

**Government of Odisha  
Department of Tourism & Culture (Tourism)**



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**Bid Documents for Lease cum Development of  
Tourism Accommodation Units**

**Volume I of II: Request for Proposal**

**March 2017**

**Paryatan Bhawan, Lewis Road, Bhubaneswar 751 014  
Phone: (0674) 243 2177 | Fax: (0674) – 243 0887**

## **Summary - Leasing of Tourism Properties in the State of Odisha on Upgrade, Develop, Operate, Manage and Transfer basis**

- 1. Development Mode** - Public Private Partnership (PPP) on upgrade, develop, operate, maintain, manage, share and transfer basis.
- 2. Lease Period** – 30 years (10 + 10 + 10). Initially the lease shall be for 10 years & there shall be review by Department of Tourism at the end of 10<sup>th</sup> and 20<sup>th</sup> year for giving extension, subject to the condition that the Operator shall qualify all the following parameters.
  - a) Fulfillment of minimum development plan.
  - b) Use of the property for the purpose for which it is meant.
  - c) Confirmation of the maintenance standard.
  - d) Timely payment of annual fees
- 3. Lease Rental:**
  - a. **Upfront Fee – non refundable**
  - b. **Annual fee – 10% of the upfront fee to be increased once every two years as per wholesale price index**
- 4. Bid Parameter** – Highest Upfront Fee
- 5. Bid Document Fee** – Rs. 5000/- (Rupees Five Thousand only) for each property – DD in favour of Director Tourism payable at Bhubaneswar
- 6. Bidding schedule:**

S. NO.	EVENT DESCRIPTION	DATE
1.	Issue of RFP	22 <sup>nd</sup> March,2017
2.	Last date for receiving queries on the RFP	15.04.2017
3.	Site Visit	Any day prior to Bid Due Date
4.	Pre- bid Meeting at Paryatan Bhawan, Lewis Road Bhubaneswar	10.04.2017 at 11.00 A.M.
5.	Last date for submission of Bids (“the Bid Due Date”) up to 17: 00 Hrs	24.04.2017 at 5:00 P.M.
6.	Opening of the Bid (11: 00 Hrs)	25.04.2017 at 11.00 A.M.

### **7. Eligibility Criteria**

<b>For Bidders having Tourism Sector Experience</b>			
<b>Project No.</b>	<b>Name of Properties</b>	<b>Minimum Net Worth in Rs. lakh (for the last financial year)</b>	<b>Minimum Turn Over in Rs. lakh (for the last financial year)</b>
1)	WAC Sunabeda	7.50	15.00
2)	Panthatasala, Bhatarika	7.50	15.00
3)	Panthatasala Chhapachikana	2.50	5.00
4)	Panthatasala Ranipur Jharial	10.00	20.00
5)	Panthatasala Nrusinghnath	10.50	21.00
6)	TC, Daringibadi	10.00	20.00
7)	TRC, Baripada	100.00	100.00
8)	T.C, Paralakhemundi	166.5	333.00
9)	T.C, Atri	35.50	71.00
10)	WAC Sohela	2.00	4.00
11)	WAC Gorakhnath Pitha	1.58	3.15
12)	WAC Chandikhol	6.00	12.00
13)	T.C. Belghar	6.25	12.50
14)	T.C. Phulbani	17.50	35.00
15)	Panthatasala Khiching	3.00	6.00
16)	WAC Odagaon	2.50	5.00
17)	Panthatasala Bisama Katak	2.50	5.00
18)	Panthatasala Binika	5.00	10.00
19)	Panthatasala Khandadhar	3.75	7.50
20)	T.C. Thuamula Rampur	2.50	5.00
21)	TRC, Kendrapara	6.00	12.00
22)	Panthika, Ramchandi, Kendrapara	3.10	6.20
23)	Panthatasala, Mahavinayak	3.00	6.00
24)	Panthatasala Dhamnagar	2.50	5.00

<b>For Bidders NOT having Tourism Sector Experience</b>		
<b>Project No.</b>	<b>Name of Properties</b>	<b>Minimum Net Worth in Rs. lakh (for the last financial year)</b>
1	WAC Sunabeda	15.00
2	Panthalasala, Bhatarika	15.00
3	Panthalasala Chhapachikana	5.00
4	Panthalasala Ranipur Jharial	20.00
5	Panthalasala Nrusinghnath	21.00
6	TC, Daringibadi	20.00
7	TRC, Baripada	200.00
8	T.C, Paralakhemundi	333.00
9	T.C, Atri	71.00
10	WAC Sohela	4.00
11	WAC Gorakhnath Pitha	3.15
12	WAC Chandikhol	12.00
13	T.C. Belghar	12.50
14	T.C. Phulbani	35.00
15	Panthalasala Khiching	6.00
16	WAC Odagaon	5.00
17	Panthalasala Bisama Katak	5.00
18	Panthalasala Binika	10.00
19	Panthalasala Khandadhar	7.50
20	T.C. Thuamula Rampur	5.00
21	TRC, Kendrapara	12.00
22	Panthika, Ramchandi, Kendrapara	6.20
23	Panthalasala, Mahavinayak	12.00
24	Panthalasala, Dhamnagar	5.00

8. **Bid Security:** The bid security shall be submitted by way of D.D. favoring The Director, Department of Tourism, Government of Odisha, payable at Bhubaneswar. The Bid Security for different projects area given below:

Sr. No.	Name of Properties	Bid Security in INR
1	WAC Sunabeda	1,00,000.00
2	Panhasala, Bhatarika	10,000.00
3	Panhasala Chhapachikana	10,000.00
4	Panhasala Ranipur Jharial	10,000.00
5	Panhasala Nrusinghnath	20,000.00
6	TC, Daringibadi	40000.00
7	TRC, Baripada	200000.00
8	T.C, Paralakhemundi	300000.00
9	T.C, Atri	200000.00
10	WAC Sohela	8,000.00
11	WAC Gorakhnath Pitha	6,000.00
12	WAC Chandikhol	10000.00
13	T.C. Belghar	10,000.00
14	T.C. Phulbani	10,000.00
15	Panhasala Khiching	12,000.00
16	WAC Odagaon	10,000.00
17	Panhasala Bisama Katak	10,000.00
18	Panhasala Binika	10,000.00
19	Panhasala Khandadhar	10,000.00
20	T.C. Thuamula Rampur	10000.00
21	TRC, Kendrapara	26000.00
22	Panthika, Ramchandi, Kendrapara	10000.00
23	Panhasala, Mahavinayak	12000.00
24	Panhasala, Dhamnagar	5000.00

NB: the summary is only indicative and given for better understanding of the potential bidders. The condition laid in the RFP and Lease cum Development Agreement is conclusive and binding on the bidders.

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## INTRODUCTION

- 1.1 The Department of Tourism (DoT) operates several accommodation units referred to as Panthasala, Tourism Complex, Wayside Amenities Center etc. (the “**Tourism Accommodation Units**”) at several locations across the state. With the objective of providing upgraded facilities to users, promoting tourism and unlocking the commercial value of these properties, Department of Tourism proposes to develop / upgrade and operate various Tourism Accommodation Units through Public Private Partnership by leasing them on upgrade / develop, maintain, manage, share and transfer basis (the “**Project or Projects**”).
- 1.2 The proposed Projects are to be carried out for the Tourist Accommodation Units listed below along with the associated Project Number (the “**Project Number**”).

<b>Project. No.</b>	<b>Name of Properties</b>
1	WAC Sunabeda
2	Panthasala, Bhatarika
3	Panthasala Chhapachikana
4	Panthasala Ranipur Jharial
5	Panthasala Nrusinghnath
6	TC, Daringibadi
7	TRC, Baripada
8	T.C, Paralakhemundi
9	T.C, Atri
10	WAC Sohela
11	WAC Gorakhnath Pitha
12	WAC Chandikhol
13	T.C. Belghar
14	T.C. Phulbani
15	Panthasala Khiching
16	WAC Odagaon
17	Panthasala Bisama Katak
18	Panthasala Binika
19	Panthasala Khandadhar
20	T.C. Thuamula Rampur

Project. No.	Name of Properties
21	TRC, Kendrapara
22	Panthika, Ramchandi, Kendrapara
23	Panthasala, Mahavinayak
24	Panthasala, Dhamnagar

- 1.3 DOT proposes to lease the Tourism Accommodation Units on an “as-is where is” basis to a private player for implementation of the Project. The details of the Tourism Accommodation Units are provided in **APPENDIX I – PROPERTY DETAILS**. The Selected Bidder shall be responsible for implementing the Project for one or more Tourism Accommodation Units under, and, in accordance with the provisions of the Lease cum Development Agreement (the “**Lease cum Development Agreement**” or “**LDA**”) to be entered into between DOT and the Selected Bidder, separately, for each Tourism Accommodation Unit in the format provided by DOT. DOT will grant the Selected Bidder the Lease for the respective Tourism Accommodation Unit for a specified time period (the “**Lease Period**”).
- 1.4 This is a common RFP applicable for all the **25 Projects**. **There is no cap on the number of Projects that can be bid for by the bidders**. In case where a bidder is bidding for multiple number of Projects, **a single Proposal**, submitted as per the prescribed formats in this RFP, is sufficient for consideration,
- 1.5 The Financial Bids (the “**Financial Bid(s)** or **Bid(s)**”) should be submitted separately for each Project along with the Proposal.
- 1.6 The LDA shall set forth the detailed terms and conditions for the grant of the Lease to the Selected Bidder, including the scope of the Selected Bidder’s services and obligations. At the end of the Lease Period, all the Project Facilities (as defined in the LDA), including all developments carried out by the Lessee and the assets provided by DOT shall revert back to DOT, free of cost and free of all encumbrances.
- 1.7 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Selected Bidder set forth in the Lease cum Development Agreement or DOT’s right to amend, alter, change, supplement or clarify the scope of work, the Lease to be awarded pursuant to this RFP or the terms thereof contained herein. Consequently, any



omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by DOT.

## **2 BRIEF DESCRIPTION OF BIDDING PROCESS**

- 2.1 DOT has adopted a single-stage process (referred to as the "**Bidding Process**") for selection of Bidders for the Projects.
- 2.2 Applicants (the "**Bidders**") are being called upon to submit their Proposal pursuant to this RFP in accordance with the terms set forth in this RFP, all the Volumes, Appendices and Addenda thereof issued by DOT as part of this Bidding Process (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by DOT, and all Proposals shall be prepared and submitted in accordance with such terms. **A Bidder bidding for multiple numbers of Projects is required to submit only one Proposal.**
- 2.3 The Proposal shall be valid for a period of not less than 12 (twelve) months from the Bid Due Date (the "**Bid Validity Period**") or for any extended period agreed to by the Bidder. DOT reserves the right to reject the Proposal which does not meet this validity requirement. Further details of the Bidding Process and the terms thereof are spelt out in this RFP.
- 2.4 The Bidders are required to meet the Eligibility Criteria given in Clause 4. The Bidders may be single applicants or consortia. In case the Bidder is a consortium, the Bidder will additionally need to meet the requirements specified in Clause 3.
- 2.5 No associate, subsidiary or a group company of the Bidder will be permitted to bid for the same Tourism Accommodation Unit.
- 2.6 Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax or e-mail within the time frame provided in Clause 2.7 below, to the officer designated in Clause 6.2.4 . **For the purpose of site visits, Bidders are required to contact the above officer during the period indicated for the joint site visit in the table below.** The envelopes / communication shall clearly bear the following identification/ title:

**"Queries / request for additional information: RFP for Lease cum  
Development of 27 Tourism Accommodation Projects".**

2.7 DOT shall endeavor to adhere to the following schedule:

S. NO.	EVENT DESCRIPTION	DATE
1	Issue of RFP	22 <sup>nd</sup> March,2017
2	Last date for receiving queries on the RFP	15.04.2017
3	Site Visit	Any day prior to Bid Due Date
4	Pre- bid Meeting at Paryatan Bhawan, Lewis Road Bhubaneswar	10.04.2017 at 11.00 A.M.
5	Last date for submission of Bids ("the Bid Due Date") up to 17: 00 Hrs	24.04.2017 at 5:00 P.M.
6	Opening of the Bid	25.04.2017 at 11.00 A.M.

### 3 CONSORTIUM RELATED MATTERS

3.1 A Consortium shall be eligible for consideration subject to the conditions set out below.

- a. The number of members in a consortium can be a maximum of 2 (two).
- b. The Proposal should contain information required for each member of the Consortium.
- c. The parties to a Consortium shall be required to form a Special Purpose Company (the "**SPC**"), incorporated under the Indian Companies Act, 1956, in due course. The SPC shall execute the Project(s) if awarded to the Consortium.
- d. The Members of the Consortium shall nominate one member as the lead member (the "**Lead Member**") who shall be the point of contact throughout the Bidding Process. The Lead Member should be a member who meets at least 51% of the Financial Eligibility Criteria. In addition, if the Bidder is meeting Eligibility Criteria under Option 1 as specified in Clause 4.2, the consortium member meeting the Technical Eligibility Criteria should have a minimum equity share of 26% in the SPC for at least 3 years from the date of commencement of commercial operations as defined in the LDA.

- e. The Lead Member 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 commencement of commercial operations as defined in the LDA 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 RFP, signed by all the other members of the Consortium.
- f. The minimum shareholding for the consortium members in the SPC shall not be permitted to go below 5% during the Lease Period as prescribed in the LDA.
- g. 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.
- h. An individual Bidder cannot be a member of any Consortium bidding for the same Tourism Accommodation Unit. Further, a member of a Consortium cannot be a member of any other Consortium bidding for the same Tourism Accommodation Unit.
- i. 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:
  - i. 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 LDA and subsequently carry out all the responsibilities as the Lessee, in case the Project is awarded to the Consortium;
  - ii. clearly outline the proposed roles and responsibilities of each member at each stage;
  - iii. commit the minimum equity stake to be held by each member; and
  - iv. 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 for execution of the Project in accordance with the terms of the LDA

**A copy of the Joint Bidding Agreement should be submitted along with the Proposal.**  
The Joint Bidding Agreement entered into between the members of the Consortium should

be applicable to all the Projects bid for by the Consortium and should fulfill the above requirements, failing which the Bid shall be considered Non-Responsive.

### **3.2 Change in composition of Consortium**

3.2.1 For a Project, if such change occurs before execution of the Lease cum Development Agreement and after declaration of the Consortium as the Selected Bidder, the Bid of the Consortium for the Project will become Non-Responsive. In such an event, DOT shall appropriate the Bid Security, as mutually agreed genuine pre-estimated compensation and damages payable to DOT for, inter alia, time, cost and effort of DOT, without prejudice to any other right or remedy that may be available to DOT hereunder or otherwise. DOT can exercise its discretion to commence negotiations with the second highest bidder for that Project or cancel the Bidding Process for that Project.

3.2.2 If such change occurs after execution of the Lease cum Development Agreement of a Project, within the period specified above, it would be deemed to be a breach thereof, and the LDA for that Project shall be liable to be terminated without DOT being liable in any manner whatsoever to the Lessee. In such an event, notwithstanding anything to the contrary contained in the LDA, DOT shall appropriate the Performance Security for the Project, as mutually agreed genuine pre-estimated compensation and damages payable to DOT for, inter alia, time, cost and effort of DOT, without prejudice to any other right or remedy that may be available to DOT hereunder or otherwise.

3.2.3 Provision of SPV for implementation of the project : The selected bidder after issue of Letter of Award may form an SPV for implementation of the project. The SPV is allowed subject to the condition that minimum 51% share in the SPV shall be hold by the original lessee at least for a period of 5 years.

3.2.4 For availing institutional finance, the selected bidder may apply to Department of Tourism. For that purpose the model substitution agreement as per Annexure-XVI shall be signed by the Lessee, Department of Tourism & the Banker.

## **4 ELIGIBILITY CRITERIA**

4.1 The Bidders should meet the Eligibility Criteria under either Option 1 or Option 2 as prescribed below. The Bidder bidding for a group of Projects is allowed to bid by qualifying either under Option 1 or under Option 2 for the entire group. The Bidder is not allowed to indicate Option 1 for some of the Projects and Option 2 for the remaining Projects bid for –

**mixing of Options is not permitted and a Proposal containing such bids shall be considered invalid.**

4.2 **OPTION 1 - for those who have experience in tourism business:** such Bidders should meet the following Technical Eligibility Criteria and Financial Eligibility Criteria.

<b>TECHNICAL ELIGIBILITY CRITERIA UNDER OPTION I</b>	
Applicable for all Tourism Accommodation Unit Projects	
Bidder should be an income tax payee and should either be an owner for the last 3 financial years or an operator for the last 3 financial years of any of the following:	
<ul style="list-style-type: none"> <li>• Hotel with appropriate trade license</li> <li>• Restaurant with trade license from local body (Municipality, Corporation etc)</li> <li>• Travel tour firm / company, adventure-sports firm / company, or a tourist transport service firm / company with appropriate trade license.</li> </ul>	

4.2.1 **Financial Eligibility Criteria under Option 1** – Bidders should meet the Net Worth & Annual Turnover criteria from tourism business as given in the table below. Besides, the source of funds for the Expected Investment given below should be specified. If a Bidder is bidding for more than one Project, **at the minimum, it should meet the Financial Eligibility Criteria for the largest Project amongst all the Projects that it is bidding** – based on the values of the three items of the Financial Criteria as listed in the table below.

4.2.1.1 Illustration: if the Bidder is bidding for Project Number 1, 2 & 3 as listed in the table below, the Bidder should meet the Financial Eligibility Criteria for Project Number 1 which has the highest Financial Eligibility Criteria among the three selected Projects.

<b>For Bidders having Tourism Sector Experience</b>			
<b>Project No.</b>	<b>Name of Properties</b>	<b>Minimum Net Worth in Rs. lakh (for the last financial year)</b>	<b>Minimum Turn Over in Rs. lakh (for the last financial year)</b>
1.	WAC Sunabeda	7.50	15.00
2.	Panthasala, Bhatarika	7.50	15.00
3.	Panthasala Chhapachikana	2.50	5.00
4.	Panthasala Ranipur Jharial	10.00	20.00

For Bidders having Tourism Sector Experience			
Project No.	Name of Properties	Minimum Net Worth in Rs. lakh (for the last financial year)	Minimum Turn Over in Rs. lakh (for the last financial year)
5.	Panthalasala Nrusinghnath	10.50	21.00
6.	TC, Daringibadi	10.00	20.00
7.	TRC, Baripada	100.00	100.00
8.	T.C, Paralakhemundi	166.5	333.00
9.	T.C, Atri	35.50	71.00
10.	WAC Sohela	2.00	4.00
11.	WAC Gorakhnath Pitha	1.58	3.15
12.	WAC Chandikhoh	6.00	12.00
13.	T.C. Belghar	6.25	12.50
14.	T.C. Phulbani	17.50	35.00
15.	Panthalasala Khiching	3.00	6.00
16.	WAC Odagaon	2.50	5.00
17.	Panthalasala Bisama Katak	2.50	5.00
18.	Panthalasala Binika	5.00	10.00
19.	Panthalasala Khandadhar	3.75	7.50
20.	T.C. Thuamula Rampur	2.50	5.00
21.	TRC, Kendrapara	6.00	12.00
22.	Panthika, Ramchandi, Kendrapara	3.10	6.20
23.	Panthalasala, Mahavinayak	3.00	6.00
24.	Panthalasala, Dhamnagar	2.50	5.00

*\* Complete source of funds should be submitted where Minimum Expected Investment has been specified for the Project – at least 30% of the prescribed Minimum Expected Investment should be through equity – refer Appendix XIII*

4.3 **OPTION 2 - for those who do not have experience in tourism business:** such Bidders are required to meet only the following two Financial Eligibility Criteria. If a Bidder is bidding for more than one Project, **at the minimum, it should meet the Financial Eligibility Criteria for the largest Project amongst all the Projects that it is bidding -** based on the values of the two items of the Financial Criteria as listed in the table below.

4.3.1.1 For example, if the Bidder is bidding for Project Number 1, 2 &3 as listed in the table below, the Bidder should meet the Financial Eligibility Criteria for Project Number 1 which has the highest Financial Eligibility Criteria among the three selected Projects.

<b>For Bidders NOT having Tourism Sector Experience</b>		
<b>Project No.</b>	<b>Name of Properties</b>	<b>Minimum Net Worth in Rs. lakh (for the last financial year)</b>
1	WAC Sunabeda	15.00
2	Panthalasala, Bhatarika	15.00
3	Panthalasala Chhapachikana	5.00
4	Panthalasala Ranipur Jharial	20.00
5	Panthalasala Nrusinghnath	21.00
6	TC, Daringibadi	20.00
7	TRC, Baripada	200.00
8	T.C, Paralakhemundi	333.00
9	T.C, Atri	71.00
10	WAC Sohela	4.00
11	WAC Gorakhnath Pitha	3.15
12	WAC Chandikhol	12.00
13	T.C. Belghar	12.50
14	T.C. Phulbani	35.00
15	Panthalasala Khiching	6.00
16	WAC Odagaon	5.00
17	Panthalasala Bisama Katak	5.00
18	Panthalasala Binika	10.00
19	Panthalasala Khandadhar	7.50
20	T.C. Thuamula Rampur	5.00
21	TRC, Kendrapara	12.00
22	Panthika, Ramchandi, Kendrapara	6.20
23	Panthalasala, Mahavinayak	12.00
24	Panthalasala, Dhamnagar	5.00

*\* Complete source of funds should be submitted where Minimum Expected Investment has been specified for the Project – at least 30% of the prescribed Minimum Expected Investment should be through equity – refer Appendix XIII*

## 5 INSTRUCTIONS TO BIDDERS

### 5.1 General terms of bidding

5.1.1 Notwithstanding anything to the contrary contained in this RFP, the detailed terms prescribed in the Lease cum Development Agreement (LDA) specific to each Project shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the LDA.

5.1.2 All Bidders are required to submit their Proposal in accordance with the guidelines set forth in this RFP. In order to promote consistency among Proposals and minimize potential misunderstandings regarding interpretation of Proposals by DOT, the format in which Bidders have to specify the fundamental aspects of their Proposal has been outlined in this RFP.

5.1.3 Submission of the Proposal in response to this RFP would have to be made in three separate sealed covers as indicated below:

- Part 1 Submission: General Documents – Cover 1
- Part 2 Submission: Technical Proposal – Cover 2
- Part 3 Submission: Financial Proposal – Cover 3

5.1.4 The contents of each Cover are listed below:

- **Part 1 Submission: General Documents – Cover 1:** Bidder will be required to submit the following documents under Cover 1 as part of the Proposal.
  - Tender Fee of Rs. 5,000 (Rupees five thousand only) **for each Project being bid for by the Bidder** - in the form of a Demand Draft in the name of the Director Tourism, DOT payable in Bhubaneswar and drawn on any Scheduled Commercial Bank.
  - A copy of this RFP with annexure, with all pages signed by an Authorized Signatory of the Bidder as prescribed in bid document
  - List of Tourism Accommodation Units being bid by the Bidder as provided in **APPENDIX I – PROPERTY DETAILS.**
  - Covering letter in the format provided in APPENDIX III - FORMAT FOR COVERING LETTER-CUM-PROJECT UNDERTAKING (Cover 1)



- General Information of the Bidder in the format provided in APPENDIX IV – GENERAL INFORMATION (Cover 1)
- Power of Attorney for Bid signatory in the format provided in APPENDIX V – FORMAT FOR POWER OF ATTORNEY FOR BID SIGNATORY (Cover 1)
- Bid Affidavit in the format provided in APPENDIX VI – FORMAT OF BID AFFIDAVIT (Cover 1)
- Bid undertaking in the format provided APPENDIX VII – FORMAT OF BID UNDERTAKING (Cover 1)
- Anti Collusion Certificate in the format provided in APPENDIX VIII – ANTI-COLLUSION CERTIFICATE (Cover 1)
- Power of Attorney for the Lead Member of Consortium as specified in the format in APPENDIX IX – POWER OF ATTORNEY FOR THE LEAD MEMBER OF CONSORTIUM (Cover 1)
- Letter of Commitment from the Bidder as per the format in APPENDIX X – FORMAT OF LETTER OF COMMITMENT (Cover 1)
- Commitment to the Minimum Project Requirements (as per the Draft LDA) in the format as specified in APPENDIX XI - COMMITMENT TO THE MINIMUM PROJECT REQUIREMENTS (Cover 1)
- Bank Guarantee for Bid Security in the format provided in APPENDIX XII- FORMAT OF BANK GUARANTEE FOR BID SECURITY (Cover 1)

5.1.5 Any condition or qualification for any stipulation contained in the Proposal for any Project shall render the bid for that particular Project liable to rejection as a Non-Responsive bid.

5.1.6 The Proposal and all communications in relation to or concerning the Bidding Documents and the Proposal shall be in English language.

5.1.7 The Bidding Documents including this RFP and all attached documents are and shall remain the property of DOT and are issued to the Bidders solely for the purpose of preparation and submission of their Proposal in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Proposal. The Proposal and any information provided along therewith by the Bidder within the Bid Due Date shall become the property of DOT and DOT shall not return the same to any Bidder.

5.1.8 This RFP along with its Appendices is not transferable.

5.1.9 Any award of Lease for any Project pursuant to this RFP shall be subject to the terms of the Bidding Documents.

## 5.2 **Cost of bidding**

5.2.1 The Bidders shall be responsible for all costs associated with preparation of their Proposals and their participation in the Bidding Process. DOT will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## 5.3 **Site visit and verification of information**

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

5.3.2 It shall be deemed that by submitting a Proposal, the Bidder has:

- Made a complete and careful examination of the Bidding Documents. Failure to comply with the requirements of the RFP shall be at the Bidder's own risk
- received all relevant information requested from DOT
- acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of DOT relating to any of the matters referred to in Clause 5.3.1 above
- satisfied itself about all matters, things and information including matters referred to in Clause 5.3.1, hereinabove necessary and required for submitting an informed Proposal, execution of the Project(s) in accordance with the Bidding Documents and performance of all of its obligations there under
- Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 5.3.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from DOT, or a ground for termination of the LDA for any Project;
- agreed to be bound by the undertakings provided by it under and in terms hereof

5.3.3 DOT shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by DOT.

5.4 **Right to accept or reject any or all bids**

5.4.1 Notwithstanding anything contained in this RFP, DOT reserves the right to accept or reject any bid, and to annul the Bidding Process, and reject all bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

5.4.2 DOT reserves the right to reject bid for any Project and appropriate the Bid Security for that Project and en-cash the bank guarantee as per the provisions of Clause 7.1.7.

5.4.3 Any misrepresentation / improper response shall lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Proposal and the financial bids have been opened and the Selected Bidder for a Project gets disqualified / rejected, then DOT reserves the right to:

- invite the remaining Qualified Bidders who had bid for the Project and whose Financial Eligibility Criteria has not been exhausted as per the process followed in Clause 9.2.4 to submit Bids
- take any such measure as may be deemed fit in the sole discretion of DOT, including annulment of the Bidding Process

DOT shall also have the right to appropriate the Bid Security or the Performance Security as the case may be, for selected or all Projects, in the event of misrepresentation by the Bidder(s).

5.4.4 In case it is found during evaluation or at any time before signing of the LDA for a Project or after its execution and during the period of subsistence thereof, that one or more of the Eligibility Criteria for one or more Tourism Accommodation Units have not been met by the Bidder or the Bidder has made material misrepresentation or has given materially incorrect or false information,

- The Selected Bidder shall be disqualified forthwith for that Project, if not yet appointed by issue of LoA.

- If the Selected Bidder has already been issued LoA for a Project and the Selected Bidder has signed the LDA with DOT for that Project, the LDA shall be terminated, by a communication in writing by DOT to the Selected Bidder.

In such an event, DOT shall appropriate the Bid Security or Performance Security for the Project, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to DOT for, inter alia, time, cost and effort of DOT, without prejudice to any other right or remedy that may be available to DOT under this RFP or law.

5.4.5 DOT reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of DOT to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of DOT there under.

## 5.5 **Clarifications**

5.5.1 To facilitate evaluation of Proposals, DOT may at its sole discretion, seek clarifications in writing from any Bidder regarding its Proposal. The request for such clarifications or substantiation and the response shall be in writing or by facsimile. No material change in the Proposal would be permitted by way of such clarification / substantiation submitted by the Bidder.

5.5.2 However, DOT reserves the right not to respond to any question or provide any clarification or consider any amendment(s) suggested by the Bidders, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring DOT to respond to any question or to provide any clarification or consider any amendment suggested by the Bidders.

5.5.3 DOT may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. Verbal clarifications and information given by DOT or its employees or representatives shall not in any way or manner be binding on DOT.

5.5.4 Bidders may note that subject to the provisions of Clause 5.5.3 above, DOT will not entertain any deviations to the RFP at the time of submission of Proposals or thereafter. Proposal to be submitted by the Bidder would have to be unconditional and unqualified and the Bidder would be deemed to have accepted the terms and conditions of this RFP and all its contents including the terms and conditions of the draft LDA. Any conditional Proposal shall be regarded as Non-Responsive and would be liable for rejection.

## 5.6 **Amendment of RFP**

- 5.6.1 At any time prior to the Bid Due Date, DOT may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addendum.
- 5.6.2 Any Addendum thus issued will be sent in writing or through e-mail and shall be binding on all Bidders.
- 5.6.3 In order to afford the Bidders a reasonable time for taking into account the contents of any Addendum, or for any other reason, DOT may, at its own discretion, extend the Bid Due Date by an appropriate period.

## **6 PREPARATION AND SUBMISSION OF PROPOSALS**

### 6.1 **Content, format, signing and submission of Proposals**

- 6.1.1 Bidders should provide all information as per this RFP and in the specified format. DOT will evaluate only those Bids that are received in the required formats and are complete in all respects.
- 6.1.2 The Proposal shall be typed or written in indelible ink and signed by the Authorized Signatory of the Bidder who shall also initial each page, in blue ink. All alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.
- 6.1.3 Each Proposal shall be submitted in three separate sealed Covers as specified in Clause 5.1.3 within the overall envelope specified in Clause 6.2.4, with each sealed cover containing documents / information as tabulated in Clause 5.1.4.

### 6.2 **Sealing and marking of Proposals**

- 6.2.1 The Bidder shall prepare the Bids as per the directions provided in Clause 6.1.3 and Clause 5.1 above and sealed as per the directions provided in this Clause.
- 6.2.2 All the three Covers specified in Clause 5.1.3, and the outer envelope specified in Clause 6.2.4 must be super-scribed with the following information:
- Name and address of the Bidder
  - Contact person with contact details – phone, fax no. and email address.

6.2.3 The Bidder shall submit one original set of documents comprising the Proposal, clearly marked "**ORIGINAL**" on all the three Covers. In addition, the Bidder shall make one (1) copy each of the three ORIGINAL marked Covers along with the contents inside them, and submit the copies with the word "**COPY**" clearly written over the three copy-Covers. In the event of any discrepancy between the original and the copy, the original shall prevail.

6.2.4 The three Covers marked "**ORIGINAL**" and the three Covers marked "**COPY**" shall be put together in one outer envelope which shall be sealed and marked as "**Bid for Tourism Accommodation Unit**". The overall envelope referred to above in Clause 6.2.4 shall be addressed to:

Attn. of            Director, Department of Tourism & Culture (Tourism)

Address           Paryatan Bhawan, Bhubaneswar - 751 014, Odisha

6.2.5 If any of the Covers / envelopes are not sealed and marked as instructed above, DOT assumes no responsibility for misplacement or premature opening of the contents of the Proposal and such Proposal – at the sole discretion of DOT – may be deemed to be Non-Responsive and hence, would be liable for rejection.

6.2.6 Bidder can submit the Proposal by registered post / courier or submit the Proposal in person, so as to reach the designated address by the Bid Due Date. DOT shall not be responsible for any delay in submission of the Proposals. Any Proposal received by DOT after the Bid Due Date shall not be opened.

6.2.7 One Bidder CANNOT submit more than one Proposal.

6.2.8 Proposals submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

### 6.3 **Bid Due Date**

6.3.1 The Proposal should be submitted before 3 P.M. IST, on the Bid Due Date specified in clause 2.7, at the address provided in Clause 6.2.4, in the manner and form as detailed in this RFP.

6.3.2 DOT may, at its sole discretion, extend the Bid Due Date by issuing an Addendum – in accordance with Clause 5.6 – uniformly to all Bidders.

### 6.4 **Late Proposals**

6.4.1 Proposals received by DOT after the time and date mentioned in Clause 6.3 shall not be eligible for consideration and shall be summarily rejected.

## 6.5 **Modifications / substitution / withdrawal of Proposal or select Bids**

6.5.1 The Bidder may modify, substitute or withdraw its Proposal or Bid for select Projects from the Proposal, after submission of the Proposal, provided that written notice of the modification, substitution or withdrawal is received by DOT prior to the time mentioned in clause 6.3.1. No Proposal / Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

6.5.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 6.2 before the Bid Due Date, with the envelopes being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**”, as appropriate.

6.5.3 Any alteration / modification in the Proposal or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by DOT, shall be disregarded.

## 6.6 **Rejection of Proposals / bids**

6.6.1 DOT reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever. It is not obligatory for DOT to accept any Bid or to give any reasons for their decision.

6.6.2 DOT reserves the right not to proceed with the Bidding Process for one or more Projects at any time, without notice or liability, and to reject any bid without assigning any reasons.

## 6.7 **Validity of Proposal**

6.8 The validity of the Proposal shall be as mentioned in Clause 2.3.

## 6.9 **Bid opening**

6.9.1 DOT would open the Cover 1 submissions of the Proposals, at 1600 hours IST on the date specified in Clause 2.7 in the presence of all Bidders who choose to be present.

6.9.2 DOT reserves the right to reject any Proposal not submitted on time and which does not contain the information / documents as set out in this RFP.

6.10 The Cover 3 submission shall be opened after the documents in Cover 1 & Cover 2 are opened, processed and scrutinized. The Cover 3 submission of only those Bidders – whose Proposals have been found to be responsive and meeting the Eligibility Criteria as

prescribed in Clause 4 – shall be opened and ranked as per the procedure described under Clause 9.2.4.

#### **6.11 Language and currency**

6.11.1 The Proposal and all related correspondence and documents should be in the English language. Supporting documents and printed literature furnished with the Proposal may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Proposals, the English language translation shall prevail.

6.11.2 The currency for the purpose of the Proposal and Bid shall be Indian Rupees unless otherwise stated.

#### **6.12 Confidentiality**

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

#### **6.13 Correspondence with the Bidder**

6.13.1 DOT shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of the Proposal or any Bid.

### **7 BID SECURITY**

#### **7.1 Bid Security**

7.1.1 The Proposal shall be accompanied by a Bid Security, (the "**Bid Security**") of total value equal to the sum of Bid Securities required for each Project bid for by the Bidder as prescribed in the table below.



<b>Sr. No.</b>	<b>Name of Properties</b>	<b>Bid Security in INR</b>
1	WAC Sunabeda	1,00,000.00
2	Panthatasala, Bhatarika	10,000.00
3	Panthatasala Chhapachikana	10,000.00
4	Panthatasala Ranipur Jharial	10,000.00
5	Panthatasala Nrusinghnath	20,000.00
6	TC, Daringibadi	40000.00
7	TRC, Baripada	200000.00
8	T.C, Paralakhemundi	300000.00
9	T.C, Atri	200000.00
10	WAC Sohela	8,000.00
11	WAC Gorakhnath Pitha	6,000.00
12	WAC Chandikhhol	10000.00
13	T.C. Belghar	10,000.00
14	T.C. Phulbani	10,000.00
15	Panthatasala Khiching	12,000.00
16	WAC Odagaon	10,000.00
17	Panthatasala Bisama Katak	10,000.00
18	Panthatasala Binika	10,000.00
19	Panthatasala Khandadhar	10,000.00
20	T.C. Thuamula Rampur	10000.00
21	TRC, Kendrapara	26000.00
22	Panthika, Ramchandi, Kendrapara	10000.00
23	Panthatasala, Mahavinayak	12000.00
24	Panthatasala, Dhamnagar	5000.00

7.1.2 Bid Security for any Project must be valid till the date of submission of Performance Security for Implementation Phase as defined in the LDA for that Project, and may be extended as per the directions of DOT from time to time. The Bid Security can either be through demand draft, payable in Bhubaneswar and drawn on any Scheduled Commercial Bank in India or in the form of a combined bank guarantee / separate bank guarantees for each Project being bid. The format of the bank guarantee is attached in APPENDIX XII-FORMAT OF BANK GUARANTEE FOR BID SECURITY (Cover 1) of this RFP.

7.1.3 If the Bid Security is submitted in the form of a single demand draft and the amount is less than the total amount required as explained in Clause 7.1.1, DOT shall consider bids for only

that number of Projects, for which Bid Security is adequate, with Project Numbers considered in ascending order.

- 7.1.4 Bid Security of un-successful Bidders would be returned on acceptance of the Bid of the Selected Bidder or when the Bidding Process is cancelled by DOT.
- 7.1.5 The Selected Bidder's Bid Security for a specific Project can be withdrawn upon the Selected Bidder furnishing the Performance Security for Implementation Phase in accordance with the provisions of the LDA for that Project. DOT may, at the Selected Bidder's option, adjust the amount of Bid Security for the above mentioned Project in the amount of Performance Security for Implementation Phase of that Project to be provided by the Selected Bidder in accordance with the provisions of the LDA for the Project.
- 7.1.6 DOT shall be entitled to appropriate and en-cash the Bid Security for a Project as mutually agreed genuine pre-estimated compensation / damages on occurrence of any of the events specified in this RFP including Clause 7.1.7 herein below and any related clauses in the LDA for the concerned Project. The Bidder, by submitting its Proposal pursuant to this RFP, would be deemed to have acknowledged and confirmed that DOT will suffer loss and damage on account of withdrawal of its Bid for any Project or for any other default by the Bidder during the Bid Validity Period. No relaxation on the Bid Security shall be given to any Bidder.
- 7.1.7 The Bid Security for a specific Project or for all the Projects, as the case may be, shall be appropriated by DOT as mutually agreed genuine pre-estimated compensation and damages payable to DOT for, inter alia, time, cost and effort of DOT without prejudice to any other right or remedy that may be available to DOT hereunder or otherwise, under the following conditions:
- If a Bidder submits a Non-Responsive Proposal or if any bid is Non-Responsive;
  - If a Bidder engages in Corrupt Practices, Fraudulent Practices, Coercive Practices, Undesirable Practices or Restrictive Practices as specified in Clause 13 of this RFP;
  - If a Bidder modifies or withdraws its Proposal or any bid(s) except as provided in Clause 6.5
  - If a Bidder withdraws its Bid(s) during the interval between the Bid Due Date and expiration of Bid Validity period, as extended by DOT;

- If any information or document furnished by the Bidder is found by DOT to be misrepresenting, misleading or untrue in any material respect
- In the case of Selected Bidder, if it fails within the specified time limit –
  - to sign and accept the Letter of Award for a Project
  - to sign the LDA for a Project and / or
  - to furnish the Performance Security for Implementation Phase of a Project as per the provisions of this RFP; or
- In case the Selected Bidder, having signed the LDA for a Project, commits any breach thereof prior to furnishing the Performance Security for that Project.

## **8 SPECIAL INSTRUCTIONS**

### **8.1 Special Instructions**

#### **8.1.1 All Bidders should note the following:**

- The Proposal (and any additional information requested subsequently) shall bear the initials of the Authorized Signatory of the Bidder and stamp of the entity thereof on each page of the Proposal.
- The Bidder shall also return, along with their Proposal, a copy of this RFP bearing the initials of the Authorized Signatory of the Bidder and stamp of the entity thereof on each page of the RFP. This shall indicate that the Bidder agrees to abide by all terms & conditions specified in the RFP.
- Proposals that are incomplete in any respect or those that are not consistent with the requirements as specified in this RFP or those that do not contain the required information in the specified formats may be considered Non-Responsive and are liable for rejection.
- Strict adherence to formats, wherever specified, is required. Non-adherence to formats may make the Proposal Non-Responsive.
- All communication and information should be provided in writing and in the English language only.
- All communication and information provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case

of conflict between amounts stated in figures and words, the higher amount will be taken as correct, whether the same has been provided in figures or in words.

- No change in or supplementary information to the Proposal shall be accepted after the Bid Due Date. However, DOT reserves the right to seek additional information from the Bidders, if found necessary, during the course of evaluation of the Proposal. In case of non-submission, incomplete submission or delayed submission of such additional information or clarifications sought by DOT, the Proposal would be evaluated solely on the basis of available information.
- The Proposals shall be evaluated as per the criteria specified in this RFP. However, within the broad framework of the evaluation parameters as stated in the RFP, DOT reserves the right to make modifications to the stated evaluation criteria, which would be uniformly applied, to all Bidders.
- Bidders are advised that their Proposals be completely devoid of any conditions, whatsoever. Conditional bids will be rejected.
- DOT also reserves the right to stop the Bidding Process at any stage, at its discretion, under intimation to the Bidders, without assigning any reasons for the same.
- DOT reserves the right to vet and verify any or all information submitted by the Bidder.
- Notwithstanding anything stated in this RFP, if any claim made or information provided by the Bidder in the Bid or any information provided by the Bidder in response to any subsequent query by DOT, is found to be incorrect or is a material misrepresentation of facts, then the Proposal or select bid shall be liable for rejection.
- The Bidder shall be responsible for all costs associated with the preparation of the Proposal. DOT shall not be responsible in any way for such costs, regardless of the conduct or outcome of the Bidding Process.

## **9 SELECTION PROCESS**

### **9.1 Process**

9.1.1 The Bidder adjudged as responsive in terms of Clause 9.2 and quoting the highest Upfront Payment shall be declared as the Selected Bidder (“**Selected Bidder**”).

9.1.2 The selection of the Selected Bidder will be done through a **2-phase** process i.e.

- **Phase 1 : Assessment of General Documents and Technical Proposal**
- **Phase 2 : Evaluation of Financial Proposal**

These phases are explained below.

## 9.2 **Phase 1 – Assessment of General Documents and Technical Proposal**

9.2.1 In this phase, the Part 1 Submission of the Bidders will be scrutinized. Proposals shall be initially scrutinized to establish “Responsiveness”. A Proposal may be deemed “**Non-Responsive**” if:

- It is not received by the Bid Due Date as specified in the RFP
- If the copy of the original RFP duly signed on all pages by the Authorised Signatory is not received. It shall be expressly agreed therein that the Bidder has read and understood the entire RFP and other Bidding Documents / requirements and shall comply with the same.
- It does not include sufficient information for it to be evaluated and / or it is not in the formats specified which materially affect the evaluation process.
- It is not signed and / or sealed in the manner and to the extent indicated in this RFP

9.2.2 .A Bid for a given Project shall be deemed “**Non-Responsive**” if:

- the total Tender Fee submitted by the Bidder minus the sum of tender fees requirement for those Projects being bid by the Bidder that come before the given Project (when all the Projects being bid by the Bidder are arranged in ascending order of Project Numbers) is less than Rs. 5000 (five thousand rupees); or
- the total Bid Security submitted by the Bidder minus the sum of Bid Security requirements for those Projects being bid by the Bidder that come before the given Project (when all the Projects being bid by the Bidder are arranged in ascending order of Project Numbers) is less than the Bid Security requirement for the given Project.

9.2.3 DOT reserves the right to reject any Proposal or Bid which is Non-Responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by DOT in respect of such Bid.

9.2.4 The Bidder adjudged as Responsive in terms of Clause 9.2.1 & 9.2.3, meeting the Eligibility Criteria in terms of Clause 4 and having provided satisfactory information / understanding

with respect to all the points mentioned above will be declared as a Qualified Bidder either for all the Projects that they are bidding for or for select Projects, as the case may be ("**Qualified Bidder**").

### 9.3 **Phase 2 – Evaluation of Financial Proposals**

9.3.1 In this phase, DOT will open the Financial Proposal (Cover 3) of the Bidders who have cleared Phase 1 of the Selection Process.

9.3.2 The Financial Proposal shall be opened on a date to be intimated by DOT, in the presence of the representatives of all Qualified Bidders, who choose to attend.

9.3.3 The Financial Proposal (Cover 3) should contain **separate sealed envelopes containing the Financial Bids** for each Project that has been indicated by the Bidder in **APPENDIX I – PROPERTY DETAILS** and as prescribed in Clause 5.1.4. Each sealed envelope should contain the quoted Upfront Payment for only one Project. The Bidder may note that the Financial Bids for those Projects which have not been indicated in Cover 1 **shall not be considered in this Phase 2**. If the Financial Bid for a Project that was indicated in Cover 1, is found to be missing from Cover 3 or is has not been submitted in a separate sealed envelope as required, then the value of the Financial Bid for that Project shall be deemed to be null (or Rs. 0.00).

9.3.4 Selection criteria for a Project shall be the highest Upfront Payment (the "**Upfront Payment**").

9.3.5 The Financial Bids shall first be opened for Project Number 1. The Financial Bids for Project Number 1 of all the Bidders who have listed Project Number 1 in **APPENDIX I – PROPERTY DETAILS** shall be arranged in ascending order of the Upfront Payment. The Bidder who has quoted the highest Upfront Payment shall be declared the Selected Bidder for Project 1.

9.3.6 The values of the items of Financial Eligibility Criteria required for Project Number 1 as given in Clause 4.2 or Clause 4.3., as applicable to the Selected Bidder shall be subtracted from the values of the items of Financial Eligibility Criteria submitted by the Selected Bidder to arrive at the balance Financial Eligibility ("**Balance Financial Eligibility**") for the Selected Bidder of Project Number 1. For the other Bidders, the Balance Financial Eligibility shall be same as the original Financial Eligibility submitted by them.

9.3.7 For the next Project (in ascending order of Project Number), Financial Bids of only those Qualified Bidders shall be considered, for whom a) the Balance Financial Eligibility is equal to or higher than the Financial Eligibility Criteria for the Project in consideration b) the

Proposal for this Project is Responsive and c) the Bidder has listed this Project in Cover 1. The Financial Bids that are opened shall be arranged in ascending order and the Bidder whose Upfront Payment is highest shall be declared the Selected Bidder for this Project. The values of the items of Financial Eligibility Criteria required for this Project shall be subtracted from the Balance Financial Eligibility of the Selected Bidder to arrive at the revised Balance Financial Eligibility for the Selected Bidder. For other Bidders, the Balance Financial Eligibility shall remain unchanged.

9.3.8 The above Clause 9.3.6 shall be applied to all the Projects till the Balance Financial Eligibility of all bidders is exhausted. **It is to be noted that the subsequent Bids would be opened only after the Selected Bidder for the previous Project has been determined.**

9.3.9 In the event that two or more Bidders quote the same amount of Upfront Payment for a given Project (the “**Tie Bidders**”), DOT shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend

9.3.10 The process underlying the evaluation of Bids covered in the preceding Clauses are illustrated subsequently.

9.3.11 DOT may choose to accept the Bid of the Selected Bidder or invite the Selected Bidder for further negotiations or reject any offer including the highest offer.

#### 9.4 **Process after identification of Selected Bidder for a Project**

9.4.1 In the event of acceptance of the Selected Bidder for a Project, DOT shall notify the Selected Bidder through a Letter of Award (the “**LoA**”) (to be issued in duplicate) that its bid for the given Project has been accepted subject to the provisions of Clause 9.4.2 of this RFP.

9.4.2 The Selected Bidder shall within 15 (fifteen) days of the receipt of the LoA, sign and return the duplicate copy of the LoA in acknowledgement thereof. In the event the duplicate copy of the LoA duly signed by the Selected Bidder is not received by the stipulated date, DOT may, unless it consents to extension of time for submission thereof, appropriate the Bid Security applicable for the Project and en-cash the bank guarantee of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by DOT on account of failure of the Selected Bidder to acknowledge the LoA, and take suitable measures as described in Clause 5.4.3.

- 9.4.3 For any Project, as a precondition to the execution of the LDA, DOT shall require the Selected Bidder to undertake the payment of the Upfront Payment on or before the signing of the LDA.
- 9.4.4 LDA would be executed by DOT only upon the payment of the Upfront Payment and Annual Lease Rental (as specified in Clause 11) and after the satisfaction of all the requirements / conditions prescribed in the RFP.
- 9.4.5 In the event of the Selected Bidder being a consortium, the Selected Bidder shall incorporate within 60 (sixty) days of the issue of the LoA an SPC in the form of a private limited company and submit to DOT as proof of having done so, copies of Certificate of Incorporation, Memorandum of Association, Articles of Association, Shareholders' Agreement and all other relevant documents.
- 9.4.6 The Selected Bidder is also required to submit the Project Development / Up-gradation & Operation Plan within 90 days of issue of LoA by DOT as prescribed in the LDA. The Selected Bidder should incorporate in the Project Development / Up-gradation & Operation Plan all comments / suggestions provided by DOT.
- 9.4.7 Failure of the Selected Bidder to comply with the requirements of one or more of clauses of this RFP shall constitute sufficient grounds for the annulment of the LoA for any Project and forfeiture of the Bid Security for that Project.

#### **9.5 Contacts during Selection Process**

- 9.5.1 The Proposals shall be deemed to be under consideration immediately after they are opened and until such time DOT makes official intimation of award / rejection to the Bidders. While the Proposals are under consideration, Bidders and / or their representatives or other interested parties are advised to refrain from contacting by any means, DOT and / or their employees / representatives on matters related to the Proposals under consideration.

### **10 LEASE PERIOD & RENEWAL**

- 10.1 The total period of lease can be maximum for 30 years. Initially the lease shall be for 10 years & there shall be review by Department of Tourism at the end of 10<sup>th</sup> and 20<sup>th</sup> year for giving extension, subject to the condition that the Operator shall qualify the following parameters.
- a. Fulfillment of minimum development plan.



- b. Use of the property for the purpose for which it is meant.
  - c. Confirmation of the maintenance standard.
  - d. Timely payment of annual fees.
- 10.2 In case of non-renewal of the LDA beyond the Lease Period, the Selected Bidder shall hand over the Project Facilities – including the Project Site on which the same has been developed along with movable and immovable assets and all rights thereto – to DOT free of all encumbrances, at a nominal cost of Rupee 1 (One).

## **11 PAYMENTS**

- 11.1 The proposal by the Bidders shall be accompanied by a Tender Fee of Rs. 5,000/- (Rupees Five thousand only) per Project being bid for by the Bidder as per the provisions of Clause 7.1.
- 11.2 The Tender Fee should be in the form of a demand draft payable at Bhubaneswar and in favor of the Director, Tourism.
- 11.3 The Selected Bidder for a Project shall deposit the Upfront Payment and the Annual Lease Rental for the first year of the Lease Period applicable for that Project on the date of signing of the LDA of that Project.
- 11.4 For all the Projects, the Annual Lease Rental for first year shall be equal to 10% of Upfront Payment. For subsequent years, Annual Lease Rental shall be increased once every two years at the rate of percentage rise in Wholesale Price Index (WPI) as prescribed in the LDA.
- 11.5 The Selected Bidder for any Project should make all payments – the Upfront Payment and the Annual Lease Rental for that Project – through demand draft in favor of Director, Tourism, drawn on a Scheduled Bank that is neither a Gramin Bank nor a Co-operative Bank and has a branch at Bhubaneswar, Odisha.
- 11.6 The Selected Bidder for a Project shall also submit the Performance Security for Implementation Phase of that Project in the form prescribed in Clause 12 on the Appointed Date to DOT.
- 11.7 In addition to the above, the Selected Bidder shall be responsible for payment of all duties and taxes related to the Project. Further, the Selected Bidder will also pay service tax and / or any other applicable taxes, charges, surcharges or levies in relation to the various payments to be made by the Selected Bidder.

11.7.1 The principal contract between DOT and the Selected Bidder for any Project shall be the Lease cum Development Agreement (LDA) for that Project.

## **12 PERFORMANCE SECURITY**

12.1.1 For each Project, the Selected Bidder of the Project shall be required to submit Performance Security for the Implementation Phase (the “**Performance Security for Implementation Phase**”) by way of an annual, revolving, unconditional and irrevocable bank guarantee, in favor of Department of Tourism by a scheduled bank in India that is not a Cooperative Bank or a Gramin Bank and has a branch in Bhubaneswar, Odisha. The Performance Security is for due and punctual performance of the obligations of the Selected Bidder under the LDA.

12.1.2 The Performance Security for Implementation Phase applicable for each Project is given in the Schedule IV of the draft LDA provided along with this RFP and for each Project, it should be submitted on or before the date of signing of the Lease cum Development Agreement (LDA).

12.1.3 The Performance Security for the Operation Phase for any Project shall be equal to the Annual Lease Rental payable by the Selected Bidder for the next two subsequent years of the Project.

12.1.4 The Performance Security for Operation Phase – for the first year & for each Project– shall be paid on or before the Commercial Operations Date applicable for Phase I development of the concerned Project – as given in the Schedule III in the draft LDA provided along with this RFP.

12.1.5 The Performance Security for Operation Phase for each subsequent year should be submitted to DOT by the Selected Bidder at least 7 (seven) days before the expiry of the existing bank guarantee – to ensure that the Performance Security is always valid.

12.1.6 The Performance Security shall be en-cashed at the sole discretion of DOT towards any liquidated damages that may be payable by the Selected Bidder to DOT and / or against termination eventualities attributed to the Selected Bidder, under the terms of the LDA.

## **13 FRAUDULENT PRACTICES AND CORRUPT PRACTICES**

13.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LoA and during the subsistence of the LDA. Notwithstanding anything to the contrary contained herein, or in the LoA or the LDA, DOT shall reject one or all bids, withdraw the

LoA, or terminate the LDA, as the case may be, without being liable in any manner whatsoever to the Bidder or Selected Bidder, as the case may be, if it determines that the Bidder or Selected Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, DOT shall forfeit and appropriate the applicable Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to DOT towards, inter alia, time, cost and effort of DOT, without prejudice to any other right or remedy that may be available to DOT hereunder or otherwise.

13.2 Without prejudice to the rights of DOT hereinabove and the rights and remedies which DOT may have under the LoA or the LDA, if a Bidder or Selected Bidder, as the case may be, is found by DOT to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LoA or the execution of the LDA, such Bidder or Selected Bidder shall not be eligible to participate in any tender or RFP issued by DOT during a period of 2 (two) years from the date such Bidder or Selected Bidder, as the case may be, is found by DOT to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

13.3 For the purposes of this Clause 13 , the following terms shall have the meaning hereinafter respectively assigned to them:

- **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of DOT who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the LDA or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of DOT, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LoA or after the execution of the LDA, as the case may be, any

person in respect of any matter relating to the Project or the LoA or the LDA, who at any time has been or is a legal, financial or technical adviser of DOT in relation to any matter concerning the Project;

- **“Fraudulent Practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by DOT with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 14 MISCELLANEOUS

14.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts at Bhubaneswar shall have exclusive jurisdiction over all disputes arising under, pursuant to and / or in connection with the Bidding Process.

14.2 DOT, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- suspend and / or cancel the Bidding Process and / or amend and / or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- consult with any Bidder in order to receive clarification or further information;
- retain any information and / or evidence submitted to DOT by, on behalf of, and / or in relation to any Bidder; and/ or
- independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder

14.3 It shall be deemed that by submitting the Proposal, the Bidder agrees and releases DOT, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and / or performance of any obligations hereunder, pursuant hereto and / or in connection herewith and waives any and all rights and / or claims it may have in this respect, whether actual or contingent, whether present or future.

### APPENDIX I – PROPERTY DETAILS

Sr. No.	Name of Property	Existing Infrastructure	Plot Area (acres)
1.	WAC Sunabeda	8 rooms, 6 Staff Quarters, 4 Toilets, 4 Veranda, Reception, Lounge, Conference cum Dining hall, kitchen	2.00
2.	Panthalasala, Bhatarika	7 rooms, conference hall, kitchen, dining , toilet	5.00
3.	Panthalasala Chhapachikana	4 room	1.00
4.	Panthalasala Ranipur Jharial	8 rooms, kitchen, dining	5.00
5.	Panthalasala Nrusinghnath	5 rooms, Garden, Lawn, Store, Lobby, Verandah, Reception, Dining & Kitchen	2.50
6.	TC, Daringibadi	4 rooms	8.89
7.	TRC, Baripada	10 rooms, Kitchen, Dinning	0.39
8.	T.C, Paralakhemundi	27 Rooms, Store, Kitchen, Restaurant & Conference Hall	21.01
9.	T.C, Atri	4 rooms, 1 office room, 1 store, 2 common bathroom, 1 big & 4 small bathing tank & ritual tank	11.20
10.	WAC, Sohela	3 rooms, dining , kitchen	0.85
11.	WAC, Gorakhnath Pitha	2 rooms, 1 store, 1 toilet, reception, dining & Kitchen	1.00
12.	WAC, Chandikhol	4 rooms	0.50
13.	T.C. Belghar	3 rooms, dining, kitchen	1.00
14.	T.C. Phulbani	4 rooms, dining, kitchen	0.50
15.	Panthalasala Khiching	4 rooms, 1 manager quarter, 1 chaoukidar quarter, dining, kitchen	1.00
16.	WAC Odagaon	2 rooms, dining	1.00
17.	Panthalasala Bisama Katak	2 rooms	0.50
18.	Panthalasala Binika	4 rooms, dining	1.00
19.	Panthalasala Khandadhar	4 rooms, dining (incomplete stage)	1.00
20.	T.C. Thuamula Rampur	3 rooms	1.00
21.	TRC, Kendrapara	4 rooms, dining (power supply & water)	1.00
22.	Panthika, Ramchandi, Kendrapara	4 rooms, common toilet, courtyard, reception dining & kitchen	
23.	Panthalasala, Mahavinayak	4 rooms, 1 office room, 1 store, 2 common bathroom, 1 big & 4 small bathing tanks & ritual tank	11.20
24.	Panthalasala, Dhamnagar	2 rooms, civil construction up to roof level	1.00

APPENDIX II – TOURISM ACCOMODATION UNIT BID FOR (Cover 1)

(Name of Tourism Accommodation Unit for which Bid is being submitted to be provided below)

<b>Project Number</b>	<b>Name of Tourism Accommodation Unit</b>

**APPENDIX III - FORMAT FOR COVERING LETTER-CUM-PROJECT UNDERTAKING**

**(Cover 1)**

(On the letterhead of the Bidder)

Date:

To

The Director & Addl. Secy. to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road,  
Bhubaneswar - 751 014

Dear Sir:

**Sub: Proposal for development / up gradation, operation & maintenance of Tourism  
Accommodation Units as indicated in the APPENDIX I – PROPERTY DETAILS**

Being duly authorized to represent and act on behalf of..... (hereinafter referred to as “the Bidder”), and having reviewed and fully understood all of the Proposal requirements and information collected and provided to us by DOT in respect of the captioned Projects, the undersigned hereby submits the Proposal on behalf of (Name of the Bidder) in response to the RFP for the above mentioned Projects in one (1) original and one (1) duplicate, with the details as per the requirements of the RFP, for your evaluation.

We confirm that our Proposal is valid for a period of 12 (twelve) months from (insert the Bid Due Date)

We understand that any omission, commission or mis-statement in facts provided by us will make our Proposal invalid at any time during the Bidding Process and also after award of the Project. DOT reserves the right to take appropriate action accordingly. We understand that DOT reserves the right to accept or reject any or all the bids and reserves the right to withhold and/or cancel the Bidding Process.

*We also hereby agree and undertake as under:*

Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Proposal, we hereby represent and confirm that our Proposal is unqualified and unconditional in all respects and we agree to the terms of the Lease cum Development Agreement.

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)*



## APPENDIX IV – GENERAL INFORMATION (Cover 1)

- Bidder details
  - a. Name of the Bidder
  - b. Bidder’s Constitution (Proprietorship / Partnership / Private Limited / Public Limited)
  - c. Country of incorporation
  - d. Address of corporate headquarters and its branch office(s), if any, in India
  - e. Date of incorporation and/or commencement of business.
- Brief description of the Bidder including details of its main lines of business
- Details of individual (s) who will serve as the point of contact / communication for DOT:
  - a. Name
  - b. Designation :
  - c. Company :
  - d. Address :
  - e. Telephone Number :
  - f. E-Mail Address :
  - g. Fax Number :
- Name, Designation, Address and Phone Numbers of Authorized Signatory of the Bidder:
  - a. Name :
  - b. Designation :
  - c. Address :
  - d. Phone No. :
  - e. Fax No. :

.....  
 Signature of the Authorized Signatory  
 (Name, Designation and Address)

- 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** as per Clause **3.1** 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 Member, Technical Member or Other Member***

**APPENDIX V – FORMAT FOR POWER OF ATTORNEY FOR BID SIGNATORY (Cover 1)**

(On Stamp Paper of relevant value and duly attested by public notary)

**POWER OF ATTORNEY**

Know all men by these presents, we \_\_\_\_\_ (name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms. \_\_\_\_\_ (name and address of residence) who is presently employed with us and holding the position of \_\_\_\_\_ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our Proposal for upgrading / developing, operating maintaining, managing, share and transfer of the Tourism Accommodation Units as provided in **APPENDIX I – PROPERTY DETAILS** Odisha (‘ Project’), including signing and submission of all documents and providing information/ responses to DOT in all matters before DOT, and generally dealing with DOT in all matters in connection with our Proposal for the said Projects. We hereby agree to ratify all such acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all such acts, deeds and things lawfully done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Executant’s Signature  
(Name, Title and Address)

I Accept  
Attorney Signature  
(Name, Title and Address of the Attorney)

Attested  
Executant

**Notes:**

1. To be executed by the sole Bidder
2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

3. Also, where required, the executants(s) should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
4. In case the Proposal is signed by an authorized Director of the Bidder, a certified copy of the appropriate resolution / document conveying such authority may be enclosed in lieu of the Power of Attorney.

## APPENDIX VI – FORMAT OF BID AFFIDAVIT (Cover 1)

*(To be furnished by the bidder on a Rs. 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)

**APPENDIX VII – FORMAT OF BID UNDERTAKING (Cover 1)**

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

To

**The Director & Addl. Secretary .to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road  
Bhubaneswar - 751 014**

Dear Sir:

**Ref: Proposal for up- gradation / development, operation & maintenance of Tourism  
Accommodation Units as indicated in APPENDIX I – PROPERTY DETAILS**

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

**APPENDIX VIII – ANTI-COLLUSION CERTIFICATE (Cover 1)**

(To be furnished by the bidder on their letter heads)

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

To

**The Director & Addl. Secretary .to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road  
Bhubaneswar - 751 014**

Dear Sir:

**Ref: Proposal for Up- gradation / Development, Operation & Maintenance of Tourism  
Accommodation Unit(s) as indicated in the**

We hereby certify and confirm that in the preparation and submission of this Proposal, we have not acted in concert or in collusion with any other Bidder or any other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive, restrictive or monopolistic trade practice.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with this Proposal.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2017

Name of the Bidder

\_\_\_\_\_

Signature of the Authorized Signatory

\_\_\_\_\_

Name of the Authorized Signatory

**APPENDIX IX – POWER OF ATTORNEY FOR THE LEAD MEMBER OF CONSORTIUM  
(Cover 1)**

(On a Stamp Paper of relevant value)

**POWER OF ATTORNEY**

Whereas the DOT has invited applications from interested parties for implementation of the Project in select Tourism Accommodation Units

Whereas M/s \_\_\_\_\_ and M/s \_\_\_\_\_ are the members of the Consortium having signed the Joint Bidding Agreement dated \_\_\_\_\_ with equity of \_\_% and \_\_% respectively.

Whereas, the members of the Consortium are interested in bidding for the Projects and implementing the Projects in accordance with the terms and conditions of the RFP and other Bidding Documents in respect of the Projects, and

Whereas, it is necessary under the RFP for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the bidding and Consortium's bids for the Projects who would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the bidding and the Consortium's Proposal for the Project including authorizing one of its officials to do the same, duly supported by a Power of Attorney.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT

We, M/s \_\_\_\_\_ and M/s \_\_\_\_\_ (*respective names and addresses of the registered office to be put*) do hereby designate M/s \_\_\_\_\_ being one of the members of the Consortium, as the Lead Member of the Consortium, is authorized to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid for the Projects, including submission of Proposal, participating in conferences, responding to queries, submission of information / documents and generally to represent the Consortium in all its dealings with DOT, any other government agency or any person, in connection with the Project until culmination of the Bidding Process in accordance with the RFP and thereafter till the Lease cum Development Agreement is entered into with the DOT.

We hereby agree to ratify all acts, deeds and things done by the Lead Member 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/ the Consortium.

All the terms used herein but not defined shall have the meaning ascribed to such terms in the RFP.

In witness of the above the seal of the /executants is affixed hereto.

Dated this \_\_\_\_ Day of \_\_\_\_ 2017

\_\_\_\_\_

(Authorized Signatory of the Executants)

ACCEPTED

\_\_\_\_\_

**[Name, Title and Address of the Attorney]**



**APPENDIX X – FORMAT OF LETTER OF COMMITMENT (Cover 1)**

*(To be submitted by the Bidder)*

To

**The Director & Addl. Secy. to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road  
Bhubaneswar - 751 014**

Dear Sir:

**Ref: Grant of Lease for Up- gradation / Development, Operation & Maintenance of Tourism  
Accommodation Units as indicated in the APPENDIX I – PROPERTY DETAILS**

This has reference to the Proposal being submitted by \_\_\_\_\_(*name of Bidder*), in respect of the aforementioned Project.

We hereby confirm the following:

We, \_\_\_\_\_ have examined in detail and have understood and satisfied ourselves regarding the contents mainly in respect of the following:

1. The Request for Proposal and the other Bidding Documents issued by DOT
2. All subsequent communications between DOT and the Bidder, represented by \_\_\_\_\_(*name of Bidder*)
3. The Bid being submitted by \_\_\_\_\_(*name of Bidder*)

Dated this the \_\_\_\_\_ Day of \_\_\_\_\_ 2017

For \_\_\_\_\_

*(Name & Designation of person signing on behalf of the Bidder)*

**APPENDIX XI - COMMITMENT TO THE MINIMUM PROJECT REQUIREMENTS (Cover 1)**

*(to be signed by all Consortium Members in case of consortium and by Single Bidder otherwise)*

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

To  
The Director & Addl. Secretary to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road  
Bhubaneswar - 751 014

Dear Sir:

**Ref: Grant of Lease for up-gradation / development, operation & maintenance of Tourism  
Accommodation Unit as indicated in the APPENDIX I - PROPERTY DETAILS**

We, the members of the Consortium, namely -----, and ----- hereby certify and confirm that, if we were to be awarded the Projects numbered - \_\_\_&\_ at Tourism Accommodation Unit (s) at [*insert name of place*] by DOT, then the development of the Project(s) shall be in accordance with the requirements as specified in the draft Lease cum Development Agreement for each Project.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 2017

Name of the Executants (In case of Single Bidder)

(SINGLE BIDDER)

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Name of the Authorized Person

Name of the Executants (In case of Consortium)

(LEAD MEMBER)

(CONSORTIUM MEMBER 1)

\_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Signature of the Authorized Person

\_\_\_\_\_  
Name of the Authorized Person

\_\_\_\_\_  
Name of the Authorized Person

## APPENDIX XII- FORMAT OF BANK GUARANTEE FOR BID SECURITY (Cover 1)

(To be issued by a Scheduled Bank in India)

(To be executed on appropriate value of Non-Judicial Stamp Paper)

<separate Bank Guarantee required for each Project>

B.G. No. \_\_\_\_\_ dated \_\_\_\_\_.

This Deed of Guarantee executed at \_\_\_\_\_ by \_\_\_\_\_ (Name of Bank) having its Head Office / Registered Office at \_\_\_\_\_ (hereinafter referred to as "the Guarantor") which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

In favour of Department of Tourism, Odisha, (hereinafter called "DOT") having its office at Lewis Road, Bhubaneswar - 751 014, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

WHEREAS, M/s. \_\_\_\_\_ Ltd., having its Registered Office at \_\_\_\_\_ (hereinafter called "the Bidder") which expression shall unless repugnant to the subject or context thereof include its / their executors administrators, successors and assigns, intends to bid to upgrade / develop, operate and maintain the Tourism Accommodation Unit at [*insert name of one place only*], Odisha (hereinafter referred to as the Bid).

And whereas, in terms of the RFP, the Bidder is required to furnish to DOT a Bank Guarantee for a sum of Rs XXXX (*Rupees in words*) towards Bid Security for the aforesaid Bid.

KNOW ALL MEN by these presents that we, as the Guarantors are bound to DOT, to pay to it, in terms of this Deed of Guarantee, on behalf of ----- [*Insert the name of the Bidder*] the sum of Rs XXXX (*Rupees in words*). The Guarantor binds itself and its successors and assigns by these presents. This Bank Guarantee is irrevocable and issue of any prior notice by DOT for invoking it is hereby waived.

Sealed with the Common Seal of the Bank this \_\_\_\_ day of \_\_\_\_ 2017

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

- a) The Guarantor, as primary obligor shall, without demur, pay to DOT an amount not exceeding **Rs XXXX (Rupees in words) (hereinafter referred to as the Guaranteed Amount)**, within 7 (seven) days of receipt of a written demand from DOT calling upon the Guarantor to pay the said amount.
- b) Any such demand made on the Guarantor by DOT shall be conclusive and absolute as regards the forfeiture of the Guaranteed Amount due and payable by the Guarantor under this Guarantee.
- c) The above payment shall be made without any reference to the Bidder or any other person and irrespective of whether the claim of DOT is disputed by the Bidder or not.
- d) This Guarantee shall be irrevocable and remain in full force for a period of 6 (Six) Months from \_\_the \_\_\_\_\_, \_\_ or for such extended period as may be mutually agreed between DOT and the Bidder and shall continue to be enforceable till all amounts under this Guarantee are paid.
- e) The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder / the Guarantor or any absorption, merger or amalgamation of the Bidder/ the Guarantor with any other person.
- f) In order to give full effect to this Guarantee, DOT shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the RFP or other documents or by extension of time of performance of any obligations granted to the Bidder or postponement / non-exercise / delayed exercise of any of its rights by DOT against the Bidder or any indulgence shown by DOT to the Bidder and the Guarantor shall not be relieved from its obligations under this bank guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise or omission on the part of DOT or any indulgence by DOT to the Bidder to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving the Guarantor.
- g) The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN

Signed and Delivered by \_\_\_\_\_ Bank

by the hand of Mr/Ms \_\_\_\_\_

its \_\_\_\_\_ and authorized official

(Bank's Seal to be affixed)

## APPENDIX XIII – FORMAT FOR TECHNICAL PROPOSAL (Cover 2)

### Format for Net Worth

(In case of sole bidder)

Financial Year	Amount (Rs. Lakh)
Last Financial Year	

(in case of Consortium)

Financial Year	Lead Member (Rs. Lakh)	Consortium Member-1 (Rs. Lakh)	Total (Rs. Lakh)
Last Financial Year			

### Calculation of Net Worth

The Applicant shall provide an Auditors certificate specifying the Net Worth of the Applicant. 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.

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

6.	<b>Total Net Investment (3+4+5)</b>	
7.	<b>Market value of land and building €</b>	
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.	<b>Total Assets (6+7+8+9+10)</b>	
12.	Current liabilities	
13.	Long term liabilities	
14.	<b>Total Liabilities (13+14)</b>	
15.	<b>Net Worth (12-14)</b>	

*\* 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 Applicant as well as in the possession of the Applicant 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 on 31<sup>st</sup> March 2013 or in case of this date being a holiday, the previous business day.**

### **Format for Annual Turnover**

*(Applicable only for Bidders claiming eligibility under Option -1 of of the RFP)*

#### **(In case of sole bidder)**

Financial Year	Amount (Rs. Lakh)
Last Financial Year	

#### **(In case of Consortium)**

Financial Year	Lead Member (Rs. Lakh)	Consortium Member-1 (Rs. Lakh)	Total (Rs. Lakh)
Last Financial Year			

#### **Source of Funds**

Project Number	Name of Tourism Accommodation Units bid for	Total Sources of Fund submitted in Rs. lakh*	Equity fund committed by Bidder (should not be less than 30% of Total Sources of Fund)

*# Audited Annual Reports should be submitted for supporting the Net worth and Turnover information if the bidder is a company. If bidder is not a company, such audited documents should be attached which can prove the Annual Turnover of the bidder.*

*\* Documentation for Total Sources of Fund (equal to or more than Minimum Expected Investment) must be provided separately for each Tourism Accommodation Unit bid for.*



## APPENDIX XIV – FORMAT FOR FINANCIAL BID (Cover 3)

*(Financial Bid should be separate for each Project and each Financial Bid should be submitted in separate sealed envelopes – the entire set of envelopes containing one Financial Bid each should be enclosed in a overall envelope which shall be labeled Cover 3 – Financial Proposal)*

Date:

**To  
The Director & Addl. Secretary .to Govt.,  
Department of Tourism & Culture (Tourism)  
Paryatan Bhawan, Lewis Road  
Bhubaneswar - 751 014**

Dear Sir:

**Ref: Financial Bid to upgrade / develop, operate and maintain Tourism Accommodation Unit  
at *[insert name of one place only]***

I / we offer to upgrade / develop, operate maintain, manage, share and transfer the Project Number \_\_\_ - *[insert name of Project]* on the stipulated terms and conditions and other particulars therein.

I / we hereby offer and agree to pay the following as Upfront Payment for the aforementioned Project : \_\_\_\_\_ ( rupees in words)

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 of 12 (twelve) months 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.

For and on behalf of:

Signature:

(Authorized Signatory and Signatory of the Bidding Company)

Name of the Person:

Designation:

SEAL OF THE BIDDING ENTITY

### APPENDIX XV – CHECKLIST OF SUBMISSIONS

#	Enclosures to the Bid	Status (submitted / not submitted)	Comments
<b>COVER 1</b>			
1.	Tender Fee of Rs.5000/ per Tourism Accommodation Unit bid for		
2.	Signed copy of RFP		
3.	Tourism Accommodation Units bid for		
4.	Covering Letter cum Project Undertaking		
5.	General Information		
6.	Power of Attorney for Bid Signatory		
7.	Bid affidavit		
8.	Bid Undertaking		
9.	Anti Collusion Certificate		
10.	Joint Bidding Agreement ( in case of consortium)		
11.	Power of Attorney for Lead Member (in case of consortium)		
12.	Letter of Commitment		
13.	Commitment to Minimum Project Specifications		
14.	Bid Security		
15.	Additional Information / Supporting documents		

**COVER 2**

16.	Eligibility Criteria		
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**COVER 3**

17.	Financial Bid (separate for each Tourism Accommodation Unit bid for)		
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**APPENDIX XVI - SUBSTITUTION AGREEMENT**

**THIS AGREEMENT** is entered into on this the ----- day of -----

----- (Month) ----- (Year) at -----.

AMONGST,

The Governor of Odisha acting in his executive capacity for the Government of Odisha represented by the Director Tourism, hereinafter referred to as “GOO” (which expression shall unless repugnant to the context of meaning thereof, include its successors and assigns of the first part);

AND

M/s \_\_\_\_\_ Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at -----hereinafter referred to as “the Concessionaire” (which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns of the second part ),

AND

\_\_\_\_\_(Financial Institution/ Bank) having its Registered Office/Head Office at -----  
----- hereinafter referred to as “**the Lender**”,of the third part.

**WHEREAS,**

A. GOO is keen to implement a project envisaging renovation, construction, operation and maintenance of ----- (more particularly described in Schedule ‘A’ and hereinafter referred to as “the Project”) with private sector participation on Build, Operate and Transfer (BOT) basis;

B. By the Concession Agreement dated ----- entered into between GOO and the Concessionaire (hereinafter referred to as “the Concession Agreement”) the Concessionaire has been granted the Concession to implement the Project on BOT basis;

C. With a view to facilitate financing of the Project by the Concessionaire, the Concessionaire have agreed to enter into Agreement being these presents with the Lender/s

D. As a condition to making any disbursement pursuant to the Financing Documents, the Lender(s) has/ have required that the Agreement being these presents be entered into among three and GOO and the Concessaionaire have also agreed to the same;

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS :-**

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereafter respectively assigned to them.

**(a) “Agreement”** means this Agreement and includes any amendment or modification made to this Agreement in accordance with the provisions hereof;

**(b) “financial assistance”** means the financial assistance setforth in Schedule I hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project;

**(c)“Lender(s)”** means the financial institutions/banks whose name(s) and addresses are set out in Schedule I hereto;

**(d)“Residual Concession Period”** means the period which shall be the aggregate remainder of the Concession Period including the Suspension Period;

**(e)“Selectee”** means a Person proposed by the Lender pursuant to this Agreement and approved by GOO for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

**(f) Suspension Period”** means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice and ending on the date on which all formalities connected with the substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facility, in accordance with this Agreement are completed and the substitution has become effective.

1.2 The terms used in this Agreement, but not defined, shall have the meaning assigned to them respectively, in the Concession Agreement.

## **ARTICLE 2**

### **SUBSTITUTION OF THE CONCESSIONAIRE BY THE SELECTEE**

#### **2.1 Lenders right to Substitute**

GOO and the Concessionaire hereby irrevocably agree that upon occurrence of an Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law or the Financing Documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Concessionaire by the Selectee for the residual Concession under the Concession Agreement in accordance with the provisions of this

Agreement. that upon substitution the Selectee shall be entitled to the extension of the remainder of the Concession Period by the Suspension Period.

## **2.2 Preliminary Notice of Termination**

GOO shall, as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the Concessionaire Event of Default, issue preliminary notice of termination to the Concessionaire in terms of Article 16.2(a) of the Concession Agreement, with a copy thereof simultaneously to the Lenders: that if the Concessionaire Event of Default is the one set out in Article 16.1(a)(9) of the Concession Agreement, the GOO shall not be obliged to issue preliminary termination notice until receipt by GOO of the recall notice issued by the Lender(s) to the Concessionaire

**2.3 Suspension of Concession and Takeover of the Project Facility:****2.3.1.** The Concessionaire irrevocably agrees that if the Cure Period specified in the preliminary notice of termination lapses without the Concessionaire Event of Default having been cured, the Concession shall, with effective from the expiry of such Cure Period, stand suspended without any further notice or other act of GOO being required, and that GOO shall have the right to enter upon and takeover the Project Site/Project Facility and to take all such steps as are necessary for the continued operation and maintenance of the Project Facility, levy, collection and appropriation of Fee subject to servicing the Debt Due as per the Financing Documents, and the substitution of the Concessionaire by the Selectee in accordance with this Agreement.

**2.3.2.** The Concessionaire hereby irrevocably consents to the takeover of the Project Facility or Project Site by GOO forthwith upon suspension becoming effective.

## **2.4 Substitution Notice**

G00 and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Event of Default specified in the preliminary notice of termination, the Lender may, within 30 (thirty) days of the expiry of the Cure Period specified therein notify G00 and the Concessionaire about the intention of the Lender(s) to seek substitution of the Concessionaire by the Selectee for the Residual Concession (the "Substitution Notice").

### **2.5 Criteria for selection of the Selectee.**

The Lender shall, in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee; namely:-

(i) the Selectee shall possess the networth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire in respect of the Concession, under the Concession Agreement;

(ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to G00 under and in accordance with the Concession Agreement and also payment of Debt Due to the Lender(s) upon terms and conditions as agreed to between the Selectee and the Lenders.

## **ARTICLE 3**

### **MODALITY FOR SUBSTITUTION:**

**3.1** The following modalities shall be followed for substitution of the Concessionaire by the Selectee pursuant to this Agreement, namely:-

(i) The Lender(s) shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the Article 2.2 of this Agreement to invite or procure offers through public auction or process of tender from the eligible persons, for the substitution of the Concessionaire by the Selectee and propose to G00 for approval of the Selectee



(the "Proposal"). The proposal of the Lender shall contain the particulars and information in respect of the Selectee, the terms of substitution, particulars of the Debt Due and such data and information as would be necessary and relevant for GOO to decide as to the acceptability of the Selectee. The Lender shall provide to GOO such additional information and clarification in respect of any data, particulars or information contained in the proposal, as GOO may promptly and reasonably require.

(ii) The proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by GOO of the proposal, observe, comply with, perform and fulfil the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement and to assume, discharge and pay the Debt Due on the terms and conditions agreed to by the Selectee with the Lenders.

(iii) The Selectee shall also undertake to enter into such documents and writings with GOO and the Lender(s) as may be necessary or required to give effect to the substitution of the Concessionaire by the Selectee.

(iv) GOO shall convey to the Lender acceptance or otherwise of the Selectee within 30(thirty) days of (a) the date of receipt of the proposal by GOO, or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the proposal, provided by the Lender to the GOO, whichever is later.

(v) At any time prior to the acceptance of the Selectee by GOO pursuant to this Agreement, GOO may require the Lender to satisfy it as to the eligibility of the Selectee and the decision of GOO as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Concessionaire. In the event GOO fails to communicate its acceptance or otherwise or the objections, if any it has to the acceptance of the

proposal or the Selectee, within a period of 30 days prescribed in the preceding sub-article (iv) GOO shall be deemed to have accepted the proposal or the Selectee

(vi) The rejection of the Selectee, if made by GOO, shall be reasoned and be made after hearing the Lender. Following the rejection of the proposal, the Lender shall have the right to submit a fresh proposal, proposing another Selectee, within 30 days of receipt of the communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-article (iv) and (v) shall apply, mutatis mutandis, to such fresh proposal.

(vii) If GOO accepts the proposal or fresh proposal, GOO shall take all necessary steps to substitute the Concessionaire by the Selectee by amendment of the Concession Agreement or by execution of fresh Agreement or such other writing as may be required or necessary to give effect to the substitution of the Concessionaire by the Selectee for the Residual Concession Period.

(viii) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of GOO and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and GOO and upon the delivery by GOO of the Project Assets to the Selectee. Upon the substitution becoming effective pursuant to this sub-article all the rights of the Concessionaire under the Concession Agreement shall cease to exist: Provided that nothing contained in this sub-article shall prejudice any pending or subsisting claims of the Concessionaire against GOO or any claim of GOO against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach or default and shall subject to the terms and conditions of the substitution, have a period of 90 days to cure any breach or default subsisting on the date of substitution and required to be cured.

(ix) The decision of the Lenders and GOO in the selection of the Selectee shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire.

(x) The Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

### **3.2 Termination and Termination Payment.**

(i) Where the Lender communicates in writing that

(a) the Lender does not intend to seek substitution of the Concessionaire, or

(b) the Lender has not been able to find suitable Selectee or

(c) GOO has declined to accept the Selectee proposed by the Lender GOO shall proceed to terminate the Concession and to make Termination Payment, in accordance with the provisions of the Concession Agreement.

(ii) Notwithstanding anything contained hereinabove, GOO shall not upon Termination of the Concession Agreement, be required to take over, the Debt Due save and except to the extent of Termination Payment due and payable under the Concession Agreement. In such an event the GOO's obligation shall be limited to assumption of such liabilities and payments of Debt Due as GOO has agreed to bear under the Concession Agreement.

(iii) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by GOO and it is expressly agreed that GOO has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.

## **ARTICLE 4**

### **MODE OF TERMINATION PAYMENTS**

#### **4.1 Mode of Payment**

(i) GOO and Concessionaire hereby irrevocably agree, and confirm that so long as the Debt Due is outstanding the Termination Payment and any other amounts due and payable by GOO to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender and advised to GOO and the Concessionaire in writing.

(ii) The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire towards the satisfaction of the Debt Due, subject to payment by the Lender(s) of the surplus amount, if any, remaining after satisfaction of the Debt Due, to the Concessionaire. Any payment so made shall to the extent of such payment, constitute a valid discharge to GOO of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.

(iii) For the purpose of giving full effect to the provisions contained in the preceding sub-article (i), the Lender(s) shall be entitled to make a demand for Termination Payment if the Concessionaire has failed to make such demand as required under Article 16.4 of the Concession Agreement within 15 days from the Termination Date under intimation to the Lender(s).

(iv) The Concessionaire hereby irrevocably appoints and constitutes the Lender(s) as its agent to make such demand for Termination Payment. Any demand made by the Lender(s) pursuant to the power and authority conferred hereby shall, for the purpose of Article 16.4 of the Concession Agreement, be deemed to be a demand for Termination Payment made by the Concessionaire.

## **ARTICLE 5**

### **GENERAL**

(i) The representatives hereto expressly represent and warrant that they are duly empowered by the Parties to sign and execute this Agreement.

(ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.

(iii) The expressions "GOO", the "Concessionaire" and the "Lender" herein used shall, unless there be anything repugnant to the subject or context, include the respective successors, legal representatives, administrators and permitted assigns.

(iv) This Agreement shall not be affected by reorganisation of the Lender, the Concessionaire or GOO and the successor in interest of the Lender, Concessionaire or GOO shall have the benefit of this Agreement.

(v) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by arbitration by a Board of Arbitrators comprising of a nominee of each party to the dispute. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitrators shall issue a reasoned award. The venue of such arbitration shall be Bhubaneswar, Odisha. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay.

(vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in New Delhi alone shall

have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.

(vii) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.

(viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.

(ix) It shall not be necessary for the Lender(s) to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

(x) No amendment, variation or modification to this Agreement shall be valid and effective unless made in writing and executed by the duly authorised representatives of all the Parties hereto.

(xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the Concessionaire. In the event of the Lenders making such payment for the time being, it shall be deemed to be a part of the Debt Dues.

(xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

#### SCHEDULE I

#### PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the Lender

Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THE DAY,  
MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF THE CONCESSIONARIE

BY : \_\_\_\_\_

WITNESSES

(1) Name : \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

(2) Name : \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

SIGNED AND DELIVERED ON BEHALF OF GOVERNOR OF ODISHA

BY : The Officer acting in the premises

WITNESSES

(1) Name : \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

(2) Name : \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

SIGNED AND DELIVERED ON BEHALF OF -----

THE LENDERS SET FORTH IN SCHEDULE I

BY: \_\_\_\_\_

WITNESSES

(1) Name: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

(2) Name: \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_