

PONDICHERRY ASHOK HOTEL CORPORATION LIMITED

UNIT : HOTEL PONDICHERRY ASHOK,PONDICHERRY

**TENDER FORM FOR LICENSE FOR ERECTING AND
OPERATING 40 COTTAGES**

Tender Ref: HPA/TENDER/COTTAGES/16-17

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Disclaimer

The information contained in this Tender document (the "**Tender**") provided to **Tenderer / Applicant(s)**, whether verbally or in documentary or any other form, by or on behalf of the Authority or any of its employees or advisors, is provided to Tenderer(s) on the terms and conditions set out in this Tender and such other terms and conditions subject to which such information is provided.

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

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

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Tenderer or Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this Tender or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the Tender and any assessment, assumption, statement or information contained therein or

deemed to form part of this Tender or arising in any way with pre-qualification of Tenderers for participation in the Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Applicant upon the statements contained in this Tender.

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

The issue of this Tender does not imply that the Authority is bound to select and shortlist pre-qualified Applications for Bid Stage or to appoint the selected Bidder or Licensee, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Applications or Bids without assigning any reasons whatsoever.

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

INSTRUCTION TO BIDDERS

1. Introduction

1.1 Background

- 1.1.1 Pondicherry Ashok Hotel Corporation Limited (PAHCL) (**the "Authority"**) - **a Joint Venture of** Indian Tourism Development Corporation, (ITDC, A Government of India Undertaking) and Pondicherry Industrial Promotion Development and Investment Corporation Limited (PIPDIC, A Government of Puducherry Undertaking) is planning for 40 more cottages in the sprawling property of the Hotel in Kalapet in northern Pondicherry.

Puducherry or Pondicherry, as it is popularly known, is a former French Enclave located on the east coast of India. Puducherry, the capital of the UT, is situated about 150 kms south of Chennai, on the Coromandel Coast of the Bay of Bengal.

The Union Territory has witnessed a steady growth in tourist arrivals in recent years, with the combined number of domestic and international tourist arrivals crossing one million in 20010-11. In addition to this tourist movement, there are "single day" arrivals, which exceed 25,000 people per day. This movement is primarily driven by the burgeoning upper middle-class population of Chennai and Bengaluru, who perceive Pondicherry as a "week-end destination". With the IT/ITES Industrial sector witnessing exponential growth in the two Metropolitan Cities, this segment is expected to grow rapidly in the coming years and will form the primary catchment for Pondicherry in attracting the leisure tourists.

With such developments, the profile of the typical tourist to the UT is changing with increased foot-falls by well - heeled high end tourists, as well as the traditional budget travelers.

In tandem with the Tourism initiatives of PAHCL, the Department of Tourism under the Government of Pondicherry (GoP), is also implementing many innovative measures for sustaining tourist interest in the Region. The Beautification of Beach and River Front at Chunnambar, the proposed Integrated Tourism facilities in Murungapakkam and the setting up of a Special Tourism Zone (STZ) in Manapet are some of the initiatives of GoP to convert Puducherry into an ideal tourist destination, focusing on the leisure tourists. The STZ is expected to add a new segment to the tourist attractions of Puducherry, with multiple theme based activities, in addition to the traditional heritage and spiritual aspects of tourism attractions of the Region.

The proposal of HPA to create a 40 more cottages in its property has considerable synergy with the ongoing initiatives of the GoP to transform the tourism sector of the UT. Together

these projects will contribute in transforming the tourism sector into the prime driver of the economy of the Union Territory.

The identified land for the Cottages, also known as the Project Site, is a scenic location overlooking the Bay of Bengal. It is proposed that about 3 Acres out of the total area of about 26.00 hectares (64.00 acres) of land in the sprawling Hotel Complex could be deployed for the proposed Accommodation, leaving the remaining land for the expansion requirements of the Hotel.

The objective of this Tendering process is to identify through a transparent bid process, a Licensee to conceptualize and develop 40 Cottages at the Project Site with multiple accommodation brackets, which will transform HPA into a major MICE attraction on the Coromandel Coast. The chosen Licensee shall develop and operate the various components of the proposed 40 Cottages for the duration of the License Agreement.

This Tender document is for selection of a licensee for the **“Erection and Operation of Cottage accommodation” of 40 Keys (“Project”)** at Kalapet Beach in the prime beach facing property of Pondicherry Ashok Hotel Corporation Limited. The 40 Cottages is proposed to be set up in an area of approximately **3.0 acres**, adjacent to the existing Hotel.

- 1.1.2 The selected Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate as such prior to execution of the License agreement (the **"Licensee"**) shall be responsible for designing, engineering, building, financing, procurement, operation & maintenance of the Project under and in accordance with the provisions of a License agreement (the **"License Agreement"**) to be entered into between the Licensee and the Authority in the form provided by the Authority as part of the Tender Documents pursuant hereto.
- 1.1.3 The scope of work will broadly include the designing, erection, and operation of 40 Cottages at the Project Site explained more in **Appendix VI**. The Project shall aim to improve the tourism infrastructure of the exotic Puducherry with the provision of first of its kind Cottages with modern amenities in that region for tourists and local population alike.
- 1.1.4 The Authority shall receive Tender Applications pursuant to this Tender in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Applications shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Applications (the **"Application Due Date"**).

1.2 Description of Bidding Process

- 1.2.1 The Authority has adopted a two- stage process (collectively referred to as the "**Bidding Process**") for selection of the Licensee for award of the Project.
- 1.2.2 The first stage (the "**Technical Stage**") of the process involves qualification (the "**Qualification**") of interested parties/ consortia who make an Application in accordance with the provisions of this Tender (the "**Applicant**", which expression shall, unless repugnant to the context, include the Members of the Consortium).
- 1.2.3 Bidding would done through e-tendering through website URL(<https://itdc.eproc.in>).
- Bidder has to register (if not registered for ITDC) with e-tendering Service provider
M/s C1 India Pvt. Ltd.
Gulf Petro Chem Building,
Building No. –301, 1st Floor,
Udyog Vihar Phase-2, Gurgaon,
Haryana –122015 (ASP)by paying annual registration fee. The details of registration fees are given on the website<https://itdc.eproc.in>.
- 1.2.4 The technical bids would be opened on the date and time prescribed. The bidders,who will be technically suitable, will have to participate in e-auctioning.
- 1.2.5 Each bidder shall deposit Rs. 2,00,000 (Rupees Two Lakhs only)towards earnest money.
- 1.2.6 Each bidder shall deposit Rs. 5,000/-(Rupees Five Thousand Only) towards cost of tender.
- 1.2.7 **The EMD and the cost of tender document are to be submitted through online payment separately.** The cost of money transfer (including payment Gateways commission and taxes etc) has to be borne by the bidder. It is advised that the bidders should consider the time taken to process the payment electronically (i.e. NEFT/RTGS, Net banking, Credit/Debit Cards) to ITDC, into consideration before submitting the bid. ITDC will not liable (in any case) for delay/non-payment in this regard.

Bank Name : AXIS BANK
Bank Account Number : 209010200005661
Branch : Bussy Street
Puducherry 605001
FOR NEFT DETAILS
IFSC CODE : UTIB0000209
MICR CODE : 605211002

Account Type : Current Account
Name of Account : Pondicherry Ashok Hotel Corporation Limited

1.2.8 All those documents submitted digitally to be signed digitally. In case, where documents are not required to be submitted digitally, should be physically signed/self certified. In case of any clarification, original documents may be verified by TEC.

1.2.9 The process as defined by the ASP for e-tendering is to be followed (details would be provided to the registered tenderer by **ASP at the time of registration**).

1.2.10 Minimum requirement for e-tendering Computer System Requirements:

Minimum of 512 MB RAM

Minimum 1 USB port

Windows Operating System

DSC Dongle driver should be installed before logging in.

Reliable Internet Connectivity.

Certificate with full chain.

Certificate should not be expired, it should be valid certificate.

Operating System

Windows XP SP 3

Windows 7 Browser Version

Internet Explorer Version 8.0 or above/Chrome/Mozilla Firefox

1.2.11 Cost of Tender Document

- a. Prior to making an Application, the Applicant shall pay to the Authority a sum of Rs. 5000/- (**Rupees Five Thousand Only**) as the cost of the Tender process
- b. In case the bidder has downloaded the tender from the website, the bidder will deposit the sum of Rs. 5000 (**Rupees Five Thousand Only**) as the cost of the Tender process by Net Transfer and submit the UTR No as proof of transaction.
- c. This UTR NO has to be included as part of the technical Bid.

1.2.12 Earnest Money Deposit

- a. The bidder would have to deposit an amount of Rs.2.00 lakh (Rupees Two Lakh only) as Earnest Money Deposit "**EMD**" either by way of Net Transfer in the Name of Hotel Pondicherry Ashok payable at Pondicherry. The EMD of the unsuccessful Bidder will be returned immediately after the Bidding Process is complete.

- 1.2.13 In the Technical Stage, Bidders/ Applicants would be required to furnish all the information specified in this Tender as per Details of Applicant at Annexure III.
- 1.2.14 The Financial Bids of only those Bidders/ Applicants that are qualified and short-listed by the Authority shall be opened.
- 1.2.15 The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.16 Prior to submission of the tender, Tenderers are invited to visit the project Site and examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the License including implementation of the Project.
- 1.2.17 As part of the Bidding Documents, the Authority will provide a draft License Agreement prepared by the Authority and other information pertaining / relevant to the Project available with it.
- 1.2.18 Financial Bids (as per Annexure – V) will be submitted by the **Bidders Online** .The highest Bidder for the Project would be evaluated on the basis of the Percentage of Room revenue payable to the Authority for award of the License. The License Period shall be pre-determined, and will be indicated in the draft License Agreement forming part of the Bidding Documents. The Minimum percentage that the authority expects is 20% (excluding Taxes) of the Room revenue. The Percentage of the room revenue to be quoted by the Bidder and payable to the Licensor shall constitute the sole criteria for evaluation of the Financial Bid. The Project shall be awarded to the Bidder quoting the highest Percentage. In this tender, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Percentage to the Authority.
- 1.2.19 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the Tender document, be invited to match the Financial Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be
- 1.2.20 The Licensee shall be entitled to charge appropriate user fee and other charges from users of the Project which shall be collected by the Licensor on behalf of the Licensee.
- 1.2.21 Any queries or request for additional information concerning this Tender shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.13.3 below. The envelopes/ communications shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information"

"Tender for Erection and Operation of 40 Cottages “.

Addressed to:

**The Managing Director,
Hotel Pondicherry Ashok ,
ECR Kalapet , Puducherry - 605 014.**

Tel: 0413 2655160

E-mail:

gm@ashokresort.com

1.3 Schedule of Bidding Process

The Authority shall endeavour to adhere to the following schedule:

Sl. No	EVENT DISCRIPTION	DATE & TIME
1	Date of Publishing the NIT in Newspaper	Feb 10 th ,2017
2.	Date of Pre- Bid Meeting	Feb 20 th , 2017
2	Last date for receiving queries from prospective Bidder	Feb 23 rd ,2017, Time 1600 hrs
3	Last date of replying to queries	Feb 27 th ,2017
4	Last date for uploading of Tender duly filled up and completed	March 10 th 2017, Time 1600 hrs
5	Tentative date of opening Financial Bid	(Only shortlisted bidders will be informed separately of the exact date and time)

In case the date indicated for a particular event happens to be a Public Holiday, the event will take place on the next working day at the same time and venue as already given.

1.4 Submission of Tenders

1. Prior to submission of the tender, Tenderers are invited to visit the project Site and examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the License including implementation of the Project.
2. The tender complete in all respect, should be uploaded on the above mentioned website. Besides this the **Technical bid is to** be submitted in a sealed cover superscribing on the top " TENDER SUBMISSION - License for Erection and operating 40 Cottages at Hotel Pondicherry Ashok".” addressed to “The General Manager, Hotel Pondicherry Ashok” and put in the tender box placed in the office of Security Officer by the stipulated date and time. The management shall not be responsible for any loss or delay in receipt of the tender by post.

3. The Technical Bid (Annexure –III of this Tender document) alongwith all required annexures should be **hardbound** and serially numbered. A copy of the Tender Document, Draft License Agreement and other annexures and schedules, duly signed on all the pages as an acknowledgement of having read, understood and agreed to is also to be enclosed as an Annexure.(Spiral Binding and Stapled Papers will lead to disqualification).Letter comprising part of the Tender Application (Annexure –II), on the letter head of the Tenderer,is also to be enclosed as part of the Technical bid. The UTR of the payment towards Earnest Money deposit and UTR towards proof of purchase of tender Document should also be enclosed with the Technical Bid. The Technical Bid The indicative List (in serial Order) as part of the Technical Bid(serial numbered with index of all submissions) is as follows;
 - a. UTR for Rs. 2.00 Lakh(Rupees Two Lakh Only) towards interest free EMD
 - b. UTR of Rs 5000/- (Rupees Five Thousand Only) towards Tender processing Cost.
 - c. Letter comprising the Application for Technical Qualification – (Annexure II of this tender Document) on letter head.
 - d. Technical Bid (Annexure III of this tender Document) duly filled up alongwith all supporting document, Annexures, Certificates, Financial statement etc and as required in the technical Bid. This submission should be serially numbered and with a index.
 - e. A copy of this tender document and the Integrity Pact , duly signed on all the pages by the authorized signatory of the tenderer, as token of having visited, assessed, verified the terms of this tender and acceptance of all conditions of the tender Document including the Draft License agreement. Subsequent Addenda, if any, including replies to queries, is also to be included and considered as part of this tender document
 4. The **Financial Bid** (as per Annexure – V of the tender document) should be uploaded on the above website only.
 5. The tenderer should ensure that the tender should reach the office of the Authority before the date indicated as per Clause 1.3 above or any other date/time confirmed by the Authority. Any tender document received after the date and time informed by the Authority will be rejected and would not be considered or opened.
 6. The Authority will open the technical bid first and evaluate the same. The tenderers who will be technically suitable, will only be considered for financial bid.
- 1.5 Each tenderer shall deposit Rs. 2.00 lakh (Rupees Two Lakhs Only) towards earnest money in the form of a Bank Draft drawn on any bank in favour of Hotel Pondicherry Ashok payable at Pondicherry. The earnest money can be deposited in cash also with the Front Office Cashier, Hotel Pondicherry Ashok. The receipt issued by Hotel Cashier may be enclosed with the tender (Technical Bid). Tenders received without earnest money deposit shall be

summarily rejected. **Cheques/ Demand draft will not be accepted.** Earnest money deposit of unsuccessful tenderers shall be refunded after expiry of validity period of the tender. In the case of successful tenderer earnest money deposit will be returned after the License agreement is signed and the Security deposit by way of cash or bank guarantee in favour of Hotel Pondicherry Ashok is deposited with the Authority as per provision of the License agreement or it may be forfeited in case the successful tenderer refuses to accept the award of license or fails to complete the required formalities and occupy the premises within the specified and permitted time and delay in starting the actual operation beyond the permitted time under the license.

2. Scope of Application

2.1 Scope of Application

2.1.1 The Authority wishes to receive Technical Bids in order to short-list experienced and capable Bidders/ Applicants for the Project .

2.1.2 The Financial Bid of only the Bidders/ Applicants who match the technical and Financial criteria would be considered and opened. The Bidders who do not match the technical and financial criteria would not be considered and would not be called when Financial Bids are opened.

2.2 Eligibility of Applicants

2.2.1 For determining the eligibility of Applicants/ Tenderer for their pre-qualification hereunder, the following shall apply:

- a. The Applicant for pre-qualification may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no applicant applying individually or as a member of a Consortium, as the case may be, can be member of another Applicant. The term Applicant used herein would apply to both a single entity and a Consortium.
- b. An Applicant may be a natural person, private entity, government-owned entity or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

- c. An Applicant shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Applicant found to have a Conflict of Interest shall be disqualified. An Applicant shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- i. the Applicant, its Member or Associate (or any constituent thereof) and any other Applicant, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Applicant, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 % (five per cent) of the paid up and subscribed share capital of such Applicant, Member or Associate, as the case may be) in the other Applicant, its Member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows:
 - (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
 - (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent)of the subscribed and paid up equity shareholding of such intermediary; or

- ii. a constituent of such Applicant is also a constituent of another Applicant;
or
 - iii. such Applicant has the same legal representative for purposes of this Application as any other Applicant; or
 - iv. such Applicant, or any Associate thereof has a relationship with another Applicant, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
 - v. such Applicant or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- d. An Applicant shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Applicant, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Applicant, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this Tender. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Explanation: In case an Applicant is a Consortium, then the term Applicant as used in this Clause 2.2.1, shall include each Member of such Consortium.

2.2.2 To be eligible for pre-qualification and short-listing, an Applicant shall fulfill the following conditions of eligibility:

A. Technical Capacity:

For demonstrating technical capacity and experience (the "**Technical Capacity**"), the Applicant shall, over the past 3 (Three) financial years preceding the Application Due Date, have and submit the same as Appendix-3 :

- i. executed for at least two Government orders
- ii. executed work for private companies / individuals/ or institutions for tent structure / Cottages
- iii. Sum total of the above is more than **Rs. 50 lakhs per year**

B. Financial Capacity:

The tender would produce certificates/ financial statement certified by its auditor as to having a turnover **higher** of the following and submit details as per Appendix- 4

- i. A minimum turnover of 1 crore (Rupees one crore) in last financial year and at least Rs 2.5 crore (Rupees two crore Fifty Lakhs) cumulative turnover over the last three years

or

- ii. 10% (Ten Percent) of the Total Project Cost estimated in the Concept Note submitted by the tenderer as part of this Tender Submission

In case of a Consortium, the combined technical capacity and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility.

\$ In case duly certified audited annual financial statements containing explicitly the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.2 (B). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this Tender.

2.2.3 The Applicants shall enclose with its application, to be submitted as per the format at complete with its Annexes, the following:

- i. Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made / received or works commissioned, as the case may be, during the past 3 (Three) years in respect of the projects specified in Clause 2.2 (A) above. In case a particular job / contract has been jointly executed by the Applicant (as part of a consortium), he should further support his claim for the share in work done for that

particular job / contract by producing a certificate from its statutory auditor or the client as per Appendix-2

- ii. Certificate(s) from its statutory auditors specifying the turnover of the Applicant, for the last three financial year. A copy of the duly audited balance sheet for the past three years is to be enclosed as per Appendix 3.
- iii. In addition to the financial and Technical obligations, the applicants for the project are also required to give a brief description of the roles and Responsibilities of the individual members with reference to the Operation and Maintenance obligations.

2.2.4 The tenderer should submit a Power of Attorney as per the format at Appendix-7, authorising the signatory of the Application to commit the tenderer. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

2.2.5 In case the Applicant is a Consortium, it shall, in addition to subscribing to the share capital of the SPV, comply with the following additional requirements as per Appendix 1:

- a. Number of members in a consortium shall not exceed 2 (Two), in the order of their equity contribution;
- b. Subject to the provisions of sub-clause (a) above, the Application should contain the information required for each member of the Consortium;
- c. Members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall be responsible for all the acts and deeds of all the Consortium members. The Lead Member shall have an equity share of at least 51% (Fifty one percent) of the paid up and subscribed equity of the proposed entity. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-8, signed by all the other members of the Consortium;
- d. the Application should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical, operating and marketing obligations;

- a) An individual Applicant cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Applicant Consortium cannot

be member of any other Applicant Consortium applying for pre-qualification; Any member who submits or participates in more than one application will be disqualified and will also lead to disqualification of the Consortium of which he is a member;

- b) the members of a Consortium shall form an appropriate SPV/company to execute the Project if awarded to the Consortium;
- c) Members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-9 (the "**Memorandum of Understanding (MoU)**"), for the purpose of making the Application and submitting a Bid in the event of being short-listed. The MoU, to be submitted along with the Application, shall, *inter alia*:
 - i. convey the intent to subscribe to SPV/ company formed with shareholding/ownership/ equity commitment(s) in accordance with this tender Document which would enter into the License Agreement and subsequently perform all the obligations of the Licensee in terms of the License Agreement, in case the License to undertake the Project is awarded to the Consortium;
 - ii. clearly outline the proposed roles and responsibilities, if any, of each member
 - iii. commit the minimum equity stake to be held by each member;
 - iv. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Licensee in relation to the Project until the termination of the License is achieved in accordance with the License Agreement;

A copy of the MoU should also be submitted along with the Bid.

- d) Except as provided under this Tender Documents, there shall not be any amendment to the MoU without the prior written consent of the Authority.
- e) The Application shall be signed by the duly authorized signatory of the Lead member and shall be legally binding on all the members of the Consortium; and
- f) One of the Consortium member should have purchased the Tender documents from the Authority or have paid the non refundable fee of Rs. 2,800/- (Rupees Two Thousand and Eight Hundred Only) to the Authority as specified in the Tender document.

- 2.2.6 Any entity which has been barred or disqualified either by the Authority, India Tourism Development Corporation Limited, the Pondicherry Ashok Hotel Corporation Limited, any other State Government in India (SG) or any Union Territory Administration in India (UT) or Government of India (GoI), or any of the agencies of SG/UT/GoI participating in any project (BOT or otherwise) and the bar subsists as on the date of Application, would not be eligible to submit an Application, either individually or as member of a Consortium.
- 2.2.7 An Applicant including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Applicant, Consortium Member or Associate .
- 2.2.8 In computing the Technical Capacity and Net Worth of the Applicant /Consortium Members under Clauses 2.2.A, 2.2.B and 2.3 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder. For purposes of this tender, Associate means, in relation to the Applicant /Consortium member, a person who controls, is controlled by, or is under the common control with such Applicant / Consortium member (the "**Associate**"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- 2.2.9 The following conditions shall be adhered to while submitting an Application:
- a. Applicants should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Applicants may format the prescribed forms making due provision for incorporation of the requested information;
 - b. Information supplied by an Applicant (or other constituent Member if the Applicant is a Consortium) must apply to the Applicant, Member or Associate named in the Application and not, unless specifically requested, to other associated companies or

firms. Invitation to submit Bids will be issued only to Applicants whose identity and/or constitution is identical to that at pre-qualification;

- c. In responding to the pre-qualification submissions, Applicants should demonstrate their capabilities in accordance with Clause 3.1 below; and
- 2.2.10 Notwithstanding anything to the contrary contained herein, in the event that the Application Due Date falls within three months of the closing of the latest financial year of an Applicant, it shall ignore such financial year for the purposes of its Application and furnish all its information and certification with reference to the 3 (Three) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of an Application hereunder, mean the accounting year followed by the Applicant in the course of its normal business.
- 2.2.11 The purchaser of the tender document must be the Tenderer itself or member of the Consortium submitting the application.
- 2.2.12 Tenderers and all parties constituting the Tenderer shall provide such evidence of their continued eligibility satisfactory to the Authority, as the Authority shall reasonably request.

2.3 Changes in Composition of the Consortium

- 2.3.1 Change in the composition of a Consortium will not be permitted by the Authority during the tendering Stage **or during the period of operation unless approved by the Authority.**

2.4 Number of Applications and Cost thereof

- 2.4.1 No Applicant shall submit more than one Application for the Project. An applicant applying individually or as a member of a Consortium shall not be entitled to submit another application either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Applicants shall be responsible for all of the costs associated with the preparation of their Applications and their participation in the Bid Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site Visit and Verification of Information

It is desirable that each Applicant submit its Application after inspecting the Project site **at his own cost** and ascertaining for themselves the site conditions, 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.

2.6 Acknowledgement by Applicant/ Tenderer

- 2.6.1** It would be deemed that by submitting the tender, the bidder/ Applicant has:
- a. Made a complete and careful examination of the Tender document
 - b. Received all relevant information requested from the Authority
 - c. Accepted the risk of inadequacy, error or mistake in the information provided in the tender or furnished by or on behalf of the Authority
 - d. agreed to be bound by the undertakings provided by it under and in terms hereof; and
 - e. Independently verified all information received from the Authority
- 2.6.2** The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Tender or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.
- 2.6.3** The Authority shall not be liable for any mistake or error on the part of the Applicant in respect of the above.

2.7 Right to Accept any Application / Bid and to Reject any or all Applications / Bids

- 2.7.1** Notwithstanding anything contained in this Tender, the Authority reserves the right to accept or reject any Application and to annul the Bidding Process and reject all Applications / Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.7.2** The Authority reserves the right to reject any Application/ Bid if:
- a) at any time, a material misrepresentation is made or uncovered, or
 - b) the tenderer does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Application.

If the Applicant/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occur after the Financial Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- i. invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the tender document; or

- ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.7.3 In case it is found during the evaluation or at any time before signing of the License Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the pre-qualification conditions have not been met by the Applicant/ Bidder, or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Licensee either by issue of the Letter of intent or entering into of the License Agreement, and if the Applicant/SPV has already been issued the Letter of intent or has entered into the License Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this Tender Document, be liable to be terminated, by a communication in writing by the Authority to the Applicant, without the Authority being liable in any manner whatsoever to the Applicant and without prejudice to any other right or remedy which the Authority may have under this Tender, the Bidding Documents, the License Agreement or under applicable law.

2.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Applicant in response to this tender Document. Any such verification or lack of such verification by the Authority shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

2.8 Clarifications to tenderers

2.8.1 Applicants requiring any clarification on the Tender may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2. They should send in their queries before the date specified in the schedule of Bidding Process contained in Clause 1.2. The Authority shall endeavour to respond to the queries within the period specified therein. The responses will be sent by fax and/or e-mail and / or hosted on the **website www.ashokresort.com**. The Authority will forward all the queries and its responses thereto, to all purchasers of the Tender without identifying the source of queries.

2.8.2 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Applicants. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Applicants. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Tender. Verbal clarifications and information given by

the Authority or its employees or the Authority representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of Tender

- 2.9.1 At any time prior to the deadline for submission of Application, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the Tender by the issuance of Addenda / Addendum.
- 2.9.2 All the Addenda / Addendum issued shall be part of the Tender Document and shall be communicated through Pondicherry Ashok Hotel Corporation Limited (www.ashokresort.com). The Authority will not be required to send / inform these addenda / addendums to the individual Applicants.
- 2.9.3 In order to afford the Applicants a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Application Due Date.₹

2.10 Clarifications

- 2.10.1 To facilitate evaluation of Applications, the Authority may, at its sole discretion, seek clarifications from any Tenderer/ Applicant regarding its Application. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.10.2 If an Applicant does not provide clarifications sought under Clause 2.10.1 above within the prescribed time, its Application shall be liable to be rejected. In case the Application is not rejected, the Authority may proceed to evaluate the Application by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.
- 2.10.3 The Authority reserves the right to call for supporting documentation to verify the data provided by Applicants, at any time during the Qualification process. The Applicant in such cases would need to provide the requested clarification / documents promptly and within the stipulated time failing which the Applicant is liable to be disqualified at any stage of the evaluation and short listing process.

QUALIFICATION AND BIDDING

2.11 Short-listing and notification

- a. After the evaluation of Applications, the Authority will announce a list of shortlisted pre-qualified Applicants (tenderers) who will be invited to attend the opening of the Financial Bid.

- b. At the same time, the Authority would notify the other Applicants that they have not been short-listed. The Authority will not entertain any query or clarification from Applicants who fail to qualify.

3. FINANCIAL BID

3.1 Financial Bid Opening

- a. The tenderers whose Technical Bids were found to responsive and qualified would be opened on the website.

3.2 Responsiveness of the Financial Bid

- a. Only those Financial Bid those have been submitted as per Annexure – V would be considered.
- b. Conditional Bids or those not responsive as per Annexure –V would be summarily rejected. The Authority will not entertain any query or clarification from Applicants / tenderer in this regard.

3.3 Contents of the Bid

- a. The Bid shall be furnished in the format at Appendix – V
- b. The Bid shall be a Percentage of the Room Tariff to be quoted by the Bidder, as the License Fee fixed to the Authority in accordance with this Tender Document and the provisions of the License Agreement.
- c. The Project will be awarded to the Bidder quoting the highest Percentage of Room Tariff.

3.4 Rejection of Bids

- a. Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul 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 therefore. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- b. The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

3.5 Validity of Bids

- a. The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

3.6 Selection of Bidder

- 3.6.1 The Bidder adjudged as responsive in terms of Clause 3.2.and quoting the highest Percentage of room tariff as per tender submission (Annexure – V)shall be declared as the selected bidder (the “**Selected Bidder**”).
- 3.6.2 In the event that two or more Bidders quote the same Percentage of room tariff , the Authority 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.
- 3.6.3 In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the “first round of bidding”), the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid highest Bidder (the “second round of bidding”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Selected Bidder.
- 3.6.4 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (the “third round of bidding”) from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.6.5 After selection, a Letter of Intent (the “**LOI**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOI in acknowledgement thereof.
- 3.6.6 In the event the duplicate copy of the LOI duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Earnest Money Deposit of such Bidder/ tenderer as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Bidder to acknowledge the LOI, and the next eligible Bidder may be considered.
- 3.6.7 After acknowledgement of the LOI as aforesaid by the Selected Bidder, it shall execute the License Agreement within 15 days from the date of issue of Letter of intent.
- 3.6.8 The Selected Bidder shall not be entitled to seek any deviation in the License Agreement.

3.7 Contacts during Bid Evaluation

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

3.8 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority 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 the Authority.

4. Fraud and Corrupt Practices

4.1 Standard of ethics

The Applicants / tenderers and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant 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. The Tenders would have to read, sign and submit the "Integrity Pact " at Schedule - G as part of the License Deed.

4.2 Eligible to Participate

Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Applicant is found by the Authority 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, such Applicant shall not be eligible to participate in any tender issued by the Authority during a period of 2 (two) years from the date such Applicant is found by the Authority 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, as the case may be.

4.3 Terms and definitions

For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or

employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the Letter of intent or has dealt with matters concerning the License Agreement or arising therefrom, 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 the Authority, 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 Letter of intent or after the execution of the License Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of intent or the License Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c) **"coercive practice"** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. Miscellaneous terms and Conditions

- 5.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Puducherry shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 5.2 the Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
 - (a) suspend and / or cancel the Bidding Process and / or amend and / or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

- (b) consult with any Applicant in order to receive clarification or further information;
 - (c) pre-qualify or not to pre-qualify any Applicant and / or to consult with any Applicant in order to receive clarification or further information;
 - (d) retain any information and / or evidence submitted to the Authority by, on behalf of, and / or in relation to any Applicant; and / or
 - (e) independently verify, disqualify, reject and / or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Applicant.
- 5.3 It shall be deemed that by submitting the Application, the Applicant agrees and releases the Authority, 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.
- 5.4 The Licensee would have to build Forty Cottages of different categories as given the Minimum technical Specification as per Schedule-B in the space made available (the extent of space is as per Schedule A.
- 5.5 The period of License is for 10 (Ten Years) extendable by another five years on mutually agreed terms. No second term renewal would be applicable but the authority may go in for re-tendering in which the Licensee would have the option for right of first refusal subject to the Licensee agreeing to match or exceed the licensee fee quoted by the highest tenderer. In case the Licensee does not agree/ match/exceed the rate the Licensor would/may award the tender to the highest applicant.
- 5.6 The Licensee would be allowed to fix the Tariff for the 40 Cottages and should submit the same in the Business Plan.
- 5.7 The license fee would be a percentage of the total revenue earned from the accommodation and should be quoted clearly in words and figures as per the Financial Bid (Annexure – V). The license fee, other charges for services as applicable and statutory deductions would be deducted by the Licensor and the balance transferred to the Licensee.
- 5.8 The company would be handing over the site on “as is where is basis”. Tenderer may visit the site and inspect the same. The tenderer will ensure at their own cost, the renovation of allotted area including demolition of structure, construction, furniture and fixtures, electrical connection, water supply, light and equipments, sound system etc along with arrangement of machines, equipment furniture and other all required items for their use.
- 5.9 The tenderer will ensure to arrange staff including their uniform at their cost. Credentials of the staff as well as parties / Directors / owners / Proprietor / Trustees will be got verified by the tenderer from Public Authorities and a copy thereof be submitted to the company before start of operations.
- 5.10 The tenderer will ensure to arrange all operational needs as per nature of business including lawn maintenance, housekeeping, garbage removal , pest control services and construction of toilets and dispose of the waste at designated location and also bear the cost of maintenance of all their equipments, furniture and fixtures.

- 5.11 The tenderer will arrange advertisement and publicity for promotion of their business. All advertisement and publicity material will be subject to approval of General Manager of the Hotel.
- 5.12 The tenderer will make arrangements and pay for HT Line , electric connection, electricity consumption for light and power, sound and other equipments used at the premises at a tariff fixed by appropriate authorities (from time to time) plus 10 % to cover administrative costs.
- 5.13 The tenderer will bear all operational expenses whatsoever to run the outlet including all furniture, fixtures so as to achieve the minimum operational standard as specified in the tender document in Schedule B. The tenderer will also ensure, at their own cost the renovation of allotted area including leveling, clearing, demolition of structure, construction, light and sound system etc.
- 5.14 The tenderer will deposit and keep deposited interest free security deposit of Rs 5 Lakhs The security deposit will be initially valid for a period of 63 (Sixty Three) months. (three months extra over the license period).The Licensor additionally would have all rights over the infrastructure and the “Project” and “Project Facilities” in case of any default in any terms and conditions of the contract.
- 5.15 The tenderer should obtain and keep in force all ancillary licenses at their cost.
- 5.16 On award of license thorough Letter of Intent, the tenderer will ensure completion of all formalities and to sign the license agreement within 15 days of receipt of the award which would be accompanied by a Security Deposit either by way of cash or bank guarantee with a validity 63 months through a bank having a branch in Pondicherry.
- 5.17 The successful tenderer, before the commencement of business, shall timely obtain all licenses such as Trade License, Eating House License etc from appropriate authority and all ancillary licenses/permissions/clearances that may be required to be obtained by the Licensee from any authority/authorities at their own cost for operation of the outlet and timely provide copy of the same to the Licensor Company The successful tenderer shall solely be responsible to ensure and keep such Licenses valid throughout the license period.
- 5.18 All taxes and Government levies as applicable from time to time like expenditure tax, entertainment tax, sales tax etc, if any, will be payable over and above the amount of license fee by the tenderer. The License Deed shall be executed on the lines of information/instructions/terms and conditions as stipulated in this annexure. However, the terms and conditions are only the guidelines and can be modified, deleted or added to at the time of actual signing of the License/contract without major deviations
- 5.19 The existing lay-out plan of the proposed premises to be licensed is as per schedule of the draft license agreement. The tenderer may submit their concept plan including interior scheme with proposed cost alongwith their offer.
- 5.20 The tenderer will pay for all structural or any other damages done to the property of the Licensor during the period of license as well as during renovation, although the renovation will be under the guidance of the Engineer Incharge / Head of the unit.

- 5.21 The tenderer will be responsible and liable to pay and settle for all kinds of claims made by guests towards operational deficiencies, physical damages etc. Under no circumstances would the tenderer sell inferior quality products/ services. Under no circumstances would the Licensor be responsible for any guest claims for the above and all the responsibility for the product/services would be that of the Licensee/directors of the Licensee firm.
- 5.22 The tenderer will take comprehensive insurance to cover all type of damages to the property and casual / walk-in guests, his staff, stocks, stores, spares, equipments etc. Copy of the insurance is to be deposited with the Hotel within 3 months of start of operation and would kept in force throughout the period of operation.
- 5.23 Being accommodation for guest the 40 Cottages must operate on a 24 hrs basis throughout the year unless due to force majeure. Timings of business / trade / office operation will be amended as per orders of local authorities and the instructions of General Manager / Head of the Unit
- 5.24 The standard of facilities provided should be at par with the hotel standards.
- 5.25 No change in the status of the tenderers will be allowed after submission of tender and during currency of the agreement without prior written approval of the company as per applicable clause of the license deed.
- 5.26 The following terms used in the foregoing paragraphs shall be the meaning given against each
- 'COMPANY' "LICENSOR" and 'AUTHORITY' means Pondicherry Ashok Hotel Corporation Limited and its unit/units
 - 'OFFICER OF THE COMPANY' OR 'OFFICER' means the 'OFFICER NAMED BY THE COMPANY'.
 - 'Managing Director' means the 'MANAGING DIRECTOR ' of Pondicherry Ashok Hotel Corporation Limited, Pondicherry.
 - "BIDDER", "TENDERER" "APPLICANT" means any individual/ company/ consortium/ HUF /firm applying to the Authority in response to this tender.
- 5.27 The tenderers must furnish a brief resume about self, their company / organization. Previous experience of setting up and running the business / marketing strength / restaurant of class / status in India or abroad, details of available expertise, technical know how for which tender is submitted. The Licensor for should propose Rates/Charges to be introduced keeping in view the market and competitors profile.
- 5.28 The tenderer must quote the percentage of the revenue collected from rooms as license fee. The amount of license fee must be quoted in figures and words. The successful tenderer shall deposit an amount of Rs 5 lakhs free security deposit with the management.
- 5.29 The successful tenderer should start the operation of the 40 Cottages within a period of 360 days from the date of signing of the Agreement. The tenderer shall be required to take possession of the premises and complete all the formalities within 30 days of the Letter of Intent.
- 5.30 The tenderer will bear the telephone bills and pay 'regularly in time at the rate applicable to other licensees.

- 5.31 The tenderer shall bear all the costs for operation of the space including all maintenance charges.

ANNEXURE –II -

(LETTER COMPRISING THE APPLICATION FOR TECHNICAL QUALIFICATION)

(TO BE SUBMITTED ON THE LETTER HEAD OF THE BIDDER AS PART OF TECHNICAL BID)

To,

The General Manager
HOTEL PONDICHERRY ASHOK,
ECR, Kalapet
Pondicherry – 605014

Sub: ERECTING AND OPERATING COTTAGES
Tender Ref: HPA/TENDER/COTTAGES/16-17

Dear Sir,

I/We, the undersigned having gone through the blue print, tender documents, inspected the site/ premises, conducted due diligence and having read all the terms and conditions thereof, submit the following tender documents:

- i) Particulars of the tenders
 - ii) The information and instructions and Annexures thereto duly signed by me/us in token of having read, understood and agreed to the same.
 - iii) Draft License Deed duly signed by me/us in token of having read and understood each and every clause contained therein, and agreed to the same.
 - iv) Physical Inspection of the premises being given on license, in token of having known the measurement of total area and its location, and other relevant details..
2. My/our Tender is valid for a period of 120 days from the date of opening of Financial Bid. I/We are fully aware that no changes in the rules or terms & conditions of the tender are permitted due to any reason. In case, I/We, withdraw this tender before this period or delay in occupying the licensed premises for shop/s (as shown in the drawing) and as physically inspected within the stipulated period, the Earnest Money Deposit shall be forfeited.
 3. I/we, agree to use the licensed premises for running the business awarded only and shall not use the same for any other purpose/business.
 4. I/We, agree to submit an affidavit, duly supported with the Bankers' Solvency Certificate and other documentary evidence about my/our financial standing / soundness and shall not change or alienate my/our interest in the premises possessed and disclosed by me/my/our interest in the premises possessed and disclosed by me /us (as per signed list enclosed) during the currency of the agreement.
 5. I/We, agree to abide by all the terms and conditions as contained in the Tender Document as well as the Draft License Agreement.

HPA/TENDER/COTTAGES/16-17

6. I/We have understood that the conditional tender will be liable for rejection. Further, I/We have understood that the decision of the Management is final and the Management of HOTEL PONDICHERRY ASHOK / ITDC is not bound to accept the highest or any other tender it may receive. Expenses incurred by the Tenderer in presenting or submitting this Tender or preparation etc. will not be reimbursed/refunded / paid in all cases.
7. I/We, agree to sign the regular agreement after completing the entire formalities including furnishing of security deposit (as per details given in Article 5 clause 5.5 of draft license agreement) etc within the stipulated period of 30 days from issue of LOI with Hotel Pondicherry Ashok embodying all the terms and conditions of the tender before taking over the job of running business at the proposed premises. I/ we further agree to complete the erection of minimum 20 Cottages / installation and commissioning of equipments etc to start the actual operation as per Concept Note within 360 (three hundred and sixty days) from the date of signing the agreement, without any damages to the property of the company.
8. I/We agree that the licensor can grant the choice of maximum of two outlets in a Unit and three in a city to me/ us, in the event of my/our emerging as H1 in more than two premises / outlets in any one category or among all the categories.
9. I/ We also agree that if I/ We are the existing licensee in two premises/ outlets, I / We can be granted License of only one outlet in the city
10. I/We, agree that HOTEL PONDICHERRY ASHOK / ITDC reserves the right to reject any or all tenders without assigning any reason thereof .

Signature of Tenderer/Authorized Signatory

Address :

Seal :

Tele.No. (s) /Mobile No:

Email address

Place:

Dated: _____

ANNEXURE –III –

DETAILS OF THE APPLICANT

TECHNICAL BID

(please strike off whichever is not applicable)

Sl. No	PARTICULARS	
1	Name of the Tenderer	
	Son/Wife/Daughter of Shri	
	Age	
	Nationality	
	Permanent Residential Address	
2	Name of the Firm / Company	
	Full Address of registered Office with Tel. No	
	Local Address of registered Office with Tel.No (if any)	
	Website	
	E- mail address for correspondence	
3	Status of the Tenderer (whether Sole Proprietor/ Hindu Undivided Family Business/ Partnership/ Consortium / Joint Venture / Limited Company)	
4	Status of Signatory of theTender in case of HUF Business/Partnership/Limited Company	Statement of Legal Capacity – Appendix - 6 Power of Attorney – Appendix 7/8 (as appropriate)
5	Name and address of the Bankers	Performance Certificates from the Bankers to be enclosed
6	Trade: Brief on Present Activities	

7	Financial Statement	Please fill up the Format at Appendix 2 (Certificate from Auditors- Appendix- 4)
8	Past experience in the Trade	Minimum three years preferred in similar business, a brief to be enclosed duly certified (Refer 2 .2 .A of Annexure 1 . Details to be filled up as per format at Appendix 5
9	ESI Certificate	Copies to be enclosed
10	P.F. Certificate	Copies to be enclosed
11	Particulars of the EMD	Bank Transaction No / UTR

The information given above are true to my knowledge and belief and no mis- representation has been made therein

Yours faithfully

(Signature of the Tenderer)

NOTE:-

- a) In case of sole proprietary concern, the name of the proprietor, father's/ husband's name, age, residential address, and office & residence phone numbers are to be indicated.
- b) In case of partnership concern, the Photostat copy of the Registered Partnership Deed is to be enclosed. The Partnership Deed should state specifically that a particular partner or partners are authorized to deal with any matter of Firm/Company. Certified copies of Income Tax Assessment years) of the Partnership Firm and individual partner(s) (for the last three years) are enclosed.
- c) In case of Hindu Undivided Family Business, an Income Tax Registration Certificate is to be enclosed, in addition to the above as per (b) above.
- d) In case of Limited Company (private or public), printed copies of Articles of Association as well as last three Annual Report of Audited Accounts is to be annexed. Authorization by the Board of Directors in favour of the signatory of the tender as well as all other documents on behalf of the Company may be attached.

- e) A declaration is to be recorded by the authorized signatories of the tender that no change in the status of sole proprietorship Hindu Undivided Family / Partnership / Company (as the case may be) will take place from the date of submission of tender and during currency of the license agreement, if entered into with them. In case any change is necessary in the overall interest of the business / purpose for which the premises is licensed, it will be with the prior written approval of the Company / Licensor failing which the license agreement will be terminated at the sole discretion of the company. It is also to be certified that there is no criminal record of the tenderer / applicant / proprietor / Managers / partners / Directors) or their close relatives affecting the business profession under this license.
- f) Bid submitted by a Consortium should comply with the following additional requirements
- - (i) Number of members in a consortium should be limited to a maximum of two only;
 - (ii) The bid should contain information of each member of the consortium;
 - (iii) Any or one of the consortium members should purchase the tender document from ITDC/ PAHCL and/or intimate PAHCL, in case the tender document are downloaded from the websites ;
 - (iv) An individual Bidder cannot at the same time be a member of a Consortium applying for the same tender. Further a member of a particular Consortium cannot be a member of any other consortium applying for the bid;
 - (v) The members of the consortium shall nominate anyone member as their lead technical member and any one member as their lead financial member;
 - (vi) Alternatively, the Members of the consortium can nominate one member as the lead member for both the bids also
 - (vii) The nomination(s) shall be supported by a Power of Attorney as per the format specified, signed by all members and by the lead technical and financial members;
 - (viii) The lead Manager, as the case may be, shall be required to meet the criteria specified;
 - (ix) The Members of the Consortium shall enter into a Memorandum of Understanding (MoU)/ Joint Bidding Agreement for the purpose of making the bid as per Appendix-9;
 - (x) The MoU shall, inter alia:
 - Expressly convey the intent to form a joint venture company, with their respective shareholding commitment(s) in accordance with the prescribed clauses set forth in this Bid document, which would be entered into through the License Agreement and subsequently carry out all the responsibilities as a Licensee in accordance with the terms of the License Agreement ;
 - a) Clearly outline the roles and responsibilities of each member at every stage; Commit the minimum equity stake as required under the clause; and
 - b) Include a statement to the effect that all the members of the Consortium

shall be liable jointly and severally for the execution of the transaction processes in accordance with the terms of the License Agreement.

A copy of the MoU should also be submitted alongwith the Bid.

The MoU entered into amongst the members of the Consortium should be specific to the tender and should also contain the above requirements, failing which the Bid shall be considered non-responsive.

Any entity which has been barred by ITDC PAHCL or any of the other entity of Government of India from participating in the transaction processes and the bar subsists as on the Bid Due Date, would not be eligible to submit the Bid, either individually or as a member of a Consortium.

Change in Consortium composition : Any change in the composition of a Consortium will not be permitted during any stage of the contract.

Annexure -IV

LICENSE FOR 40 COTTAGES

ON REVENUE SHARING BASIS

IN HOTEL PONDICHERRY ASHOK

ON “BUILD AND OPERATE BASIS”

DRAFT LICENSE AGREEMENT

June 2016

HOTEL PONDICHERRY ASHOK
A unit of: PONDICHERRY ASHOK HOTEL CORPORATION LIMITED
KALAPET, ECR ROAD
PONDICHERRY - 605014

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DRAFT LICENSE AGREEMENT

This, Agreement hereinafter referred to as “Licence Agreement” is entered into on this the day of, 20__ between

1. Hotel Pondicherry Ashok or The Ashok Beach Resort, a Unit of Pondicherry Ashok Hotel Corporation Limited as its now known as under and having its principal / Corporate office at Chinna Kalapet , ECR Road, Pondicherry 605014 acting through the Managing Director(hereinafter referred to as the “Licensor”, or the “Authority”, as the case may be which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part,

AND

2. _____, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [●] }1 acting through _____ who is duly authorized to sign and execute this license deed copy of the resolution in this regard is enclosed (hereinafter referred to as the “ Licensee”, or the “Successful Bidder”, or the “Tenderer” as the case may be which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of the Other Part.

RECITALS

Whereas

- A. Licensor is developing a Project of 40 Cottages also Known as “ Project” on a total area of approximately 3(Three) acres at Hotel Pondicherry Ashok, Chinna Kalapet , ECR Road, Pondicherry 605014. The land will be given on “as is where is” basis. The total land available for the said Project is spread over approximately 3(Three) acres. (more fully described in detail in the site plan attached as Schedule A, hereinafter referred to as “the Project Site”).
- B. Licensor has decided to develop the Project as a concept destination by engaging a Licensee on Build and Operate basis.

- C. In furtherance of its objectives, Licensor invited competent and reputed organisations with minimum individual/consortium net worth of Rs. 1 (One)crores (“Minimum Net Worth”) by means of a Tender (Tender Ref: _____ dated _____, 2014 to Build and Operate 40 (forty) numbers of Cottages at the Project site on a License basis for a initial period of 5 (Five) extendable by another 3(three) years (hereinafter referred to as “the Project”).
- D. In response to the tender , several proposals including that of the Successful Bidder were received. After evaluation of the proposals that were received, the Licensor accepted the proposal submitted by the Successful Bidder and having found that the same is meeting the parameters prescribed in the Tender document, issued its acceptance by means of a Letter of Intent (“LoI”) bearing No. _____ dated _____. The LoI has been acknowledged by the Successful Bidder by its letter no. _____ dated_____.
- E. The Licensee has requested the Authority to accept it as the entity which shall undertake and fulfill and perform the obligations and exercise the rights under the LOI, including the obligation to enter into this License Agreement. The Article of Association of the Licensee shall reflect the terms and conditions of the License Agreement.
- F. Licensee has paid the Security Deposit of INR 5.00 Lakhs (Rupees Five Lakhs only) by way of a demand draft / irrevocable Bank Guarantee from [name of Bank] dated ___ in favour of Hotel Pondicherry Ashok valid for 63 months within the 15(Fifteen) days period of the date of the LoI. In case the Bank Guarantee for 5 years cannot be produced Demand Draft of Rs Five Lakhs in favour of Hotel Pondicherry Ashok may be submitted within the 15(Fifteen) days period of the date of the LoI which would be retained as Interest free Security Deposit.
- G. The Project is to be developed based on a revenue sharing model. The financial bid submitted by the Licensee is revenue sharing at the rate of ___% of Gross Revenue per month. (hereinafter referred to as the “License Fee”) .
- H. Licensee agrees to implement the said Project on its own and agrees to act as the Licensee for the purposes of this Agreement. However, Licensee may implement and execute the said Project through a Special Purpose Company incorporated in India under the Companies Act, 1956 (hereinafter referred to as the “SPV”) and necessary documents and

agreements including a shareholders agreement that may be entered into between the Licensee and such SPV, as may be necessary shall be submitted by the Licensee to the Licensor.

- I. It is deemed necessary and expedient to enter into this License Agreement to record the terms of the said Agreement between the Parties.

- J. The following documents shall form part of this Agreement:
 1. Tender Document (Ref No . HPA/TENDER/COTTAGES/16-17 dated 14.01.2017) alongwith terms and conditions issued by the Authority.
 2. The Letter of Intent in favour of Licensee.
 3. License Agreement comprising of Articles I to 24.
 4. Schedules of License Agreement comprising of Schedule A to D.
 5. Bid clarifications/corrigendum"s/addendums issued by the Licensor

All of the forgoing documents, together with this License Agreement are referred to herein as the Contract documents.

ARTICLE I DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

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

“Accounting Year” means the financial year commencing from 1st day of April of any calendar year and ending on 31st day of March of the next calendar year.

“Additional CP Period” shall have the meaning ascribed to it in clause 5.7 of this Agreement.

“Affected Party” shall have the meaning ascribed to it in clause 16.1 of this Agreement.

“Agreement” means this Agreement, its Recitals, schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

“Agreement Date” shall mean the date of this Agreement.

“Applicable Laws” means all laws, promulgated or brought into force and effect by GoP/GoI or the Authority including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court/judicial or quasi judicial authorities, as may be applicable to this License Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this License Agreement.

“Applicable Permits” means all licenses, clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, construction, operation and maintenance of the Project during the subsistence of this Agreement.

“Appointed Date” shall mean the date on which the Conditions Precedent are met by the Parties in accordance with Article 5 and shall have the meaning ascribed thereto in Clause 5.8. 5 **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof as in force from time to time.

“Associate” or “Affiliate” means in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party. As used in this definition, the expression **“control”** means with respect to a person which is a corporation, the ownership, directly or indirectly, of minimum 51% of the voting shares of such person and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

“Award” shall have the meaning ascribed to it in clause 22.3.1 of this Agreement.

“Bank” means any scheduled bank incorporated in India.

“Bid” means the documents in their entirety comprised in the Tender document submitted by the Licensee in response to the tender notice _____ dated _____ in accordance with the provisions thereof.

“COD” means the commercial operations date after the Construction Period alongwith the Cure Period and the date on which the guest are allowed to stay in the Project (Cottage/s) located at the Project Site and would mean the 181st day (for twenty Cottages) and 365th Day (twenty Cottages) after effective Date excluding Cure Period, if any. The License if as applicable would be from the 181st and 365th day.

“Change in Ownership” Shall have the same meaning as ascribed to it in clause 8.1.2(xviii) of this Agreement.

“Concept Plan” means the design, financing, procurement, installation, commissioning operations and management of the project facilities and the works of design, procurement and construction necessary to complete the required infrastructure / System for the safe and reliable commercial operation of the Project as described in Schedule B including

- (i) Proposed area development including sub-components.
- (ii) Implementation methodology and phasing/time schedule.
- (iii) Proposed investments in basic infrastructure and sub-components
- (iv) Marketing and O&M strategy.
- (v) Details of the 60% of the total investment proposed to be made.

“Concession Period” means the period beginning from the Effective Date and ending on the Termination Date or the Expiry whichever is earlier.

“Conditions Precedent” shall have the meaning as ascribed to it in Article 5.

“Construction Period” or “Project Implementation Period” means the period of 365 days, beginning from Effective Date i.e., the date of letter of offer or issue of the order by the Authority and ending on the COD.

“Contract Documents” shall have the meaning ascribed to it in Recital J.

“Corrupt Practice” shall have the meaning as ascribed to it in clause 8.3.4 of this Agreement.

“Cure Period” means the period specified in this License Agreement for curing any breach or default of any provision of this License Agreement by the Party responsible for such breach or default and upon failing of which the Agreement may be terminated by the other Party. Cure Period shall:

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice.
- (b) Continue for a maximum period of 6 months.
- (c) Not relieve any Party from liability to pay Damages or compensation under the provisions of the License Agreement;

“Dispute” shall have the meaning set forth in clause 22.1(a) of this Agreement.

“Dispute Resolution Procedure” means the procedure for Dispute resolution set forth in Article 22.

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

“Effective Date” means the date of offer of possession by the Licensor of the parcel of the project site admeasuring 3 acres for the Project in accordance with clause 5.3 of this Agreement.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project(Cottage/s) , including users of Hotel /Authority thereof, or which poses an immediate threat of material damage to any of the Project Assets/ Assets or persons or guests of the Licensor/Authority.

“Encumbrances” means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any

designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project.

“Expiry” means expiry of the Concession Period by efflux of time at the end of 10 years or 15 years (in case of extension) or termination of contract whichever is earlier from the date of this Agreement after which the Project Site along with complete structures will revert back to the Authority. It is expressly agreed between the parties that the Licensee reserves no right of first refusal after the Expiry of Concession period.

“Expiry Date” means the date on which Expiry occurs.

“Fixed assets” shall mean a long-term, tangible asset held for business use and not expected to be converted to, such as Cottages, equipment, real estate, and furniture, land, buildings, machinery, vehicles, leasehold improvements, and other such items which are not consumed or sold during the normal course of a business but used to carry on its operations and need not necessarily mean 'immovable;' any asset expected to last, or be in use for, more than one year may be a Fixed Asset.

“Fare Revenue” shall have the meaning ascribed thereto in Article 6 of this Agreement

“Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence specified in Article 16.

“Gol” means the Government of India.

“GoP” means the Government of Puducherry.

“Government Agency” means Gol, GoP, the Authority or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Gol, GoP or the Authority having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Agreement.

“Government Order” mean the order issued by the GoP or any department under GoP, the Authority or Gol or any Department under Gol.

“Government Representative” means such person or persons as may be authorized in writing by any Government agency to act on its behalf under this License Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this License Agreement

“Gross Revenues” shall mean all revenues and receipts of every kind (from both cash and credit transactions) derived from operating the Project in during the Concession Period from the use of Project Facilities & other Project Assets in the Site including but not limited to the following:

- a) income from users of the Project or its assets including entertainment centres, if any.
- b) charges and license payments,;
- c) Sale of goods / merchandise/ and allied services related to operations,
- d) income from guest rooms, telephone, telefax, and telex charges,
- e) income from stores, exhibit or sales space of every kind;
- f) income from vending machines;
- g) income from parking, use and other fees;
- h) wholesale and retail sales of merchandise;
- i) income from management and operating fees;
- j) Maintenance charges, service charges, utility charges;

k) Advertising revenues, franchise revenues;

“Indemnified Party” and “Indemnifying Party” mean the Party entitled to be indemnified by the other Party (or Indemnifying other Party) pursuant to Article 20 of this Agreement.

“Insurance Cover” shall have the meaning ascribed to it in clause 15.1.

“Intellectual Property” means all intellectual property or other propriety rights of every kind, including without limitation all patents, registered design rights, works subject to the laws of copyright, trade secrets, processes, trademarks and service marks whether registered or not, goodwill and know how and any associated or similar rights (including in all cases applications and right to apply therefore and documentation thereof);

“Licensor” or “Authority” shall mean the Pondicherry Ashok Hotel Corporation Limited or Hotel Pondicherry Ashok which is joint venture undertaking of India Tourism Development Corporation Limited (ITDC) and Pondicherry Industrial Promotion Development Investment Corporation Limited which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns .

“License Agreement” means this Agreement.

“License Fee” shall mean the fee amount equivalent to __% of the gross revenues quoted by Licensee vide _____ dated _____ in response to tender (ref _____ dated _____) payable by the Licensee to the Authority. The percentage of ___ would be applied on the Published Tariff or the Discounted Rate or Negotiated Rate (as the case may be) charged to the guest at the time of registration, after deduction of charges for any service provided by the Licensor including Breakfast, any other Food and beverage Charges and other service availed by the guest from the Licensor and after deduction of all Taxes and other charges.

“Licensee” means the company/consortium/JV, identified as such in the Preamble/ tender and its successors and permitted assigns expressly approved in writing by the Licensor.

“Licensee Event of Default” shall have the meaning ascribed to it in clause 18.1 of this Agreement.

“Licensor Event of Default” shall have the meaning ascribed to it in clause 18.4.1 of this Agreement.

“Movable Assets” shall mean and include all such machines, equipments and furniture/s of Project Facilities, which are tangible in nature and that is movable (and not immovable like the civil structure etc.) and which was owned by the Licensee and used as part of the overall development, operation and maintenance of Project Facilities.

“Operations Period” means the period commencing from COD and ending on the Termination Date or Expiry Date, whichever is earlier.

“Party” or “Parties” means the parties to this License Agreement, i.e. Authority and the Licensee and **“Party”** shall mean any of the parties to this License Agreement individually

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

“Preliminary Notice” shall have the meaning ascribed to it in clause 18.1.2 of this Agreement.

“Project” means, subject to the provisions of the License Agreement and requirement of guest for a comfortable stay , the development, financing, designing, construction, operation (other than registration and collection of revenue), maintenance and management, at the Project Site, of a minimum of 40 (Forty) numbers of Cottages, swimming pool, HT Connection, STP Plant, approach Road and other requirements as required for residential

accommodation including furniture and fittings, soft furnishing, furnishing, graphics, pathways etc as befitting a three star category hotel as well as other requirements as may be intimated by the Authority from time to time depending on guest requirements at the project Site.

“Project Assets” means all physical and other assets relating to and forming part of the Project and Site including:

- (i) rights over the Site in the form of license, right of way, property development rights, or otherwise,
- (ii) financial assets, including receivable, security deposits, security etc.
- (iii) insurance proceeds, and
- (iv) applicable Permits and authorizations relating to or in respect to Project,
- (v) Intellectual Property rights

“Project Facilities” shall mean all facilities which may be financed, designed, constructed, built, installed, and transferred erected or provided by the Licensee from time to time at the project site, and may include the following:

- (i) 40 Cottages
- (ii) Swimming Pool
- (iii) HT Connection
- (iv) STP Plant
- (v) Approach Road
- (vi) Green spaces, Pathways and Roads and sport activities;
- (vii) Structures providing accommodation and resort facilities to visitors, and
- (viii) Family entertainment centre/ facilities.
- (ix) Transportation including Golf Carts, Buggies used conveying guest and material at the Project Site
- (x) Any other guest Facility developed with the written permission of the Licensor/ Authority

The term Project Facilities used in this Agreement shall be interpreted either to include the above mentioned facilities or such other optional project facilities that the Licensee may undertake in future with prior permission of the Licensor which may be necessary in the larger interest of the Project and for the benefit of visitors and any other immovable/ movable assets which form part of the operation at the Project site and has to be handed over to the Licensor at the termination of this agreement either through efflux of time or due to Licensee Breach of Agreement.

“Project Site” shall mean the land measuring approximately 3 acres located in Hotel Pondicherry Ashok as per Site Plan, to be developed for 40 Cottages on a Design, Build, Finance, Operate and Transfer Basis annexed here at Schedule A.

“Tender” or “Bid” means the Tender (tender ref _____ dated {●}) issued by the Authority and comprising of the technical Bid, Financial Bid, Draft License mAgreement with all its Schedules and the response to the Bid questionnaire

“Reserve Price” shall have the meaning as ascribed to it in clause 5.5(i)

“Rs.” Or “Rupees” means the lawful currency of the Republic of India.

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way upto the Project site, howsoever described, necessary for construction, operation and maintenance of the Project in

accordance with this License Agreement. The road, approach ways, pathways, easements within the Project Site to each and all the Cottages and other facilities as constructed within the Project would be the responsibility of the Licensee and would not be considered as Right of Way to be provided by the Licensor as part of Condition Precedent of the Licensor.

“Sub Lease” shall mean the transfer by the Licensee of the whole interest or any part thereof, in the Project Site to any other person, in consideration of the price paid or promised or of money, service or any other thing of value, to be rendered periodically or in specified occasions to the Licensee by such other person.

“Tariff” and “Negotiated Tariff” or “Discounted tariff” would mean the published tariff in Rupees or Rupee equivalent for any foreign Currency of each unit of Accommodation i.e. Tariff as published on website or any other rate card, brochure or publicity material available to the public. **“Negotiated Tariff” and “Discounted tariff”** would, in the context of this License Agreement, mean the tariff / rate arrived at between the guest or the Licensee or Licensor after negotiation or after offering discount as the case may be. In case the **“Negotiated Tariff” and “Discounted tariff”** include the cost of breakfast or charges for any other services, Licensor would deduct the cost of such charges first and then charge percentage as quoted by the Licensor, as per the Financial Bid, on the Balance amount.

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project, or on the construction, operation and maintenance thereof or on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever by the Government from time to time.

“Termination” means the expiry with normal efflux of time or termination of this License Agreement and the rights hereunder due to Licensee Event of Default and/ or Licensor Event of Default.

“Termination Date” means the date on which this License Agreement and the rights hereunder expires pursuant to the provisions of this License Agreement or is terminated by a Termination Notice.

“Termination Notice” means the communication issued in accordance with this License Agreement by any one Party to the other Party terminating this License Agreement.

“Termination Payment” means the amounts payable by Licensor to the Licensee under this License Agreement upon the Termination of this License Agreement. For the avoidance of doubt it is expressly agreed that the amount payable shall be subject to the limitations specified in this License Agreement

“Transfer Assets” shall mean both the Fixed Assets and immovable assets, fully operational and functional, of the Project which are necessary or required for the performance of services and such other assets as Licensee procures in accordance with the provisions of the Agreement and shall specifically include all land, property and structures thereupon acquired during the term, all immovable equipment etc. and exclude Movable Assets in relation to the operation of the Project, as existing on the date of Termination.

“User” means a person who uses the Project or any part of the Project on payment of the Fare **“Vesting Certificate”** shall have the meaning attributed to it in Sub-Article 17.5.

- 1.2 INTERPRETATION: In this License Agreement, unless the context otherwise requires,
- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enactment or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
 - b. references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted
 - c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firma, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity) and shall include successors and assigns;
 - d. the table of contents, headings and subheadings in this License Agreement are for convenience of reference only and shall not be used in and shall not affect the, construction or interpretation of this License Agreement;
 - e. Contract” means this License Agreement together with all schedules, attachments, appendices, corrigendum”s, addendums and exhibits thereto and as may be amended from time to time.
 - f. the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
 - g. The words “Clause” or sub-Clause” means a clause or sub-clause of this Agreement or the corresponding Schedule, unless otherwise specified.
 - h. references to “construction” includes, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction,
 - i. any reference to time shall mean a reference to Indian Standard Time;
 - j. any reference to day shall mean a reference to a calendar day;
 - k. any reference to month shall mean a reference to a calendar month
 - l. Any reference to Lakhs means hundred thousand (100,000) and crore means ten million (10,000,000);
 - m. the Schedules to this License Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - n. any reference at any time to any License Agreement, deed, instrument, license or document of any description shall be construed as reference to this Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of. Such reference provided that this Article shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - o. references to Recitals, Articles, , Sub-Articles, Paragraphs, or Schedules in this License Agreement shall, except where the context otherwise requires, be deemed to be

references to Recitals, Articles, Articles, Sub-Articles, paragraphs, and Schedules of or to this License Agreement:

- p. any License Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this License Agreement from or by any Party shall be valid and effectual Only if it is in writing under the hands of duly authorized representative of such Party, as the case may be, in this behalf and not otherwise
- q. the damages payable by either Party to the other of them as set forth in this License Agreement , whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages
- r. unless otherwise expressly provided in this License Agreement any Documentation required to be provided or furnished by the Licensee to the Authority shall be provided free of cost and in three copies and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- s. any word or expression used in this License Agreement shall unless otherwise defined or construed in this License Agreement shall be construed as per the General Clauses Act, 1897.

1.3 MEASUREMENTS AND ARITHMETIC CONVENTIONS All measurements and calculations shall be in metric system and calculations done for 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.4 PRIORITY OF CONTRACT DOCUMENTS AND ERRORS/DISCREPANCIES

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

- (i) This License Agreement;
- (ii) TheTender issued by the Authority, and
- (iii) All other Contract Documents.

1.4.1 Subject to 1.4 above in case of ambiguities or discrepancies within this License Agreement, the following shall apply:

- i) between two or more Articles of this License Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail;
- ii) between the articles of this License Agreement and the Schedules, the Articles shall prevail;
- iii) between Schedules and Annexure, the Schedules shall prevail;
- iv) between the written description on the Drawings and Specifications/Standards, the latter shall prevail;
- v) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- vi) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE -2

SCOPE OF PROJECT

- 2.1 The Project shall be executed on the Project Site as given per Schedule A
- 2.2 The “Scope of the Project “ shall mean and include, during the Concession Period the Licensee
- a) subject to Applicable Laws shall design, build, engineer, finance, construct, operate and maintain the Project Facilities as defined and as per the Minimum Development Obligation at Schedule B (40 (Forty
 - b) Cottages and Swimming Pool etc) including the common infrastructure facilities and any other guest facility subject to approval of the Authority in writing on the Project Site in accordance with the Concept Plan and in conformity with the Applicable Laws
 - c) shall undertake Operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement other than registration of guests, check out of guest and collection of revenue; and
 - d) shall perform and fulfill all other obligations of the Licensee in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the\ performance of any or all of the obligations of the Licensee under this Agreement.
- 2.3 Negative List
1. The Scope of the project does not include provision for any Food and Beverage Outlet including Halls, Banquet Hall, Convention Hall being opened and would be the exclusive right of the Licensor unless such permission is accorded by the Licensor in writing. In case the Licensee opens such food and beverage outlet the same would be considered a breach of contract and the License would stand terminated and the Security deposit along with all Project Facilities at the Project Site / performance guarantee would stand forfeited without any compensation whatsoever from the Licensor.
 2. It is agreed that the Licensee will not permit the use of the Licensed Space, in any form or on subletting to any individual / party/ organization/ company. The Licensee alone and no other party or person will be permitted to carry on business in the said Licensed space nor will the benefits under the License or any of them be assigned, transferred, shared or otherwise parted with, in whole or part by the licensee. Any such act by the Licensee shall be considered violation of License Deed and the Licensor shall have the right to terminate the License. In such circumstances, the Licensee will have to settle all the outstanding dues and hand over vacant possession of the Licensed Space within 15 days on receipt of such communication from the Licensor.

3. The Licensee shall not stock, display, exhibit any books, magazines, newspapers or periodicals, statues, idols or other articles which are repugnant to moral or indecent and immoral, improper or otherwise objectionable in character.
4. The licensing space shall be used only for operating 40 Cottages and Swimming Pool and other guest Facilities and not for Godown or any other purpose.
5. Staff Accommodation
6. Any other activity which does not have the written approval of the Licensor.

ARTICLE - 3 GRANT AND ACCEPTANCE OF RIGHTS

3.1 Grant of Rights

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Licensor hereby grants and authorises the Licensee to undertake and execute the Project in accordance with Article 2, perform its obligations and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement.

3.2 Concession Period

1. This License is granted for a **initial** period of 10 (Ten Years) commencing from____ and shall expire on _____subject to the provisions for earlier termination hereinafter contained, for operating 40 Cottages at the Project site of approximately 3 (Three) acres which would be handed over to the Licensee on '**as is where is**' basis.
2. The Licensee shall be entitled to a one time renewal **of 5(Five) years** after the expiry of the period stipulated under Clause 1, unless he has committed a breach of the terms and conditions of the agreement or has been a defaulter in the payment of license fee and/or other dues, or guilty of proved misconduct which has adversely affected the image and reputation of the Licensor. The extended period shall be as per the prevailing Licensing Procedure.
3. The Licensee will apply for the renewal of his license six (6) calendar months before the expiry of the license and on failure to do so, the Licensor will be free to negotiate with and to allot the licensed Space to any other party.
4. At the time of such one time renewal, the Licensee shall execute a fresh License Deed. In case the Licensee fails to get the license renewed for the period coming into effect from the expiry of this License Deed, the Licensee shall be considered to be in unauthorized occupation of the Licensed Space and the Licensor shall be within its right to initiate proceedings under the due process of law.
5. If a fresh license agreement/deed is not executed for any reason, whatsoever, thirty (30) days prior to the expiry of the initial period granted hereunder, it will be presumed that the License has not been renewed and the use of the premise by the Licensee, after such date shall be considered as unauthorized. The Licensor shall be at liberty to enter into such arrangements as it may deem fit, with any other party permitting the use of the premises by such other party after the expiry of the initial period of license with the Licensee and the Licensee shall not interfere with the same directly or indirectly nor shall cause any

damage, loss or expenses to the Company in this regard.

6. No second renewal will be permitted, after the expiry of the first renewal period. Open tenders will be invited in which the existing licensee will be at liberty to participate and have the privilege of the right of first refusal unless otherwise debarred.
 7. If the party continues to occupy the premises, even after the expiry of the initial period of license or if renewed, after the period of renewal expires, besides being declared an unauthorized occupant and for any other action that the licensor in his discretion can enforce, the licensee shall be liable to pay 'damages' for unauthorized occupation at the following rates :-
 - a) 50 % of the monthly license fee (applicable at the time) for each day of the first week of unauthorized occupation.
 - b) 75 % of the monthly license fee (applicable at the time) for each day of the second week of unauthorized occupation.
 - c) 100 % of the monthly license fee for each day of the third week of unauthorized occupation.
 - d) For each day of unauthorized occupation thereafter, 100 % of the monthly license fee shall continue to be charged till the party vacates the premises on his own volition or due to any act of the licensor.
- 3.3 In the event of early Termination, Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination Date.
- 3.4 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Rights hereby granted shall entitle the Licensee to enjoy, and obligate the Licensee to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
- a. to perform and execute the Project in accordance with Article 2 of this Agreement during the Concession Period;
 - b. perform and fulfill all of the Licensee's obligations under this Agreement;
 - c. bear and pay all expenses, costs and charges incurred in the fulfillment of all the Licensee obligations under this Agreement; and
 - d. neither assign, transfer or sublet or create any lien or Encumbrance on the whole or any part of the Project Site nor transfer, Concession or part possession therewith save and except as expressly permitted by this Agreement.

ARTICLE 4 REVENUE SHARE

4.1 REVENUE SHARE

a) COTTAGES :

- i The Licensee would be fixing the Room Tariff for the Cottages so designed and constructed by him which would be published on websites, brochures and other publicity material.
- ii The Minimum percentage that the authority expects would be 20% of the Room revenue and a Minimum of 10% of the revenue collected from all other sources.
- iii The Licensee will pay a minimum guaranteed amount of Rs 1.5 Lakhs (Rupees One Lakh Fifty Thousand Only) per Month in case the project is not completed as per the schedule.
- iv The Licensee shall pay a minimum guaranteed amount of Rs 1.5 Lakhs (Rupees One Lakh Fifty Thousand Only) or The Licensee shall pay a __ percentage, as quoted in the Financial Bid submitted by the Licensor as part of the Tender, whichever is higher, on all such room revenue charged to the guest excluding taxes and other charges for services or provided by the Licensor.
- v **The Licensor shall be doing the process of check – in and check out of all the guests of the Licensee. The Licensor shall also be issuing the Key / Key Cards and Preparing the Bills of the Guest of the Licensee for which the Licensor would be charging Rs 25000 per month additionally over and above the other charges and the percentage of Revenue.**
- vi The Licensee shall pay __ percentage of the Tariff/ Negotiated tariff/ discounted tariff (as the case may be) whichever is higher whenever the tent is occupied except when prior approval of the Authority has been taken for
 1. hosting a FAM tour of Travel agents/ Business providers.
 2. Travel Writers and journalists.

b) Food and Beverage :

- i. The Licensor would be operating / offering all the Food and Beverage Services to residents of the Cottages. The Licensee shall not procure /serve food and or beverages to the occupants from other source other than the Hotel.
- ii. The Rate for the Buffet breakfast is currently Rs 200 (Rs Two Hundred) plus taxes per person and subject to revision from time to time. The Licensor, may revise the rate from time to time giving the Licensee a minimum of 15 days notice in case of any change. This amount would be deducted from the revenue due to the Licensee in each case. In case there is a special case where breakfast is not availed by the guest, it should be informed to the Licensor prior to check in of the guest.
- iii. The licensor would collect all the revenue generated from the resident /s of the Cottages towards Charges for Food and Beverage and other services that would be provided to the guest who stay in the Cottages, in accordance with the provisions of this Agreement.

- iv. An amount equal to 5% of the Food and Beverage less taxes and other charges, charged to the Tent excluding the cost of Breakfast, if any, and would transferred to the account of the Licensee.

4.2 Credit Bills

1. In the normal course of business the Licensee would be extending credit to guest / resident of the Cottages. The entire responsibility for collection of credit bill for the 40 Cottages would lie with the Licensee.
2. The Licensor would treat all such credit bills as if they have been collected and would deduct its license fee at ___ percentage in accordance with the provisions of this agreement at the end of each month.
3. In case payment is received by Credit Card then the Deduction made by the Bank/ Service Provider. Similarly any commission payable to Travel agents and OTP would be deducted on prorata basis.

4.3 Discounted Bills

1. In case the resident guest ask for a discount on bills, over and above the negotiated rate at which the guest were checked in, due to deficiency of service in the Cottages, the Licensor would charge the license fee at contracted percentage as per provision of this agreement on the negotiated rate.
2. In case the resident guest ask for a discount on bills, over and above the negotiated rate at which the guest were checked in, due to deficiency of service on the part of the Licensor, the Licensor would charge the license fee at contracted percentage as per provision of this agreement on the discounted rate .

ARTICLE 5 CONDITIONS PRECEDENT

5.1 The rights and obligations of the Authority and the Licensee under this Agreement are subject to the satisfaction in full of the conditions specified in Article 5 (“**Conditions Precedent**”).

5.2 The conditions precedent required to be satisfied by the Licensor shall be deemed to have been fulfilled when the Authority shall have provided access and Right of Way to Project Site of approximately 3(three) acres as per site plan at Schedule --I in accordance with the provisions of this License Agreement for the purposes of the Project and clause 5.3 and allowed erection and operation of Cottages in Hotel Pondicherry Ashok.

5.3 **Access to Project Site**

Within 15 days from the Agreement Date, Authority shall provide to the Licensee the Right of Way to the Project Site admeasuring approximately 3.00 acres and shall issue an Offer of Possession to the Licensee for such Site in accordance with this Agreement (“**Effective Date**”).

5.4 The Licensor hereby warrants that as on the Effective Date the Project Site together with the Right of Way.

- a. has been acquired through the due process of law; and
- b. belongs to and is vested in the Authority and that it has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of the Agreement and that the Licensee shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation / resettlement or land acquisition of any Persons affected thereby.

5.5 **Conditions Precedent of the Licensee**

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

- i. Deposited with the Licensor Security Deposit of Rs 5 .00 Lakh (Rupees Five Lakhs only) by way of cash or Bank guarantee for 63 months from a nationalized bank in Pondicherry in favour of Hotel Pondicherry Ashok. Upon failure of the Licensee to pay the said Security Bid within the Appointed Date, the Licensor shall be entitled to forfeit the earnest money deposit of Rupee Two Lakh paid by the Licensee to the Authority.
- ii. Prepared a Concept Plan earmarking the location of 40 cottages in accordance with this Agreement for the Project and preliminary project cost estimates, including the area statement, block drawings, interior designs and external approach road with greenery and vegetation to be so provided and as incorporated in the concept plan as per the applicable Local Byelaws, Norms, etc and submit to the Authority for its approval, whereby meeting all the requirements mentioned herein, apart from all other requirements of this the License Agreement in the concept plan within a period of 20 days from the Effective Date. The Licensee shall also be required to submit a copy of the documents and drawings to the Authority for its review.

- iii. Submit a Business Plan defining the category of Cottages and the Proposed Rate at which the Licensee would be offering the Rooms to its guest.
- iv. Incorporated the necessary suggestions / amendments proposed by the Licensor in its concept plan, within a period of 10 (ten) days from the date of receipt of such suggestions from the Authority and submit again for approval.
- v. Obtained Applicable Permits in respect of tented Accommodation.
- vi. Submit 4 attested copies of the Consortium Agreement⁶
- vii. Provided that upon request in writing by the Licensee, the Authority may, in its discretion, waive any of the conditions precedent set forth in this clause.

5.6 Obligation to Satisfy the Conditions Precedent.

Each Party shall make all reasonable endeavour to satisfy the Conditions Precedent within 30 (thirty) days of the Effective Date or as extended mutually thereafter, and shall provide the other Party with such reasonable assistance as may be required to assist that Party in satisfying the Conditions Precedent.

- 5.7 Upon fulfillment of the Conditions Precedent to the mutual satisfaction of the Parties, the Authority shall issue a letter to the Licensee declaring the date on which the Conditions Precedent is met. Such date shall be deemed to be the Appointed Date for the purposes of this Agreement.

ARTICLE 6 REVENUE

6.1 REVENUE

1. Tariff :

- a. During the Operation Period the Licensee will fix the Tariff for the Cottages which has to be notified to the Licensor at least 7 working Days in advance so that the same can be uploaded on the website of the Licensor.

2. Discounted Tariff :

- a. The Licensee can/ may extend discount to residents of the Cottages as part of business activity. The discount offered/ negotiated tariff may be intimated in writing / by mail to the designated officer of the Licensor at the time of reservation so that the rate can be applied when the guest checks in.
- b. In case no such rate is forwarded as per 6.1.2.a it would be assumed that the guest is a walk in and the Licensor can offer any room of the Hotel/ tent and would be free to negotiate the Tariff.
- c. The Minimum percentage that the authority expects would be 20% of the Room revenue and 10 % on all other guest services/ bills.
- d. As it is envisaged to market the Inventory of rooms of the Licensor and the Licensee together to tap specific MICE and conference segments the licensor and licensee may arrive at a mutually agreed Discounted Tariff for both Cottages and hotel rooms on case to case basis. The Licensor would charge the licensee the percentage of the room revenue as quoted by the Licensee through the Financial Bid (at ANNX –V) on the said discounted Tariff charged to the guest of the Cottages as per provision of this Agreement.
- e. The commission payable to Travel agents/Bank would be deducted on prorata basis as applicable.

3. F&B Revenue:

- a. Share of Food & Beverage:
Since all Food and Beverage services would be undertaken by the Licensor, 5% (Five)Percentage of such F&B sales charged / entered in the guest folio of residents of Cottages would transferred to the account of the Licensee .
- b. In case there are specific discount / discount rate / special rate offered on Food and Beverage by the Licensor for the residents of the Cottages and the Hotel as promotion scheme, Happy Hours ,Food festivals, Conferences etc ,then the above 5 (Five) percentage Revenue Share on Food and beverage Sale would not be due to the Licensee from the Licensor.

6.2 Revenue Collection :

- a. The Licensor i.e Hotel Pondicherry Ashok shall have the sole and exclusive right to levy, and appropriate revenues from users of the Cottages at tariff/ discounted tariff/Negotiated Tariff, as the case may be, on behalf of the Licensee at the project site. The rate to be charged to the guest has to be intimated to the Licensor failing which it

would be assumed that the guest is a walk in and the representatives of the licensor would be free to apply any tariff as arrived at between both the parties.

- b. The Licensee would be responsible for collection of Credit extended by him/ Licensor for residents of the Cottages. For all purposes, the Licensor would on preparation of bill, consider the same as revenue and ___ percentage would be deducted as License Fees, even though collection has not been made.
- c. In the event that any person uses the facilities in Project without payment of fare due or uses the Project site, Project Asset in contravention of rules and regulations, the Licensee shall, subject to applicable law and applicable permits, be entitled to determine and collect from such person/the Licensee, the amount due and a penal sum. Such penal sum/ interest would not be considered as part of revenue and Licensor would not be entitled for any part of the same. The cost for recovering such revenue, including legal and court fees if any, would be borne by the Licensee and the Licensee would indemnify the Licensor against any such cases / incidents.

ARTICLE 7 OBLIGATIONS OF LICENSOR

7.1 Obligations of the Licensor:

The Licensor agrees to provide support to the Licensee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this License Agreement and the Applicable laws, the following:

- a. handover to the Licensee on as-is-where-is basis peaceful physical possession of the Project Site free from Encumbrance and encroachment for the purpose of implementing the Project within 15 days from the Agreement Date.
- b. upon written request from the Licensee, facilitate it in obtaining necessary access .
- c. enable easy access to the Site, free from Encumbrances, in accordance with this License Agreement;
- d. provide the Site as per Schedule A (annexed herewith) and in accordance with the provisions of this License Agreement thereafter permit peaceful use thereof by the Licensee as licensee under and in accordance with the provisions of this License Agreement without any let or hindrance from the Authority.
- e. support, cooperate with and facilitate the Licensee in the implementation and operation of the Project in accordance with the provisions of this License Agreement
- f. Allow construction on the Project Site including approach road, as per the provisions of this License Agreement. The title of such Project Site shall remain vested in the Authority all the time.
- g. approve with or without modifications the Concept Plan in a timely manner, in any case not later than 60 days from the date of its submission by the Licensee;
- h. procure that no barriers are erected or placed by any Governmental Agency on the Project Site except on account of any law and order situation or upon national security considerations;
- i. The Authority will facilitate and help the Licensee in carrying out shifting of utilities/common infrastructure facilities (if any) such as water, electricity, telephone lines, drainage lines and roads outside the Project Site required for the smooth functioning of the Project.

7.2 The Authority/ Licensor will not:

- a. Provide any financial support in the form of equity or grant during construction of the Project or any subsidy during operation and maintenance of the Project.
- b. Stand guarantee for raising finance during construction and operation.
- c. Provide exemption from payment of licence fees, taxes and duties and other statutory obligations.
- d. Provide any rebate on whatsoever under this Agreement.

7.3 Enabling Act

The Concession will be governed by the provisions of Pondicherry Town and Country Planning Act, and/or other acts as applicable and rules made therein and/or regulations or guidelines issued by the government besides any other associated Acts/rules/Guidelines and as amended from time to time shall be applicable for the Project and the Licensee shall take all approvals from the Authority or any other governmental agency as per above Act. The purpose of allotment of the Project Site shall ordinarily remain unchanged for the entire duration of the Concession Period.

ARTICLE 8 OBLIGATIONS OF THE LICENSEE

8.1 OBLIGATIONS OF THE LICENSEE

The Licensee shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

1. Obligations prior to commencement of construction
 - i) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Permits, and obtain such Applicable Permits in conformity with the Applicable Laws;
 - ii) within 15 days of the Effective Date, prepare and submit to the Authority detailed plan, based on which the Licensee shall develop the Project (“Concept Plan”). The Concept Plan shall set out in detail
 - a. Proposed area development including sub-components.
 - b. Implementation methodology and phasing/time schedule.
 - c. Proposed investments in basic infrastructure and sub-components
 - d. Marketing and O&M strategy.
 - e. layout / concept plan for the Project Facilities proposed,
 - f. planning for carrying out the Project development activities, detailed design, construction methodology standards, schedules, quality assurance procedures, type, periodicity etc., and
 - g. construction milestones for the Project Facilities, and
 - h. details of the reports to be submitted and procedure for reviews.
 - i. Rate at which the cottages would be charged to the Guest.
 - iii) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - iv) obtain all Applicable Permits/clearances required for the Project under Applicable Laws;
 - v) finalize the design and detailed engineering drawings based on the Concept Plan;
 - vi) have requisite organization and designate and appoint a project manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the Licensing Authority Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement; and

vii) undertake, do and perform such acts, deeds and things as may be necessary or required for the Project under and in accordance with this Agreement.

2. Other Obligations of the Licensee

Licensee shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this License Agreement, the following:

- i) Shall complete the erection of a minimum 20 nos of cottages within 180 days and the balance Cottages within a period of 365 days of signing of this agreement.
- ii) Shall complete construction of the Swimming Pool, Changing Rooms, Filtration Plant within 180 days from the date of signing the agreement. In case the Swimming Pool is not Build and the Guest of the Licensor used the Pool of Hotel/ Authority will have full right to prevent guest of the rooms of the Licensee from using the Pool or charge Rs 300/- (Rs three Hundred per Room + Taxes either from the Guest or the Licensee) for each such unauthorized usage.
- iii) Shall keep deposited a security deposit / performance guarantee amount of Rs 5.00 Lakhs by way of Bank Guarantee for a period of 63 months in favour of Hotel Pondicherry Ashok in accordance with the terms of this Agreement. Notwithstanding the Security deposit of 5 Lakhs, all the Project Assets, both movable and immovable and Project Facilities constructed and developed by the Licensee during the License Period is also a part of the Security and the Licensor would have full lien without compensation over the Project assets and Project Facilities in case of any default on part of the Licensee.
- iv) Licensee shall undertake activities strictly in accordance with the Government Order or as per direction of the Licensor.
- v) The Licensee shall arrange for all basic infrastructure needs like power in Ht Connection if Required, road, sewage, waste disposal and water by himself. In case the Licensor does the same on behalf of the Licensee the cost for the said services would be reimbursed/ deposited in advance.
- vi) Operate and maintain the Project through trained operation and maintenance personnel and abide by all the statutory regulations in this regard.
- vii) Keep the residential Cottages and the surrounding of the area and the approaches pest free and clean neat and tidy at all times.
- viii) not enter into any project agreement or any agreement relating to the Project, the term of which extends beyond the Termination Date without the consent of the Authority.
- ix) remove promptly from the Site all surplus construction machinery and material, waste material (including, without limitation, hazardous material

- and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- x) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Licensee"s / Licensee obligations under this Agreement.
 - xi) comply with all Applicable Permits and Applicable Laws in the performance of the Licensee's obligations under this Agreement including those being performed by any of the Contractors.
 - xii) abide at all times by all existing labour law enactment and rules made there under, regulations, notifications and bye-laws of the State or Central government or local authority and other labour law (including rules), regulations, bye-laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central or the local authority.
 - xiii) develop, implement and administer a safety, health and environment program for the Project, the users thereof, and the Contractors personnel engaged in the provision of any services under any of the project agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to comply with applicable Laws.
 - xiv) take all reasonable precautions for the prevention of accidents on or about the Project and provide assistance and emergency medical aid to accident victims.
 - xv) not to place or create and nor permit any Contractor or other person claiming through or under the Licensee to create or place any Encumbrance or security interest over all or any part of Site or the project assets, or on any rights of the Licensee therein or under this License Agreement, save and except as expressly set forth in this Agreement;
 - xvi) be responsible for safety, soundness and durability of the Project including all structures forming part thereof.
 - xvii) The lead member of the consortium or JV at the time of the bidding shall continue to hold a minimum equity stake equal to 51% either by itself or through a SPV, till the expiry of the agreement. Non lead member of the consortium or the JV shall continue to hold a minimum equity stake of upto 11% of the aggregate shareholding of the Licensee in the Project till the expiry of the agreement.
 - xviii) The Licensee shall not permit the non lead members of the Successful Bidder to undertake any Change in Ownership of the Project till the Expiry of the agreement as mentioned in sub clause (xvi) to clause 8.1.2.
 - xix) Upon Termination or Expiry of this License Agreement, the Licensee shall deliver forthwith actual or constructive possession of the project free and

clear of all Encumbrances and execute such deeds, writings and documents as may be required by the Licensor effectively divesting the Licensee of all of the rights, title and interest in the project and conveying it free of any charge or cost to Authority/ Licensor.

- xx) The Licensee shall on Expiry or termination of the Concession Period, as the case may be allowed only to take away the Movable Assets but the Fixed Assets will remain in as and where condition in accordance with the terms of this Agreement. This will be decided mutually with the Licensor.

8.2 Reasonable assistance:

The Licensee shall, at all times, afford access to the Site to the authorized representatives of Licensor, Lenders, and to the persons duly authorized by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Licensee shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Site. It is expressly agreed between the Parties that Sub-Lease or sub-contracting of any portion of the land is strictly prohibited.

8.3 Change in Ownership Structure of the Licensee

- i. The Licensee shall not permit the lead member of the Successful Bidder to undertake any Change in Ownership of the Project till the Expiry of License Term Ten years from the Effective Date as mentioned in sub clause (xvi) to clause 8.1.2.
- ii. The Licensor reserves the right to accept any change in the status and constitution of the Licensee. It is agreed that the Licensee should apply in writing to the Licensor before effecting any change for its approval and the Licensor will have sole discretion to accept or reject such request. In case the request made by the Licensee is not approved by the Licensor, the Licensee shall not make any such changes, otherwise the License shall be treated as cancelled / revoked. The Licensee shall have no right to transact from the shop and will remove his goods within 30(thirty) days from the receipt of such communication after settling all outstanding dues.
- iii. It is agreed that the Licensee will not permit the use of the Licensed Space, in any form or on subletting to any individual / party/ organization/ company. The Licensee alone and no other party or person will be permitted to carry on business in the said Licensed space nor will the benefits under the License or

any of them be assigned, transferred, shared or otherwise parted with, in whole or part by the licensee. Any such act by the Licensee shall be considered violation of License Deed and the Licensor shall have the right to terminate the License. In such circumstances, the Licensee will have to settle all the outstanding dues and hand over vacant possession of the Licensed Space within 15 days on receipt of such communication from the Licensor.

8.4 Licensee undertakes not to indulge in the offering, giving, receiving or soliciting of anything or value to influence the actions of the Authority or any of the officials of the Authority or any other Government Agency for the purposes of contract execution or matters related therewith. (“Corrupt Practice”).

8.5 The licensee, in connection with carrying on his business in the licensed premises, will only appoint persons having good character, well-behaved, skill-full in the business after necessary character verification from local police authorities. The Licensee shall keep his employees well dressed or may order to wear uniform for easy identification and check.

8.6 The Licensee, the members of his staff or his representatives shall not do any act, which may be derogatory to or inconsistent with the hotel’s high standards and reputation as a modern luxury hotel or its business or cause nuisance to the management of the Hotel or its customers or visitors.

8.7 The employee of the Licensee shall not seek regularization in the services of the ITDC or the company at any point of time. The Licensor shall not in any way be liable for any claims arising out of the relationship of master and servant between the Licensee and his employees. If the Licensee employs or engages any person or persons, he/they shall be the servants of his Licensee, in all respects and all responsibilities under any Act or other laws and labour laws shall be of the Licensee alone and the Licensor shall not be liable for any claim on the Licensee on account of Workmen Compensation or otherwise.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Licensing Authority

Licensing Authority represents and warrants to the Licensor that:

- a) It has full power and authority to execute, deliver and perform its obligations under this License Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this License Agreement, exercise its rights and perform its obligations, under this Agreement.
- b) It has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this License Agreement.
- c) It has the financial standing and capacity to perform its obligations under the License Agreement
- d) This License Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- e) Licensing/ Licensor is subject to the laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.
- f) It has complied with Applicable Laws in all material respects.
- g) All information provided by it in the Tender Notice in connection with the Project is to the best of knowledge or belief, true and accurate in all material respects, however the correctness of the same is not warranted.
- h) Upon the Licensee paying the license Fee in accordance with the terms of this Agreement and performing the covenants herein, it shall not at any time during the term hereof, interfere with the peaceful exercise of the rights and discharge of the obligations by the Licensee, in accordance with this License Agreement.
- i) To the extent the Authority has knowledge, there are no facts or information related to the Project and Disclosed Data relating to that which it has intentionally not disclosed to the Licensee and which, if learned by the Licensee/ Licensee, might reasonably be expected to materially affect the Licensee evaluation of the risks the Licensor is assuming pursuant to this Agreement or might reasonably be expected to deter the Licensee from completing the transactions contemplated by this Agreement on the terms of this License Agreement.

9.2 Representations and Warranties of the Licensee

The Licensee represents and warrants to the Authority that:

- a. It is duly organized, validly existing and in good standing under the laws of India and has taken the full power and authority to execute and perform its obligations under this License Agreement and to carry out the transactions contemplated hereby.
- b. It has made a complete and careful examination of requirements, and other information set forth in this Tender document.
- c. It has received all such relevant information as it has requested from Authority.

- d. It has made a complete and careful examination of the various aspects of the Project including but not limited to:
- Project Site
 - Existing facilities and structures
 - The conditions of the access roads and utilities in the vicinity of the Project Site
 - Conditions affecting transportation, access, disposal, handling and storage of the materials
 - All other matters that might affect the Licensee's /Licensee's performance under the terms of this License Agreement.
- e. It has the financial standing and capacity to undertake the Project in accordance with the terms of this License Agreement
- f. This License Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms thereof.
- g. It is subject to laws of India with respect to this License Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this License Agreement on matters arising there under including any obligations, liability or responsibility hereunder.
- h. All the information furnished in the Bid is, and shall be, true and correct as on the date of this Agreement till Effective Date. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance under any of the terms of the Memorandum and Articles of Association of the Licensor or any Member of the Consortium or any Applicable Laws or any covenant, contract, License Agreement, arrangement, understanding, decree or order to which, it or any Consortium Member is a Party or by which it or any Consortium Members or any of its or their properties or assets is bound or affected.
- i. There are no actions, suits, proceedings, or investigations pending or, to the Licensee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of this License Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its or their obligations under this License Agreement.
- j. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any material adverse effect or impairment of the licensee's ability to perform its obligations and duties under this Agreement
- k. It has complied with all Applicable Laws in all material aspects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement.
- l. The Licensee /Licensee represents and warrants that the lead member as well as the non lead members at the time of the bidding will continue to hold equity ownership in

the manner and to the limit specified in sub clause (xvi) to clause 8.1.2 of this Agreement.

- m. All rights and interests of the Licensee in and to the Project shall pass to and vest in the Licensor on the Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Licensee or the Authority and that none of project assets including material, supplies or equipment forming part thereof shall be acquired by the Licensee subject to any License Agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this License Agreement.
- n. No representation or warranty by the Licensee contained herein or in any other document furnished by it to the Licensor/Licensor, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- o. The Licensee has the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement.
- p. The Licensee/ Licensee is duly recognized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Licensee pursuant to the Letter of intent, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement.
- q. No representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any other Government department in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or omit to state a material fact necessary to make such representation or warranty not misleading .
- r. No sums in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise or indulged in Corrupt Practice for securing the rights or entering into this License Agreement or for influencing or attempting to influence any officer or employee of the Licensor in connection therewith.

9.3 Disclosure

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

ARTICLE 10
GROSS REVENUE, ACCOUNTS AND AUDIT

10.1 ACCOUNTS AND AUDIT

All revenue from the Residents of the Project (Cottages) would be collected by the Licensor as and when they check out or at the time of check in.

The following indicative list of charges would be deducted from the revenue:

- a. License Fee at ____ percentage as per terms of the Financial Bid submitted by the Licensee as part of the tender and this agreement.
- b. 95 % of the charges of Food and beverage services extended by the Licensor unless there is any negotiated or discounted rate.
- c. Taxes as applicable.
- d. Service Charges, Commission to Agents and Banks on prorata Basis
- e. Electricity and Water Charges.
- f. 10 % of any Other charges generated from the Cottages but not rendered by the Licensor.
- g. Other statutory charges as applicable

The balance amount , after deducting the Charges indicated as per sub clause 10.1. and any other charges , would be paid to the Licensee by the 7th of the following month.

The designated officer of the Licensor would forward a statement of accounts to the Licensee along with the payment being remitted.

10.2 The Licensee may maintain full accounts of all Gross Revenues derived and on account of use of the Project Site/Project Facilities (from the Cottages) for cross verification.

10.3 Licensee may, at reasonable intervals during Licensors normal business hours and on prior intimation, examine such accounts .

10.4 If any audit or examination discloses an understatement of any amounts due to the Authority or the Licensee as the case may be, the designated officer of the Licensor and Licensee may resolve the issue through dialogue or may take the help of the auditor.

10.5 In case the same is still is not resolved, any dispute concerning the correctness of an audit shall be settled by an expert appointed with mutual consent of the Parties.

ARTICLE 11

DISCLAIMER

- 11.1 The Licensee acknowledges that prior to the execution of this License Agreement, the Licensee has after a complete and careful examination made an independent evaluation of the feasibility of the project, of the market for services and/or facilities, of the Specifications and Standards, and of the Site, of the Scope of the Project, Tender Notice, local conditions, physical qualities of ground, subsoil and geology and all the information provided by the Authority or gathered otherwise, and has determined to the Licensee's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.
- 11.2 Save as provided in Article 11.1, the Licensor makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and /or completeness of the information provided by it and the Licensee /Licensee confirms that it shall have no claim whatsoever against the Authority in this regard.
- 11.3 The Authority shall not be liable to the Licensee in respect of any failure to disclose or make available to the Licensee (whether before, on or after execution of this License Agreement) any information, documents, data or any failure to review or update the Disclosed Data, nor any failure at any stage to inform the Licensee of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data.
- 11.4 The Licensee acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Sub-Article 11.1 above and hereby confirms that the Licensing / Licensor shall not be liable for the same in any manner whatsoever to the Licensee, the consortium members or their Associates or to any person claiming through or under any of them.
- 11.5 Except as otherwise provided in this License Agreement, all risks relating to the Project shall be borne by the Licensee and the Licensor shall not be liable in any manner for said risks or the consequences thereof.

ARTICLE 12
USE AND DEVELOPMENT OF THE SITE

- 12.1 Authority hereby grants to the Licensee access to the Site for carrying out such surveys, investigations and/or tests as the Licensee may deem necessary. Such surveys, investigations and/or tests are to be carried out at the Licensee's cost, expense and risk and without causing disruption to the existing utilities. Authority hereby grants to the Licensee for the License Period the access to the Site (as described in Schedule "A") and to survey, design, engineer, procure, construct, operate and maintain the Project, in accordance with this Agreement. Such right and license of the License to the use of the Site shall be subject to:
- a. Any existing utilities on, under or above the Site are kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions with the authority of the controlling body of that utility; the entire cost of which shall be borne by the Licensee.
 - b. Authority retains the right to cross the Project above and/or outside the scheduled fixed width in any way adversely affecting the development and or operation of the Project.
 - c. It is expressly agreed that trees on the Site are property of the Authority and that Licensee will preserve all the trees and if any such tree is required to be necessarily cut the same shall be done only with prior approval of Authority.
- 12.2 The license and the right to use the Site shall be granted for the purpose of carrying out the functions placed upon and exercising the rights granted to the Licensee under this License Agreement, and not for any other purposes.
- 12.3 The Licensee shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this License Agreement.
- 12.4 The Licensee will be governed by the provisions of Pondicherry town and Country Planning Act and /or other acts as applicable, and rules made therein and/or regulations and guidelines issued by the concerned Government besides any other associated acts/guidelines or rules.
- 12.5 The purpose of allotment of the said piece of land measuring approximately 3 acres and as per the site plan shall ordinarily remain unchanged for the entire duration of the License period.
- 12.6 The Site, as described in Schedule A, shall be made available to the Licensee pursuant hereto by the Licensor free from all Encumbrances and occupations and

without the Licensee being required to make any payment to the Authority on account of any costs, expenses and charges for the use of such Site for the duration of the Concession Period save and except as otherwise expressly provided in this License Agreement.

- 12.7** Any encroachment of area over and above the area allotted to the License as per Schedule A of this agreement shall lead to the termination of the License/ agreement and appropriation without compensation of the Project and Project Facilities over and above the Security deposit besides damage charges as listed in Article 3.

ARTICLE 13
COMMERCIAL OPERATION

- 13.1 The Licensee shall implement the Project in accordance with the provisions of this License Agreement and achieve Commercial Operation for the first 20 Cottages within 180 days of the Effective Date.
- 13.2 The balance Cottages will be completed within a period of 365 days from the Effective Date. Licensee shall complete the construction of the Project and its related services and facilities in accordance with the provisions mentioned in the Tender document issued by the Authority with respect to the Project.
- 13.3 Failure of the Licensee to comply with the requirements of minimum percentage of construction as stated above may result in termination of the License Agreement in accordance with the procedure set forth in this Agreement.
- 13.4 If the COD is not achieved for reasons attributable to Licensor the Project completion time may be extended, for and by such period.
- 13.5 If the Project completion is not achieved for reasons beyond the control of Licensee, Cure Period (as defined in clause 1.1) will be provided to complete the Project.
- 13.6 If the Licensee is unable to complete or does not complete the entire work as per 13.1 or 13.2 above, License fee at the contracted % rate as submitted in the Financial Bid at Annexure V , would be payable by the Licensee to the Licensor.
- 13.7 The contracted rate would be on the proposed tariff as submitted by the Licensee in the Business plan.

ARTICLE 14
OPERATION AND MAINTENANCE

- 14.1 During the Operation Period, the Licensor shall maintain the Reservation and Registration of the Guests who use the tented accommodation at the project site on behalf of the licensee using appropriate software based on reservation received either through the Licensee, Licensor or walk ins as the case may be. The Licensor will provide periodic statement to the Licensee at periodic intervals or as required by the Licensee.
- 14.2 Other than the service mentioned above the Licensee shall operate and maintain the Project by itself in accordance with this License Agreement as per minimum standards prescribed under Schedules – B, C of this License Agreement and would provide services including:
- a. provide suitably trained personnel for operation and management activities at all times
 - b. permitting safe & smooth services during normal operating condition.
 - c. undertake routine maintenance including prompt repairs of any wear or damage found.
 - d. carry out periodic preventive maintenance to Project Assets including operating systems.
 - e. Undertake major maintenance such as repairs to structures, installations, rides, other equipments, etc
 - f. maintain a public relation unit following best practice model to interface with and attend to suggestions from users of the Project, the media, Government agencies, and other external agencies
 - g. adherence to the safety, health and environmental standards and requirements.
 - h. Operation and maintenance of all Project Assets diligently and efficiently and with the best industry practice.
 - i. Ensuring that no portion of the land is sub-leased, for any reason whatsoever. Sub-leasing will not be permitted and the Licensee will have to develop, operate and maintain the entire project on its own.
 - j. maintaining a high standard of cleanliness and hygiene on the project

ARTICLE 15 INSURANCE

- 15.1 At all times during the period of this Agreement, Licensee shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Site and Project Facility, (“Insurance Cover”). All insurance policies in respect of the insurance obtained by the Licensee pursuant to this Clause shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.
- 15.2 Without prejudice to the provisions contained in clause 15.1 above, the Licensee shall, during the operations period, procure and maintain insurance cover including but not limited to the following:
- a. Loss, damage or destruction of the Project assets, including assets handed over by the Government to the Licensee at replacement value.
 - b. Comprehensive third party liability insurance including injury to or death of personnel of the Government or others who may visit or stay or use the Project site, project Facility.
 - c. The Licensee general liability arising out of the Concession
 - d. Liability to third parties for goods or property damage.
 - e. Workmen compensation insurance.
 - f. Any other insurance that may be necessary to protect the Licensee and its employees including all Force Majeure events that are insurable and not otherwise not covered in (a) to (e) above.

ARTICLE 16 FORCE MAJEURE

16.1 Force Majeure” shall mean any event or circumstance or combination of events or circumstances that has a Material Adverse Effect on either Party (the “Affected Party”) but only if and to the extent that such events and circumstances in all probability are not within the Affected Party’s reasonable control.

16.2 The Following circumstances and events shall constitute an event or circumstance of Force Majeure to the extent that they or their consequences satisfy the above requirements:

- a. the effect of natural elements or other acts of God, including but not limited to any storm, flood, drought, lightening, earthquake, cyclone or other natural disaster
- b. fire, accident, breakage of facilities or equipment, structural collapse or explosion which the Party claiming to have been subject to Force Majeure demonstrates to have been attributable to a cause other than
 1. inherent defects of any equipment,.
 2. Circumstances within the reasonable control of the Affected Party or its contractors
- c. epidemic or quarantine
- d. acts of war (whether declared or undeclared), sabotage, terrorism or acts of public enemy (civil disturbances, revolution, rebellion or insurrection, exercise of military or usurped power or any attempt at usurpation of power.
- e. radioactive contamination or ionization radiation.
- f. events of strikes, work to rule actions, go-slows or similar labour related problems caused in whole or in part by agitation or unrest except where such events which are site specific or attributable to the Party claiming relief.

16.3 Duty to Report

16.3.1 A Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing of the occurrence of the event of Force Majeure as soon as reasonably practicable and in any event, within 15 (Fifteen) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the event of Force Majeure is likely to have on the performance of its obligations under this License Agreement.

16.3.2 Any notice pursuant to this Article 16.3.1 shall include full particulars of

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- a. the nature and extent of the event of Force Majeure which is the subject of any claim for relief under this Article 16 with evidence in support thereof,
- b. the estimated duration and the effect or probable effect which such event of Force Majeure is having or will have on the Affected Party's performance of its obligations under this License Agreement; and
- c. the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such event Force Majeure; and any other information the Affected Party wishes to present in support of its claim.

16.3.3 For so long as the Affected Party continues to claim to be affected by such event of Force Majeure, it shall continue to provide to the other Party, written reports every week, containing information as required by this Article 16 and such other information as the other Party may reasonably request the Affected Party to provide.

16.3.4 Any party claiming to have been affected by an event of Force Majeure shall not be entitled to any relief unless it has complied with all the provisions of Articles 16.3.1, 16.3.2, and 16.3.3 above

16.4 Excuse from Performance of Obligations

An Affected Party who is rendered wholly or partially unable to perform its obligations under this License Agreement shall be excused from performance of such of its obligations as are directly and materially adversely affected by the event of Force Majeure, provided however that

- a. an obligation to make any payment or meet any financial obligation shall not be excused on account of an event of Force Majeure, and
- b. the suspension of performance of its obligations by the Affected Party shall be of no greater scope and of no longer duration than is reasonably necessitated by the event of Force Majeure, and
- c. the Affected Party shall continue to make all reasonable efforts to mitigate or limit the damage to the other Party arising out of or as a result of the existence or occurrence of such event of Force Majeure and to cure the same with due diligence; and
- d. When the Affected Party is able to resume performance of its obligations under this License Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- e. any Insurance Proceeds shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure event unless otherwise required by the Lenders.

16.5 Liability for Other Losses, Damages, etc.

Save and except as expressly provided in this Article 16, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of the occurrence or existence of any event of Force Majeure or the exercise by it of any right pursuant to this Article 16.

16.6 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force majeure Event, such disputes shall be finally settled in accordance with the dispute resolution procedure, provided however that the burden as to the occurrence or existence of such Force Majeure event shall be upon the Party claiming relief and / or excuse of such Force Majeure Event.

ARTICLE 17

DIVESTMENT OF RIGHTS AND INTERESTS

- 17.1 Upon Expiry or Termination of this License Agreement, the Licensee shall hand over the site to the Authority in accordance with the terms of this Agreement and shall comply with the following
- a) notify to the Authority forthwith the location and particulars of all Project Assets .
 - b) deliver forthwith actual or constructive possession of project site and Project Facilities free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the Authority for fully and effectively divesting the Licensee of all of the rights, title and interest of the Licensee in the Cottages and conveying the project site free of any charge or cost to the Authority; and
 - c) comply with the Divestment Requirements set out in Sub-Article 17.2
- 17.2 Upon Termination of this Concession Contract, the Licensee shall comply and conform to the following Divestment Requirements in respect of the Project.
- a. The Licensee hands over the Project site and all Project facilities, free from all Encumbrances absolutely and free of any charge or tax unto the Authority or its Nominee; and
 - b. The Licensee complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of the Licensee in the Project of Cottages
- 17.3 Not earlier than 3 months before the expiry of the Concession Period but not later than 60 days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 30 days from the date of issue of Termination Notice, the Authority shall verify, in the presence of a representative of the Licensee, compliance by the Licensee with the divestment Requirements set forth in Sub-Article 17.2 in relation to the project and, if required, take appropriate steps for clearing the Project Site at the Licensee's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Licensee shall rectify the same at its cost.
- 17.4 Upon the Licensee conforming to all Divestment Requirements and handing over actual or constructive possession of the Project Site to the Authority or a person nominated by the Authority in this regard, the Authority shall issue a certificate substantially in the form set forth in Schedule "C" (the "Vesting Certificate") which

will have the effect of constituting evidence of divestment of all rights, title and lien in the Project by the Licensee and their vesting in the Authority pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by the Authority. The divestment of all rights, title and lien in the Project shall be deemed to be complete on the date when the Vesting Certificate has been issued.

ARTICLE 18 TERMINATION

18.1 TERMINATION FOR THE LICENSEE EVENT OF DEFAULT

18.1.1 LICENSEE EVENT OF DEFAULT

The following events shall constitute an event of default by the Licensee (a “Licensee Event of Default”) unless such Licensee Event of Default has occurred as a result of the Authority Event of Default or a Force Majeure Event

- i The Licensee fails to complete the Project within scheduled completion time.
- ii The Licensee fails to complete the entire work/ project mentioned in the work plan submitted in the technical bid within a period of 270 days from the date of receipt of possession.
- iii The Licensee is in Material Breach of this License Agreement
- iv The Licensee commits default in complying with any of the terms and conditions of this Agreement, save and except those defaults specifically identified or in respect of which Cure Period has been expressly provided in this Agreement, and fails to remedy or rectify the same within the period provided in a notice in this behalf from the Authority which shall:
 - a. require the Licensee to remedy the breach or breaches referred to in such notice within 1 (one) month (or such longer period as may be agreed by the Authority at its absolute discretion); or
 - b. permit the Licensee to put forward within 15 days of such notice a reasonable program for the remedying of the breach or breaches, such program to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied
- v The Licensee creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under the terms of this License agreement.
- vi The Licensee is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Licensee or for any of its property that has a material bearing on the Project.
- vii The Licensee abandons the operations of the project for more than 30 (Thirty) consecutive days without the prior consent of the Authority, provided that the Licensee shall be deemed not to have abandoned such operation if such abandonment was
 - a. as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or

- b. is on account of a breach of its obligations by the Authority.
- viii The Licensee repudiates this Licence /License Agreement or otherwise evidences an intention not to be bound by this License Agreement;
- ix The Licensee has delayed any payment including the License Fee, as the case may be, that has fallen due under this License Agreement if such delay exceeds 180 (one hundred and eighty) days

18.1.2 Save and except as otherwise provided in Sub-Article 18.2, and without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Licensee /Licensee under this Agreement including any Licensee Event of Default, the Authority shall be entitled to terminate this License Agreement by a communication in writing (the “Termination Notice”) to the Licensee if the Licensee has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, the Authority shall by a notice in writing inform the Licensee of its intention to issue the Termination Notice (the “Preliminary Notice”) and grant 15 days time to the Licensee/ Licensee to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

18.1.3 Subject to Sub-Article 18.2, the following shall apply in respect of cure of any of the defaults and/or breaches of this License Agreement

- a. The Cure Period shall commence from the date on which a notice in writing is delivered by the Authority to the Licensee asking the latter to cure the breach or default specified in such notice.
- b. The Cure Period provided in this License Agreement shall not relieve the Licensee from liability for Damages caused by its breach or default, if any
- c. The Cure Period shall not in any way be extended by any period of suspension under this License Agreement
- d. If the cure of any breach by the Licensee requires any reasonable action by Licensee/ Licensee that must be approved by the Authority hereunder the applicable Cure Period (and any liability of the Licensee for damages incurred) shall be extended by the period taken by the Authority to accord their required approval.

18.2 Notwithstanding anything to the contrary contained in this License Agreement, in the event of the Licensee being in default under any of the provisions hereof expressly

providing for Termination under or in accordance with this Sub-Article 18.1, the Authority shall be entitled to terminate this Agreement forthwith by issuing a Termination Notice to the Licensee and upon issue of such Termination Notice by the Authority this License Agreement shall stand terminated forthwith.

18.3 Upon Termination by the Authority on account of occurrence of Licensee Event of Default during the Operations Period, the Authority shall take over the complete system (all Project Assets). No Termination Payment shall be due or payable on account of Licensee 's default occurring prior to COD

18.4 TERMINATION FOR LICENSOR EVENT OF DEFAULT.

18.4.1 The Licensee may after giving 30 days notice in writing to the Authority terminate this license / License Agreement upon the occurrence and continuation of any of the following events (each a "Licensor / Licensor Event of Default"), unless any such the Licensor Event of Default has occurred as a result of Licensee Event of Default or due to a Force Majeure Event

- (i) the Authority is in breach of this License / License Agreement and such breach has a Material Adverse Effect on the Licensee and the Authority has failed to cure such breach or take effective steps for curing such breach within 30 days of receipt of notice in this behalf from the Licensee/ Licensee.
- (ii) the Authority repudiates this License / License Agreement or otherwise evidences an irrevocable intention not to be bound by this Licensee/ License Agreement
- (iii) the Authority fails to provide unrestricted access to the Project Site to the Licensee within 15 days of the Letter of intent.

18.4.2 Termination Notice

If a Party having become entitled to do so decides to terminate the Agreement pursuant to the preceding Clause, it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) Any other relevant information.

18.4.3 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility;
- (ii) The Termination Payment, if any, payable by either Party in accordance with the following sub clause 18.4.5 is paid to the Other Party on the Termination Date.

18.4.4 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying event of default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

18.4.5 Termination Payments

- (i) Upon Termination of the Agreement on account of Licensee Event of Default, prior to the Commercial Operation date (COD) , the Licensor /Licensor shall retain payments, if any, already received from the Licensee.
- (ii) Upon Termination of the Agreement on account of Licensee Event of Default, the Licensor /Licensor shall not make any payments to the Licensee for the Project and any or all project facilities, materials at the Project Site and shall take over possession of the saME.
- (iii) Upon Termination of the Agreement on account of Licensor/ Licensor Event of Default, the Licensee can
 - a. Remove all Tangible and Moveable assets installed at the Projects Site and as per the last audited balance sheet of the Licensee **(or)**
 - b. License/ Licensee can accept compensation which shall be an aggregate of net value, as determined by Auditors of the Licensor as per the last Audited Balance Sheet of the Licensee
 - (1) tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Licensee and comprised in the Project, which in the reasonable judgment of the said expert are capable of being put to use / utilised by the Authority and
 - (2) the moveable assets which the Authority agrees to take over less any amount due to the Authority from Licensee under the Agreement and the insurance claims claimed or received.
- (iv) All payments due to the Licensee as calculated under Clause 18.4.5 shall be made within 15 days of receiving the Termination Notice.

18.5 Upon Termination of this License Agreement for any reason whatsoever, the Authority / Licensor shall:

- a. take possession and control of the Project (Cottages) and the Project Site forthwith
- b. Sever all essential services to the project Site including water, electricity, Telephone and any or all services.
- c. take possession and control forthwith of any material, construction plant, implements, stores, equipments etc. on or about the Site
- d. restrain the Licensee and any person claiming through or under the Licensee / Licensee from entering upon the Site or any part of the Project/ Project Site; and/or
- e. succeed upon election by the Authority without the necessity of any further action by the Licensee/ Licensee, to the interests of the Licensee under such of the project agreement as the Authority may in its discretion deem appropriate and shall upon such election be required to compensate such contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Licensee as aforesaid. All sums claimed by such Contractors as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Licensee and such Contractors and the Authority shall in no way or manner be liable or responsible for such sums.

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

18.7 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of the Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover monetary damages and other rights and remedies which it may have under law or contract. The rights and obligations of either Party under this Agreement, including

without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 19

ASSIGNMENTS AND CHARGES

- 19.1 Subject to Sub-Articles 19.3 and 19.4, this License / License Agreement shall not be assigned by the Licensee save and except with prior consent in writing of the Licensor, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- 19.2 Subject to Sub-Article 19.3 and Sub- Article 19.4, the Licensee shall neither create nor permit to subsist any contract for operation, maintenance, are any encumbrance over the License period and all such contracts, agreements should include provision for termination of all contracts / agreements with termination of the License, whether due to efflux of time or otherwise, without any liability to the Licensor. The Licensee would indemnify the Licensor from all such contracts/ agreements and the consequences thereof.
- 19.3 Subject to Sub-Article 19.4, the Licensee shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this License /License Agreement to which Licensee is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- 19.4 The restraint set forth in Sub-Articles 19.1 and 19.2 shall not apply to
- (a) liens arising by operation of law (or by an License/ License Agreement evidencing the same) in the ordinary course of business of the Project
 - (b) mortgages/pledges/hypothecation of goods/assets arising or created in the ordinary course of business of the Tented Accomodation project and as security only for indebtedness to the lenders under the financing documents and/or for working capital arrangements for the Tented Acommodation project.
 - (c) liens or encumbrances required by any Applicable Law

ARTICLE 20 LIABILITY AND INDEMNITY

20.1 General Indemnity

- (a) The Licensee will indemnify, defend and hold the Licensor harmless against any and all proceedings, actions and, third party claims (other than a claim by the Licensor for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, Operation and Maintenance of the Project) but including and arising out of a breach by Licensee of any of its obligations under this License/ License Agreement except to the extent that any such claim has arisen due to the Authority Event of Default.
- (b) the Authority will, indemnify, defend and hold harmless the Licensee against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of the Authority in the land comprised in the Site adversely affecting the performance of the licensee's /Licensee's obligations under this License Agreement and/or arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants, agents, subsidiaries and contractors ("the Authority Indemnified Persons") including the Authority Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Licensee/ Licensee, its Subsidiaries, Affiliates, contractors, servants or agents including due to Licensee Event of Default.

20.2 Without limiting the generality of Sub-Article 20.1 the Licensee shall fully indemnify, save harmless and defend the Authority including its officers, servants, agents and subsidiaries from and against any and all loss and damages , during the subsistence of this llcense agreement and after the subsistence of this license agreement, arising out of or with respect to

- (a) failure of the Licensee to comply with Applicable Laws and Applicable Permits,
- (b) payments of taxes/ statutory payments relating to the Licensee's /Licensee contractors, suppliers, employees and representatives, income or other taxes required to be paid by the Licensee without reimbursement hereunder, or
- (c) non-payment of amounts due as a result of material or services furnished to the Licensee or any of its Contractors which are payable by the Licensee /Licensee or any of its contractors.

20.3 Without limiting the generality of the provisions of this Article 20, the Licensee shall fully indemnify, save harmless and defend the Licensor indemnified Person from and against any and all damages which the Licensor Indemnified Persons may

hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any material, information, design or process used by the Licensee /Licensee or by the Licensee's /Licensee's Contractors in performing the Licensee's / Licensee's obligations or in any way incorporated in or related to the Project. If any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Licensee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Licensee's / Licensee's Works, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Licensee /Licensee shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Licensor /Authority, authoring continued use of the infringing work. If the Licensee /Licensee is unable to secure such license within a reasonable time, the Licensee shall , at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing

20.4 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 20 (the "Indemnified Party") it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction

20.5 DEFENSE OF CLAIMS

20.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or rising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 20, the

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

20.5.2 If the Indemnifying Party has exercised its rights under Sub-Article 20.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

20.5.3 If the Indemnifying Party exercises its rights under Sub-Article 21.4 then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless

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

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

ARTICLE 21

RIGHTS AND TITLE OVER THE SITE

- 21.1 Notwithstanding any provisions within this tender Document, License Agreement the Project Site is part and parcel of a greater holding of the Authority and is the exclusive owner of such parcel and the Project. This tender and license agreement only entitles the Licensor to operate the Project i.e erecting and operation of 40 Cottages during the subsistence of License and the Licensee will peacefully vacate the Project site upon termination of this License agreement after handing over the entire Project Facilities unless the License is renewed.
- 21.2 During the subsistence of this License, the Licensee shall have exclusive rights to the use of the Site in accordance with the provisions of this License / License Agreement and for this purpose it may regulate the entry and use of the Project by third parties other than persons authorized by the Authority or authorized representatives of Statutory / Government bodies.
- 21.3 The Licensee shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as the Authority may specify. Where such access or use causes any damage to the Project and consequent financial loss to the Licensee/ Licensee, it may seek compensation or damages from such user of the Site as per Applicable Laws.
- 21.4 The Licensee shall not sublet the whole or any part of the Site, and shall have to develop, operate and maintain the entire project.

ARTICLE 22 DISPUTE RESOLUTION

22.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this License/License Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the parties themselves, failing which, in accordance with the conciliation procedure set forth in Sub-Article (b) below.
- (b) In the event of any Dispute between the Parties not resolved to the satisfaction of either parties, either Party may require such Dispute to be referred to the Managing Director of the Authority as representative of the Licensor and the Chairman of the Board of Directors as representative of the Licensor/ Licensee for amicable settlement.
- (c) Upon such reference, the said two representatives shall meet not later than 15 (Fifteen) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15(fifteen) days of such meeting between the said two representatives, either Party may refer the dispute to arbitration in accordance with the provisions of Sub-Article 22.2.
- (d) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 15 working days or such longer period as may be mutually agreed between the Parties, then the provisions of Sub-Article 23.2 shall apply.

22.2 Arbitration

22.2.1 Dispute Due For Arbitration

Disputes or differences shall be due for arbitration only if all the conditions in Sub-Article 22.1 are fulfilled.

22.2.2 Settlement of Disputes In respect where provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 can be invoked by the Licensor in respect of the Licensed Space the provisions of the said Act shall apply.

22.2.3 In respect of any other dispute or difference relating to the terms of his License Deed , the matter shall be referred to the sole arbitration of the Managing Director of ITDC or any other person appointed by him in this behalf. The award given by the Arbitrator shall be binding upon the parties.

It is specifically agreed by the Licensee that it will have no objection to any such appointment that the arbitrator so appointed is an employee of the Licensor or he has already expressed view on, for any of the matters in dispute or difference. The arbitrator so appointed shall have power to extend the time for making an award. The said Arbitrator shall act under provisions of the Arbitration and Conciliation Act, 1996.

22.2.4 Except as above , only Pondicherry Courts will have jurisdiction.

22.2.5 The language to be used in the arbitration shall be the English language exclusively, and the award shall be a reasoned one written in the English Language.

22.2.6 No Suspension of Work

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of the Authority and the Licensee shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Licensee shall continue to be made in terms of the Contract.

22.2.7 Rules Governing the Arbitration Proceedings

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended or replaced by other enactment from time to time and Courts of Puducherry shall have the jurisdiction.

22.3 Arbitration Award to be binding

22.3.1 The Licensee and the Authority undertake to carry out any decision or award of the arbitrators (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

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

22.3.3 This License Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award and the finalization of Award in any arbitration proceeding hereunder.

ARTICLE 23

GOVERNING LAW AND JURISDICTION

- 23.1 This License/ License Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts in Puducherry, India shall have the sole and exclusive jurisdiction over all matters arising out of or relating to this License / License Agreement.
- 23.2 Additionally, any dispute between the State Government and the Licensee /Licensee shall be subject to the jurisdiction of the civil courts in Puducherry.

ARTICLE 24 MISCELLANEOUS

24.1 Waiver

Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this License Agreement

- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this License /License Agreement
- (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (iii) shall not affect the validity or enforceability of this License/ License Agreement in any manner. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this License Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

24.2 Survival

Termination of this License Agreement

- (a) shall not relieve the Licensee or the Licensor of any obligations hereunder which expressly or by implication survives Termination hereof, and
- (b) except as otherwise provided in any provision of this License/ License Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such termination. All obligations surviving the cancellation, expiration or Termination of this License/ License Agreement shall only survive for a period of 3 [Three] years following the date of such Termination or expiry of this License / License Agreement.

24.3 Entire License/ License Agreement:

This License/License Agreement constitutes a complete and exclusive statement of the terms of the License/ License Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by both the parties and executed by the person expressly authorised by the parties

The Licensee shall not stock, display, exhibit any books, magazines, newspapers or periodicals, status, idols or other articles which are repugnant to moral or indecent and immoral, improper or otherwise objectionable in character.

The licensing space shall be used only for operating Cottages and not for Godown or any other purpose.

24.4 Notices:

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

- (a) in the case of the Licensee/ Licensee, be given by letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Licensee may from time to time designate by notice to the Authority, provided that notices or other communications to be given to an address outside [●] may (if they are subsequently confirmed by sending a copy thereof by first class registered airmail or by courier) be sent by facsimile/email to the number as the Licensee may from time to time designate by notice to the Authority; and
- (b) in the case of the Authority, be given by letter delivered by hand and be addressed to the Chief Administrator , the Authority Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

24.5 Severability

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

24.6 Corrupt and Fraudulent Practices

The Licensee warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Licensee, to any person by way of fees, commission or otherwise for securing the rights or entering into this License Agreement or for influencing or attempting to influence any officer or employee of the Authority or GOH in connection therewith.

24.7 Language

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

24.8 Confidentiality

Each party shall keep in strict confidence any information or document received by it or on its behalf from the other party in connection with the Project, and shall not disclose such information or document in any manner otherwise than as provided for in this sub-article. Except and Only to the extent as otherwise reasonably required in order to exercise any rights afforded under this License Agreement, each Party shall keep in strict confidence any information and document received by it or on its behalf in connection with the Project and shall not disclose such information or document in any manner, other than for the purpose performing of its obligations under this License Agreement or as required under any Laws and Regulations, however the foregoing obligations of confidentiality shall not apply to

(a) any information that is reasonably required by any Persons engaged in the fulfillment of the Licensee's or the Authority's obligations under this License Agreement

(b) any information which either Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this sub-article

(c) any information which is reasonably required to enable a determination to be made under Article 22 (Dispute Resolution)

(d) any information the disclosure of which is required by any Applicable Laws or other regulations (including any order of a court of competent jurisdiction), or by Governmental Agency

(e) any information required by the Lenders or the Lender's Representative or insurance advisers or insurers, but only to such extent necessary to enable their decisions to be taken

24.9 Exclusion of Implied Warranties etc.

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

24.10 Counterparts

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

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS LICENSE AGREEMENT WITNESSTH AS FOLLOWS

SIGNED, SEALED AND DELIVERED

For and on behalf of

by

SIGNED, SEALED AND DELIVERED

For and on behalf of the Authority LICENSEE

by

Signature

NAME

DESIGNATION

Signature

NAME

DESIGNATION

Witness

Witness

Witness

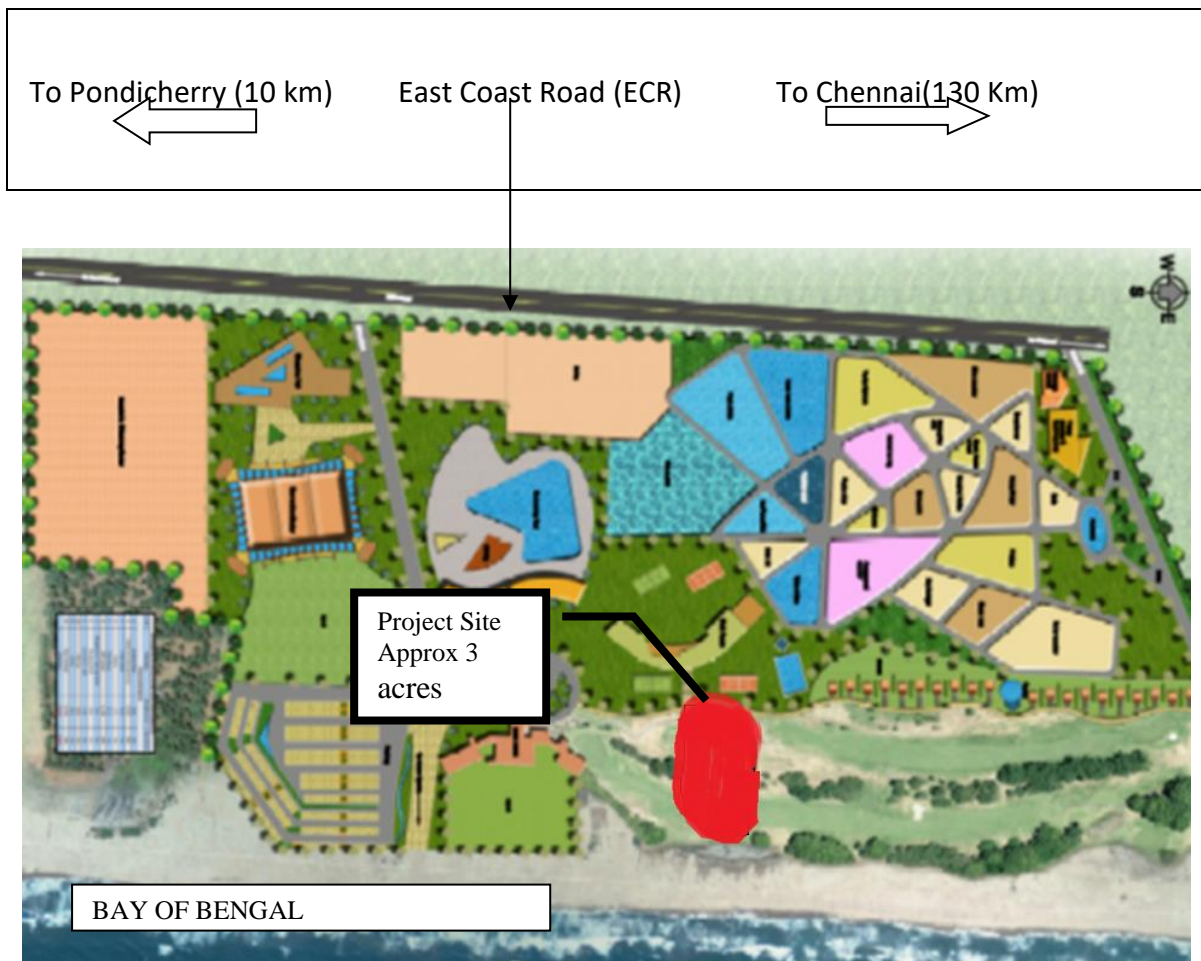
Witness

SCHEDULE-A SITE OF THE PROJECT

1. Bidders can visit and obtain the details from during any working days.
2. Bidders may seek an appointment with the nominated person of the Authority.

Hotel Pondicherry Ashok,
ECR Road,
Pondicherry - 605014
Ph : 0413- 2655160

SITE MAP



SCHEDULE B –

MINIMUM DEVELOPMENT OBLIGATION AND MINIMUM SPECIFICATION

7. Minimum Development Obligations

The responsibility of the bidder shall include all activities that are required to be undertaken in order to comply with the Minimum Development Obligation, Land use and the Applicable Development Control. The facility would need to be planned, designed and constructed in accordance with the Specification and Standard provided and Maintenance and Performance Standards provided in this section. The proposed Project is to be developed as per the

- Table - 1 - which indicates the Minimum Development Obligation,
- Table - 2 - which is the Minimum Technical Specification
- Table – 3 - which indicates the necessary / desirable facilities in the project

Table 1 – Minimum Development Obligations

S.no		
1	Minimum Development Obligation / Essential Facilities	The Project would consist of a minimum of 40 Cottages to be erected in approximately 3 Acres days with approach roads and balance as landscaped area
		All the Cottages should be air-conditioned with attached bath
2	Swimming Pool with requisite filtration plant and separate changing Room for gents and Ladies	Minimum 3000 sq ft. Maximum Depth – 4 ft Separate Area for Kids depth not exceeding 1.5 ft (18 inches) Life Guard / attendant during pool operation timings.
3	Approach Road to all the Cottages	Hard compact road suitable for Golf Cart vehicles etc
4	Battery Operated Vehicles – Minimum – 2 Nos	For conveying guests and their Luggage from the main building and back

5	Cycle Bank	Minimum 20 nos – mixed for gens, ladies and children
6	HT Connection (if required as Hotel would not be able to provide power)	As Applicable for the Project
7	STP Plant	As Applicable for the Project
2	NEGATIVE ACTIVITY	The Licensee cannot operate restaurant and bar or any other Food and Beverage Facility or any other facility other than forty cottages without express written permission from the Authority.

The Project consisting of erecting and operation of Accommodation shall contain only 40 Cottages of single or multiple categories of suitable configuration, so that the Project infrastructure shall conform to the check-list for the facilities required for the minimum budget and medium category .

All the Cottages would be air-conditioned, have attached Bathroom and all facilities and amenities equivalent to a good three – four star Hotel

- The Project cannot operate any Food and Beverage facilities.

Negative List

The Concessionaire shall not undertake the following activities on the Project Site:

1. No Conference / Convention / Exhibition Facility should be provided.
2. The Project cannot operate any Food and Beverage facilities.

2. MINIMUM TECHNICAL SPECIFICATION

The following specifications and standards cover only some of the minimum requirements for the development of the Project. The Licensee shall erect / construct, operate, maintain and manage the proposed 40 Cottages strictly conforming to the relevant Indian standards, the best industry practices and acceptable norms and local conditions. Whether the requirements are explicitly stated or not in the Tender documents, the Bidders must note

that PAHCL envisages a world class facility in all respects and expects international quality and standards from the selected Licensee, as in the binding contractual obligation.

TABLE -2- Minimum Technical Specification

Sl.No	Particulars	Specifications
1	Cottages	<ul style="list-style-type: none"> All cottages should be air-conditioned with material temporary in nature conforming to CRZ norms. It should be both sound and heat insulated Wind resistant of upto 100-120 km/hr
2	Structure	<ul style="list-style-type: none"> Rust resistant with rust free paint Corrosion resistant Should withstand high Wind Velocity (Min 120 Km/hr)
3	Others	<ul style="list-style-type: none"> Light transmission of less than 15% UV light transmission of less than 5% Temperature resistance between – 30 c to 70C Min Fire retardancy as per CERF CI DIN 4102:81 NEP92507 : M2 Tensile strength of more than 2500/2700 N/5 sq cm of DIN EN ISO 1421
4	Inside Wall	<ul style="list-style-type: none"> If no third wall, Inside wall should be of Insulated Material like FRP/Sandwich Panel or any other which can be cleaned / painted and are Temp and acoustic insulation of more than 90 % Min Fire retardancy as per CERF CI DIN 4102:81 NEP92507 : M2
5	Floor	<ul style="list-style-type: none"> Concrete/ Tiled/wooden
6	Windows, Ventilators & Doors	
a	Windows	<ul style="list-style-type: none"> Powder coated aluminium double track / triple track sliding window with 6 mm thick plain glass.
b	Ventilators	<ul style="list-style-type: none"> Powder coated aluminium frame with 6mm thick glass loovers.

c	Wooden Door	<ul style="list-style-type: none"> • 100x75 mm thick teak wood / Sal wood frame • 35 mm Panelled shutters with vision panel 5mm. • 35mm thick flush door shutters in back office & store room etc.
d	Metal door	<ul style="list-style-type: none"> • 100x75mm thick frame with 50mm thick shutters for metal and fire doors in AHU room, electrical room etc.
e	Glass doors	<ul style="list-style-type: none"> • 12mm toughened glass with patch fittings as front wicket door.
f	Main door	<ul style="list-style-type: none"> • Automatic Sliding door with 12 mm toughened glass
g	Toilet doors	<ul style="list-style-type: none"> • Frame: 40 mm teak / sal wood frames • Shutter: 35mm thick flush door shutters with louvers as per detail.
h	Toilet inner partitions	<ul style="list-style-type: none"> • 115mm thick brick work/100mm thick cement concrete blocks for internal partition walls.
7	Water Supply & Sanitary	
	i) Sanitary	Vitreous ware with CP brass fittings
	ii) Drainage	
	Internal	UPVC SWR pipes conforming to IS 13592
	External	UPVC pipes conforming to IS 4985
	iii) Water supply pipes	
	Internal	CPVC pipes- sdr13.5 for cold and sdr 11.0 for hot water
	External	Rigid PVC pipes- sch'80 - ASTM standard
8	Electrical	<ul style="list-style-type: none"> • External – Insulated cables as per requirement and Load specification • ISO certified
9	Light Fittings	<ul style="list-style-type: none"> • Energy efficient (LED only) • BIS certified
10	Electrical fitting	<ul style="list-style-type: none"> • BIS star rated

1. MINIMUM AND DESIRABLE FACILITIES AND SERVICES

The Hotel shall confirm to the minimum check-list given below for the facilities and services required for the 40 Cottages as given below in table below:

Table 3 – Minimum Desirable facilities and Services

S.NO	MINIMUM REQUIREMENTS FOR PROJECT	Necessary/ Desirable
1	General	
A	Full time operation 7 days a week in season	N
B	Establishment to have all necessary trading licenses	N
C	Establishment to have public liability insurance	N
E	Bedrooms, Bathroom, Public areas fully serviced daily	N
F	All floor surfaces clean and in good repair	N
2	Guest Room	
A	All cottages with outside windows / ventilation	N
B	Minimum size of bedroom excluding bathroom	280ft
C	Air-conditioning with Room temp between 20 & 28 Degrees C.	100%
D	A clean change of bed and bath linen daily & between check-in	N
E	Minimum bed width for single 90 cm and double 180 cm	N
F	Mattress thickness minimum 6 inches	N
G	Minimum bedding 2 sheets, pillow & case, duvet with cover , mattress protector / bed cover	N
3	Bathroom	
A	All Cottages with attached bathrooms	All
B	Minimum size of bathroom in square feet	40 sq.ft
C	1 bath towel and 1 hand towel to be provided per guest	N
D	Bath mat	N
E	Guest toiletries to be provided- minimum 1 new soap & shampoo per guest per day	N
F	Bottled toiletry products to be provided	N
G	A clothes - hook in each bath/shower room	N
H	Covered sanitary bin	N
I	Each western WC toilet to have a seat with lid and toilet paper	N
J	Floors and walls to have non - porous surfaces	N
K	Hot and cold running water available 24 hours	N
L	Shower cabin	D

S.NO	MINIMUM REQUIREMENTS FOR PROJECT	Necessary/ Desirable
M	Bath tubs (some rooms should offer this option to guests)	D
N	Water saving taps / shower	N
O	Energy saving lighting (LED Only)	N
P	Hairdryers	D
4	Living Room	
A	Safe keeping / in room safe	N
B	Minibar / Fridge	D
C	Drinking water with minimum one glass tumbler per guest (Ultra violet treated water will not be acceptable)	N
D	Guest Linen	N
E	Shelves / drawer space (Ward Robe)	N
F	Sufficient lighting, 1 per bed	N
G	A 5 amp earthed power socket	N
H	A bedside table and drawer	N
I	LCD/LED TV - cable if available (With remote)	N
J	A writing surface with sufficient lighting	N
K	Chairs	N
L	Wardrobe with minimum 4 clothes hangers per bedding	N
M	A wastepaper basket	N
N	Opaque curtains or screening at all windows	N
O	A mirror at least half length (3')	N
P	A stationary folder containing stationery and envelopes	N
Q	A 'do not disturb' notice	N
R	Night spread / bedcover with nightly turndown service	D
S	Linen room	N
T	Tea kettle with supplies	N
5	Public Area	
A	Public Lounge or seating area within the Project site in the lobby and shall have furniture and fixtures which shall include chairs/arm chairs, sofa, tables	N

S.NO	MINIMUM REQUIREMENTS FOR PROJECT	Necessary/ Desirable
B	Valet (Parking) services to be available	D
C	Availability of room, F& B and other tariff	N
D	Public rest rooms for ladies and gents with soap and clean towels, a washbasin with running hot and cold water, a mirror, paper towels, hand drier, sanitizer etc a sanitary bin with lid in unisex & ladies toilet	D
6	Room and Facilities for the Differently abled Guest	
A	At least one Tent for the differently abled guest (Minimum door width should be one metre to allow wheel chair access with suitable low height furniture, low peep hole, cupboard to have sliding doors with low clothes hangers etc. Room to have audible and visible (blinking light) alarm system)	N
B	Ramps with anti-slip floors at the entrance. Minimum door width should be one metre to allow wheel chair access	N
C	Bathroom	N
D	Public restrooms	N
E	Pest control	N
7	Staff	
A	Uniforms for Staff different from Licensor Uniform	N
B	English speaking front office staff	N
8	Staff Welfare / Facilities	
A	Staff rest room	D
B	Staff Locker Room	D
C	Toilet facilities (Full length mirror, hand dryer with liquid soap dispenser)	N
D	Dining area	N
9	Guest Services	
A	Provision of wheelchair for the differently abled guest	N
B	Valet (ironing) services to be available	N
C	Dry- cleaning /laundry (for 4 star hotels, it can be outsourced)	D
D	Iron and Iron Board (for 4 star hotels, it can be made available on request)	N

S.NO	MINIMUM REQUIREMENTS FOR PROJECT	Necessary/ Desirable
E	Paid transportation on call	N
F	Free shoe cleaning service	N
G	Assistance with luggage on request	N
H	Wake - up call service on request	N
I	Name Address and telephone numbers of doctors with front desk	N
J	24 hours secured and manned Left luggage room facilities	N
K	Provision for chargeable emergency supplies toiletries / first aid kit	N
10	Safety & Security	
A	Secure Boundary wall around the Project/ Project site with guards	N
B	Rodent and anti snake measure including snake pits/ traps etc	N
C	Metal detectors (door frame or hand held)	D
D	CCTV at strategic locations	N
E	Staff trained in fire fighting drill	N
F	Security arrangements for all hotel entrances	N
G	Each bedroom door fitted with lock and key, viewport / peephole & internal securing device	N
H	Smoke detectors	N
I	Fire and emergency procedure notices displayed in room behind door	N
J	Fire and emergency alarms should have visual & audible signals	N
K	First aid kit with over the counter medicines with front desk	N
L	Fire Exit signs on guest floors with emergency / backup power	N
11	Communication Facilities	
A	A telephone for incoming & outgoing calls in the room	N
B	PC available for guest use with internet access	D
C	E-mail service	D
12	Swimming Pool	N
13	Parking Facilities	N

S.NO	MINIMUM REQUIREMENTS FOR PROJECT	Necessary/ Desirable
14	Battery Operated vehicles for transfer of Passenger and luggage	N

Schedule C

Performance Standards

The following maintenance and performance standards cover only some of the minimum requirements for operation. The licensor shall operate, maintain and manage the proposed facility at the Project Site in Hotel Pondicherry Ashok and allied facilities strictly conforming to the relevant Indian standards, the best industry practices and internationally acceptable norms. Whether the requirements are explicitly stated or not in the tender documents, the Bidders must note that PAHCL envisages and expects international quality and standards in all respects from the selected Licensee, as in the binding contractual obligation.

1 During the period of operation, the Licensee shall maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- i. Perform maintenance on a routine and periodic basis.
- ii. Provide functional facilities that
 - a. have an environmentally acceptable atmosphere for users of the facility
 - b. ensure the safety of the visitors; and,
 - c. maintain a good environment in the site conducive to all tourism and leisure facilities.
- iii. Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- iv. Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

2 Maintenance Works

- h. The Licensee shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical and electrical works and equipment, furniture for meeting the specified performance standards as per **Table D1** below.

Table D.1. – Maintenance Requirements

Sl.No	Description	Required Level	Facility/Service
1	Power Supply, Electrical Installations,	Standby power arrangements shall be made for necessary amenities at the project site like accommodation facilities, parking lots etc. No loose, open, un-insulated wiring any of the areas. Switch Boards, Electric meters are enclosed in boxes and access to authorized persons only	Standby Full Load power supply including A/C by DG sets shall be ready to be operated and should be available 24 hours.
2	Natural and Mechanical Ventilation and Illumination	Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC.	Any disruption to mechanical ventilation, if provided, shall be rectified within 24 hours. Arrangements for natural ventilation like skylights ventilators, shafts etc. shall be cleaned after every 5 days.

- ii. **Maintenance of Circulation Areas of Commercial area / spaces, etc.** - Circulation Area maintenance shall include the entire house keeping activities requiring routine and periodic maintenance. Annual maintenance shall be done for accessories like fans, lighting arrangements etc in these areas.

3 Performance Standards – Intent

- i) The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- ii) The obligations of the Operator in respect of Maintenance requirements shall include:

- a. maintaining site environment so as to cause minimum disturbance to the environment.
 - b. ensure that the facilities are operational, and rectification of the defects and deficiencies within the minimum time
 - c. ensure that the fixed parameters provided in this tender are abided by at any time during the License period.
- iii) Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Operator shall be entitled to additional time in conformity with good industry practice. However the Operator shall get prior approval from the Licensor for such additional requirements of time.
- iv) Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the Project Site or Project Facilities poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

4. Routine Maintenance Performance Standards

Notwithstanding anything contrary to specified in this schedule, the Licensee will adhere to the Routine performance Standards as specified in the Table below so as to ensure the highest level of standard of maintenance as befitting a Accommodation premises of repute. If the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Licensee shall be entitled to take the facility/ service out of guest use and take additional time in conformity with good industry practice to repair the defect and bring the facility/ service to guest at the earliest. However the Operator shall get prior approval from the Licensor for such additional requirements of time.

Table D2 - Performance Standards for Routine Maintenance

SL NO	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for Repairs / Rectifications
A.	Hotel		
1	Power Supply, Electrical Installations, Electrical	NIL	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours

SL NO	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for Repairs / Rectifications
	Equipments shall be functional		
2	Boundary Wall shall be without any Damage / Breach	NIL	Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection.
3	There shall be no standing water on pavement surface, no water logging in the centre	NIL	Immediate measures to be taken and water logging should be cleared within four hours.
4	All Toilets, Urinals, bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of time.	Toilets, Urinals, bathrooms shall be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done at least twice daily.
5	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
6	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time	The dustbin shall be emptied after every six hours or earlier if it is full or if it creates foul smell in the neighbourhood.
7	All Information Signage and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection

SL NO	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for Repairs / Rectifications
8	Seating Arrangements shall not be damaged	Maximum 5% number of damaged seats at any given point of time	Any damaged seat shall be repaired, replaced within seven days of detection. These shall be cleaned daily and checked that they are firmly fixed/grouted to the platform with the base.
9	Power Supply, Electrical Installations, Electrical Equipments shall be functional	NIL	Timely intervention with temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Independent Engineer
10	Staircases shall be clean and functional	NIL	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.
11	Illumination (Lighting) shall be functional maintain the illumination level.	To meet the required illumination level as per national standards	The ventilators, sky-lights, etc serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned once in seven days to
B. Building such as Offices/Administration etc.			
12	Defects in Electricity gadgetry like bulbs/ lamp shades/wiring/ etc	NIL	Temporary measures within 4 hours, permanent restoration within 7 days
13	Defects in all other utilities like water supply/tap/tap connections/pipe/ sewer and drainage pipes/ tanks & overflow/ glasses/ window	NIL	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required.

SL NO	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for Repairs / Rectifications
	panes/ all other building furniture		
C.	Telecom System / Networking		
14	Telecommunication and Networking Systems shall be functional	NIL	Temporary measures within 8 hours, and permanent restoration within 3 days
D.	Fire Fighting Equipments		
15	Fire Fighting Equipments shall be functional	NIL	Any damage to fire fighting equipments installed in the facilities and in public spaces shall be rectified within 2 days of detection.
		NIL	Fire extinguishers shall be replaced before the end of its expiry date. The water tank meant for fire fighting purpose shall remain flooded with water to its capacity at all the times.
E.	Water Tank		
16	Water Tank shall be clean and functional	NIL	Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place.

5. Periodic Maintenance Service Standards

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project in **Table D#**

Table D3 : Periodic Maintenance Standards

Sl.No	Periodic Renewal Activities	Time Limit for Renewal
-------	-----------------------------	------------------------

1	Repainting of furniture, signage delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in three years
3	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc in the offices, cabins, booths etc.	Minimum once in three years
4	Resurfacing of Pavement	Routine repairs every year and premix carpet every fourth year. In case the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints
5	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
6	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

6. Performance Standard for Operations

In order to maintain the quality and operational standards of high quality, the indicative list of performance standards for operations and services are proposed for the Project in **Table D4**

Table D4 : Performance Standard for Operations

SL NO	Parameters	Performance Indicators
1	Parking Area	To remain operational 24 hours a day throughout the year
2	Enquiry Offices	To remain operational 24 hours a day throughout the year

SL NO	Parameters	Performance Indicators
3	Information Displays	To remain operational 24 hours a day throughout the year
4	Toilets	To remain operational 24 hours a day throughout the year
5	Water Supply	To remain operational 24 hours a day throughout the year
6	Electric Supply	To remain operational 24 hours a day throughout the year
7	Telecommunication and Networking Equipment	To remain operational 24 hours a day throughout the year
8	Standby Diesel Generator Sets	Standby diesel generator sets to supply power to the Project facilities including A/c must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply
9	Maintenance Office	To remain operational 16 hours a day throughout the year
10	Security	To remain functional 24 hours a day throughout the year. Appropriate fencing of the site with lighting and security shall be provided to ensure that there will be no encroachment on the site.

SCHEDULE – D
VESTING CERTIFICATE

1. The Authority represented by the Managing Director or his representative, refers to the License Agreement dated..... (the “Agreement”) entered into between Hotel Pondicherry Ashok (the Authority) and [●]. (the “Licensee”) for setting up of Accommodation in Pondicherry.

2. The Authority hereby acknowledges compliance and fulfillment of divestment of rights and interests set forth in Article 17 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired the Project Site and Project Facilities free of all encumbrances and all title and interest of the Licensee in the Project and the same shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding, anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Licensee to rectify and remedy and defect or deficiency in any of the obligations of Licensee under the License Agreement and the Divestment Requirement contained therein and/or relieving the Licensee in any manner of the same.

Signed this day of....., 2010 at [.....]

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf
of the Authority

For and on behalf
of LICENSEE by

(Signature)

(Name)

(Designation)

Hotel Pondicherry Ashok

ECR Road, Pondicherry

605014

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

1.

2.

SCHEDULE – E

HANDOVER PACKAGE

1. Upon Termination or expiry of the Concession Period, the Licensee shall comply with and conform to requirements set out in Article 17.

2. The Project Assets of the Licensee will be handed over to the Licensor on Termination of this agreement and the Licensee will ensure that the Handover Package contains, at a minimum the following information:
 - i. Premises – a list of the premises operated by the Licensee, showing the status, address, telephone number, facsimile number, responsible manager and use of each;
 - ii. Contracts – (i) a list of all agreements, permits, licences or other documents which are material to the operation of the Licensee’s business showing (as appropriate) the contact number, name, address, telephone and facsimile numbers of counterparties, contract price, value and subject matter(ii) Termination Letter and No Dues certificate from each of the Contractors/ contracts.
 - iii. Systems – a list of systems used (computer and otherwise) for the maintenance and the Project, together with a description of the systems and master passwords where applicable;
 - iv. Daily operations – a list of any other information key to the daily operation of the Licensee’s business, including:
 - a. the names, work and home telephone numbers of each person in possession of keys accessing the premises owned or operated by the Licensee within the Precinct;
 - b. lists of Plant and other assets owned or otherwise operated by the Licensee material to the operation of the Licensee’s Business and
 - c. master password

3. Organisational structure – a detailed diagrammatical representation of the organisational structure of the Licensee and its Affiliates;
4. Employees – details of each employee of the Licensee, including: a. names, work telephone numbers, roles and responsibilities; b. the date on which his or her of employment began; c. terms and conditions of employment; d. all payments, benefits or changes to terms and conditions of employment promised to any employee; and e. training record and certifications.
5. Drawings – current and accurate “as built” drawings showing all modifications and Augmentations, constructed or installed during the Contract Term, showing precise locations as installed, including three sets of all drawings and documentation, and one complete set of drawings and documentation stored in labelled CD-Rom format;
6. Planning and building permit correspondence – copies of all correspondence with the relevant authorities, consultants, contractors, and subcontractors pertaining to access arrangements, applications for planning permits, applications for building permits, correspondence related to subsequent building works and alterations and additions to services, and any other building or operational issues related to the Project;
7. Details of all Systems, buildings plant and equipment - comprehensive set of commissioning and test data confirming that all Railway Systems and building services plant and equipment installed has been commissioned to meet the established design criteria;
8. Manuals – copies of the most recent Operating Manual, Maintenance Manual and Quality Assurance Manual.
9. Asset listing giving life status and associated O&M specification for each asset along with the maintenance schedule for the balance life.
10. Co-ordination procedures with emergency services.
11. Safety case log.
12. Any other document, detail etc. as required for effective and efficient working of the Project and its Assets.

SCHEDULE - F

INDICATIVE LIST OF CLEARANCES

See Article 5

Sl.No	Item	
1	Water connection	
2	Shifting of Services and utilities	
4	Application for PAN, sales tax and other tax registrations etc.	Income Tax Department, Pondicherry
6	Clearance for employing labour- Primary employer	Labour Department, Government of Pondicherry
9	Cutting of Trees	Government of Pondicherry, Department of Environment
11	Fire safety equipment	Pondicherry Fire and Rescue Service
13	Boiler and Diesel Generator Set	Municipal Administration and Water Supply Department

The above are only a indicative list. The licensee is to take all appropriate licenses and permissions from all departments for the operation of the 40 Cottages at the Project Site.

The Licensor does not accept any responsibility for obtaining any or all licenses.

INTEGRITY PACT

PRE-CONTRACT INTEGRITY PACT

This pre-bid pre-contract Agreement (hereinafter called the Integrity Pact) is made on ____ day of the month of ____ 2015 between on one hand, Shri.....General Manager, Hotel Pondicherry Ashok, unit of India Tourism Development Corporation Ltd., Ministry of Tourism, Govt. of India, (hereinafter called the "BUYER" which expression shall mean and include unless the context otherwise requires his successors in office and assigns) of the First Part and M/s. _____ represented by Shri _____, Chief Executive Officer hereinafter called the "BIDDER/SELLER" which expression shall mean and include unless the context otherwise requires his successors and permitted assigns of the Second Part.

WHEREAS the BUYER proposes to procure (Name of the Stores/Equipment/item) and the BIDDER / SELLER is willing to offer/has offered the stores and

WHEREAS the BIDDER is a private company/public company/Government undertaking/partnership expert agency constituted in accordance with the relevant law in the matter and the BUYER is a Ministry/Department, Govt. of India/PSU performing its function on behalf of The President of India.

NOW THEREFORE:- To avoid all forms of corruption by following a system that is fair, transparent free from any influence/prejudiced dealings prior to, during and subsequent to agency of the contract to be entered into with a view to:-

Enabling the BUYER to obtain the desired said stores/equipment at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement and

Enabling BIDDERS to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the BUYER will commit to prevent corruption in any form by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this Integrity Pact and agree as follows:

1. COMMITMENTS OF THE BUYER

- 1.1 The BUYER undertakes that no official of the BUYER connected directly or indirectly with the contract will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favor or any material or immaterial benefit or any other advantage from the BIDDER either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process bid evaluation, contracting or implementation process related to the contract.
- 1.2 The BUYER will during the pre-contract stage treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.

- 1.3** All the officials of the BUYERS will report to the appropriate Govt. office of any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
- 2.** In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the BUYER with full and verifiable facts and the same is prima facie found to be correct by the BUYER, necessary disciplinary proceedings or any other action as deemed fit including criminal proceedings may be initiated by the BUYER and such a person shall be debarred from further dealings delayed to the contract process. In such a case while an enquiry is being conducted by the BUYER, the proceedings under the contract would not be stalled.
- 3. COMMITMENTS OF BIDDERS**
- The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular, commit itself to the following:
- 3.1** The BIDDER will not offer directly or through intermediaries any bribe, gift consideration, reward, favour, any material or immaterial benefit, other advantage, commission, fees brokerage or inducement to any official of the BUYER connected directly or indirectly with the bidding process or to any person, organization or third party related to a contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2** The BIDDER further undertakes that it has not given, offered, promised to give directly or indirectly any bribe, gift, consideration, reward, favour any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the BUYER or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the Government for showing or forbearing to show favour or disfavor to any person in relation to the contract or any other contract with buyer.
- 3.3** BIDDERS of foreign origin shall disclose the name and address of the Agents/Representatives in India and Indian BIDDERS shall disclose foreign principals.
- 3.4** BIDDERS shall disclose the payments to be made by them to agents/brokers or any other intermediary in connection with this bid/contract.
- 3.5** The BIDDER further confirms and declares to the BUYER that the BIDDER is the original manufacturer /integrator/authorized Government sponsored export entity of the stores and has not engaged any individual or firm or company whether Indian or foreign to intercede facilitate or in any way to recommend to the BUYER or any of its functionaries, whether official or unofficially to the award of the contract to the BIDDER, nor has any amount been paid, promised or intended to be paid to any such individual firm or company in respect of any such intercession, facilitation or recommendation.

- 3.6** The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract shall disclose any payment he has made is commented to or intends to make to officials of the BUYER or their family members agents brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.7** The BIDDER will not collude with other parties interested in the contract to impair the transparency fairness and progress of the bidding process, bid evaluation contracting and implementation of the contract.
- 3.8** The BIDDER will not accept any advantage in exchange for any corrupt practice unfair means and illegal activities.
- 3.9** The BIDDER shall not use improperly for purposes of competition or personal gain, or pass on to others any information provided by the BUYER as part of the business relationship regarding plans, technical proposals and business details including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.10** The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.11** The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12** If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER either directly or indirectly is a relative of any of the officers of the BUYER or alternatively if any relative of any officers of the BUYER has financial interest/stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filing of tender.
The term "Relative" for this purpose would be as defined in Section 6 of the Companies Act, 1956.
- 3.13** The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings of transaction directly or indirectly with any employee of the BUYER.

4. PREVIOUS TRANSGRESSION

- 4.1** The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country confirming to anti-corruption approach in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2** The BIDDER agrees that if it makes incorrect statement on this subject BIDDER can be disqualified from the tender process or the contract already awarded, can be terminated for such reason.

5. EARNEST MONEY (SECURITY DEPOSIT)

- 5.1 While submitting commercial bid, the BIDDER shall deposit an amount of Rs Five Lakhs as to be deposited through online payment through <https://itdc.eproc.in> or by way of Bank Guarantee. The cost of money transfer (including Payment Gateways Commission and taxes etc) has to be borne by the bidder.
- 5.2 The Earnest Money / Security Deposit shall be valid upto a period of five years or complete conclusion of the contractual obligations to the complete satisfaction of both the BIDDER and the BUYER and after completion of warranty period, whichever is later.
- 5.3 In case of successful BIDDER a clause would also be incorporated in the Article pertaining to Performance Bond in the Purchase Contract that the provisions of Sanctions for Violation shall be applicable for forfeiture of Performance Bond in case of a decision by the BUYER to forfeit the same by assigning reason for imposing sanction to violation of this Pact.
- 5.4 No interest shall be payable by the BUYER to the BIDDER on Earnest Money/Security Deposit for the period of its currency.

6. SANCTIONS FOR VIOLATIONS

- 6.1 Any breach of the aforesaid provisions by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the BUYER to take all or any one of the following actions wherever recurred.
 - i. To immediately call off the pre-contract negotiations after assigning any reason. However, the proceedings with the other BIDDER(s) would continue.
 - ii. The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond (after the contract is signed) shall stand forfeited either fully or partially as decided by the BUYER and the BUYER shall assign reason therefore.
 - iii. To immediately cancel the contract if already signed, without giving any compensation to the BIDDER.
 - iv. To recover all sums already paid by the BUYER and in case an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the BUYER in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
 - v. To encash the advance bank guarantee and performance bond/warranty bond if furnished by the BIDDER in order to recover payments already made by the BUYER along with interest.
 - vi. To cancel all or any other contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the BUYER resulting from such cancellation/rescission and the BUYER shall be entitled to deduct the amount so payable from the money due to the BIDDER.

- vii. To debar the BIDDER from participating in future bidding processes of the Govt. of India for a minimum period of 5 years, which may be further extended at the discretion of the BUYER.
 - viii. To recover all sums paid in violation of this Pact by BIDDER(s) any middlemen or agent or broker with a view to securing the contract.
 - ix. In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the BUYER with the BIDDER, the same shall not be opened.
 - x. Forfeiture of Performance Bond in case of a decision by the BUYER to seek for the forfeiture for imposing sanction for violation of this Pact.
- 6.2** The BUYER will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) of an offence as defined in Chapter IX of the Indian Penal Code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3** The decision of the BUYER to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the independent Monitor (s) appointed for the purposes of this Pact.

7. FALL CLAUSE

The BIDDER undertakes that it has not supplied/is not supplying similar product/systems or sub-systems at a price lower than that offered in the present bid in respect of any other customer, Ministry/Department of the Government of India or PSU and if it is found at any stage that similar products/systems or such systems was supplied by the BIDDER to any other Ministry / Department of the Government of India or a PSU at a lower price then that very price with due allowance for elapsed time would be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the BUYER if the contract has already been concluded.

8. INDEPENDENT MONITORS

- 8.1** The BUYER appoints independent Monitor for this Pact in consultation with the Central Vigilance Commission (Name and Address of the Monitors to be given).
- 8.2** The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
- 8.3** The Monitor is not subject to instructions by the representatives of the parties and performs his functions, neutrally and independently.
- 8.4** Both the parties accepted that the Monitor has the right to access all the documents relating to the project/procurement including minutes of meeting.

- 8.5** As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Authority designated by the Buyer.
- 8.6** The BIDDERS accept that the Monitor has the Right to access without restriction to all project documentation of the BUYER including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to sub contractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER with confidentiality.
- 8.7** The BUYER will provide to monitor sufficient information about all the meetings among the parties relating to the project provided such meeting could have an impact on contractual relation between the parties. The parties will offer to the Monitor the option to participate in such a meeting.
- 8.8** The Monitor will submit a written report to designated Authority of Buyer in the Department within 8 to 10 weeks from the date of reference or intimation to him by the buyer/bidder and should the occasion arise, submit proposal for correcting problematic situations.

9. FACILITATION OF INVESTIGATION

In case of any allegation of violation of any provisions of this Pact or payment of commission, the BUYER or its agencies shall be entitled to examine all the documents including the Book of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

10. LAW AND PLACE OF JURISDICTION

This Pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the BUYER.

11. OTHER LEGAL ACTIONS

The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

12. VALIDITY

12.1 The validity of this Integrity Pact shall be from the date of its signing and valid upto 5 years after complete execution of the contract to the complete satisfaction of both the BUYER and the BIDDER/SELLER and including warranty period. In case the BIDDER is unsuccessful this Integrity Pact shall expire after six months from the date of the signing of the contract.

12.2 Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case the parties will strive to come to an agreement to their original intentions.

13. The parties hereby sign this integrity pact at _____ on _____.

BUYER

BIDDER

Name of the Officer
Designation
Dept./MINISTRY/PSU

“Chief Executive Officer”

WITNESS

WITNESS

1. _____

1. _____

2. _____

2. _____

ANNEXURE V

FINANCIAL BID

1. *(To be submitted on the Letterhead of the Tenderer)*
2. *(To be submitted in a sealed Envelope superscribed – “FINANCIAL BID - FOR LICENSE OF ERECTING AND OPERATION OF 40 COTTAGES AT HOTEL PONDICHERRY ASHOK,PONDICHERRY “)*

TO

The General Manager,
Hotel Pondicherry Ashok ,
Pondicherry – 605014

Ref: Your Tender Ref : HPA/TENDER/TENT/15-16 dated _____

Dear Sir,

1. I/We, the undersigned having inspected the premises (Project Site) of approximately 3 (Three) Acres as per Schedule – A of the Draft License Agreement at Hotel Pondicherry Ashok for erecting and operating 40 (Forty Cottages) of minimum specification as per Schedule B of the Draft License Agreement and having read and understood the important instructions and draft License Agreement in this regard make the following financial bid :-

A	B	
Particulars	Percentage share to licensor /Authority per occupied tent	
	In figure	In words
License Fee	X %	X percentage of Room rent
	X %	X percentage of other services and facilities charged
<p>Note : IMPORTANT INSTRUCTION TO TENDERER</p> <p>1 Tenderer is to replace only X (in column B) with the proposed bidding amount.</p> <p>2 Changes in any other colum will lead to disqualification.</p> <p>3 The rates quoted in Column "B" is to be protected using a transparent Cellotape</p>		

2. That I/We understand that the Minimum percentage that the authority expects would be 20%

of the Room revenue.

3. That I/We understand that all the revenue will be collected by the Licensor after registering and allotting the Cottages to guests.
4. That I/We understand that the entire Food and Beverage services for the Cottages would be undertaken by the Authority.
5. That the Authority would deduct from the revenue collected, **X % (X percentage)** of the Room revenue, excluding taxes and other charges whichever is higher.
6. That I/We understand that the Authority would deduct from the revenue collected, **X % (X percentage)** of the revenue from other services, excluding taxes whichever is higher and other charges and costs as indicated in the License Deed.
7. This will be applicable during the entire period of Licence.
8. I/ We understand the management of Hotel Pondicherry reserves the final and undisputable right in accepting or rejecting my /our offer without assigning any reason or explanation and that I/we would not claim any charges / reimbursement from the Authority in respect of filling up this tender.

Signature

Name

Address

(Seal of the company)

Appendix -1

Information regarding Consortium Members

- A) In case of a consortium information regarding role of each member should be provided as per table below:

Sr. No.	Name of Member	Role*	Percentage of equity in the Consortium
1.		Lead Member	
2.			

- B) The following information shall also be provided for each member of the Consortium:

Name of Applicant / member of Consortium:

No.	Criteria	Yes	No
1.	Has the Applicant / constituent of the Consortium been barred by the Central / State / UT Government, or any entity controlled by them, from participating in any Project (Built Operate Transfer or otherwise)		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Application		
3.	Has the Applicant / constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

Appendix -2

Financial Capacity of the Applicant
(Refer to Clauses 2.2.2 (B) of Annexure 1)

(In Rs. Lakhs)

Sl. No	Applicant Type	Turnover			Balance Sheet/ Auditor certificate at page
		Year 1	Year 2	Year 3	
	1				
1	Single entity applicant				
2	Consortium member 1				
3	Consortium member 2				
	Total				

Note

1. In case of single entity ignore Row 2 &3.
2. Year 1 would denote the latest year and go backwards.

Appendix -3

Details of Eligible Projects

Type of project : Govt . Project / PSU/ Private -

Item 1	Particulars of the Project 3
Title & Nature of the project	
Entity for which the project was constructed/ developed	
Location	
Project cost	
Date of commencement of Project/ Contract	
Date of completion/ Commissioning	

Note:

1. Please refer to Clause 2.2 A of Annexure -1
2. Please fill up individual sheets for each project
3. Please arrange the project in chronological order with Govt, & PSU project first for each year

Appendix - 4

Certificate from the Statutory Auditor regarding Financial Statement of the Applicant

Based on the books of accounts and other published information authenticated by it, This is to certify that (name of the Applicant/Member/Associate) has turnover of Rs _____ lakhs during the financial year _____

(Signature,
Name
Designation of the Authorised Signatory)

Name of the audit firm:
Seal of the audit firm:
Date :

Note:

- 1. In case the books of account/balance sheet have already been certified, Certificate need not be furnished*
- 2. Certificate for each of the years for which uncertified statements are being furnished would require this certificate failing which the financial statement for that year would be ignored and may lead to rejection of the tender application.*

Appendix - 5

Certificate from the Statutory Auditor regarding project executed by the Applicant

Based on the books of accounts and other published information authenticated by it, This is to certify that (name of the Applicant/Member/Associate) has executed project/s for Rs _____ lakhs during the financial year _____

(Signature,
Name
Designation of the Authorised Signatory)

Name of the audit firm:
Seal of the audit firm:
Date :

Appendix - 6

Statement of Legal Capacity

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

Ref.

Date:

To,

The Managing Director
Hotel Pondicherry Ashok
Pondicherry Ashok Hotel Corporation Limited
ECR, Kalapet
Puducherry - 605 014

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the Tender document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf

of

.....

** Please strike out whichever is not applicable.*

Appendix - 7

POWER OF ATTORNEY FOR SIGNING OF APPLICATION

(Refer Clause 2.2.5)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (name), son/daughter/wife of and

presently residing at , who is presently employed with us/ the Lead Member of our Consortium and holding the position of , as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid to Pondicherry Ashok Hotel Corporation Limited (the "Managing Director") for the **Erection and operation of 40 Cottages at Hotel Pondicherry Ashok** including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Applications and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the License Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and / or upon award thereof to us and / or till the entering into of the License Agreement with the Authority.

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

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

For

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)

Accepted

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- Wherever required, the Applicant should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

Appendix - 8

POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

(Refer Clause 2.2.5)

Whereas Pondicherry Ashok Hotel Corporation Limited (the "Managing Director") has invited applications from interested parties for the **Erection and Operation of 40 Cottages** at Hotel Pondicherry Asgok, ECR, Pondicherry 605014 (the "Project").

Whereas, , and (collectively the "Consortium") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Tender document (Tender,) and other connected documents in respect of the Project, and

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at

And M/s..... having our registered office at ,
(hereinafter collectively referred to as the "Principals") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s
having its registered office at ,
being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "Attorney").

We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the License/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project and/ or upon award thereof till the License Agreement is entered into with the Authority.

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

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

1. For _____

(Signature)

(Name & Title)

2. For _____

(Signature)

(Name & Title)

Witnesses:

- 1.
- 2.

(Executants)

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

Notes:

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

signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

Appendix - 9

Memorandum Of Understanding

(To be submitted if the applicant is a consortium)

(To be executed on Stamp paper of Minimum Rupees 100)

THIS “**Memorandum of Understanding**” also known as “**Joint Bidding Agreement**” is entered into on this theday of, 20

AMONGST

1. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

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

WHEREAS

- (A) On behalf of Pondicherry Ashok Hotel Corporation Limited ("PAHCL") which has invited applications (the "**Applications**") through its "The Managing Director" (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) having its principal office at Pondicherry Ashok Hotel Corporation Limited, Kalapet Beach, Puducherry - 605 014 (the "The Managing Director") by its Tender Ref : HPA/TENDER/TENT/13-14 dated_____ (the "**Tender**") for license for erecting and operation of 40 Cottages at Hotel Pondicherry Ashok (the "**Project**").
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Tender document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the Tender document that the members of the Consortium shall enter into a Memorandum of Understanding / Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

HPA/TENDER/COTTAGES/16-17

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Tender.

2. Consortium

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

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

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall subscribe to the special purpose vehicle (the "**SPV**") created by GoP for the Project, under the Indian Companies Act, 1956 for entering into a License Agreement with the Authority and for performing all its obligations as the Licensee in terms of the License Agreement for the Project.

4. Role of the Parties

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

- a. Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the License Agreement when all the obligations of the SPV shall become effective;
- b. Party of the Second Part shall be {the Technical Member of the Consortium;}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Tender, and the License Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the License Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

- 6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and networth have been reckoned for the purposes of qualification and short-listing of Applicants for the Project in terms of the
- 6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.
- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the License Agreement.
- 6.6 In the event there is an O & M member, the Parties undertake that the O&M Member shall subscribe and hold at least 10% (ten per cent) of the subscribed and paid up equity shares in the SPV for a period of 5 (five) years from the date of commercial operation of the Project, in terms of the License Agreement.
- 6.7 In the event no member of the Consortium has adequate O & M Experience, then the parties undertake that the Licensee shall enter into an Agreement with a qualified O & M Agency for a period of five years from the date of commercial operation of the Project.

7. Representation of the Parties

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

- a. Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained;
 - ii. violate any Applicable Law presently in effect and having applicability to it;
 - iii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

- iv. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- v. create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- vi. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- vii. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

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

9. Miscellaneous

9.1 This Memorandum of Understanding / Joint Bidding Agreement shall be governed by the Applicable laws in India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

(Executants)

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

For _____

(Signature)

HPA/TENDER/COTTAGES/16-17

(Name & Title)

For _____

(Signature)

(Name & Title)

Witnesses: 1.

Signature

Name

Address

Witness: 2

Signature

Name

Address

Notes:

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