negotiations**

- 1.74.1 The Parties will attempt in good faith to resolve any dispute, difference, conflict or claim arising out of or in relation to this Agreement or the performance of the Agreement (a **"Dispute"**) through negotiations between senior authorized representatives of each Party with authority to settle the relevant dispute. If the Dispute has not been settled through negotiations within 14 days from the date on which either Party has served written notice on the other regarding the Dispute (the **"Notice"**), or such longer period as may be mutually agreed by the Parties, then the remaining provisions of this clause shall apply.
- 1.74.2 If the Dispute is not resolved in accordance with the provisions of the clause above, either Party shall be entitled to approach the court to resolve the issue;
- a) While any dispute is pending, both Parties shall, save as otherwise provided herein, continue to perform their respective obligations under this Agreement and shall not, whether by act or omission, impede or otherwise interfere with the endeavors of the defaulting Party to remedy the breach or default to which such Dispute relates.
  - b) The legal proceedings shall be held in Bhubaneswar and shall be conducted in English.

## **SCHEDULE I - LETTER OF AWARD**

## **SCHEDULE II – PROJECT ASSETS**

[To be inserted after Joint Verification on Handover Date]

## SCHEDULE III: MINIMUM DEVELOPMENT REQUIREMENTS

### Minimum Development Requirements/ Minimum Development Obligations:

Name of Property	Minimum Development Requirement	Implementation Completion Date
Yatriniwas, Satapada	Redevelop/ Renovate, Augment, Furnish and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop 60 lettable rooms with at least 3-Star Hotel facilities and certification</li> </ul>	36 months from the Appointed Date
TRC Jharsuguda	Redevelop/ Renovate, Augment, Furnish and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop 50 lettable rooms</li> </ul>	36 months from the Appointed Date
Panthanivas, Panchalingeswar	Redevelop/ Renovate, Augment, Furnish and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop at least 40 lettable rooms</li> </ul>	24 months from the Appointed Date
Yatriniwas, Konark (part)	Redevelop/ Renovate, Augment, Furnish and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop at least 75 lettable rooms with at least 3-Star Hotel facilities and certification</li> </ul>	36 months from the Appointed Date
Tourist Complex, Daringbadi (part)	Develop and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop at least 50 lettable rooms</li> </ul>	36 months from the Appointed Date
BN Palace, Paralakhemundi	Redevelop/ Renovate, Augment, Furnish and Operate <ul style="list-style-type: none"> <li>• Lessee shall develop at least 50 lettable rooms</li> </ul> <p><i>Note: The lessee shall develop the Palace into a Heritage Hotel without compromising the heritage nature of the property and in compliance with the norms specified in Guidelines for Classification of Heritage Hotels issued by Ministry of Tourism, Govt. of India. The construction of any new component shall be in compliance with the prevailing by-laws and other</i></p>	36 months from the Appointed Date

Name of Property	Minimum Development Requirement	Implementation Completion Date
	<p><i>regulatory frameworks being stipulated by various governing authorities and development authorities from time to time over the Minimum Development Obligation Period. All planning, designing and other interventions shall be done with prior approval from DoT or a DoT appointed committee.</i></p>	
Panthika, Dhauri	<p>Redevelop/ Renovate, Augment, Furnish and Operate</p> <ul style="list-style-type: none"> <li>• Lessee must develop at least one multi-cuisine restaurant with a minimum capacity of 60 pax</li> </ul>	12 months from the Appointed Date

## **Schedule IV**

### **VESTING CERTIFICATE**

- (i) DOT represented by Director Tourism, DOT refers to the Lease, cum Development Agreement dated \_\_\_\_\_2021 (the "Agreement") entered into between DOT and \_\_\_\_\_(the "Lessee") for Up-gradation / Development, Operation, Maintenance, Management and Transfer of the Tourism Accommodation Unit at\_\_\_\_\_.
- (ii) DOT hereby acknowledges compliance and fulfilment by the Lessee of the Divestment Requirements set forth in the Agreement on the basis that upon issue of this Vesting Certificate, DOT shall be deemed to have acquired, and all title and interest of the Lessee in or about the Project Assets shall be deemed to have vested unto DOT, free from any encumbrances, charges and liens whatsoever.
- (iii) Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Lessee to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/ or relieving the Lessee in any manner of the same.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at Bhubaneswar

AGREED, ACCEPTED AND SIGNED, For and on behalf of LESSEE by:  (Signature)	SIGNED, SEALED AND DELIVERED For and on behalf of DOT by:  (Signature)  Name  Director, Department of Tourism; Government of Odisha Paryatan Bhawan, Lewis Road, Bhubaneswar – 751014
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In witness whereof the parties have signed this deed of Agreement on the date & year mentioned above.

In presence of –

**Witness**

1. Name : \_\_\_\_\_ Signature of the Officer acting in the presence  
Address \_\_\_\_\_ for and on behalf of the Odisha Tourism

2. Name : \_\_\_\_\_ Signature of the Officer acting in the presence  
Address \_\_\_\_\_ for and on behalf of \_\_\_\_\_