

**UT ADMINISTRATION  
LAKSHADWEEP**

**INTERNATIONAL COMPETITIVE BIDDING  
(UNDER SINGLE STAGE BIDDING)**

**PROCESS FOR**

**DEVELOPMENT OF MINICOY ISLAND,  
ECO-TOURISM RESORT**

**REQUEST FOR PROPOSALS (RFP)**

**August 2021**

## **DISCLAIMER**

The information contained in this Request for Proposals document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP 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 Bidder may require. This RFP 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 RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. 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 Bidder 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 RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

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

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 RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

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## GLOSSARY

<b>Associate</b>	As defined in Clause 2.2.1.3
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bank Guarantee</b>	As defined in Clause 2.27.1
<b>Bid</b>	As defined in Clause 1.2.1
<b>Bidders</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in Clause 1.1.6
<b>Bid Due Date</b>	As defined in Clause 1.3
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Concession</b>	As defined in Clause 1.1.5
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Concession Fee</b>	As defined in Clause 1.2.6
<b>Conflict of Interest</b>	As defined in Clause 2.2.1
<b>Consortium</b>	As defined in Clause 2.2.1.1
<b>Damages</b>	As defined in Clause 2.2.1.3
<b>DBFOT</b>	As defined in Clause 1.1.1
<b>Demand Draft</b>	As defined in Clause 2.27.2
<b>Eligible Experience</b>	As defined in Clause 3.2.1
<b>Eligible Projects</b>	As defined in Clause 3.2.1
<b>Estimated Project Cost</b>	As defined in Clause 1.1.4
<b>Experience Score</b>	As defined in Clause 3.2.6
<b>Feasibility Report</b>	As defined in Clause 1.2.3
<b>Financial Capacity</b>	As defined in Clause 2.2.2.2
<b>Government</b>	Government of India
<b>Highest Bidder</b>	As defined in Clause 1.2.7
<b>Jt. Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Member</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Award
<b>Member</b>	Member of a Consortium
<b>Net Worth</b>	As defined in Clause 2.2.4 (ii)
<b>O&amp;M</b>	Operation and Maintenance
<b>PPP</b>	Public Private Partnership

<b>Project</b>	As defined in Clause 1.1.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>Selected Bidder</b>	As defined in Clause 3.6.1
<b>SPV</b>	As defined in Clause 2.2.6
<b>Technical Capacity</b>	As defined in Clause 2.2.2
<b>Threshold Technical Capacity</b>	As defined in Clause 2.2.2
<b>UT</b>	Union Territory of India

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above.

# **INVITATION FOR PROPOSAL**



# 1. INTRODUCTION

## 1.1 Background

1.1.1 The Administrator, UT Administration of Lakshadweep (the “**Authority**”) is engaged in development of sustainable eco-tourism projects in the Union Territory (UT) of Lakshadweep Islands and as part of this endeavour, the Authority has decided to undertake development and operation/ maintenance of the Minicoy Island, Eco-Tourism Resort (the “**Project**”) through Public-Private Partnership (the “**PPP**”) on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis, and has, therefore, decided to carry out the bidding process for selection of a private entity as the bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of the Project	Minicoy Island, Eco-Tourism Resort
Location	Minicoy Island, Lakshadweep Union Territory of India
Total Land Area	8.53 Ha
Total Lagoon Area	6.00 Ha
No. of keys	Total keys = 150 <ul style="list-style-type: none"> <li>• 110 keys for Beach villas</li> <li>• 40 keys for Water villas</li> </ul>
Estimated Project Cost	Rs. 319 Cr.
Supporting infrastructure to be created by the developer	<ul style="list-style-type: none"> <li>• 114 KLD RO/Desalination Plant</li> <li>• 968 kW DG Set</li> <li>• 2152 kW (Rooftop + Floating) Solar Power Source</li> </ul>
CRZ Clearance	Prior/In-principle CRZ Clearance for the project shall be obtained by the Authority. Refer Appendix VIII for details of CRZ Clearance.
Conversion of Land Use (CLU) and License to store and serve alcohol in the Resort	Prior/In-principle approval for Conversion of Land Use (CLU) and License to store and serve alcohol in the Resort for the project shall be obtained by the Authority upfront. Refer Appendix IX for details of approval for Conversion of Land Use (CLU) and License to store and serve alcohol in the Resort.
Other clearances	Lakshadweep Administration shall facilitate the concessionaire in obtaining applicable permits subject to concessionaire submitting timely complete application. Refer Appendix IX for details of other clearances required for the project.
Type of construction proposed	Eco friendly material and/or pre- cast concrete technology.

Concession period	Concession Period is 75 years including maximum 3 years of construction period, commencing from the Appointed Date.
Star Categorization	Conform to minimum 5 Star categorization by Ministry of Tourism, Government of India

- 1.1.2 The selected Bidder, who is either a company incorporated under the Companies Act, 1956/2013 or undertakes to incorporate as such prior to execution of the concession agreement (the “**Concessionaire**”) shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.3 The scope of work will broadly include development of self-sustainable eco-tourism resort including trunk/ supporting infrastructure such as water and sewage treatment plant, levelling, grading, boundary wall, fencing, roads, drainage, power distribution, street lighting, landscaping, RO plant, power generation facility, etc.
- 1.1.4 Indicative capital cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the “**Bid Due Date**”).
- 1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

## 1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a single-stage bidding process (collectively referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. The first part (the “**Technical Bid**”) of the process involves Pre-qualification (the “**Pre-qualification**”) of interested parties / consortia who submit a Bid in accordance with the provisions of this RFP (the “**Bidder**”, which expression shall, unless repugnant to the context, include the Members of the Consortium). The second part of the process involves the financial proposals (the “**Financial Bid**”) of the Bidders pre-qualified in the Technical Bid. The Technical Bid and Financial Bid shall collectively be referred as Bid (the “**Bid**”). Prior to participation in the Bidding Process, the Bidder shall pay to the Authority a **sum of Rs 1,30,000 (Rupees One Lakh Thirty Thousand only)**, in the form of a demand draft issued by a Scheduled Bank in India, drawn **in favour of SPORTS and payable at Kavaratti**, as the cost of the Bid process. The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date.

The Government of India has issued guidelines (see Appendix-VII of RFP) for qualification of bidders seeking to acquire stakes in any public-sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

1.2.2 At the Pre-qualification stage, the Technical Bids of the Bidders would be evaluated and only those Bidders that are pre-qualified by the Authority shall be eligible for the second part of the Bidding Process comprising opening and evaluation of their Financial Bids.

1.2.3 The Bidding Documents include the draft Concession Agreement for the Project which is enclosed. The Financial Feasibility Report prepared by the consultants of the Authority (the “**Feasibility Report**”) is also enclosed. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to deposit, along with its Bid, **a bid security of Rs. 6.38 Crore** (the “**Bid Security**”), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority. In case a bank guarantee is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. Where a demand draft

is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 1.2.5 Bidders are invited to 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 Project including implementation thereof.
- 1.2.6 Bids are invited for the concession fee (the “**Concession Fee**”) offered by a Bidder to the Authority for award of the concession. Concession fee shall be payable annually in accordance with the Concession Agreement. The Concession Fee shall constitute the sole criteria for evaluation of Bids and the Project shall be awarded to the Bidder quoting the highest Concession Fee.
- 1.2.7 In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Concession Fee. Subject to the provisions of Clause 2.8, the Project will be awarded to the Highest Bidder.
- 1.2.8 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 RFP, be invited to match the 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.
- 1.2.9 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect a user fee from the users.
- 1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.14.6 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

***“Queries/Request for Additional Information: RFP for Minicoy Island, Eco-Tourism Resort Project”.***

### **1.3 Schedule of Bidding Process**

- 1.3.1 The Authority shall endeavour to adhere to the following schedule:

1.	Issuance of Bidding Documents	01 August 2021
2.	Last date for receiving queries	12 August 2021
3.	Pre-Bid Conference	17 August 2021

4.	Authority response to queries latest by	24 August 2021
5.	Bid Due Date	02 September 2021 (1500 Hours)
6.	Opening of Technical Bids	02 September 2021 (1530 Hours)
7.	Announcement of qualified Bidders	To be announced later
8.	Opening of Financial Bid	To be announced later
9.	Letter of Award (LOA)	To be announced later
10.	Validity of Bids	To be announced later
11.	Signing of Concession Agreement	To be announced later

#### **1.4 Pre-Bid Conference**

The time and venue of the Pre-Bid Conference shall be intimated at a later stage.

## 2. INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1 General Terms of Bidding

- 2.1.1 The Authority wishes to receive Bids under this RFP from capable Bidders. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 The Feasibility Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report.
- 2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.4 The Technical Bid and Financial Bid should be furnished in the format at Appendix-I and Appendix-II respectively along with all enclosures, duly signed by the Bidder's authorised signatory. The Financial Bid shall clearly indicate the bid amount, in both figures and words, in Indian Rupees. The Bid shall consist of Concession Fee, to be quoted by the Bidder. The Concession Fee shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.5 The Bidder shall deposit a **Bid Security of Rs. 6.38 Crore (Rupees Six Crore Thirty-Eight Lakh only)** in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee acceptable to the Authority, as per format at Appendix-VI.
- 2.1.6 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder. Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Due Date except in the

case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.

- 2.1.7 The Bidder should submit a Power of Attorney as per the format at Appendix–III, authorising the signatory of the Bid to commit the Bidder.
- 2.1.8 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix–IV.
- 2.1.9 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.10 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.11 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.11 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

## **2.2 Eligibility of Bidders**

- 2.2.1 For determining the eligibility of Bidders for submission of Bids hereunder, the following shall apply:
  - 2.2.1.1 The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
  - 2.2.1.2 A Bidder 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.
  - 2.2.1.3 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration

of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, 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 a Bidder, 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 Bidder, Member or Associate, as the case may be) in the other Bidder, 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 sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1.3, 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% of the subscribed and paid up equity shareholding of such intermediary; or
- ii. a constituent of such Bidder is also a constituent of another Bidder; or
- iii. such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- v. such Bidder, or any Associate thereof, has a relationship with another Bidder, 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 other's information about, or to influence the Bid of either or each other; or

- vi. such Bidder 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.

*Explanation:*

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1.3, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ 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 by operation of law.

- 2.2.1.4 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

- 2.2.2 To be eligible for pre-qualification and short-listing, a Bidder shall fulfil the following conditions of eligibility:

2.2.2.1 **Technical Capacity:** For demonstrating technical capacity and experience (the “Technical Capacity”), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

- i. owned a functional 3 star and/or 4 star and/ or 5 star and/ or 5 star Deluxe and above category hotels or hotels having minimum Average Room Rate (ARR) of Rs.10,000/- exclusive of taxes (per room per night) and having a minimum of **50 residential rooms**; or
- ii. operated, maintained and managed a functional 3 star and/or 4 star and/ or 5 star and/or 5 star Deluxe and above category hotels or hotels having minimum Average Room Rate (ARR) of Rs.10,000/- exclusive of taxes (per room per night) and having a minimum of **50 residential rooms**.

such that the sum total of residential rooms is more than **300 residential rooms** (the “**Threshold Technical Capacity**”).

*Note:*

- “Star” category could be equivalent for international hotels.
- Only rooms having Average Room Rate (ARR) of Rs.10,000/- and above shall be considered and Average Room Rate (ARR) to be calculated by taking average revenue earned from room and dividing it by number of rooms sold. Further, Average Room Rate (ARR) to be certified by Chartered Accountant and matched with the profit & loss account

2.2.2.2 **Financial Capacity:** The Bidder shall have a minimum Net Worth (the “**Financial Capacity**”) of Rs. **80 Crore** (Rupees Eighty Crore only) at the close of the preceding financial year.

The Authority has invited Bids for following three projects simultaneously.

Sl. No.	Name of the Project	Financial Capacity Requirement
1	Development of Minicoy Island, Eco-Tourism Resort	INR 80 Crore
2	Development of Suheli Island, Eco-Tourism Resort	INR 80 Crore
3	Development of Kadmat Island, Eco-Tourism Resort	INR 80 Crore

In case, a Bidder applies for more than one of the above Projects, the Bidder shall meet the Financial Capacity for all the Projects it is applying for on a cumulative basis.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

2.2.3 **O&M Experience:** In the event that the Bidder does not have the requisite O&M experience, it shall either enter into an agreement, for a period of 5 (five) years from COD, with an entity having the aforesaid experience relating to the performance of O&M obligations, or engage experienced and qualified personnel for discharging its O&M obligations in accordance with the provisions of the Concession Agreement, failing which the Concession Agreement shall be liable to termination.

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

- i. Certificate(s) from statutory auditors<sup>1</sup> of the Bidder or its Associates or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.2.2(A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- ii. Certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the Bid to commit the Bidder. 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-IV.

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<sup>1</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFP.

2.2.6 Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act,2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- a. Number of members in a consortium shall not exceed 6 (six), but information sought in the Bid may be restricted to 4 (four) members in the order of their equity contribution;
- b. subject to the provisions of sub-clause (a) above, the Bid 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 have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other members of the Consortium;
- d. the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- e. an individual Bidder cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for pre-qualification;
- f. the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- g. members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
  - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession 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. commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
  - v. members of the Consortium undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
  - vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- h. except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit an Bid, either individually or as member of a Consortium.

2.2.8 A Bidder 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 Bidder, 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 by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further

satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

- 2.2.9 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium Members under Clauses 2.2.2, 2.2.4 and 3.2, the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ 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 by operation of law.

- 2.2.10 The following conditions shall be adhered to while submitting an Bid:

- a) Bidders 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, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Bidders whose identity and/ or constitution is identical to that at pre-qualification;
- c) in responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and
- d) in case the Bidder is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

- 2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

- a) Where, on the date of the Bid, 25% (twenty five percent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five percent) or more of the aggregate issued, subscribed and paid

up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) 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 Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.13 This RFP is not transferable.

2.2.14 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

### **2.3 Change in composition of the Consortium**

2.3.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:

- a) the Lead Member continues to be the Lead Member of the Consortium;
- b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidders; and

- c) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/Associate of any other Consortium bidding for this Project.
- 2.3.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing. The Bidder must submit its application for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.
- 2.3.3 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-V, prior to the Bid Due Date.
- 2.3.4 The option of change in composition of the Consortium which is available under Clause 2.3.1 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member at the Bid Stage, the single entity Bidder shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

## **2.4 Change in Ownership**

- 2.4.1 By submitting the Bid, the Bidder acknowledges and undertakes that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium.
- 2.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project,



it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

## **2.5 Number of Bids and costs thereof**

- 2.5.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.5.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding 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.

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

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

## **2.7 Acknowledgement by Bidder**

- 2.7.1 It shall be deemed that by submitting a Bid, the Bidder has:
- a) made a complete and careful examination of the Bidding Documents;
  - b) received all relevant information requested from the Authority;
  - c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6 above;
  - d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
  - e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance

of any of the matters referred to in Clause 2.6 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;

- f) acknowledged that it does not have a Conflict of Interest; and
- g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.7.2 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 RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

## **2.8 Right to accept or reject any or all Bids**

2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid 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.

2.8.2 The Authority reserves the right to reject any Bid if:

- a) at any time, a material misrepresentation is made or uncovered, or
- b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

If the Bidder/Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the 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 RFP; or
- ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

2.8.3 In case it is found during the evaluation or at any time before signing of the Concession 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 Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the

Bidder/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

- 2.8.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.8.5 The Authority may, in its sole discretion and on grounds of reciprocity, disqualify a Bidder, if any or all of its constituents are entities incorporated in a country where an entity incorporated in India does not have similar rights of bidding for contracts contemplated hereunder.

## **B. DOCUMENTS**

### **2.9 Contents of the RFP**

- 2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.11.

#### **Invitation for Proposals**

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

#### **Appendices**

- I. Technical Bid for Pre-qualification
- II. Financial Bid for Selection of Bidder
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Joint Bidding Agreement
- VI. Bank Guarantee for Bid Security
- VII. Guidelines of the Department of Disinvestment

- VIII. CRZ Clearance
- IX. Other Clearances

2.9.2 The draft Concession Agreement and the Financial Feasibility Report provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

## **2.10 Clarifications**

2.10.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.10.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. 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.

2.10.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.11 Amendment of RFP**

2.11.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.11.2 Any Addendum issued hereunder will be in writing and shall be sent to all the Bidders.

2.11.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BID**

### **2.12 Language**

2.12.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### **2.13 Format and Signing of Bid**

2.13.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.

2.13.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

### **2.14 Submission of Bid**

2.14.1 The Bidder shall submit the Bid in the format specified at Appendix-I to VI, together with the documents specified in Clauses 2.14.2 and 2.14.3. The Bidder shall seal the original and the copy of the Bid, together with their respective enclosures, in separate envelopes duly marking the envelopes as “ORIGINAL” and “COPY”.

2.14.2 **Technical Bid** envelope shall contain:

- i. Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents;
- ii. Power of Attorney for signing the Bid as per the format at Appendix-III;
- iii. if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- iv. copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-V;
- v. copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;

- vi. copies of Bidder's duly audited balance sheet and profit and loss account for the preceding five years; and

The envelope shall clearly bear the following identification:

***“Technical Bid: Minicoy Island, Eco-Tourism Resort”***

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of each of the envelope.

2.14.3 **Financial Bid** envelope shall contain:

- i. Bid in the format specified at Appendix-II
- ii. The documents accompanying the Financial Bid shall be placed in a separate envelope and marked as “Enclosures of the Bid”. The documents shall include:
  - a. Bid Security in the format at Appendix–VI;
  - b. A copy of the Concession Agreement with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause 2.14.2 (ii) hereinabove.
- iii. The two envelopes specified in Clauses i and ii above shall be placed in an outer envelope, which shall be sealed. Each of the two envelopes shall clearly bear the following identification:

***“Financial Bid: Minicoy Island, Eco-Tourism Resort”***

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right-hand corner of each of the envelope.

2.14.4 A true copy of the documents accompanying the Bid, as specified in Clause 2.14.2 and 2.14.3 above, shall be bound together in hard cover separately for Technical Bid and Financial Bid and the pages shall be numbered serially in each document. Each page thereof shall be initialled in blue ink by the authorised signatory of the Bidder. This copy of the documents shall be placed in a separate envelope and marked “Copy of Documents”.

2.14.5 The envelopes shall then be sealed in an outer envelope which shall clearly bear the following identification:

***“Bid for Minicoy Island, Eco-Tourism Resort”***

2.14.6 Each of the envelopes shall be addressed to:

Assistant General Manager,  
SPORTS Lakshadweep Tourism,

2nd Floor Lakshadweep Administrative Office,  
Indira Gandhi Road  
Willingdon Island  
Cochin-03  
Email- agmsportskochi@gmail.com  
Phone - 04896263001, 04896262356

2.14.7 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

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

## **2.15 Bid Due Date**

2.15.1 Bids should be submitted before the specified time on the Bid Due Date as specified in Clause 1.3 at the address provided in Clause 2.14.6 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.14.6.

2.15.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

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

## **2.16 Contents of the Bid**

2.16.1 The Technical Bid shall be furnished in the format at Appendix-I. The Financial Bid shall be furnished in the format at Appendix-II and shall consist of Concession Fee, to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Concession Fee offered by him, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

2.16.2 The Project will be awarded to the Highest Bidder.

2.16.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.16.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

## **2.17 Modifications/ Substitution/ Withdrawal of Bids**

2.17.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the

Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

- 2.17.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.14, with the envelopes being additionally marked “MODIFICATION”, “SUBSTITUTION” or “WITHDRAWAL”, as appropriate.
- 2.17.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **D. EVALUATION PROCESS**

### **2.18 Opening and Evaluation of Bids**

- 2.18.1 The Authority shall open the Technical Bids on the Bid Due Date, at the place specified in Clause 2.14.6 on time specified in Clause 1.3 and in the presence of the Bidders who choose to attend.
- 2.18.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.17 shall not be opened.
- 2.18.3 The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.
- 2.18.4 Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.18.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.18.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.
- 2.18.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Experience Score of the Bidder.
- 2.18.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Experience Score, and may also, while computing the aggregate Experience Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found



to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the or Bid in accordance with the provisions of Clause 2.8.

## **2.19 Confidentiality**

2.19.1 Information relating to the examination, clarification, evaluation, and recommendation of 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 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 or as may be required by law or in connection with any legal process.

## **2.20 Tests of responsiveness**

2.20.1 Prior to evaluation of Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of the RFP. A Technical Bid shall be considered responsive if:

- i. it is received as per format at Appendix-I;
- ii. it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.15.2;
- iii. it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.14;
- iv. it is accompanied by the Bid Security as specified in Clause 2.1.5;
- v. it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
- vi. it contains all the information and documents (complete in all respects) as requested in this RFP;
- vii. it contains information in formats same as those specified in this RFP;
- viii. it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFP for each Eligible Project;
- ix. it contains an attested copy of the receipt of the Authority towards the cost of the RFP process as specified in Clause 1.2.1;

- x. it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
- xi. it does not contain any condition or qualification; and
- xii. it is not non-responsive in terms hereof.

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

## **2.21 Clarifications**

2.21.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. 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.

2.21.2 If a Bidder does not provide clarifications sought under Clause 2.21.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

## **2.22 Pre-Qualification and notification**

2.22.1 After the evaluation of Technical Bids, the Authority would announce a list of qualified Bidders who will be eligible for opening of their Financial Bids. At the same time, the Authority would notify the other Bidders that they have not been short-listed. The Authority will not entertain any query or clarification from Bidders who fail to pre-qualify.

## **2.23 Proprietary Data**

2.23.1 All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid, or any information provided along therewith.

## **2.24 Correspondence with the Bidder**

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

## 2.25 Rejection of Bids

- 2.25.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. 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.
- 2.25.2 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.

## 2.26 Validity of Bids

- 2.26.1 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.

## E. BID SECURITY

### 2.27 Bid Security

- 2.27.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.5 and 2.1.6 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of the Authority in the format at Appendix–VI (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.27.2 Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at Kavaratti (the “**Demand Draft**”). The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.27.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.27.4 Save and except as provided in Clauses 2.1.5 and 2.1.6 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Due Date. Where Bid Security has been paid by demand draft, the refund

thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

- 2.27.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.27.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.27.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.27.7 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- a. a Bidder submits a non-responsive Bid;
  - b. a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
  - c. a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
  - d. the Selected Bidder fails within the specified time limit –
    - i. to sign and return the duplicate copy of LOA; or
    - ii. to sign the Concession Agreement; or
    - iii. to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
  - e. the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

### 3. CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Bids

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.
- 3.1.2 The Bidder's competence and capability is proposed to be established by Technical Capacity and Financial Capacity.

#### 3.2 Technical Capacity for purposes of evaluation

- 3.2.1 Subject to the provisions of Clause 2.2.2, the following categories of experience would qualify as Technical Capacity and eligible experience (the "**Eligible Experience**") in relation to eligible projects as stipulated in Clauses 3.2.3 and 3.2.4 (the "**Eligible Projects**"):

Category 1: Owned and / or operated, maintained and managed a functional 3 Star category hotel, as recognised by Ministry of Tourism, Government of India, or equivalent category for international hotels, or hotels with Average Room Rate (ARR) of minimum Rs. 10,000/- excluding taxes per room per night, with a minimum of 50 residential rooms

Category 2: Owned and / or operated, maintained and managed a functional 4 Star category hotel, as recognised by Ministry of Tourism, Government of India, or equivalent category for international hotels, or hotels with Average Room Rate (ARR) of minimum Rs.12,000/- excluding taxes per room per night, with a minimum of 50 residential rooms

Category 3: Owned and / or operated, maintained and managed a functional 5 Star category hotel, as recognised by Ministry of Tourism, Government of India, or equivalent category for international hotels, or hotels with Average Room Rate (ARR) of minimum Rs.15,000/- excluding taxes per room per night, with a minimum of 50 residential rooms

Category 4: Owned and / or operated, maintained and managed a functional 5 Star Deluxe and above category hotel, as recognised by Ministry of Tourism, Government of India, or equivalent category for international hotels, or hotels with Average Room Rate (ARR) of minimum Rs.20,000/- excluding taxes per room per night, with a minimum of 50 residential rooms

- 3.2.2 Eligible Experience in respect of each category shall be measured only for Eligible Projects.

- 3.2.3 For a project to qualify as an Eligible Project under Categories 1, 2, 3 and 4, the entity claiming experience should have held, in the company owning or operating the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed.
- 3.2.4 Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.5 The Bidder shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.
- 3.2.6 A Bidder's experience shall be measured and stated in terms of a score (the "**Experience Score**"). The Experience Score for an Eligible Project in a given category, as specified in Clause 3.2.1, would be measured in terms of residential rooms in the respective hotel whereby each room will get a score of one. This score will then be multiplied by the applicable factor in Table 3.2.6 below. In case the Bidder has experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its Experience Score

**Table 3.2.6: Factors for Experience across categories:**

<b>Categories</b>	<b>Factor</b>
Category 1	1.00
Category 2	1.25
Category 3	1.50
Category 4	2.00

- 3.2.7 The Experience Score determined in accordance with Clause 3.2.6 in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- 3.2.8 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

### **3.3 Details of Experience**

- 3.3.1 The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- 3.3.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I.

- 3.3.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

### **3.4 Financial information for purposes of evaluation**

- 3.4.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.
- 3.4.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.4.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 and provide details as per format at Annex-III of Appendix-I.

### **3.5 Pre-qualification of Bidder**

- 3.5.1 The credentials of eligible Bidders shall be measured in terms of their Experience Score. The sum total of the Experience Scores for all Eligible Projects shall be the ‘**Aggregate Experience Score**’ of a particular Bidder. In case of a Consortium, the Aggregate Experience Score of each of its Members, who have an equity share of at least 26% in such Consortium, shall be summed up for arriving at the combined Aggregate Experience Score of the Consortium.
- 3.5.2 The Bidders shall then be ranked on the basis of their respective Aggregate Experience Scores and short-listed for opening of Financial Proposals. The Authority expects to short-list up to 6 (six) pre-qualified Bidders in the Pre-qualification stage. The Authority, however, reserves the right to increase the number of short-listed pre-qualified Bidders by adding additional Bidder.
- 3.5.3 The Authority may, in its discretion, maintain a reserve list of pre-qualified Bidders who may substitute the short-listed Bidders in the event of their withdrawal from the Bidding Process or upon their failure to conform to the conditions specified herein.

### **3.6 Selection of Bidder**

- 3.6.1 Subject to the provisions of Clause 2.8.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 2.20 and who quotes the highest Concession Fee offered to the Authority, shall ordinarily be declared as the selected Bidder (the “**Selected Bidder**”). 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.

3.6.2 In the event that two or more Bidders quote the same amount of Concession Fee (the “**Tie Bidders**”), 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 The Authority has invited Bids for following three projects simultaneously.

Sl. No.	Name of the Project
1	Development of Minicoy Island, Eco-Tourism Resort
2	Development of Suheli Island, Eco-Tourism Resort
3	Development of Kadmat Island, Eco-Tourism Resort

Bids of all 3 (three) projects as specified above shall be opened simultaneously.

If it is found that 1 (one) Bidder is the Highest Bidder in more than 1 (one) but up to 2 (two) of the above projects, then such Bidder shall be awarded such projects.

If it is found that 1 (one) Bidder (**Subject Bidder**) is Highest Bidder in more than 2 (two) of the above projects, the procedure to be followed to determine the Selected Bidder shall be as follows:

The projects shall be ranked (in descending order) as per the amount of Concession Fee quoted by the Subject Bidder. The 1<sup>st</sup> (first) and the 2<sup>nd</sup> (second) ranked projects will be awarded to the Subject Bidder. The 3<sup>rd</sup> (third) ranked project shall be offered to the second Highest Bidder for such project at the Concession Fee quoted by the Subject Bidder. If the 2<sup>nd</sup> (second) Highest Bidder matches Concession Fee of the Subject Bidder, it will become the Selected Bidder for the 3<sup>rd</sup> (third) ranked project.

If the 2<sup>nd</sup> (second) Highest Bidder refuses to match the Concession Fee of the Subject Bidder for the 3<sup>rd</sup> (third) project, then the 3<sup>rd</sup> (third) project shall be awarded to the Subject Bidder at the Concession Fee it has quoted. The Subject Bidder will not have option to refuse the Project.

3.6.4 After selection, a Letter of Award (the “**LOA**”) 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 LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.



- 3.6.4.1 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

### **3.7 Contacts during Bid Evaluation**

- 3.7.1 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, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

### **3.8 Bid Parameter**

- 3.8.1 The Bid shall comprise a Concession Fee, to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the highest Concession Fee, shall ordinarily be the Selected Bidder. The Concession Fee comprising the Bid shall be offered in accordance with the provisions of Clause 3.8.2.
- 3.8.2 The Concession Fee payable shall be due and payable within 15 (fifteen) days of the commencement of an Accounting Year. Provided that the Concession Fee for the first Accounting Year shall be paid within 15 (fifteen) days of occurrence of the COD.

#### 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, 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, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, 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 practices, as the case may be.
- 4.3 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 LOA or has dealt with matters concerning the Concession 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) save and except

as permitted under the Clause 2.2.1.4 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession 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, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **5. PRE-BID CONFERENCE**

- 5.1 Pre-Bid Conference(s) of the Bidders shall be convened at the designated date, time and place. A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## **6. MISCELLANEOUS**

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

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 Bidder in order to receive clarification or further information;
- c. qualify or not to qualify any Bidder and/ or to consult with any Bidder 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 Bidder; 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 Bidder.

6.2 It shall be deemed that by submitting the Bid, the Bidder 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 with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.3 The Concession Agreement and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:

- a. the Concession Agreement;
- b. the RFP.

i.e. the Concession Agreement at (a) above shall prevail over the RFP at (b) above.

## **APPENDICES**

**Appendix-I: Technical Bid for Pre-qualification**

**Letter Comprising the Technical Bid for Pre-qualification**

*(Refer Clause 2.14.2)*

Dated:

To,

Mr. \*\*\*\*\*

UT Administration,

Lakshadweep Islands

Sub: Technical Bid for pre-qualification for Minicoy Island, Eco-Tourism Resort

Dear Sir,

1. With reference to your RFP document dated ....., I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Bidder for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require supplementing or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:

- a. I/ We have examined and have no reservations to the Bidding documents, including any Addendum issued by the Authority;
  - b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1 of the RFP document;
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.8 and 2.25 of the RFP document.
  9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.
  10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
  11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
  12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.
  13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees<sup>2</sup>.

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<sup>2</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule .....hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.



14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13<sup>th</sup> July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VII thereof.
15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (PPP or otherwise), and no bar subsists as on the date of Bid.
16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
17. I/ We acknowledge and agree that in the event of a change in control of a Member whose Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/we further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to commencement of the Appointed Date under the Concession Agreement , it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall, at the sole discretion of the Authority, be liable to be terminated under and in accordance with Clause 2.4.2 of the RFP without the Authority being liable to us in any manner whatsoever.
18. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
20. I/ We have studied all the Bidding Documents carefully and also surveyed the \*\*\*\*\*. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.
21. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of

Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.

22. I/ We understand that the selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
23. I/ We hereby confirm that we shall comply with the O&M requirements specified in Clause 2.2.3.
24. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
25. I/ We certify that in terms of the RFP, my/our Net Worth is Rs. .... (Rupees ..... ) and the Aggregate Experience Score is ..... (in figures) ..... (in words).
26. I/ We offer a Bid Security of Rs..... (Rupees ..... only) to the Authority in accordance with the RFP Document. The Bid Security in the form of a {Demand Draft/ Bank Guarantee} has been submitted.
27. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.
28. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.
29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorized Signatory)

Place: Name and seal of the Bidder/ Lead Member

Appendix-I**Annex-I: Particulars of the Bidder**

- 1
  - a. Name:
  - b. Country of incorporation:
  - c. Address of the corporate headquarters and its branch office(s), if any, in India:
  - d. Date of incorporation and/ or commencement of business:
  
- 2 Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  
- 3 Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - a. Name:
  - b. Designation:
  - c. Company:
  - d. Address:
  - e. Telephone:
  - f. E-Mail:
  
- 4 Particulars of the Authorised Signatory of the Bidder:
  - a. Name:
  - b. Designation:
  - c. Address:
  - d. Phone Number:
  - e. Fax Number:
  
- 5 In case of a Consortium:
  - a. The information above (1-4) should be provided for all the Members of the Consortium.
  - b. A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
  - c. Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role <sup>\$</sup>	Percentage of equity in the Consortium <sup>\$\$</sup>
1			
2			
3			
4			

<sup>\$</sup>The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.2.6 (d) and instruction 4 at Annex-IV.

<sup>\$\$</sup>The percentage of equity should be in accordance with Clause 2.2.6 (a), (c) and (g).

6. The following information shall also be provided for the Bidder, including each Member of the Consortium:

**Name of Bidder/ member of Consortium:**

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

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary).

Appendix-I**Annex-II: Technical Capacity of the Bidder<sup>@</sup>***(Refer to Clauses 2.2.2, 3.2 and 3.3 of the RFP)*

Bidder type <sup>#</sup>	Member Code <sup>¥</sup>	Project Code <sup>¥¥</sup>	Category <sup>\$</sup>	Experience (number of rooms)		Experience Score <sup>££</sup>
				Number of residential rooms in the hotel	Multiplying factor	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Single entity Bidder		a				
		b				
		c				
		d				
Consortium Member 1		1a				
		1b				
		1c				
		1d				
Consortium Member 2		2a				
		2b				
		2c				
		2d				
Consortium Member 3		3a				
		3b				
		3c				
		3d				
<b>Aggregate Experience Score =</b>						

- <sup>@</sup> Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.9 and/ or by a project company eligible under Clause 3.2.3. In case the Bid Due Date falls within 3(three) months of the close of the latest financial year, refer to Clause 2.2.12.
- <sup>#</sup>A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.9, shall be provided.
- <sup>¥</sup>Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member,

*TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

- ~~¥~~ Refer Annex-IV of this Appendix-I. Add more rows if necessary.
- \$ Refer Clause 3.2.1.
- ££ Divide the number of rooms in the Experience column by one room and then multiply the result thereof by the applicable factor set out in Table 3.2.5 to arrive at the Experience Score for each Eligible Project. In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 3.2.7, and the product thereof shall be the Experience Score for such Eligible Projects.

Appendix-I**Annex-III: Financial Capacity of the Bidder***(Refer to Clauses 2.2.2, 2.2.4 and 3.4 of the RFP)***(In Rs. Crore\$)**

Bidder type \$\$	Member Code‡	Net Cash Accruals					Net Worth‡‡
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Consortium Member 3							
Consortium Member 4							
<b>TOTAL</b>							

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

- \$For conversion of other currencies into rupees, see notes below Annex-II of Appendix-I.
- \$\$A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.
- ‡For Member Code, see instruction 4 at Annex-IV of this Appendix-I.
- ‡‡The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
  - a. reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - b. be audited by a statutory auditor;
  - c. be complete, including all notes to the financial statements; and
  - d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders)<sup>3</sup>.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFP document.
6. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 of the RFP document.

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<sup>3</sup> To further explain, Net worth is aggregate value of the paid-up share capital and all reserves created out of the profits and securities, premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation



**Annex-IV: Details of Eligible Projects***(Refer to Clauses 2.2.2, 3.2 and 3.3 of the RFP)***Project Code:****Member Code:**

Item (1)	Refer Instruction (2)	Particulars of the Project (3)	
Title & nature of the project			
Category	5		
Year-wise Number of Rooms in the Hotel	6	Year	Number of Rooms
		Year 1	
		Year 2	
		Year 3	
		Year 4	
		Year 5	
		Total	
		Five Year Average (Total divided by 5 - No. of rooms to be considered for column no. 5 of the table in Annex-II)	
Location and address of the Hotel	7		
Date of commencement of Hotel	8		
Equity shareholding (with period during which equity was held)	9		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	13		

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Project in this Annex. Information provided in this section is intended to serve as a back-up for information provided in the Bid. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.

3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
5. Refer to Clause 3.2.1 of the RFP for category number.
6. The five-year average number of rooms for each Eligible Project for the entire 5 years (total divided by 5) is to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12)

For the project to be Eligible for a particular year within last 5 financial years, the hotel needs to have total number of operational rooms more than or equal to 50 in that year, in accordance with Clause 2.2.2.

7. Particulars such as name, address and contact details of owner may be provided for all Eligible Projects.
8. The date of commissioning of the project should be indicated for all Eligible Projects.
9. For all Eligible Projects, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 3.2.3). In case the project is owned/ operated, maintained and managed by the Bidder Company, please indicate accordingly (Refer Clause 3.2.3).
10. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
11. Certificate from the Bidder’s statutory auditor<sup>4</sup> or its respective entity issuing the star categorization certificate must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.
12. The Bidder shall provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

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<sup>4</sup> In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

**Certificate from the Statutory Auditor regarding Hotels<sup>Φ</sup>**

Based on its books of accounts and other published information authenticated by it, this is to certify that .....(name of the Bidder/Member/Associate) is/ was an equity shareholder in .....(title of the project company) and holds/held Rs. ....cr. (Rupees ..... crore) of equity (which constitutes .....%<sup>ε</sup> of the total paid up and subscribed equity capital) of the project company from .....(date) to .....(date)<sup>¥</sup>. The project was/is likely to be commissioned on .....(date of commissioning of the project).

We certify that ..... (title of the project company) {owned/ operated, maintained and managed} a .....(insert name of the hotel) having a capacity of .....(insert number) residential rooms and the total number of residential rooms {owned/ operated, maintained and managed} by them works out to .....(insert number of residential rooms in words and figure) during the past five financial years as per year-wise details noted below:

**(Give year wise details)**

.....  
.....

We certify that the star category of the project is ..... As per the following certification process method: ..... / We certify that the Average Room Rate (ARR) in the hotel is Rs. .... /- excluding taxes, calculated in accordance with Clause 2.2.2 of the RFP Document for the Project.

We also certify that the project is in operation from ..... and presently functional.

Name of the audit firm:

Seal of the audit firm:(Signature, name and designation of the authorized signatory) Date:

13. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.9, the Bidder should also provide a certificate in the format below:

<sup>Φ</sup> Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFP.

<sup>ε</sup> Refer instruction no. 10 in this Annex-IV.

<sup>¥</sup> In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that ..... (name of Applicant) owned/ operated/ managed the ..... (name of project) from ..... (date) to ..... (date)."

**Certificate from the Statutory Auditor/ Company Secretary regarding Associate<sup>\$</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (*name of the Bidder/ Consortium Member/ Associate*) is held, directly or indirectly<sup>‡</sup>, by ..... (*name of Associate/ Bidder/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

*{Describe the share-holding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein. }*

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of Date:  
the authorised signatory).

<sup>\$</sup>In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

<sup>‡</sup>In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

14. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score<sup>5</sup>.

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<sup>5</sup> Refer Clause 3.2.6 of the RFP.

Appendix-I

**Annex-V: Statement of Legal Capacity**

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

Ref. Date:

To,

Mr \*\*\*\*\*

UT Administration,

Lakshadweep Islands

Dear Sir/Madam,

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

We have agreed that .....(insert member's name) will act as the Lead Member of our consortium<sup>6</sup>.

We have agreed that .....(insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf\$ and has been duly authorized to submit the RFP. Further, the 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.....

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<sup>6</sup> Please strike out whichever is not applicable.

**Appendix-II: Financial Bid for selection of Bidder**

**Letter comprising the Bid**

*(Refer Clauses 2.1.4 and 2.14)*

Dated:

To,

.....

.....

Sub: Financial Bid for the Minicoy Island, Eco-Tourism Resort Project

Dear Sir,

1. With reference to your RFP document dated ....., I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and

- b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1 of the RFP document; and
  - c. I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - e. the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clauses 2.8 and 2.25 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Net Worth criteria and meet(s) the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.<sup>7</sup>

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<sup>7</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule ..... hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-VII thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/ We acknowledge and undertake that our Consortium was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. I/ We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the site identified for the Project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.



22. I/ We offer a Bid Security of Rs..... (Rupees ..... only) to the Authority in accordance with the RFP Document.
23. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
24. The documents accompanying the Bid, as specified in Clause 2.14.3 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid”.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and Revenue and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement. }
29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
30. I/ We hereby submit the following Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement:
31. ***We offer a Concession Fee of (\_\_\_\_\_) from the date of COD of the Project, which shall be increased @ 05% every year as specified in the draft Concession Agreement.***

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place: Name and seal of Bidder/Lead Member

**Appendix-III: Power of Attorney for signing of Bid<sup>8</sup>**

*(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 for the ..... Project proposed or being developed by the ..... (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bids 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 Concession 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 Concession 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 THIS ..... DAY OF .....2.....

For .....

(Signature, name, designation and address)

Witnesses:

1.

(Notarised)

2.

<sup>8</sup> To be submitted in original.

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 Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders 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-IV: Power of Attorney for Lead Member of Consortium<sup>9</sup>**

*(Refer Clause 2.2.5)*

Whereas the .....(“the Authority”) has invited applications from interested parties for the ..... Project(the “Project”).

Whereas,....., .....and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

**NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS**

We,.....having our registered office at.....,M/s. ....having our registered office at.....,M/s. ....having our registered office at .....and .....having our registered office at.....,(hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/S.....having its registered office at.....,being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/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, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with 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 Concession Agreement is entered into with the Authority.

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<sup>9</sup> To be submitted in original.

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 .....2.....

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

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 Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders 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-V: Joint Bidding Agreement

(Refer Clause 2.2.6 (g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

### AMONGST

1. .... Limited, a company incorporated under the Companies Act, 1956/2013 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, 1956/2013 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)

### AND

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

### AND

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>\$</sup>

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

---

**WHEREAS,**

- (A) UT Administration of Lakshadweep, under the aegis of Ministry of Home Affairs, represented by its Chairman and having its principal offices at ..... (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the Bids”) by its Request for Proposal No. .... dated .....(the “RFP”) for pre-qualification and short-listing of bidders for development, operation and maintenance of the ..... Project (the “Project”) through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

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

**2. Consortium**

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

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

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act,2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession 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 Concession 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;}

- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}

- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other 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 RFP, RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

#### 6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party:}

{Fourth 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 Net Worth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project in terms of the RFP.

- 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 Concession Agreement.

## **7. Representation of the Parties**

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

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the

financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the 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 Concession 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 Bidder 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 Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

FOURTH PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

**Notes:**

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

## Appendix VI: Bank Guarantee for Bid Security

(Refer Clauses 2.1.5 and 2.27)

**B.G. No.**

**Dated:**

1. In consideration of you, ....., having its office at ....., (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company registered under the Companies Act, 1956/2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... Project on DBFOT basis (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.5 read with Clause 2.1.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. .... (Rupees ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. .... (Rupees ..... only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have

obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. .... crore (Rupees ..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

## **Appendix-VII: Guidelines of the Department of Disinvestment<sup>10</sup>**

*(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II  
Government of India  
Department of Disinvestment

Block 14, CGO Complex  
New Delhi.  
Dated 13th July, 2001.

### **OFFICE MEMORANDUM**

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- b. In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

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<sup>10</sup> These guidelines may be modified or substituted by the Government from time to time.



- d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- e. The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- f. Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- g. Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

### **Appendix-VIII: CRZ Clearance**

It is proposed that the project shall be developed in environmentally sustainable manner and upfront CRZ clearance shall be obtained by the Authority. The process followed for obtaining upfront CRZ clearance are as under:

1. Submitted documents for CRZ clearance to LCZMA. Documents for CRZ include:
  - a. Detailed Project Report, site layout and drawings prepared by IPE Global Ltd
  - b. CRZ map in 1:4000 scale prepared by National Centre for Sustainable Coastal Management (NCSCM)
  - c. Rapid EIA study undertaken by National Institute of Ocean Technology (NIOT)
  - d. NOCs from Lakshadweep Pollution Control Committee, Department of environment & Forest and concerned Panchayat.
2. LCZMA shall appraise the project and provide recommendations. The project shall be forwarded to MoEF
3. Project shall be then scrutinized by Expert Appraisal Committee (EAC) at MoEF.
4. Once EAC approves the project, MoEF shall grant the CRZ clearance to the project.

It is expressly provided that the responsibility of the Authority shall be limited to providing upfront CRZ clearance, subject to compliance during the concession, if any. The Concessionaire, at its own risk and cost, shall be solely responsible for adhering to the conditions of CRZ clearance. The Concessionaire shall be responsible for making itself fully aware about terms and conditions of the CRZ clearance.

Any violation of the terms & conditions of the CRZ clearance obtained by the Authority to facilitate the Concessionaire shall be treated as Concessionaire's default and relevant provisions of default of the Concession Agreement shall be applicable for such occurrence.

### Appendix-IX: Other Clearances

- a. **Conversion of Land Use:** The Authority shall, as required under Applicable Laws, obtain the Conversion of Land Use (CLU) Permit for the project site on or before the Appointed Date.
- b. **License to store and serve alcohol in the Resort:** Commitment to license to store and serve alcohol shall be provided at the date of signing of agreement. Actual license shall be contingent upon compliance to fire and other approvals as per extant provisions and shall be provided after completion of construction.
- c. **Other Clearances:** The following list of Applicable Permits for construction, operation and maintenance of the Eco-Tourism Resort is indicative only. The actual Applicable permits will be contingent upon the nature of construction and operation envisaged by the Concessionaire.

The estimated timeframe for obtaining following approvals is 30 days, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority will provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

S. No.	Clearance / Permit	When required?	Relevant Department	Timeline
1	Land Diversion	Before Construction	Revenue Department	30 days
2	Transfer of land lease to Legal Entity – Lease Registry	Before Construction	Registrar / Sub-Registrar	30 days
3	CRZ Clearance	Before Construction	LCZMA + MoEFCC	LCZMA: 60 days
				MoEF: 60 days
				Total: 120 days (Max.)
				(as per CRZ notification 2011)
4	Development Permit	Before Land Development	Lakshadweep PWD	30 days
				(as per Lakshadweep Building Bye-Laws)
5	Building Permit	Before erection of building	Lakshadweep PWD	30 days
				(as per Lakshadweep Building Bye-Laws)
6	Development Certificate	After Land development but before building construction	Lakshadweep PWD	30 days
				(as per Lakshadweep Building Bye-Laws)

7	Occupancy Certificate	After Building Construction but before occupation	Lakshadweep PWD	15 days (as per Lakshadweep Building Bye-Laws)
8	Provisional NOC	Before Construction	Lakshadweep Pollution Control Committee	1 week after receiving the project drawings
9	Consent to Establish	Before Construction	Lakshadweep Pollution Control Committee	1 week after receiving the project drawings
10	Consent to Operate	After Building Construction but before operation	Lakshadweep Pollution Control Committee & concerned departments like PWD & Revenue Department	15 days
11	Panchayat NOC	Before Construction	Village / Dweep Panchayath	15 days
12	Clearance from Environment Dept (in case of water villas)	Before Construction	Department of Environment and Forest	30 days after receiving the approved project drawings
13	Provisional Permit for Eco-friendly Tourist Resorts	Before Construction	Evaluation Committee under the Tourism Department	90 days (as per Guidelines for setting up eco-friendly tourist resorts)
14	Operational Permit for Eco-Friendly Tourist Resorts	After Construction and Before Operation		30 days (as per Guidelines for setting up eco-friendly tourist resorts)
15	Food License & Hygiene Clearance	Before Operation	Department of Health, Lakshadweep; Food Safety & Standards Authority of India (FSSAI)	15 days
16	Approval for construction of floating jetty	Before construction of jetty	Port Management Board & Environment Department	30 days
17	Approval for Adventure sports/water sports activity	Before operation of water sports activity	Department of Tourism, Lakshadweep;	15 days
18	Fire Clearance	Before operation	Fire Department/Police Department, Lakshadweep	15 days
19	Liquor License	During operation	Currently, liquor is banned in UT (Bangaram is an exception)	Liquor license will be given within one month of the submission of application by the successful bidder