



**Request For Qualification Cum Request for Proposal
(R.F.Q Cum R.F.P.)**

For

**DEVELOPMENT OF FIVE STAR HOTEL CUM COMMERCIAL COMPLEX NEAR
DR. BHIMRAO AMBEDKAR GOMTI VIHAR KHAND - 1, GOMTI NAGAR,
LUCKNOW (UTTAR PRADESH)**

**ON DESIGN, BUILD, FINANCE, MAINTAIN, OPERATE AND OWN BASIS
UNDER PUBLIC PRIVATE PARTNERSHIP (PPP)**

**LUCKNOW DEVELOPMENT AUTHORITY
PRADHIKARAN BHAWAN, VIPIN KHAND, GOMTI NAGAR,
LUCKNOW, UTTAR PRADESH**



09 SEPTEMBER, 2011

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Tender No.

Processing Fee for RFQ cum RFP document: Rs. 1,00,000/- (Non Refundable)



ACKNOWLEDGEMENT

To be returned to the following address on receipt of this Document:

To,
The Vice Chairman
Lucknow Development Authority (LDA),
Lucknow, Uttar Pradesh

<i>Tender Document Number</i>	
<i>Tender Document collected by (Name of the person)</i>	
<i>Designation</i>	
<i>Name of the organization</i>	
<i>Address</i>	
<i>Contact No.</i>	
<i>Signature</i>	
<i>Date of Receipt</i>	

Tender No.

Processing Fee: Rs. 1,00,000/-

Date of Pre-Bid meeting: 16 September, 2011

Vice Chairman
LDA



REQUEST FOR QUALIFICATION CUM REQUEST FOR PROPOSAL

***Development of Five Star Hotel Cum Commercial Complex in Dr. Bhimrao Ambedkar Gomti
Vihar Khand -1, Lucknow
on
DBFO Basis***

Details of Tender:

This tender is for the Development of a Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) by a private developer on Design, Build, Finance, Operate, Maintain and Own basis.

This RfQ cum RfP Document consists of:

Volume 1: Instructions to Bidders

Volume 2: Draft Development Agreement



VOLUME 1 - INSTRUCTIONS TO BIDDERS



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DISCLAIMER

The information carried in this Request for Qualification Cum Request for Proposal (RFQ Cum RFP) document or subsequently provided information whether verbally or in documentary form by or on behalf of Lucknow Development Authority (**LDA/Authority**), other local agencies, Government of Uttar Pradesh (**GoUP**) or any of their employees or advisors/ *consultants* is provided to Bidders on the terms and conditions set out in this RFQ Cum RFP document and any other terms and conditions subject to which such information is provided.

This RFQ Cum 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 RFQ Cum RFP is to provide interested parties with information that may be useful to them in the formulation of their proposals for qualification pursuant to this RFQ Cum RFP (the "**Proposal**"). This RFQ Cum 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 RFQ Cum 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 RFQ Cum RFP. The assumptions, assessments, statements and information contained in this RFQ Cum RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFQ Cum RFP and obtain independent advice from appropriate sources.

Information provided in this RFQ Cum 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, 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 RFQ Cum RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFQ Cum RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFQ or arising in any way with pre-qualification of Bidders for participation in the Bidding Process.



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

The issue of this RFQ Cum RFP does not imply that the Authority is bound to select and short-list pre-qualified Bidders for Bid Stage or to appoint the Selected Bidder or Developer, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

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



Definitions

Agreement/ Development Agreement

“Agreement/ Development Agreement” shall mean the Draft Development Agreement given in Part 2 of the RfQ cum RfP document.

Associates

For a Bidding Company or a Consortium Member, only those entities would be “Associates” who control and are controlled by or are under the common control with such Bidder/Consortium Member.

Bank

“Bank” shall mean any State Bank of India (SBI), Nationalized Bank and any Indian Scheduled Commercial Bank.

Bidder(s)

“Bidder(s)” shall mean Bidding Company or Bidding Consortium that has submitted a Proposal in response to this RFQ cum RFP Document.

Bid Document

“Bid Document” shall mean this Request for Qualification cum Request for Proposal document or any other document issued by Lucknow Development Authority (LDA) as part of the Bid Process.

Bid Process

“Bid Process” shall mean various activities taken up by LDA leading up to the selection of the Successful Bidder.

Bidding Company

“Bidding Company” shall mean a corporate entity (Public or Private Limited) registered under the Companies Act, 1956 or equivalent International law satisfying the basic eligibility criteria of bidding laid down herein.

Bid Evaluation Committee/BEC

“Bid Evaluation Committee/BEC” means the committee duly constituted by Department of Industrial Development, Government of Uttar Pradesh to evaluate the Proposals.

Bid/ Proposal

“Bid/ Proposal” shall mean together Envelope A and Envelope B as defined in Section 1.2 as submitted by the Bidders in response to this RfQ cum RfP Document.

Bid Security



“Bid Security” shall have the meaning as referred in Section 5.7 of this document.

Bid Validity Period

“Bid Validity Period” shall mean the period stipulated in Clause 2.13 of Section 2 of this RFQ cum RFP Document, for which the Proposal submitted is valid.

Bid Value

“Bid Value” shall mean the amount offered by the Bidder in the Financial Proposal payable to LDA for the purpose of developing the Project at the Project Site.

Competent Authority

Competent Authority shall mean the authority having the power to accept or reject the Proposals of the Bidders pursuant to evaluation of the same by the Bid Evaluation Committee.

Consortium

“Consortium” shall mean Group of companies that have jointly submitted the Proposal for the Project.

Consortium Member

Each entity in the Bidding Consortium shall be referred to as a “Consortium Member”.

Developer

“Developer” shall mean the Successful Bidder with whom the Lucknow Development Authority shall sign the Development Agreement.

Floor Area Ratio

“Floor Area Ratio (FAR)” means the quotient of the floor space excluding the area specifically exempted from computation under the concerned regulations that can be constructed in a plot to the plot area.

$$\text{FAR} = \text{Total covered floor area on all floors} / \text{Plot area}$$

Financial Bid / Financial Proposal

“Financial Bid / Financial Proposal” shall mean the information submitted as per Appendix 12 of this document and is part of the Bid/Proposal.

Good Industry Practice

Good Industry Practice shall mean practices, methods, techniques and standards as changed from time to time that are generally accepted for use in the infrastructure, construction and real estate industry or any other good industry practice which is relevant to the said project.

Lead Member / Lead Consortium Member (LM/ LCM)



In case of a Bidding Consortium, the “Lead Member (LM)/ Lead Consortium Member (LCM)” shall be that Consortium Member vested with the prime responsibility of developing the Project and holding not less than 26% stake in the Consortium.

Letter of Acceptance

“Letter of Acceptance” shall have a meaning as referred in Appendix 10 of this Document. It means Letter submitted by the Bidder accepting the Award or Intention to Award the Project to the Bidder.

Letter of Commitment

“Letter of Commitment” shall have a meaning as referred in Appendix 11 of this Document.

Project

“Project” shall mean designing, engineering, procuring, financing, construction, operation and maintenance of a minimum of Five Star category or above Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, in Lucknow, Uttar Pradesh in accordance with the provisions of the Development Agreement.

Project Site

“Project Site” shall mean all that plot of land admeasuring 2.48 Hectares which is more specifically described in the Draft Development Agreement.

Proposal

“Proposal” shall mean cumulatively Techno-Commercial proposal and its sub-proposal and the Financial Proposal submitted by the Bidder in response to this RfQ cum RfP.

Proposal Due Date

“Proposal Due Date” shall have the same meaning as referred to in Clause 2.27 of this Document.

Responsiveness / Non-responsive

“Responsiveness / Non-responsive” shall mean as referred in Clause 2.24 of this document.

Request for Qualification cum Request for Proposal (RFQ cum RFP)

“Request for Qualification cum Request for Proposal” shall mean this document inviting the submission of “Proposal” to Design, Build, Finance, Operate, Maintain and Own the Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Gomti Nagar, Lucknow in Uttar Pradesh.

Selection Process

“Selection Process” shall have the same meaning as the 'Bid Process'.

**Subsidiary/Subsidiaries**

For a Bidding Company or a Consortium Member, Subsidiary / subsidiaries shall mean only those entities in which the Bidding Company / Consortium Member" hold(s) more than 50% of the voting securities directly.

Successful Bidder

Successful Bidder is the Bidder who inter-alia meets the following requirements (a) meets the Technical and Financial criteria; and (b) who offers the highest Bid Value and adheres / consents to adhere to all other conditions laid down by LDA in regard to the Project.



Request for Qualification Cum Request for Proposal (RFQ Cum RFP)

LUCKNOW DEVELOPMENT AUTHORITY

1. INTRODUCTION

1.1 PROJECT BACKGROUND & INTRODUCTION

Lucknow Development Authority (referred to as **LDA/Authority**) was established in 1974 under Uttar Pradesh Urban Planning & Development Act 1973. It works on the development of city, regarding control and acquisition of land, building constructions and social and physical infrastructure in urban area of the city. The Authority is responsible for developing the urban area of the city. In pursuance of its main objectives and role that it is assigned to play under its enabling Act, the Authority has decided to develop a Hotel cum Commercial Complex on Design Build-Finance, Maintain, Operate and Own (**DBFO**) basis near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Gomti Nagar, Lucknow (Uttar Pradesh), on the pre identified vacant land, acquired by LDA (**the Project**), as described below.

LUCKNOW

Lucknow is the capital of India's most populous state, Uttar Pradesh and is situated about 500 km southeast of New Delhi in the heart of the state. The city lies at an average altitude of 110 meters above mean sea level and generally slopes to the east. Lateral slopes are towards the River Gomti, which flows from north-west to south-east through the heart of the city, dividing it into the Trans-Gomti and Cis-Gomti regions. The position of the City as the only large urban centre amidst a number of small towns in the surrounding districts makes it an attractive destination for job seekers and people in need of education and health facilities. Lucknow is known for its cultural heritage. Some of the well-known historical buildings, which occupy a pride of place, include the Residency, Bara Imambara, Rumi Darwaza, Husainabad Imambara, the Picture Gallery, Sikandarabagh, Dilkusha Palace, Kaiserbagh Palace, the Hussainabad Clock Tower etc.

Area of Lucknow city is 337.5 Sq. Km. The present population is around 32 lakhs. It is well connected by air and rail connectivity is also very good with all the major stations in India.

DR BHIMRAO AMBEDKAR GOMTI VIHAR

Dr. Bhimrao Ambedkar Gomti Vihar is approached by VIP Road connecting Hazratganj with MG Road and is in the heart of Lucknow (UP). Dr Bhimrao Ambedkar Gomti Vihar



has been developed on the southern embankment of the river Gomti on an area of about 90 acres near Dr. Bhimrao Ambedkar Samajik Parivartan Sthal.

THE NEED FOR THE PROJECT

Today, Lucknow is among the top ten fastest growing non-metropolitan cities of India. The City is witnessing an economic boom. The presence of Government departments and several public sector undertakings provide lot of employment opportunities in that area. UP Government has a very optimistic plan for developing the infrastructures for the City's further economic growth in order to tap the City's potential to take it to a higher level. In last few years, the City has witnessed few drastic changes which are indicators of its development and potentiality of the City for further development. The City has now:

- More aerial traffic entering into and going from Lucknow to national as well as International destinations, specially in view of the upcoming international airport terminal which is almost ready for business;
- More than average occupancy in 4-5 Star hotels round the year which is high by the Industrial norms in a non metro city;
- Peak season occupancy, which is from October to March, is over 85%;
- More disposable income with people;
- Proximity with several places of religious interests in the region;

In view of the above, the City is in need of enhanced world class accommodation facilities as well as commercial space to capitalize on the business potential of the State. Also, considering the commercial growth of the City, Lucknow does need a commercial space as well which can cater to the space requirements of various public/private organizations/set ups who have a prominent presence in the City via their offices at various locations but don't have a consolidated face at one place.

THE SITE LOCATION

The proposed site for the Project is on land of the size of 2.48 Hectares near Dr. Bhimrao Ambedkar Gomti Vihar Khand-I on VIP Road, located very centrally and at prime location of the city, approx. 02 Kms. from Hazaratganj. The site is in the vicinity of Dr. Bhimrao Ambedkar Samajik Parivartan Sthal, Samajik Parivartan Prateek Sthal, located near Dr. Bhimrao Ambedkar Gomti Vihar opposite Dr. Bhimrao Ambedkar Park (the **Site**), more specifically described in the draft Development Agreement.

The Site location is ideal for the Project as it is between places of tourist interests as well as traditional business centre of Lucknow. The Site falls in close vicinity to several places of importance in the city like La Martiniere Pillar, La Martiniere



College, Lucknow Zoo, Dr. Bhimrao Ambedkar Samajik Parivartan Sthal etc. and is hardly 2 km from the traditional business district of the town.

THE PROJECT

The Project i.e. development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1 shall have two components:

- a. **Hotel:** The Hotel component of the proposed development will be branded as a minimum Five Star or a higher category Hotel and will contain at least 150 guest rooms (150 Keys), with a 24 hour Coffee Shop of 100 seating capacity, Specialty Restaurant of 75 seating capacity, Lounge / Bar of 50 to 100 seating capacity, Food & Beverages & Other ancillary facilities such as bakery, conference halls of various sizes, Business Centre, Executive Health Club and a swimming pool with an additional paddle pool for kids.
- b. **Commercial Complex:** The Commercial Complex component of Project may contain commercial units like shops, business centres, shopping plaza, multiplex, service apartments, hotels including budget hotels or set up of similar nature as may be permissible under the law. The Developer shall have the right to sell the commercial set up or any part thereof to the interested purchasers, subject to the terms and conditions as stated herein and/or in the Development Agreement.

KEY FEATURES

- | | | |
|----|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a) | Area of Land | 2.48 Hect. |
| b) | Location | Located very centrally at prime location of the city approximately 2.0 KM from the main business centre of Hazratganj. Located on newly developed 08 lane road connecting Kalidas Marg to Lucknow-Faizabad Highway which is a 60.0 metre wide road as per the Master Plan. Thus the actual site boundary begins beyond the road widening margin for 60.0 metre wide road. The Site is in the vicinity of Dr. Bhimrao Ambedkar Samajik Parivartan Sthal, Samajik Parivartan Prateek Sthal, located near Dr. Bhimrao Ambedkar Gomti Vihar opposite Dr. Bhimrao Ambedkar Park. |



- | | | |
|----|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| c) | Land Use | Commercial (Sub City Centre) |
| d) | Permissible FAR & | Lucknow Development Authority has proposed a policy of allowing FAR of 3.0 and additional purchasable FAR of 1.0 for Hotel plots of 2.0 Hectare or more, having all Infrastructure facilities, located on 30 metres or wider roads, and utilising at least 25% of FAR for development of Five Star Hotel. The policy is under consideration of Housing and Urban Planning Department, Government of Uttar Pradesh for its approval. After the approval of the policy Basic FAR of 3.0 & an additional purchasable FAR upto 1.0 will be permissible. |
| e) | Ground Coverage | 40% is permissible. |
| f) | Height Restriction | No height restriction is proposed. However keeping in view the monuments like Dr. Bhimrao Ambedkar Samajik Parivartan Sthal, Samajik Parivartan Prateek Sthal, the height should be so designed that the skyline of these monuments is not disturbed nor is the architectural ambience and visual aesthetics deformed. |
| g) | Permissible Activities | As per the Zoning Regulations of prevailing Lucknow Master Plan-2021. |
| h) | Available Infrastructure | Land is located on newly developed 08 lane VIP road connecting Mahatma Gandhi Marg to Lucknow-Faizabad National Highway. |
| i) | Facility Development | LDA proposes to develop facilities like offices for govt./semi govt. departments, police post, fire station, 33/11 kV sub station, bus-taxi-three wheeler stops and public convenience kiosks on adjoining government land. |

ENVIRONMENTAL CLEARANCE

Environmental Impact Assessment for the Project Site has been done by the Transaction Advisors to the Authority i.e. M/s Abacus Legal Group, which suggests



that the Project Site does not come under the regulated area of Archeological Survey of India (ASI) or in the prohibited range from the Gomti river as per the Authority's norms and the Project is feasible on these accounts.

However the Successful Bidder/ Developer shall require an Environmental Clearance from State Environment Impact Assessment Authority (SEIAA) as per the Environment Impact Assessment Notification S.O. 1533 (E) dated 14th September, 2006 at the time of implementation of the Project as per law.

FACILITIES PROPOSED TO BE INCORPORATED BY THE DEVELOPER IN THE PROJECT

The Developer shall construct a Service Road all along the Project Site and shall also provide provision for merging of the traffic with the main road in the front of the Project Site as per the requirement of the Project and therefore shall be required to construct roads for entry as well as exit.

THE CONTOUR OF THE PROJECT

The Successful Bidder shall develop a Five Star Hotel cum Commercial Complex as per the prevalent Development Control Regulations in the city of Lucknow. Hotel shall be developed within a maximum period of 5 years from the date of issuance of Letter of Award including any extension as may specifically be provided there for and operated, maintained and owned by the Successful Bidder. The Successful Bidder shall get the freehold rights on the Site only after the receipt of Project Completion Certificate in respect of the Hotel component of the Project and/or any other condition that may be stipulated in the Development Agreement.

CONSTRUCTION PERIOD

The Five Star Hotel is proposed to be completed by the Bidder within a period of 5 years from the date of Letter of Award or any extension as may be specifically mentioned herein or in the Development Agreement.

DEVELOPMENT MODE

The Project is proposed to be developed on Design, Build, Finance and Operate Basis (DBFO).

RESERVE PRICE



There is a reserve price for the Bid Value to be quoted by the Bidders and the same is INR 112,00,00,000 (Indian Rupees One Hundred Twelve Crore) (**Reserve Price**). Any Bid/Proposal received below this amount shall be out rightly rejected.

DEVELOPMENT OF THE PROJECT

Bidder would be responsible for designing, financing, constructing, operating & maintaining the Project. After the completion of the Hotel component of the Project, the Bidder shall be given the Project Completion Certificate and only after receipt of the Project Completion Certificate and/or fulfilling any other condition that may be stipulated in the Development Agreement, the Bidder shall be allowed to get free hold rights on the Project Site.

ADVERTISEMENT/HOARDING CHARGES

During the construction period, the Bidder may have the right to permit/allow and charge for advertisement/hoarding on the Project Site as per applicable laws.

TIE-UP

The Developer shall ensure operation and maintenance of the Hotel facility as per the minimum industry standards prescribed for a Five Star Category Hotel and in pursuance of the same shall enter into tie ups with the known brands in the industry of Five Star Hotels to run the facility and maintain the prescribed industry standards.

CONFORMATION WITH BYE LAWS

Bidders shall ensure that the design of entire Project facility(ies) (Hotel cum Commercial Complex) conforms to the provisions of concerned development authorities, Bye-laws, requirements of all statutory/regulatory bodies in respect of fire hazard, ventilation & lighting requirement, safety, security, evacuation, alarm etc during disaster. The Project shall confirm with the norms of the National Disaster Management Authority for the seismic zone in which the Project falls.

Since the Project includes commercial component also and is not purely a hotel project, Byelaws, FAR, Ground coverage norms applicable to "commercial" shall be applicable for the purpose of the Project. If however, the Developer makes it a purely hotel project, the Developer will get the benefits of the Byelaws, FAR etc as provided for hotels under the GoUP. policy for hotels as may be applicable. Further, rules and regulations of Housing & Urban Development Planning for hotels shall not be applicable because the Project envisages construction of hotel cum commercial activities, however, if the Site is used purely for construction of hotel facility, such rules and regulations shall be applicable.



TAX INCENTIVES

The Developer shall be entitled to the relevant tax exemptions/deferments for the Hotel Project under the prevalent Uttar Pradesh Tourism Policy in terms of various tax exemptions like luxury tax, trade tax, entertainment tax and other relaxations that may be available to tourism units under the policy.

PROJECT APPROVALS

Bidder will be responsible to obtain all approvals from local bodies, statutory & regulatory authorities in respect of Building Plan of the Project and/or its facilities to be constructed by it.

SCOPE OF WORK

The Project envisages the following scope of work:

- a. Preparing detailed design for the proposed Project in accordance with the approved conceptual plans and design and getting them approved from the Authority or their authorized representative, local bodies and other agencies.
- b. Construction of the Hotel cum Commercial Complex at the proposed Site location.
- c. The Hotel component shall be completed in a time frame of 5 years from the date of Letter of Award or any extension thereof as may be specifically provided for.
- d. Pay in advance the Bid Value (Bid Value) in the manner as described below.

BID VARIABLE/FINANCIAL PROPOSAL

The 'bid variable' for the Project is the Bid Value payable by the Bidder to LDA.

BID VALUE

The Bidder will be required to pay to the Authority a Bid Value quoted by the Successful Bidder/ Developer as the highest amount payable as part of the Financial Proposal payable in advance in the manner prescribed herein below.

ANNUAL TAXES, FEE, RATES & DUTIES

The Bidder shall bear / pay all applicable taxes, fees, rates and duties in relation to the Project at all time during and after the construction.

1.2 BRIEF DESCRIPTION OF THE BIDDING PROCESS



LDA invites Request for Qualification cum Request for Proposal (**RFQ Cum RFP**) from interested parties to participate in the Bid Process. The Bid Proposal of only competent Bidders, who satisfy the eligibility criteria prescribed in the document and furnish the details as per terms and conditions stated in this document, shall be opened for the purpose of selecting the Successful Bidder for the Project.

LDA intends to follow a single stage Bidding Process for selection of the Bidder for the Project. The submission of Bids by interested parties in response to the Bid Document would be required to be in two separate sealed envelopes as indicated below:

Envelope A: Techno Commercial Proposal

Envelope B: Financial Proposal

The Bids received would be subject to a prima-facie check for responsiveness followed by a stepwise evaluation procedure as described below.

Below are the brief highlights of the process:

- a. There shall be a Pre Bid meeting before the RFQ Cum RFP Proposal submission. Queries with respect to the Project may be sent to the Authority through email at the address provided in this RFQ Cum RFP document latest by 16th September 2011 by 1700 hrs. Attendance of the Bidders at the Pre Bid meeting is not mandatory. However, subsequent to the meetings LDA may not respond to all the queries from any Bidder.
- b. During the Bid Process Bidders would be required to furnish the information specified in this RFQ Cum RFP Document.
- c. This RFQ Cum RFP deals with both the first stage (Qualification Stage) and second stage (Financial Proposal Stage). However, Financial Proposals of only those Bidders shall be opened who are found to qualify the Qualification criterias.
- d. During the RFQ Cum RFP Stage, Bidders would be expected to examine the Project in detail, and to carry out such studies as they deem fit to submit Proposals for the implementation of the Project.
- e. The Project would be awarded to the Successful Bidder after evaluating the Proposals on the basis of the bidding criteria specified in this RFQ Cum RFP document for the Project.
- f. This RFQ Cum RFP document contains the required details of the process to be followed during the entire bidding process.

2. SELECTION PROCESS AND INSTRUCTIONS TO BIDDERS

2.1 Scope of Proposal

2.1.1 LDA wishes to receive Proposals from experienced and capable Bidders in respect of the Project.



2.1.2 The Financial Proposals of only those Bidders shall be opened who qualify the technical and financial eligibility criteria as laid down herein.

2.1.3 Qualification will be based on the assessment of the Technical and Financial capability of the Bidders in commissioning, operating and maintaining the Project facilities. The Bidders found to be technically and financially capable (i.e. fulfill both the technical and financial eligibility criteria) would be eligible for the next stage of the selection process i.e. opening the Financial Proposals.

2.2 Eligible Bidders

2.2.1 The Bidder may be a single company or a group of maximum 5 companies (hereinafter referred to as **Consortium**), coming together to implement the Project. The term Bidder used hereinafter would therefore apply to both a single entity and/or a Consortium.

2.2.2 The Bidder shall submit a Power of Attorney as per the format enclosed at Appendix 1A, authorizing the signatory of the Proposal to commit the Bidder.

2.2.3 Proposals submitted by a Consortium shall comply with the following additional requirements:

- a. Number of members in a Consortium would be limited to maximum of 5;
- b. The Proposal must contain the information required for each member of the Consortium.
- c. An individual Bidder cannot at the same time be member of a Consortium applying for this Project. Further, a member of a particular Consortium cannot be member of any other Consortium applying for this Project; an undertaking towards this end needs to be submitted by all members of the Consortium.
- d. Members of the Consortium shall nominate one of the members of the Consortium as the Lead Member. The nomination shall be supported by a Power of Attorney as per the format enclosed at Appendix 1B
- e. Members of the Consortium shall enter into a Memorandum of Understanding (MOU)/Joint Bidding Agreement as per the format enclosed at Appendix 9 and get it duly notarized for the purpose of making the Proposal and submitting the Proposal. The MOU shall, inter alia:
 - i. Convey the intent to form a Special Purpose Vehicle (hereinafter **SPV**) with shareholding commitment(s) as stipulated in this document, which would enter into the Development Agreement and subsequently carry out all the responsibilities as Developer in terms of the Development Agreement, in case the Project is awarded to the Bidder.
 - ii. Clearly outline the proposed roles and responsibilities of each member in case of Consortium at each stage,



- iii. Commit the minimum equity stake as stipulated,
 - iv. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Development Agreement.
 - v. Include a commitment that no member of the Consortium shall divest/transfer its Interest or any part thereof in the SPV until the completion of the construction of the Hotel component of the Project and issuance of the Project Completion Certificate in respect of same by the Authority and/or any other condition that may be stipulated in the Development Agreement (**Lock In Period**) as defined in the Development Agreement.
- f. In case of Consortium, at all times during the Lock In Period:
- i. the Lead Member shall hold at least 26% of total shares in the shareholding of the SPV.
 - ii. The Technical Member meeting the technical requirements shall also hold a minimum of 26% in the shareholding. Other member of the Consortium shall hold a minimum of 10% share each in the shareholding of the SPV.
 - iii. In case the Lead Member and the Technical Member are same, the Lead Member shall hold minimum of 51% in the Consortium.

2.2.4 Notwithstanding anything stated elsewhere in this document, LDA shall have the right to seek updated information from the Bidders to ensure their continued eligibility. Bidders shall provide evidence of their continued eligibility in a manner that is satisfactory to LDA. Bidder may be disqualified if it is determined by the LDA, at any stage of the process, that the Bidder will be unable to fulfill the requirements of the Project or fails to continue to satisfy the Eligibility Criteria. Supplementary information or documentations may be sought from Bidders at any time and must be so provided within a reasonable time frame as stipulated by LDA.

2.2.5 Any entity which has been barred or disqualified either by GOI or GoUP or their Departments or agencies from participating in projects (BOT or otherwise) and such disqualification subsists as on the Proposal Due Date, would not be eligible to submit a Proposal, either individually or as member of a Consortium. Bidder is required to submit an affidavit to this effect.

2.3 Changes in Consortium Composition

After short listing, change in the composition of the Consortium (except Lead Member as well as the Technical member) will be subject to approval of LDA but applications to change the Consortium must reach LDA before the date of opening of the Financial Proposal i.e. Envelope B.



2.4 Number of Proposals

Each Bidder shall submit only one (1) Proposal in response to this RFQ cum RFP. Any Bidder, which submits or participates in more than one Proposal will be disqualified from all its bids and will also cause the disqualification of the Consortiums / Bidder of which it is a member as the case may be.

2.5 Proposal Preparation Cost

The Bidder shall be responsible for all of the costs associated with the preparation of its Proposal and its participation in the Selection process. LDA will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the qualification process.

2.6 Project Inspection and Site Visit

2.6.1 Data to the extent available has been indicated in the Bid Document and the Bidders are suggested to make their own investigations and collect additional data for preparation of the Proposal. It is desirable that each Bidder submits its Proposal after inspecting the Site; and ascertaining for itself the location, surroundings, access, transport, right of way or any other matter considered relevant by it.

2.6.2 Site visit may be facilitated by LDA. A prospective Bidder may notify LDA in writing 3 days prior to its planned visit. LDA would endeavor to facilitate the Site visit depending upon the availability of the concerned officials.

2.6.3 The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of Bid Document shall be at the Bidder's own risk. It would be deemed that by submitting the Proposal, Bidder has:

- a. Made a complete and careful examination of terms & conditions/ requirements, and other information set forth in this RfQ cum RfP document
- b. Received all relevant information requested from LDA and
- c. Made a complete and careful examination of the various aspects of the Project including but not limited to:
 - i. Bidder's own validation of the Project Site, location of facilities and other existing facilities and structures;
 - ii. Clearances required for the Project; and
 - iii. All other matters that might affect the Bidder's performance under the terms of this RfQ cum RfP Document.

2.6.4 LDA shall not be liable for any mistake or error on the part of the Bidder in respect of the above.

2.7 Right to Accept or Reject any or all Proposals



2.7.1 Notwithstanding anything contained in this RFQ cum RFP, LDA reserves the right to accept or reject any Proposal and to annul the Bid Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, without assigning any reasons.

2.7.2 LDA reserves the right to reject any Proposal if:

- (a) At any time, a material misrepresentation is made or uncovered, or
- (b) The Bidder does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal. Such misrepresentation / improper response would lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium would be disqualified /rejected.

2.8 Contents of RFQ

The RFQ cum RFP Document comprises the contents as given in the Table of Contents and would additionally include any Addenda issued in accordance with the provisions of this Document.

2.9 Clarifications

Interested parties may address their queries relating to the RFQ cum RFP by email only at aeldaprojects@gmail.com with a mandatory copy to consultants at abacus@del2.vsnl.net.in. The queries must reach the above latest by 1700 hrs on 16th September, 2011. LDA would endeavor to respond to the queries by the date mentioned in the Schedule of Bidding Process.

LDA shall aggregate all such clarifications, without specifying the source of clarifications, and shall prepare a response, which shall be distributed to all the Bidders. It may be noted that queries in writing only would be entertained from the Bidders. The responses will be sent by fax/ email and shall also be uploaded on the website of the Authority and of the consultants.

2.10 Amendment of RFQ cum RFP

2.10.1 At any time prior to the deadline for submission of Proposal, LDA may, for any reason, whether at its own initiative or in response to clarifications requested by any Bidder, modify the RFQ cum RFP Document by the issuance of an Addendum.

2.10.2 Any Addendum thus issued will be uploaded on the website of the Authority i.e. <http://ldalucknow.co.in> as well as of the Consultant i.e. www.abacuslegalgroup.net.

2.11 Language

The Proposal and all related correspondence and documents should be written in the English language. Supporting documents and printed literature furnished by Bidder with the Proposal may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language duly



certified appropriately. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

2.12 Currency

The currency for the purpose of the Proposal shall be the Indian Rupee (INR). In all such cases, the original figures in the relevant foreign currency and the INR equivalent thereof must be given. The exchange rate(s) applied shall be clearly stated. The conversion to Indian Rupees shall be based on the closing exchange rate published by the Reserve Bank of India as on the Proposal Due Date. LDA reserves the right to use any other suitable exchange rate for the purposes of uniform evaluation for all Bidders.

2.13 Validity of Proposal

Proposals shall remain valid for a period not less than 180 days from the Proposal Due Date. LDA reserves the right to reject any Proposal, which does not meet this requirement.

2.14 Format and Signing of Proposal

2.14.1 The Bidder would provide all the information as per this RFQ cum RFP. LDA would evaluate only those Proposals that are received in the required format and are complete in all respects.

2.14.2 The Bidder shall prepare one original of the documents comprising the Proposal and forming part of Envelope A and clearly marked "ORIGINAL". In addition, the Bidder shall make one copy of the Proposal of documents forming part of Envelope A, clearly marked "COPY". In the event of any discrepancy between the original and the copy, the original shall prevail.

2.14.3 The Proposal and its copy shall be typed or written in indelible ink and each page shall be initialed and stamped by the Bidder. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal.

2.15 Sealing and Marking of Applications

2.15.1 The First Envelop should be marked as **Envelop A** (original and copy) and shall contain

- a. Power of Attorney for the signing authority as per the format enclosed at **Appendix 1A**,
- b. Power of Attorney for the Lead member of the Consortium as per the format enclosed at **Appendix 1B**, in case of Consortium;
- c. Bidder details (**Appendix 2**)



- d. Application in the prescribed format (**Appendix 3**) along with supporting documents;
- e. Completed Format for Experience as in **Appendix 4** (BRS 1 to 2), along with supporting documents.
- f. Completed Format for Financial Capability Evaluation as in **Appendix 5** (BRS3 &4) and **Appendix 6**, along with supporting documents.
- g. Format of Anti collusion certificate as in **Appendix 7**.
- h. Format of Project Undertaking as in **Appendix 8A**.
- i. In case of a Consortium, an undertaking from each member of Consortium certifying that it is an exclusive member of that particular consortium alone and not a member of any other consortium nor an independent Bidder, bidding for this Project and has submitted only one (1) Proposal in response to this RFQ CUM RFP. (**Appendix 8B**)
- j. MOU/Joint Bidding Agreement in case of a Consortium (**Appendix 9**);
- k. Letter of Acceptance as per **Appendix-10**
- l. Letter of Commitment as per **Appendix-11**
- m. Bid Security in the form of Demand Draft in favour of Lucknow Development Authority, payable at Lucknow
- n. A duly initialed and stamped copy of the Development Agreement by the authorized representative of the Bidder conveying the intention to abide by its terms and conditions

The second Envelop should be marked as **Envelop B** and shall include:

- Financial Proposal as per **Appendix-12**.

The Bidder shall seal both Envelope A and Envelope B in an outer envelope superscribing '**PROPOSAL FOR DEVELOPMENT OF FIVE STAR HOTEL CUM COMMERCIAL COMPLEX NEAR DR> BHIMRAO AMBEDKAR GOMTI VIHAR KHAND - 1,GOMTI NAGAR, LUCKNOW (UTTAR PRADESH)**' and also shall mention the name(s) of Bidder/Consortium along with address and contact phone no. of the Bidder/Lead Member (in case of Consortium).

2.15.3 The Bidder shall also enclose in a separate envelope, enclosed in the outer envelope, a demand draft of Rs **1,00,000/-** (Rupees One Lac Only), in favour of Secretary, LDA payable at Lucknow on any scheduled bank towards non refundable Processing Fee. Proposals unaccompanied by this demand draft will not be considered for evaluation and short-listing.

2.15.4 The envelope shall be addressed to:

To,



**Vice Chairman
Lucknow Development Authority
Gomti Nagar
Lucknow (Uttar Pradesh)**

2.15.5 If the envelope is not sealed and marked as instructed above, LDA assumes no responsibility for the misplacement or premature opening of the contents of the Proposal submitted. The Bidder can submit the Proposal by registered post/ courier or submit the Proposal in person, so as to reach the above mentioned address by the Proposal Due Date. LDA shall not be responsible for any delay in submission of the Proposals. Any Proposal received by LDA after the deadline for submission of the Proposals shall not be opened.

2.16 Proposal Due Date

Proposals shall be submitted before 1500 hours IST on the Proposal Due Date mentioned in the Schedule of Bidding Process, at the address provided above in the manner and form as detailed in this RFQ cum RFP. Proposals submitted by either facsimile transmission, telex or e-mail will not be considered for evaluation and short listing. However LDA reserves the right to extend the Proposal Due Date and Time, at any time prior to opening of Proposals; in such cases the RFQ cum RFP Proposals received prior to such extension shall not be opened. Further if the RFQ cum RFP document is materially modified along/during such extended period, the RFQ cum RFP Proposals received prior to extension shall be returned to the submitting Bidders and appropriate time shall be allowed for resubmission of the Proposals.

2.17 Late Proposals

Proposals received after the Proposal Due Date shall not be considered.

2.18 Modifications/ Substitution/ Withdrawal of Proposals

The Bidder may modify, substitute or withdraw its Proposal after submission, provided that written notice of the modification, substitution or withdrawal is received by LDA before the opening of the Financial Proposal i.e. Envelope B. No Proposal shall be modified or substituted or withdrawn by the Bidder after the opening of Financial Proposal.

2.19 Evaluation of Proposal - Due Date

LDA would open the Proposals after 1600 hours 1ST on the Proposal Due Date mentioned in the Schedule of Bidding Process, for the purpose of evaluation.

2.20 Evaluation of Proposals - Criteria

LDA would subsequently examine and evaluate Proposals in accordance with the criteria set out in Section 3.



2.21 Evaluation of Proposals - Supporting Documents

LDA reserves the right to call for supporting documentation to verify the data provided by Bidders, at any time during the Bidding Process. The Bidder in such cases would need to provide the requested clarification / documents promptly and within the stipulated time failing which the Bidder is liable to be disqualified at any stage of the Bidding Process.

2.22 Evaluation of Proposals - Right to Reject

LDA reserves the right to reject any Proposal if:

- (a) At any time, a material misrepresentation is made or uncovered; or
- (b) The Bidder does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposals.

2.23 Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. LDA will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to treat the same in confidence. LDA will not divulge any such information unless it is ordered to do so by any authority that has the power under law to require its disclosure.

2.24 Tests of responsiveness

2.24.1 Prior to evaluation of Proposals, LDA will determine whether each Proposal is responsive to the requirements of the RFQ cum RFP. A Proposal shall be considered responsive if the Proposal:

- a) is received by the Proposal Due Date (Clause 2.16) including any extension thereof pursuant to Clause 2.17
- b) is accompanied by the letter of intent, if applicable, (to form a consortium and submission of MOU duly supported by Board resolution and charter documents before the RFQ cum RFP submission deadline).
- c) contains information required as per Appendix 3, 4(BRS 1 to2), 5(BRS 3 to 4) and 6.
- d) is accompanied by Demand Draft of Rs 1,00,000/- (Rupees One Lac Only) towards payment for Submission of Proposals for RFQ cum RFP as specified in Clause 2.15.3 and is further accompanied by the Bid Security in the form as prescribed herein. LDA reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by LDA in respect of such Proposals.

2.25 Clarifications

To facilitate evaluation of Proposals, LDA may at its sole discretion, seek clarifications in writing from any Bidder regarding its Proposal.



2.26 Qualification and Notification

After the evaluation of Proposals, LDA would announce a list of successful Bidders (Bidders) who meet the Qualification Criteria. This would be followed by the opening of Financial Proposals of the shortlisted Bidders.

2.27 Schedule of Bidding Process

LDA shall endeavor to adhere to the following schedule:

Milestone	Date
Date of Issuance of RfQ cum RfP	09.09.2011
Pre-Bid Conference at 1200 Noon	16.09.2011
Last Date for receiving queries	16.09.2011
LDA response to queries latest by	20.09.2011
Last Date for Submission of Proposals up to 1500 hrs. (Proposal Due Date)	07.10.2011
Opening of Envelope A	07.10.2011 (Tentative)
Opening of Envelope B	14.10.2011 (Tentative)

2.28 Non Association with Project Consultants

LDA has retained Project Consultants for assistance in the selection process. The Bidders are required not to have any association with the members, or attempt to exercise undue influence on the members, of the Project Consultancy Team in any manner whatsoever from the date of receipt of this document till the completion of the selection process. Non-conformance with this requirement is a sufficient condition for the disqualification of any Bidder from the selection process.

2.29 Consequences of Not Adhering to the Process

The consequences of not adhering to the specific procedures laid hereinabove will lead to rejection of the Proposal.

3 CRITERIA FOR EVALUATION

Qualification will be based on the assessment of the Technical and Financial capability of the Bidders in commissioning, operating and maintaining the Eligible project facilities. The Bidders would be evaluated on eligibility criteria as defined in Section 3.2 and 3.5. The Bidders found to be technically and financially capable (i.e.



fulfilling both the technical and financial eligibility criteria) would be eligible for the next stage of the selection process.

3.1 Evaluation Parameters

The Bidder's competence and capability is proposed to be established by the following parameters:

- (a) Technical Experience
- (b) Financial capability factor, in terms of:
 - i. Turn over
 - ii. Net worth
 - iii. Net cash accruals

On each of these parameters, the Bidder would be required to meet the evaluation criteria as detailed herein. Bidders meeting all the criteria only will be qualified for further evaluation of the Proposal.

3.2 Eligible Experience

Technical Experience

For the purpose of this RFQ cum RFP, the Bidder which could be single entity or the Consortium shall be evaluated on the following:

(i) Should have executed Eligible projects in core infrastructure/real estate sector of total value of at least INR 500 Cr with minimum turnover of INR 50 Cr each year;

Eligible project:

- a. Projects completed during the last seven financial years (not before 1st April, 2003) shall only be considered.
- b. Core infrastructure projects would mean highways and expressway, airports, refineries and pipelines thereof, railways, ports, power, telecom, industrial parks, SEZs, Group Housing and Integrated/Hi-tech Township, development of integrated township whether or not part of a special economic zone, irrigation, sewage, water supply, shopping malls and multiplexes.

Experience as a consortium member will be considered in proportion to the equity holding in the project at the time of execution /construction of the Project. Documentary evidence in the form of a CA certificate (Appendix 4) must be submitted along with the Proposal:

A certificate from the appropriate authorities of respective clients needs to be submitted in support of the above in case of completed projects.

Relevant pages of the Contract Agreement in projects which are awarded and under execution as per clause 3.2 i(a) need to be provided. Relevant pages shall mean the



Preamble of Contract Agreement detailing the Parties, portion including scope of work and the last pages detailing the signatories.

3.3 Details of Experience

The Bidder shall furnish details of technical experience as on 31st March, 2010 as per **Appendix 4**, Bid Response Sheet No. 1.

The Bidder must provide the necessary project specific information as per **Appendix 4**, Bid Response Sheet No. 2.

3.4 Financial Capability

The financial capability of the Bidder / Consortium will be evaluated on the basis of

- (a) Turnover
- (b) Net Worth and
- (c) Net Cash accruals

The Bidders needs to provide information regarding the above based on audited annual accounts.

The Proposal must be accompanied by the audited Balance Sheet and Profit and Loss Account of the Bidder (of each member in case of a Consortium) as per **Appendix 5** for the last seven (7) Financial Years not prior to 1st April, 2003.

3.5 Evaluation Criteria for Financial Capability

For the purpose of Qualification, the Bidder - a single entity or a Consortium needs to demonstrate the Threshold Financial Capability measured on the following criteria:

1. Average Net worth of **Rs. 50 Crores** in last three Financial Years i.e. not prior to 1st April, 2007, as certified by a practicing Chartered Accountant.
2. Positive cash accruals in last three years not prior to 1st April, 2007.

3.6 Special Conditions for a Consortium

In case the Bidder is a Consortium, turnover, net worth and net cash accruals would be taken as an arithmetic sum of net worth, turnover and net cash accruals of each member of the Consortium, calculated in the ratio of their stake in the Consortium. The Consortium would be required to meet the threshold criteria on the basis of aggregate figures subject to provisions of this Clause.

3.7 Evaluation methodology

The technical and financial capacity of the Bidder will be evaluated as per the criterias as mentioned above and all the Bidders meeting the criterias as prescribed above shall be qualified for the purpose of opening their Financial Proposals.

3.7.1 For evaluation of technical experience as per clause 3.2 and of financial capability as per clause 3.5, the financial and technical capabilities of the group



companies/associates shall also be considered. For these purposes group companies/associates shall mean the following--“For the purposes hereof, associate means, in relation to the Bidder/Consortium Member a person who controls and is controlled by or is under the common control with such Bidder/Consortium Member. As used in this definition, the expression ‘control’ means, with respect to a person, which is company or corporation, the ownership, directly or indirectly of more than 50% 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 a person, whether by operation of law or by contract or otherwise”.

3.7.2 In case the Bidder claims the technical and/or financial capacity of its group companies/associates, the Bidder shall necessarily submit documentary evidence in proof of such claims. Such documentary evidence shall consist of CA certificates to support such capacity and also to establish requisite “Control” relationship as defined in 3.7.1 above.

3.8 Evaluation of Financial Proposal (Assessment of Envelope B)

Financial Proposal of only those Bidders who meet the technical and financial criterias as laid down above and forming part of Envelope A would be evaluated. The evaluation criteria for assessment of the Financial Proposals are described in Section 4 of this RFQ cum RFP. In case of ambiguity between the amount in words and figures the former shall prevail

4 METHODOLOGY & CRITERIA FOR EVALUATION OF FINANCIAL PROPOSAL (ENVELOPE B)

4.1 Financial Proposal Evaluation

- a. This part of the RFQ cum RFP provides information on the methodology that will be used to evaluate the Financial Proposals received. The Financial Proposal evaluation seeks to select the entity offering the best commercial terms to LDA.
- b. The Financial Proposals would be ranked in descending order of the quoted Bid Value, with the Bidder quoting the highest Bid Value being ranked first and the Bidder quoting the second highest ranked as second and so on.
- c. The Bidder offering the highest Bid Value would be preferred as a Bidder who subsequently be designated as the Successful Bidder and would sign the Development Agreement on the terms and conditions as specified by LDA.
- d. Financial Proposal of only those Bidders who qualify the technical and financial criterias after evaluation of Envelope A, would be opened and evaluated. The Financial Proposals of the non-responsive Bidders would be returned to the respective Bidders unopened.
- e. Bidders are requested to note that the Bid Value quoted should not have any conditionality attached or deviations from the Development Agreement as



indicated in the Bid document. Bids with conditions attached may be treated as non-responsive and liable for rejection at the discretion of LDA.

- f. The BEC shall evaluate and submit its recommendations to the Competent Authority in order to select the Successful Bidder for the Project.
- g. In the event of more than one responsive Bidders quoting the same Bid Value, BEC shall break the tie by way of draw between such Bidders.

4.1.1 Responsiveness of Financial Proposal

- a. BEC will open Envelope 'B' of only those Bidders who have qualified the technical and financial criterias as laid down herein. Any Bid containing caveats/deviations from RFQ cum RFP Documents is liable to be rejected by BEC/ LDA.
- b. Bidders shall be ranked as per the highest Bid Value payable to LDA. The Proposal of the Bidder quoting the highest Bid Value shall be considered as the proposal having highest financial score which would be the sole criterion for award of the Project.

The Proposal with highest financial score would be ranked first.

4.1.2 Determination of Preferred Bidder

- a. LDA shall issue a Letter of Intent to the Successful Bidder after obtaining approval from the Competent Authority which needs to be accepted by the Bidder within 7 days of issuance of Letter of Intent. The Bidder shall pay 10% of the Bid Value minus INR 7 Crore (already paid as Bid Security at the time of submission of the Proposal) in the form of Demand Draft from a scheduled bank in favour of Lucknow Development Authority, payable at Lucknow, at the time of acceptance of Letter of Intent (LoI).
- b. LDA shall issue a Letter of Award (LOA) after getting the approval of the Competent Authority to the Successful Bidder within 21 days of conveying the acceptance of the LoI by the Successful Bidder.
- c. The Successful Bidder shall pay 15% of the Bid Value within 30 days of issuance of the Letter of Award (LoA), in the form of Demand Draft from a scheduled bank in favour of Lucknow Development Authority, payable at Lucknow.
- d. 25% of the Bid Value shall be paid by the Successful Bidder within 90 days of the issuance of LOA alongwith the Bank Guarantee of an amount as stated below.
- e. The remaining 50% of the Bid Value shall be paid by the Successful Bidder in eight (8) equal quarterly installments within a period of two years from the date of submission of the above referred Bank Guarantee. An interest @ 15% p.a. shall be charged during this period. In case of any default in payment of



the installments, a further penal interest of 3.5%, which makes a total of 18.5% compound interest shall be charged on the Successful Bidder for the period of the delay in payment and will be compounded quarterly.

- f. The Bank Guarantee shall be for an amount of 15% of the Bid Value.
- g. Issuance of Bank Guarantee shall be in the form prescribed by the Authority and the same shall be valid for a period of 30 months from the date of its issuance. Alternatively, the BG may be issued for a period of 12 months subject to the subsequent extension provision of the same for 12 months and 6 months respectively at the request of the Bidder.
- h. The Successful Bidder shall be eligible for taking over the possession of the Site only upon making payment of 50% of the Bid Value and furnishing the Bank Guarantee as referred above.
- i. Any default in payment of installments on more than two occasions (quarters) shall give the right to the Authority to invoke the Bank Guarantee and appropriate the sum due including any interest and penal interest thereon.
- j. The Bidder shall be required to replenish the Bank Guarantee (except when it has been invoked for the last two installments) within a period of 15 days from the date of notice to replenish the same by the Authority. Failure to do so shall constitute an Event of Default of the Bidder.
- k. The Successful Bidder shall enter into Development Agreement with LDA for the implementation of the Project within 7 days from the date of furnishing the bank guarantee as referred above.
- l. If the Successful Bidder fails in entering into Development Agreement as required without giving the appropriate clarifications to the satisfaction of LDA, LDA reserves the right to begin negotiations with the next highest ranked Bidder and so on.
- m. LDA also reserves the right to reject any Proposal if:
 - i. At any time, a material misrepresentation is made or uncovered, or
 - ii. The Bidder does not respond promptly and thoroughly to the requests for supplementary information required for evaluation of the Proposal.
 - iii. The Proposal deviates from the commercial parameters of these RFQ cum RFP Documents.

5. GENERAL PROVISIONS

5.1 Prohibition against Collusion with other Bidder



Each Bidder shall warrant by its Bid that the contents of its Bid have been arrived at independently. Any Bid which has been arrived at through consultation, collusion, or understanding with any other prospective Bidder for the purpose of restricting competition shall be deemed to be invalid.

5.2 Inducements

Any effort by a Bidder to influence processing of Bids or award decision by LDA or any officer, agent or Consultants thereof may result in the rejection of such Bidder's Bid. In such a rejection of Bid, the Bidder shall lose its Bid Security.

5.3 Communication between Bidders and LDA

All communication, unless specified otherwise, on these RFQ cum RFP Documents to LDA shall be addressed to:

The Vice Chairman,
Lucknow Development Authority
Gomti Nagar
Lucknow (Uttar Pradesh)
Tel: 0522-2302577 Fax: 0522-2395554,
E-Mail: aeldaproject@gmail.com
Web: <http://ldalucknow.co.in>

All communication to the Bidder shall be sent to the Authorized Representative & Signatory at the addresses mentioned in the covering letter to this RFQ cum RFP, unless LDA is advised otherwise.

5.4 Interpretation of Documents

5.4.1 LDA will have the sole discretion in relation to:

- a. The interpretation of this RFQ cum RFP, the Proposals and any documentation provided in support of the Proposals; and
- b. All decisions in relation to the evaluation and ranking of Proposals, whether or not to request for any clarifications or additional information from Bidder in relation to its Proposal and the selection of the Successful Bidder.

5.4.2 LDA will have no obligation to explain its interpretation of this RFQ cum RFP, the Proposals or their supporting documentation and information or to explain the evaluation process, ranking process or the selection of the Successful Bidder.

5.5 Enquiries concerning the RFQ cum RFP / Draft Development Agreement

5.5.1 LDA encourages a careful review of these RFQ cum RFP Documents and preparation of the observations/ comments by the Bidder. The Bidder should send their comments in writing.



5.5.2 LDA at its discretion, may respond to inquiries submitted by any Bidder. Such a response will be sent in writing to all the Bidders and will qualify as an “Addendum”.

5.5.3 All inquiries should be submitted to the LDA in writing by e-mail to aeldaprojects@gmail.com with a copy marked to Consultants at abacus@del2.vsnl.net.in.

5.5.4 No interpretation, revision or other communication regarding this solicitation is valid unless in writing and is signed by an officer so designated by the Vice Chairman, LDA. Written copies of LDA responses, including a description of the inquiry but without identifying its source, will be sent to all the Bidder(s) and will qualify as an “Addendum”

5.6 Bid Opening

- a. All Bids received by LDA will remain sealed and unopened in LDA possession until the Proposal Due Date. LDA shall open all Bids, received on or prior to the Proposal Due Date mentioned under Schedule of Selection Process or on any date as extended by LDA and communicated to the Bidders. The Bids shall be opened in the presence of Bidders’ representatives, who choose to attend. Bidders’ representatives attending the Bid Opening shall register to evidence their presence.
- b. The following information will be announced at the Bid Opening and recorded:
 - i. Bidder’s names
 - ii. Names of Consortium Members
- c. After the Bid Opening, information relating to the examination, clarification and evaluation of Bids and recommendations concerning the Bid Award shall not be disclosed.

5.7 Bid Security

5.7.1 The Bidder shall submit an Bid Security for an amount of Rs. 7,00,00,000/- (Rs. Seven Crore only) along with its Proposal.

5.7.2 The Bid Security shall be in the form of a Demand Draft in favour of LDA, payable at Lucknow, U.P.

5.7.3 The Bid Security shall be valid for a minimum period of 90 days beyond the Proposal Validity Period. Upon any extension of the Proposal Validity Period, the validity of the Bid Security shall be extended by the corresponding period.

5.7.4 LDA shall have the right to reject the Proposal, which does not include the Bid Security as “non-responsive”.



5.7.5 The Bid Security of unsuccessful Bidders, except the second successful Bidder will be returned within a period of twenty one (21) days from the date of acceptance of Letter of Intent by the Successful Bidder. However, the Bid Security of second successful Bidder shall be returned on signing of the Development Agreement by the Successful Bidder.

5.7.6 The Bid Security of the Successful Bidder shall be appropriated towards the payment of 10% of the Bid Value, upon the acceptance of the Lol by the Successful Bidder.

5.7.7 In addition to the above, LDA will promptly release Bid Security of all the Bidders in the event LDA decides to terminate the Bidding Process.

5.7.8 The Bid Security shall be forfeited by LDA, in any of the following case:

- a. The Bidder withdraws its Bid after the Proposal Due Date
- b. Successful Bidder fails to accept Letter of Intent within the time provided for the same and pay the specified amount payable at the Lol Stage.
- c. Bidder fails to pay the Bid Value within the time specified for it.
- d. Successful Bidder fails to execute the Development Agreement within the stipulated time period.

5.8 Sources of Funds

The responsibility to raise funds for the Project would rest with the Successful Bidder.

6. FRAUD AND CORRUPT PRACTICES

6.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority may reject a Proposal without being liable in any manner whatsoever to the Bidder if it determines that the Bidder 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.

6.2 Without prejudice to the rights of the Authority under Clause 6.1 hereinabove, if a Bidder 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 Bid Process, such Bidder shall not be eligible to participate in any tender issued by Authority during a period of 2 (two) years from the date such Bidder is found by Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.



6.3 For the purposes of this Clause 6, 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 Authority who is or has been associated in any manner, directly or indirectly, with the Bid Process or the LOA or has dealt with matters concerning the Development Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of Authority, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) save and except as permitted herein, engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LOA or after the execution of the Development Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Development Agreement, who at any time has been or is a legal, financial or technical adviser of 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 Bid 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 Bid Process;

(d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid 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 Bid Process.

7. PRE-BID CONFERENCE

7.1 A Pre-Bid conference of the interested parties shall be convened on 16th September, 2011 at Hotel Taj, Gomti Nagar, Lucknow at 12 Noon. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

7.2 During the course of Pre-Bid conferences, the Bidders will be free to seek clarifications and make suggestions for consideration of Authority. Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bid Process.



8. MISCELLANEOUS

8.1 The Bid Process shall be governed by, and construed in accordance with, the laws of India and the competent Courts at Uttar Pradesh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bid Process.

8.2 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 Bid Process and/ or amend and/ or supplement the Bid 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. pre-qualify or not to pre-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 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.

8.3 It shall be deemed that by submitting the Proposal, the Bidder agrees and releases the Authority, its employees, agents and advisers/consultants, 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 and the Bid Documents, pursuant hereto, and/ or in connection with the Bid Process, to the fullest extent permitted by applicable law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.



APPENDICES

APPENDIX IA

Power of Attorney for signing of Proposal & execution of Development Agreement

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the "**Attorney**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our proposal for the "**Development of Hotel cum Commercial Complex in Gombi Vihar, Lucknow in Uttar Pradesh**", proposed or being developed by LDA including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre Bid and other conferences and providing information/ responses to the Authority, submission of Bid, representing us in all matters before the Authority, signing and execution of all contracts including the Development 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 Development 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 20....

For

.....

(Signature, name, designation and address)

Witnesses: 1.

(Notarized)

2.



Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney shall be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required, the same shall be under common seal affixed in accordance with the required procedure.*
- Wherever required, the Bidder shall 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 legalized by the Indian Embassy and notarized 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 legalized by the Indian Embassy if it carries a conforming Apostil certificate.*



APPENDIX IB

Power of Attorney for Lead Member of Consortium

Whereas LDA has invited proposals from interested parties for the Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow in Uttar Pradesh.

Whereas,,, and (collectively the "**Consortium**") being Members of the Consortium are interested in bidding for the "**Development of Five Star Hotel cum Commercial Complex Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow in Uttar Pradesh**", in accordance with the terms and conditions of the Request for Qualification cum Request for Proposal document (**RFQ cum 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, and M/s. having our registered office at, (hereinafter collectively referred to as the "**Principals**") do hereby irrevocably designate, nominate, constitute, appoint and authorize from amongst us, 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 authorize 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 Project, 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 prequalification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Project



and/ or upon award thereof till the Development Agreement is entered into 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/ Consortium.

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

For
(Signature)
.....
(Name & Title)

For
(Signature)
.....
(Name & Title)

For
(Signature)
.....
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

The mode of execution of the Power of Attorney shall be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required, the same shall be under common seal affixed in accordance with the required procedure.



- Also, wherever required, the Bidder shall 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 legalized by the Indian Embassy and notarized 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 legalized by the Indian Embassy if it carries a conforming Apostille certificate.*



APPENDIX 2

Details of 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 Bidder including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for LDA:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:
4. Particulars of the Authorized 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) needs to be provided for all the Members of the Consortium.
 - (b) Information regarding the role of each Member needs to be provided as per table below:

Name of Member	Role*	Percentage of equity in
----------------	-------	-------------------------



		the Consortium

(c) The following information shall also be provided for each Member of the Consortium:

Name of Bidder/ member of Consortium:

Criteria	Yes	No
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 (BOT or otherwise)?		
If the answer to 1 is yes, does the bar subsist as on the date of Proposal?		
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?		

6. A statement by the Bidder/ each of the Members of its Consortium (where applicable) or any of their Associates disclosing material nonperformance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary). Write NA if the same is not applicable.



APPENDIX 3 FORMAT FOR LETTER OF APPLICATION

[On the Letter Head of the Bidder (in case of Single Bidder) or Lead Member (in case of a Consortium)]

Date: -----

To,

Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Sir,

Being duly authorized to represent and act on behalf of _____ (hereinafter referred to as "the **Bidder**"), and having reviewed and fully understood all of the qualification requirements and information provided, the undersigned hereby expresses its interest and apply for selection for the Development of Hotel cum Commercial Complex in Gomti Vihar, Lucknow, in Uttar Pradesh on Design, Build, Finance and Operate (DBFO).

We are enclosing our Proposal, in one Original and one Copy, with the details as per the requirements of the Bid Document, for your evaluation.

The undersigned hereby also declares that the statements made and the information provided in the Proposal are complete, true and correct in every detail.

We confirm that the Proposal is valid for a period of 180 days from the due date of submission of Proposal and is unconditional.

We hereby also confirm the following:

1. The Proposal is being submitted by (name of the bidding Company/Lead Consortium member) who is the Bidding Company/the Lead Consortium Member of the Bidding Consortium Comprising (mention the names of the entities who are the Consortium Members), in accordance with the conditions stipulated in the RFQ cum RFP.
2. As the Bidding Company/Lead Consortium Member (in case of a Bidding Consortium), we hereby confirm to abide by the roles and responsibilities assigned to us as per the MoU/Joint Bidding Agreement between the Consortium Members and as outlined in this RFQ cum RFP.
3. We have examined in detail and have understood the terms and conditions stipulated in the RFQ cum RFP Document issued by LDA and in any subsequent communication sent by LDA. We agree and undertake to abide by all these terms and



conditions. Our Proposal is consistent with all the requirements of submission as stated in the RFQ cum RFP or in any of the subsequent communications from LDA.

4. We confirm that there are no conditions in "Envelope B: Financial Proposal".

5. The information submitted in our Proposal is complete, is strictly as per the requirements stipulated in the RFQ cum RFP, and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Proposal.

6. We confirm that we have studied the provisions of the relevant Indian laws and regulations required to enable us to prepare this Financial Proposal and as required to Design, Build, Finance, Operate, Maintain and Own Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow in Uttar Pradesh, in the event that we are finally selected.

7. We confirm that all the terms and conditions of the Proposal are firm and valid for acceptance for a period of 180 days from the Proposal due date.

Our PAN number is -----

Our TAN number is -----

Thanking You,

Yours Sincerely,

For and on behalf of : (name of the Bidding Company / Lead Consortium Member
and the Company Seal)

Signature : (Authorized Representative & Signatory)

Name of the Person :

Designation :



APPENDIX 4 INFORMATION RELATED TO EXPERIENCE GUIDELINES

1. Member Code: NA= Not Applicable in case of a single entity Bidder, LM =Lead member, AM= Associate Member
2. The Chartered Accountant issuing the certification for Experience of the Bidder must hold a valid Certificate of Practice.
3. Any Bidder consisting of a Single Entity should fill in details as per the row titled Single Entity Bidder and ignore the other rows mentioned below. In case of a Consortium, the details need to be provided as per the lower rows and the row titled Single Entity Bidder may be ignored.



**FORMAT FOR ESTABLISHING EXPERIENCE OF BIDDER
BID RESPONSE SHEET 1**

S. No	Name of the Project	Type: Similar or core infrastructure	Project		Date of			Authority for whom carried out	Equity holding at the time of execution/construction
			Location	Cost Rs. crores	Award	Commencement	Completion		

Note:

1. Only the Eligible Projects that satisfy technical criteria shall be included.
2. All the Financial numbers are to be given in INR
3. The format shall be filled up for each member of the consortium and as a cumulative experience for the consortium

(Signature of Authorized Signatory)

Company seal & stamp

Signature, Name, Address and Membership No. of Chartered Accountant



Bid Response Sheet 2

Name of Bidder:	Member Code:
	Category:
1.	Name of Contract
	Country
2.	Name of Employer
3.	Employer's address, telephone and fax no.)
4.	Role (strike out whichever is not applicable) Developer/Prime contractor/ Subcontractor
5.	Value of the Total Contract (in specified currencies and INR)
6.	Value of the Bidder's Contract (in specified currencies and INR)
7.	Certified Billings till date (in specified currencies and INR and exchange rate)
8.	Date of Award
9.	Date of Commencement of Project/ Contract
10.	Date of Completion/ Commissioning

(Signature of Authorised Signatory)

Company seal & stamp

Instructions

1. Information provided in this section is intended to serve as a back up for information provided in accordance with Appendix 4, Bid Response Sheet 1.
2. The Projects cited must comply with the eligibility criteria specified in Clause 3.2.
3. A separate sheet should be filled for each of the Eligible Projects.



APPENDIX 5
FORMAT FOR ESTABLISHING FINANCIAL CAPABILITY OF THE BIDDER
Bid Response Sheet 3
Format for Financial Capability of Single Entity Bidder

Turnover, Net Worth and Net Cash Accruals

Net Worth (Rs. Crores) for Last three FYs	Net Cash Accruals (CA) (Rs. Crores) for Last three FYs			Turnover (Rs. Crores) For Last 7 FYs				
				Year	Year	Year	Year	Year

(Signature of Authorized Signatory)

Company seal & stamp

Signature, Name, Address and Membership No. of Chartered Accountant



BID RESPONSE SHEET 4
Format for Financial Capability of Consortium

Turnover, Net Worth and Net Cash Accruals

Bidder Type	Equity share (%)	Turnover (Rs Crores) For Last 7 FYs							Net Worth (Rs. Crores) for Last three FYs			Net Cash Accruals (CA) (Rs. crores) for Last three FYs
		Year	Year	Year	Year	Year	Year	Year	Year	Year	Year	
Consortium Member 1												
Consortium Member 2												
Consortium Member ...												
Total												

Aggregate Turnover = Rs ----- crores
 Aggregate Net worth = Rs _____ crores
 Aggregate Net Cash Accruals = Rs _____ crores

(Signature of Authorized Signatory)

Company seal & stamp

Signature, Name, Address and Membership No. of Chartered Accountant



APPENDIX 6

GUIDELINES FOR PROVIDING INFORMATION RELATED TO FINANCIAL CAPABILITY

1. The Bidder shall provide the Financial Capability based on its own audited financial statements. Financial capability of the Bidder's parent company or its subsidiary or any associate company (who are not Members of the Consortium) will not be considered for computation of the Financial Capability of the Bidder.

2. Member Code LM = Lead Member, AM = Associate Member

3. Instructions for calculation of Financial Capability:

(a) Net Cash Accruals = (Profit After Tax + Depreciation + Other non-cash expenditure)

(b) Net Worth = Subscribed and Paid-up Equity (including Share Premium, if any) + Reserves - Revaluation Reserves - Miscellaneous expenditure not written off-Deferred Revenue Expenditure-Deficit in Profit & Loss Account

(c) The financial year would be the same as followed by the Bidder for its annual report. Year 1 will be the last Financial Year. Year 2 shall be the year immediately preceding Year 1.

(d) The Bidder shall provide audited Annual Reports as required under this Bid Document. For a Consortium, audited Annual Reports of all Members shall be provided.

(e) In case of a Consortium comprising of members with holdings in each other, the cross holdings between the group companies comprising part of the Consortium will be deducted for the purpose of Net Worth calculations.

4. Financial details of the Bidder: If the Bidder is a Consortium the Financial Details of all the members need to be provided. The Financial Details shall be provided in the following manner.



Name of Member:

Role of Member:

S No.	Particulars as per the Audited Balance Sheet	Year 3	Year 2	Year 1	TOTAL
1.	Profit After Tax (PAT)				
2.	Depreciation				
3.	Other non-cash expenditure				
4.	Subscribed and Paid up Equity				
5.	Reserves				
6.	Revaluation reserves				
7.	Miscellaneous expenditure not written off				
8.	Deferred Revenue Expenditure				
9.	Deficit in Profit & Loss Account				
10.	Net Cash Accruals = (1+2+3)				
11.	Net Worth = (4+5-6-7-8-9)				

(Signature of Authorized Signatory)

Company seal & stamp

Signature, Name, Address and Membership No. of Chartered Accountant



APPENDIX 7
FORMAT FOR ANTI-COLLUSION CERTIFICATE
[To be submitted on the letter heads of the Bidders separately]
Anti-Collusion Certificate

Date: -----

To,

.....

.....

Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Sir,

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

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

Dated this _____ Day of _____, 2011

Name of the Bidder

Signature of the Authorized Person

Note:

To be submitted by each Member in case of Consortium.



APPENDIX 8A
FORMAT FOR PROJECT UNDERTAKING

[To be submitted on the letter heads of the Bidders separately]

To,

.....
.....

Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Sir,

We have read and understood the Bid Document in respect of the captioned Project provided to us by the Vice Chairman, LDA, Government Of Uttar Pradesh.

We hereby agree and undertake as under:

(a) Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Bid we hereby represent and confirm that our Bid is unqualified and unconditional in all respects.

(b) We are not barred by the Government of India or the Government of Uttar Pradesh or their Departments or Agencies from participating in any projects (BOT or otherwise).

Dated this _____ Day of _____ 2011.

Name of the Bidder

Signature of the Authorized Person
Company seal & stamp



**APPENDIX 8B
FORMAT FOR PROJECT UNDERTAKING**

[In case of Consortium]

[To be submitted on the letter heads of the Bidders separately]

To,

.....

.....

Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Sir,

We have read and understood the Bid Document in respect of the captioned project provided to us by the VC, LDA, Government Of Uttar Pradesh

We hereby agree and undertake to be an exclusive member of the consortium and not a member of any other consortium nor an independent Bidder, bidding for this Project and have submitted only one (1) Proposal in response to this RFQ CUM RFP

Dated this _____ Day of _____ 2011.

Name of the Bidder

Signature of the Authorized Person

Company seal & stamp



APPENDIX 9

Memorandum of Understanding/ Joint Bidding Agreement/Consortium Agreement (To be executed on Stamp paper of appropriate value)

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

AMONGST

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

AND

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

AND

3. Limited, a company incorporated under the Companies Act, 1956 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

Lucknow Development Authority (hereinafter referred to as "**Authority**" / "**Confirming Party**" which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors).

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

WHEREAS,

(A) LDA represented by its Vice Chairman (VC) and having its principal offices at, Gomti Nagar, (U.P) (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 proposals (the "Proposals") by its Request for Qualification cum Request for Proposal Document No. dated(the "**RFQ cum RFP**") for selection of developer for development of Hotel cum Commercial Complex in Gomti Vihar, Lucknow, Uttar Pradesh.



(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 RFQ cum RFP document and other bid documents in respect of the Project. It is a necessary condition under the RFQ cum RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

© In order to have an inter se understanding between the Members of the Consortium, we hereby agree to enter into this Consortium Agreement which shall be binding on each of the Members of the Consortium as per the terms as stated herein.

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 RFQ cum 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 and for the purposes of jointly undertaking the Project by way of forming a joint stock company/special purpose vehicle/Developer.

2.2 The Parties hereby undertake to participate in the Bidding Process and to undertake the Project, if selected, only through this Consortium, by way of forming an SPV of the Consortium i.e. the Developer, and not individually and/ or through any other consortium, either directly or indirectly or through any of their Associates.

3. Covenants

3.1 The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall enter into a Development Agreement with the Authority, through Developer, for performing all its obligations as the Developer in terms of the Development Agreement for the Project.

3.2 The Parties further undertake to enter into a shareholders agreement immediately after the formation/incorporation of the Developer to incorporate the terms and conditions of their participation in the Developer as per the terms herein and carry out the necessary changes in the Memorandum and Articles of Association of the Developer to adopt such terms of the shareholders agreement within 60 days from the date of incorporation of the Developer. The Parties shall immediately furnish a copy of the shareholders agreement so entered and copy of modified Memorandum and Articles of Association of the Developer to the office of LDA.

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 issuance of Project Completion Certificate from LDA as per the Development Agreement and/or fulfillment of any other condition that may be stipulated in the Development Agreement;

(b) Party of the Second Part shall be the Technical and Operation and Maintenance Member of the Consortium;

(c) Party of the Third Part shall be the Financial Member of the Consortium;

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFQ cum RFP and the Development Agreement, till such time as may be required under the terms of the Development Agreement.

6. Shareholding in the SPV/Developer

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

S. No.	Party	Shareholding in the SPV
1.	First Party%
2.	Second Party%
3.	Third Party%
	TOTAL%

6.2 The Parties undertake that no member of the Consortium shall divest/transfer its Interest or any part thereof in the Developer until the completion of the construction of Hotel component of the Project and issuance of the Project Completion Certificate in respect of the same by the Authority (**Lock In Period**) as defined in the Development Agreement.

6.3 The Parties undertake that the Project Site shall be exclusively used for the Project components i.e. Hotel cum Commercial Complex and for no other purposes.

6.4 The Parties undertake that they shall comply with all equity Lock-in Period requirements set forth in the Development 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 Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the termination of the Development Agreement as per its terms and conditions.

8. Miscellaneous



8.1 This Joint Bidding Agreement shall be governed by laws of India. The competent Courts at Uttar Pradesh shall have the exclusive jurisdiction to deal with any matter arising out of the terms of this Agreement.

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

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)
(Name)
(Designation)
(Address)

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of
THIRD PART:

For and on behalf of
CONFIRMING PARTY:

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

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

In the presence of: 1.

2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement shall 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 shall be under common seal affixed in accordance with the required procedure.

2. Joint Bidding Agreement shall also include 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-10 Format of Letter of Acceptance

(The Letter of Acceptance is to be submitted by EACH Consortium Member of the Bidding Consortium)

Date:

Place:

To,

.....

.....

Sub: Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Dear Sir,

This has reference to the Proposal being submitted by (name of the Lead Consortium Member of the Bidding Consortium), as Lead Consortium Member of the Bidding Consortium comprising (mention name(s) of the Consortium Members) in respect of selection of Successful Bidder to Design, Build, Finance, Operate, Maintain and Own Five Star Hotel cum Commercial Complex Dr. Bhimrao Ambedkar Gomti Vihar Khand - 1, Lucknow in Uttar Pradesh in response to the RFQ cum RFP Document issued by dated....

We hereby confirm the following:

(a) We (name of the Consortium Members furnishing the Letter of Acceptance), have examined in detail and have understood and satisfied ourselves regarding the contents including in respect of the following:

- i. The RFQ cum RFP Document issued by LDA;
- ii. All subsequent communication between LDA and the Bidder, represented by (Mention name of the Lead Consortium Member)
- iii. The Proposal being submitted by (name of the Lead Consortium Member)

(b) We agree to abide by the terms and conditions of the RFQ cum RFP Document and the Proposal being submitted by the Lead Consortium Member in respect of the Project.

(c) We also reaffirm that (name of the Lead Consortium Member) continues to be the Lead Consortium Member and that (give name, designation and address of authorized representative and signatory here) designated as the authorized representative and signatory of the Lead Consortium Member of the Bidding Consortium is the authorized



representative and signatory in respect of all matters concerning our Proposal for this Project and contractual commitments thereof.

Thanking You,
Yours Sincerely,

For and on behalf of: (name of the Bidding Company / Lead Consortium Member
and the Company Seal)

Signature: (Authorized Representative & Signatory)

Name of the Person:

Designation:



APPENDIX-11 Format of Letter of Commitment

(The Letter of Commitment is to be submitted by EACH Promoter(s) and/or Associate(s) and/or Subsidiary (ies) of the Bidding Company / Consortium Members of the Bidding Consortium whose strength have to be credited for)

Date:

Place:

To,

.....

.....

Sub: Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

Dear Sir,

This has reference to the Proposal being submitted by (name of the Lead Consortium Member of the Bidding Consortium), as Lead Consortium Member of the Bidding Consortium comprising (mention name(s) of the Consortium Members) in respect of selection of Successful Bidder to Design, Build, Finance, Operate, Maintain and Own “ Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow in Uttar Pradesh” in response to the Request for Qualification cum Proposal (“RFQ cum RFP”) Document issued by LDA.

We hereby confirm the following:

1. We (name of the Promoter/Affiliate/Subsidiary), have examined in detail and have understood and satisfied ourselves regarding the contents including in respect of the following:

- i. The RFQ cum RFP Document issued by LDA;
- ii. All subsequent communication between LDA and the Bidder, represented by (name of the Bidding Company or of the Lead Consortium Member in case of a Bidding Consortium);
- iii. The Financial Proposal being submitted by (name of the Bidding Company or of the Lead Consortium Member in case of a Bidding Consortium)

2. We agree to abide by the terms and conditions of the RFQ cum RFP Document and the Proposal being submitted by the Bidding Company / Lead Consortium Member in respect of the Project.

3. We also reaffirm that (give name, designation and address of authorized representative and signatory here) designated as the authorized representative and



signatory of the Bidding Company / Lead Consortium Member of the Bidding Consortium is the authorized representative and signatory in respect of all matters concerning our Proposal for this Project and contractual commitments thereof.

Thanking You,
Yours Sincerely,

For and on behalf of: (name of the Bidding Company / Lead Consortium Member
and the Company Seal)

Signature: (Authorized Representative & Signatory)

Name of the Person:

Designation:

**APPENDIX-12 Financial Proposal (Format for Information Submission)**

(To be provided on the letterhead of the Bidder)

Date:

Place:

To,

.....

.....

Dear Sir,

Sub: Development of Five Star Hotel cum Commercial Complex near Dr. Bhimrao Ambedkar Gomti Vihar Khand -1, Lucknow (Uttar Pradesh) on Design, Build, Finance, Operate, Maintain and Own (DBFO) basis

1. We the undersigned Bidder, submit the following as our Financial Proposal in response to the RFQ cum RFP issued by LDA.
2. Rs.....(Rupees Only) is the Bid Value payable in the manner as prescribed in the RFQ cum RFP dated, as issued by LDA.
3. We confirm that the Financial Proposal conforms to all the terms and conditions stipulated in the Request for Proposal Document.
4. We confirm that our Financial Proposal is FINAL in all respects and contains NO conditions.
5. We confirm that in the event of more than one Responsive Bidders quoting the same lump sum value, LDA shall break the tie by way of draw between such Bidders.
6. We confirm that, the information submitted in our Financial Proposal is complete and is correct to the best of our knowledge and understanding. We would be solely responsible for any errors or omissions in our Proposal.
7. We confirm that we have studied the provisions of relevant Indian laws and regulations required to enable us to prepare this Financial Proposal and as required to design, build, finance and operate the Project, in the event that we are finally selected.
8. If the Bid Value is not paid in advance within specified time the Bid Security provided by us shall be liable to be enforced by the Authority immediately.



Thanking You,
Yours Sincerely,

For and on behalf of:
and the Company Seal)

(name of the Bidding Company / Lead Consortium Member

Signature:

(Authorized Representative & Signatory)

Name of the Person:

Designation:



VOLUME 2 - DEVELOPMENT AGREEMENT



LUCKNOW DEVELOPMENT AUTHORITY

DEVELOPMENT OF FIVE STAR HOTEL CUM COMMERCIAL COMPLEX NEAR DR. BHIMRAO AMBEDKAR GOMTI VIHAR KHAND - 1, GOMTI NAGAR, LUCKNOW (UTTAR PRADESH)



DRAFT DEVELOPMENT AGREEMENT
Vice Chairman,
Lucknow Development Authority,
Government of Uttar Pradesh
Pradikaran Bhavan, Gomti Nagar, Lucknow - 226010
Tel: 0522-2302577 Fax: 0522-2395554,
E-Mail: aeldaproject@gmail.com
Web: <http://ldalucknow.co.in>

September 9, 2011



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THIS DEVELOPMENT AGREEMENT is mutually agreed and entered into on this ____ day of ____, Two Thousand and Eleven at Lucknow (Uttar Pradesh)

BETWEEN

Lucknow Development Authority, acting through The Vice Chairman, Lucknow Development Authority, established under the Uttar Pradesh Urban Planning and Development Act, 1974, having its main office at Pradikaran Bhavan, Gomti Nagar, Lucknow - 226010, (hereinafter referred to as "**LDA/ Authority**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors) of the **FIRST PART**;

AND

_____, a company incorporated under the provisions of the Indian Companies Act, 1956, having its registered office at _____, hereinafter referred to as the "**Developer**" duly represented through its director Shri. _____ who has been authorized to sign this document through a board resolution dated _____, annexed hereto as **Annexure I**, which expression shall unless repugnant to the context include its successors and permitted assigns, of the **OTHER PART**.

WHEREAS,

- A. The Authority is desirous of promoting tourism infrastructure in the State of Uttar Pradesh, with a view to enable the growth of tourism in the State. In order to enable more efficient use of public resources, the Authority has taken the decision to support the development of tourism infrastructure in the State through public-private-partnership (PPP) route. In pursuance of this objective, the Authority intends to develop a Hotel cum Commercial Complex on Design, Build, Finance, Maintain, Operate and Own Basis in Gomti Vihar, Lucknow (Uttar Pradesh).
- B. By Gazette Notification dated 2nd June, 2010, a land admeasuring 2.247 Hectares situated in Village Jiamau, District Lucknow, Lucknow (Uttar Pradesh) has been acquired by the Authority under the Land Acquisition Act, 1894 and thus Authority is the owner of the said land, earmarked for the purpose of Project Facilities, details of which are provided mentioned in Schedule I to this Development Agreement.
- C. The Authority had accordingly invited proposals by its [Tender Notice No. (the "Tender Notice")/Request for Qualification cum Request



for Proposal] dated 9th September 2011 for short listing of Bidders for construction of Project Facilities on “Design, Build, Finance, Maintain, Operate and Own Basis” and had shortlisted certain Bidders including, inter alia, the [name of the Successful Bidder].

- D. After evaluation of the Bids received, the Authority had accepted the Bid of the [name of the Successful Bidder] and issued its Letter of Intent No. dated (hereinafter called the “LoI”) to the [name of the Successful Bidder] requiring, inter alia, the acceptance of the same within a period of 7 days from the date of its issuance.
- E. [name of the Successful Bidder] has since promoted and incorporated the Developer as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights of the [name of the Successful Bidder] under the LoI, including the obligation to enter into this Development Agreement pursuant to the LoI and Letter of Award (LOA) for executing the Project.
- F. By its letter dated, the Developer has also joined in the said request of the [name of the Successful Bidder] to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the [name of the Successful Bidder] including the obligation to enter into this Development Agreement pursuant to the LoI and LOA. The Developer has further represented to the effect that it has been promoted by the [name of the Successful Bidder] for the purposes hereof.
- G. The Authority has agreed to the said request of the [name of the Successful Bidder] and the Developer and in consequence thereof had issued a Letter of Award (LOA) bearing No. ____ dated ____ to the Developer which has been acknowledged by Developer’s letter bearing No. ____ dated _____. Accordingly the Authority has agreed to enter into this Development Agreement with the Developer for execution of the Project for construction of Project Facilities on “Design, Build, Finance, Maintain, Operate and Own Basis”, subject to and on the terms and conditions set forth hereinafter.
- H. The Developer shall undertake commercial development of the Project Facilities on the parcel land of appx. 2.48 Hectares near Dr. Bhimrao Ambedkar Gomti Vihar Khand-I, Lucknow (Uttar Pradesh), located very centrally and at prime location of the city, approximately 2 Kms. from Hazaratganj, as per the applicable Development Control Regulations (DCR) in Lucknow. The Developer shall be given the land for the Project



on leasehold basis and shall be entitled for conversion of such right into freehold rights only after completing the Hotel facility of the Project as per the terms stated herein and fulfilling other terms and conditions as mentioned herein below.

- I. Authority has executed this Agreement to assign to the Developer, the development rights and stating its obligations with regard to designing, engineering, financing, construction, operation and maintenance of the Project Facilities i.e. Five Star Hotel cum Commercial Complex.
- J. The Authority confirms the receipt of an amount of INR _____ (Indian Rupees only) as 50% of the Bid Value for the Project Site in three installments vide demand draft bearing nos. _____, _____, _____ and _____ respectively, which was the pre condition for the execution of the Development Agreement.

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

THIS AGREEMENT WITNESSETH AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 9.

“Agreement” shall mean this Development Agreement with its recitals and schedules, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” means and includes any statute, law, bye-law, rule, regulation, ordinance, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency having jurisdiction over



the matter in question, whether in effect as of the date of this Agreement or thereafter.

“Applicable Permits” shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents and approvals required to be obtained or maintained by the Developer under Applicable Law, in connection with the construction and maintenance of the Project Facilities during the subsistence of this Agreement.

“Approved Drawings” shall mean the drawing selected by the Authority among the drawings submitted by the Developer for the development of the Project Facilities.

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

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and the Rules thereunder, and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Authority” means Lucknow Development Authority;

“Bid” means the documents in their entirety comprised in the bid submitted by the Developer in response to the Tender Notice in accordance with the provisions thereof;

“Bid Value” shall mean the highest amount of Bid Variable offered by the Developer in the Financial Proposal at the RfQ cum RfP Stage payable to LDA for the purpose of developing the Project Facilities at the Site.

“Commercial Operations Date (COD)” shall mean the date on which the Project Monitoring Committee issues a certificate in respect of the Hotel facility of the Project stating that the facility is ready to commence its operations.

“Construction Commencement Date” shall mean the certificate issued by Authority to the Developer after approving the drawings for the Project Facilities submitted by the Developer.

“Construction Period” shall mean a period of maximum of 5 years from the date of Letter of Award for the Hotel facility or extension thereof as may be approved by the Authority.

“Conditions Precedent” shall have meaning as ascribed under Article 4.



“Contractor” shall mean any Person with whom the Developer has entered into / may enter into any material contract in relation with the Construction, Operation and Maintenance of the Project Facilities.

“Construction Works” shall mean all the works at the Project Site, required to be undertaken by the Developer, in conformity with the specifications, the Development Control Regulations and such other applicable law which need to be complied by the Developer.

“Developer” shall mean M/s _____.

“Development Control Regulations (DCR)” shall mean the Development Control Rules/Regulations in Lucknow as framed by the Lucknow Development Authority (LDA).

“Dispute Resolution” shall mean the procedure as mentioned Article 12.

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities.

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site/ Project Facilities.

“End user/ occupants/potential buyers” shall be the person/s with whom the Developer enters or has entered into an agreement for the sale/ lease of the Commercial Complex facility as per the terms herein.

“Financial Closure” means the legally binding loan documentation entered into between the Developer and Lenders to mobilize the financial requirements of the Project towards the Project cost.

“Financing Documents” shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

“Financial Year” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.



“Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence as specified in Article 9 of this Agreement.

“GoUP” shall mean the Government of Uttar Pradesh.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence, integrity and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project similar to that of the Project.

“Government Agency” shall mean Government of India (GoI), GoUP, Authority or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Parties, the Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement.

“Lenders” means financial institutions, banks, funds or trusts, who finance or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to / trustee for the holders of debentures / bonds or other securities issued by the Developer to meet the cost of the Project.

“Letter of Award” shall mean the letter issued by the Authority to the Developer as per the terms and conditions of the RfQ cum RfP Document.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of the Developer to exercise any of its rights to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement and / or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

“Parties” shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.



“**Person**” shall mean (unless otherwise specified or required by the context), any individual, company, Authority, partnership, trust, unincorporated organization, government or government body or any other legal entity.

“**Preliminary Notice**” shall mean the notice intended for termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“**Project**” shall mean designing, engineering, procuring, financing, construction, operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

“**Project Agreement**” means collectively this Agreement, construction contracts, operations and maintenance contracts and any other material contract (other than Financing Documents) entered into or may be entered into by the Developer in connection with the Project.

“**Project Facilities**” shall mean:

- a. A minimum of Five Star Hotel having the classification of “Five Star” or above category as per the industry norms and from the concerned agency under the Ministry of Tourism, Govt. It shall have the provision/facility for at least 150 guest rooms (150 Keys), with a 24 hour Coffee Shop of 100 seating capacity, Specialty Restaurant of 75 seating capacity, Lounge / Bar of 50 to 100 seating capacity, Food & Beverages & Other ancillary facilities such as bakery, conference halls of various sizes, Business Centre, Executive Health Club and a swimming pool with an additional paddle pool for kids (hereinafter referred to as **Hotel facility**).
- b. The Commercial Complex component of Project may contain commercial units like shops, business centres, shopping plaza, multiplex, service apartments, hotels including budget hotels or set ups of similar nature as may be permissible under the law. The Developer shall have the right to sell the commercial set up or any part thereof to the interested purchasers, subject to the terms and conditions as stated herein (hereinafter referred to as **Commercial Complex facility**).

“**Project Site/ Site**” shall mean all that plot of land admeasuring 2.48 Hectares assigned for the Project by the Authority, near Dr. Bhimrao Ambedkar Gombi Vihar Khand-I, Lucknow (Uttar Pradesh), located very centrally and at prime location of the city, approx. 02 Kms. from Hazaratganj. The Site is in the vicinity of Dr. Bhimrao Ambedkar Samajik Parivartan Sthal, Samajik Parivartan



Prateek Sthal, located near Dr. Bhimrao Ambedkar Gomti Vihar opposite Dr. Bhimrao Ambedkar Park and is more particularly described in Schedule I.

“Proposals/ Request for Qualification cum Request for Proposal (RfQ cum RfP)” shall mean the Request for Qualification cum Request for Proposal Document, issued by Authority dated 9th September, 2011, to the interested bidders, and the amendments and modifications made thereto from time to time together with all Annexures, Schedules, Maps along with such corrigendum, addendum, amendments as made from time to time.

“Rupees” or “Rs.” or “Indian Rupees/INR” refers to the lawful currency of the Republic of India.

“Scheduled Project Completion Date” shall mean date of completion of the development of the Hotel facility within 5 (five) years from the date of Letter of Award or an extension thereof as may be approved by the Authority.

“Standards of Reasonable and Prudent Developer” means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated herein.

“Tax” shall mean and includes all taxes, fees payable to the Authority, stamp duty, cesses, levies that may be payable by the Developer under Applicable Law.

“Termination” shall mean termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement.

“Termination Date” shall mean the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

1.2 Interpretation



1.2.1 In this Agreement, unless the context otherwise requires,

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- d. the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- e. references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
- f. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g. any reference to day shall mean a reference to a calendar day; references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Lucknow are generally open for business; any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- h. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- i. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this



Agreement is not a business day, then the period shall run until the end of the next business day;

- j. the words importing singular shall include plural and vice versa;
- k. references to any gender shall include the other and the neutral gender;
- l. "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- m. "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- n. references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- o. any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-article shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- p. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, in this behalf and not otherwise;
- q. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- r. references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any



contrary indication, be construed as a reference to a paragraph of this Agreement or of the Schedule in which such reference appears; and

- s. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the Authority and/or any of its authorized representative shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of Agreements and errors/discrepancies

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

- a. this Agreement; and
- b. RfQ cum RfP.

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

- a. between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Clauses;



- b. between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexures, the Schedules shall prevail; and
- c. between any value written in numerals and that in words, the latter shall prevail.

2 GRANT AND ACCEPTANCE OF DEVELOPMENT RIGHTS

2.1 Grant of Development Rights

Subject to and in accordance with the terms and conditions set forth in this Agreement, Authority hereby grants and authorizes the Developer to investigate, study, design, engineer, procure, finance, construct, operate, maintain and own the Project Site and the Project Facilities thereon, and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement ("**Development Rights**"), subject to the terms and conditions as specified herein.

2.2 Acceptance of Development and Ownership Rights

In consideration of the rights, privileges and benefits conferred upon the Developer, and other good and valuable consideration expressed herein, the Developer hereby accepts the Development and Ownership Rights, subject to specific provisions as mentioned herein, and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

2.3 Completion of Construction of the Project Facilities

The Developer shall complete the construction of the Project Facilities such that the Hotel facility is developed within a maximum period of 5 (five) years, from the date of Letter of Award, including any extension as may specifically be provided therefor.

3 HANDOVER OF PROJECT SITE

3.1 Handover of Project Site

- a. Authority shall, within 30 days of the Appointed Date, handover to the Developer on an as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from Encumbrance, for the purpose of implementing the Project subject to Clause 4 herein.
- b. Upon the Project Site being handed over pursuant to the preceding sub-article (a), the Developer shall, subject to the provisions of Article 5 have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to



implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site

- a. The Developer shall have the right to use the Project Site for the purpose of implementing the Project in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- b. The ownership of the Project Site shall be and continue to be of the Authority until the Developer obtains freehold rights in respect of the same. During such time the Developer shall have only leasehold rights on the Project Site.
- c. The Developer is allowed to utilize a Floor Area Ratio (FAR) of 3 on the Project Site and shall be entitled to purchase as additional FAR of 1 depending upon the requirements of the Project.
- d. The Developer shall be entitled for commercial operation of the Hotel facility only after procuring the Project Completion Certificate from the Authority and subsequently shall be eligible to apply for the freehold rights on the Project Site provided it has obtained a classification of at least "Five Star" category from the concerned agency under the Ministry of Tourism, (GoI) for the Hotel facility.
- e. The Developer shall not create any Encumbrance on the whole or any part of the Project Facilities including the Project Site at any time before the issuance of the Project Completion Certificate, save and except as set forth and permitted under this Agreement. However, it shall have the rights to create mortgage in respect of the Project Site in favour of the Lenders in order to attain financial closure for the Project after obtaining prior permission in writing from the Authority, which permission shall not be unreasonably withheld.
- f. In the event of any default by the Developer upto the Commercial Operation Date, all the rights of all the Lenders with respect to the Site shall be subject to Authority's unfettered rights as stated in this Agreement.
- g. The Developer shall not, without the prior written approval of Authority, use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.



- h. The Developer shall allow access to and use of the Project Site for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as the Authority may specify.

Provided that such access or use shall not result in a Material Adverse Effect.

Provided further, that to the extent such access and use allowed by the Developer affects the performance of any of its obligations hereunder, the Developer shall not be deemed or construed to be in breach of its obligations nor shall it incur / suffer any liability on account thereof.

3.3 Peaceful Possession

Authority hereby warrants that:

- a. The Project Site together with the necessary right of way
 - i. has been acquired through the due process of law
 - ii. is vested with the Authority
- b. and that Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement.
- c. The Developer shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and ownership of the Project Site, subject to obtaining freehold rights in respect of the Project Site.

3.4 Applicable Permits

The Developer shall obtain and maintain the Applicable Permits and adhere to Applicable Law in such sequence as is consistent with the requirements of the Project. The Developer shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued. The applicable permits shall include but not be limited to the permits from:

1. Authority
2. Fire Department
3. Environmental Clearances
4. State Pollution Board
5. Land/drain owning agencies
6. Any other applicable permits

4 CONDITIONS PRECEDENT

The respective rights and obligations of the Parties under this Agreement, except the provision for achieving financial closure, force majeure and dispute resolution, shall be subject to the satisfaction in full of the conditions



precedent specified in this Article 4 (the “**Conditions Precedent**”). However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire:

4.1 Conditions Precedent of the Developer

The Developer shall fulfill the following conditions precedent within 60 days from the Appointed Date:

- a. The Developer shall have achieved the financial closure for the Project and established the necessary financial evidence.
- b. The Developer shall have received the applicable permits and clearances from concerned authorities under relevant laws as may be applicable.
- c. The Developer shall have carried out an exhaustive environmental impact study in respect of the Project Site and a study considering the norms of Archeological Survey of India and submit a copy thereof to the Authority.
- d. The Developer shall have prepared and submitted the drawings for the Project Facilities for the approval from Authority and the same have been approved by the Authority as per the procedure laid down in Article 5.2.
- e. The Developer shall have proposed the names of its representative to be empanelled as the members of the Project Monitoring Committee.

4.2 Conditions Precedent of the Authority

Authority shall fulfill the following conditions precedent:

- a. Authority shall have handed over the Project Site to the Developer within 30 days from the Appointed Date on an “as-is-where-is basis”, subject to the condition that in case the Developer fails to fulfill its conditions precedent within the time period allowed for the same, the Authority shall be entitled to immediately take back the possession of the Site from the Developer on “as is where is” basis.
- b. Authority shall have within a period of 60 days from the acceptance of the Letter of Intent constituted a Project Monitoring Committee (**PMC**) comprising of equal number of representatives of each of the Authority and the Developer for the purpose of ensuring that the time lines in respect of the Hotel facility as specifically stated herein are met without compromising on the standards prescribed for such facility as per the industry norms. Each of the Party herein shall be responsible for the fee



and/or expenses of its representatives in the PMC. The Project Monitoring Committee shall hold its meetings at least once every three months to review the progress during the Implementation Period and submit its report to the Authority.

4.3 Cost of satisfying the Conditions Precedent

The cost of satisfying the above conditions precedent shall be borne by the respective Parties responsible for satisfaction of the Conditions Precedent.

4.4 Non- fulfillment of the Conditions Precedent

- a. In case of non-fulfillment of the Conditions Precedent attributable to reasons beyond the control of the Developer or Authority, the period for satisfaction of Conditions Precedent may be extended by mutual agreement of the Parties subject to a maximum of 60 days beyond which the Party not in default shall be entitled to seek termination of this Agreement as per the terms and conditions as stated herein.

4.5 Obligations to satisfy Condition Precedents

- a. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within the time period as specified above.
- b. Upon satisfaction in full of all Conditions Precedent by the last Party, the other Party shall forthwith issue to such Party a Certificate of Compliance of Conditions Precedent (the "**Certificate of Compliance**").
- c. The later of the date of issue of Certificate of Compliance to the Developer or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession Agreement shall commence and the Developer shall be entitled to commence construction of the Project Facilities.

5 DEVELOPER'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Developer shall have the following obligations:

5.1 Financial Obligations

5.1.1 Financing Arrangement

The Developer shall at its cost; expenses and risk make such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.



5.2 Operational Obligations

5.2.1 Drawings

- a. The Developer shall, subject to the Development Control Regulations (DCR) and as per the requirements under this Agreement prepare the drawings for the Project Facilities and submit the same to the PMC for approval within a period of 10 days from the constitution of the PMC and in such sequence as is consistent with and essential for the approval process, at the Developer's cost.
- b. PMC shall, within a period of 15 days from such submitted drawings, review and approve it, or shall communicate the changes, revisions and modifications in the drawings. The Developer shall make the changes, revisions and modifications within 15 days from such receipt of the comments and shall resubmit the drawings to PMC for its approval. If however, PMC delays in responding towards the drawings submitted for more than 15 days from the receipt of the drawings, the Developer is entitled to get an extension on the Commercial Operation Date equivalent to the number of days of delay after 15 days period, subject to the discretion of Authority.
- c. PMC shall, within a period of 7 days from such resubmission, ascertain whether the Developer has carried out the changes, revisions and modifications and accordingly accord its approval to the drawings. Upon such approval of the drawings by the PMC, the Authority shall issue a Construction Commencement Certificate to the Developer. The Developer can commence the Construction Works only after the receipt of the Construction Commencement Certificate in respect of the concerned Project Facilities. If however, PMC delays in responding towards the resubmitted drawings for more than 7 days from the receipt from the Developer, the Developer is entitled to get an extension on the Commercial Operation Date of the Hotel facility equivalent to the number of days of delay after 7 days period, subject to the discretion of Authority.

5.2.2 Project Implementation - Construction works

- a. The Developer shall construct the Project Facilities as per Approved Drawings and shall also comply with the DCR. No work shall be commenced or carried out which infringes the DCR or any other Applicable Law for the time being in force.
- b. Developer shall ensure that the design of Project Facilities conforms to the provisions of concerned development authorities, Bye-laws, requirements of all statutory/regulatory bodies in respect of fire hazard, ventilation & lighting requirement, safety, security, evacuation, alarm



etc during disaster. The Project shall conform with the norms of the National Disaster Management Authority for the seismic zone in which the Project falls.

- c. Since the Project includes commercial component also and is not purely a hotel project, Byelaws, FAR, Ground coverage norms applicable to “commercial” shall be applicable for the purpose of the Project. If however, the Developer makes it a purely hotel project, the Developer will get the benefits of the Byelaws, FAR etc as provided for hotels under the GoUP. policy for hotels as may be applicable. Further, rules and regulations of Housing & Urban Development Planning for hotels shall not be applicable because the Project envisages construction of hotel cum commercial activities, however, if the Site is used purely for construction of hotel facility, such rules and regulations shall be applicable.
- d. During the construction period, the Developer may have the right to permit/allow and charge for advertisement/hoarding on the Project Site as per applicable laws.

5.2.3 Project Implementation - Operation and Maintenance

- a. The Developer shall also operate and maintain the Project Facilities in accordance with the Standards of Reasonable and Prudent Developer and in accordance with the Approved Drawings and DCR for that purpose, do all such acts, deeds and things necessary and expedient including, without limitation obtaining all the approvals required for the operation and maintenance of the Project Facilities in accordance with Applicable Law.
- b. The Developer shall operate and manage the Hotel facility as per the best industry norms for such facility and in pursuance of the same shall ensure that the Hotel facility is operated and maintained by the known brands in the industry for Five Star or above category hotels. The Developer shall apply to the concerned agency under the Ministry of Tourism, GoI), at appropriate time for its classification as a “Five Star” or above category as per the industry norms and procure and furnish a certificate to this effect to the Authority.
- c. The Developer shall not be granted freehold rights in respect of the Project unless it has procured and submitted to the Authority applicable certificate from the concerned agency for the classification of the Hotel facility in terms of article above.



- d. The Developer, after the conversion of freehold rights in respect of the Project Site, shall be free to execute the conveyance deeds in respect of the Commercial Complex facility or any part thereof for its indented use as it may deem appropriate. No sale with any of the purchaser of the Commercial Complex facility or any part thereof shall be valid unless the Developer has procured freehold rights in respect of the Project Site.
- e. The Developer shall be entitled to the relevant tax exemptions/deferments for the Hotel Project under the prevalent Uttar Pradesh Tourism Policy in terms of various tax exemptions like luxury tax, trade tax, entertainment tax and other relaxations that may be available to tourism units under the policy.

5.2.4 Extension of Scheduled Project Completion Date

If the completion of the Hotel facility is delayed beyond the period specified herein, then Authority may at its discretion extend the Scheduled Commercial Operation Date of the Hotel facility by a maximum of 90 days. However, the Authority shall have the right to demand the Developer a maximum of Rs. 50,000/- per day as Liquidated Damages during the extended days. The Developer shall pay the Liquidated Damages by way of demand draft from a scheduled or nationalized bank acceptable to Authority, drawn in favour of **“Lucknow Development Authority”** payable at Lucknow. The Liquidated Damages shall have to be paid for the delay in the period from the Scheduled Commercial Operation Date of the Hotel facility till the date of actual Commercial Operation Date of the Hotel facility. If there is any delay beyond the extended days then the Authority shall, subject to the provisions of Article 10, be entitled to terminate this Agreement.

5.2.5 Insurance

The Developer shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, all insurances in respect of the Project Facilities in accordance with the Good Industry Practice. The Developer shall maintain a register of entry in order of premiums paid towards the Project Facilities and Project Site and proof of payments made shall be submitted to the Authority whenever requested for at any time during the Project construction period.

5.2.6 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Developer towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Developer may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their



favour as security for the financial assistance provided by them to the Project. The Developer shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, except in case of normal wear and tear.

5.2.7 Un-insurable Risks

If any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained / re-instated in respect of such risk, the Developer shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

5.2.8 Environmental Compliance

The Developer shall, at all times, ensure that all aspects of the Project Facilities and processes employed in the construction and maintenance thereof shall conform with the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Developer shall obtain and maintain from time to time all necessary clearances from empowered Government Agencies and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.

5.2.9 Applicable Permits

The Developer shall, in respect of the Project, procure the Applicable Permits and be in compliance thereof at all times.

5.2.10 Specific Obligations

- a. Two small water bodies are existing adjoining the Project Site. These water bodies need to be conserved in accordance with the applicable Govt. policies and statutes while preparing the designs and layouts for the Project and implementing the same.
- b. Keeping in view the volume of visitors to the proposed Project Site after its development, requirement of a pedestrian cross over for 08 lane road shall be included in the Project.
- c. Developer shall procure an Environmental Clearance from State Environment Impact Assessment Authority (SEIAA) as per the Environment Impact Assessment Notification S.O. 1533 (E) dated 14th September, 2006 as per the applicable law.



- d. The Developer shall construct a Service Road all along the Project Site and shall also provide provision for merging of the traffic with the main road in the front of the Project Site as per the requirement of the Project and therefore shall be required to construct roads for entry as well as exit.

5.3 General Obligations

The Developer shall at its own cost and expense:

- a. investigate, study, design, procure, finance, construct, operate and maintain the Project Facilities in accordance with the provisions hereof;
- b. obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times;
- c. shall not do or permit any activity on the Project Site which may be nuisance, annoyance or disturbance to the owners, occupiers or occupants/residents of other premises adjacent or in and around the vicinity.
- d. shall not interfere or cause damage to the properties of the Authority whether located outside or inside the Project Site, such as water supply lines, water meters, street-lights and such other properties. If the Developer intends to interfere with/modify any such utilities then it has to take prior written permission from the Authority/ concerned authorities.
- e. ensure to get approval of the agreement with the end user/ prospective buyers of the Commercial Complex facility or any part thereof from the Authority before entering into the same.
- f. shall not encroach upon any adjoining land, road, pathway or footpath of the Authority or GoUP in any manner whatsoever;
- g. the stamp duty payable in respect of this Agreement shall be borne by the Developer. Also the registration charges payable in respect of this Agreement and the duplicate thereof shall be borne by the Developer.
- h. ensure and procure that any contract relating to the Project, entered into by the Developer for implementing the Project in accordance with this Agreement contains provisions that would entitle a nominee of the Authority to step into such contract/s shoes at the Authority's discretion, in place and substitution of the Developer, pursuant to the provisions of this Agreement;



- i. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- j. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose the Authority be treated as employer in this regard;
- k. make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;
- l. be responsible for all the health, security, environment and safety aspects of the Project at all times;
- m. ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- n. upon receipt of a request therefor, afford access to the Project Facilities to the authorized representatives of Authority for the purpose of ascertaining compliance with the terms and conditions of this Agreement;
- o. the Developer shall annually pay all existing and future taxes, cesses, rates, assessments and outgoings of every description for the time being payable either by the end users or by the occupant in respect of the Project Facilities and anything for the time being thereon or as may be fixed from time to time. Also the Developer shall pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities. As regards supply of water, the Developer shall abide by the conditions laid down in that behalf by the concerned authority from time to time. Provided that in the case of a tax, cess rate or assessment as is required to be paid by the Authority in respect of the Project Site, the Developer shall pay to the Authority an amount equal to such tax, cess, rate or assessment as the case may be.

5.4 No Breach of Obligations



The Developer shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to Article 9;
- b. Authority Event of Default;

5.5 Minimum Equity Obligations/Lock in Period

- a. The Developer or no member of the Developer (in case of Consortium) shall divest/transfer its Interest or any part thereof in the Developer until the issuance of the Project Completion Certificate by the Authority and Developer procuring the classification of "Five Star" for the Hotel facility from the concerned agency (**Lock In Period**).
- b. During the Lock in Period the Developer *{(i.e. the special purpose vehicle as formed by the Successful Bidder (in case of Consortium Members))}* shall maintain the issued and paid up capital of the Developer in the manner as below:
 - i. the Lead Member shall hold at least 26% of total shares in the shareholding of the SPV.
 - ii. The Technical Member meeting the technical requirements shall also hold a minimum of 26% in the shareholding. Other member of the Consortium shall hold a minimum of 10% share each in the shareholding of the SPV.
 - iii. In case the Lead Member and the Technical Member are same, the Lead Member shall hold minimum of 51% in the Consortium
- c. The Lock in obligations shall equally be applicable for the Developer formed by an Individual Successful Bidder.

6 AUTHORITY'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authority shall have the following obligations:

Authority within its purview shall:

- a. at the request of the Developer provide on best effort basis necessary liaison to the Developer in securing Applicable Permits;



- b. Observe and comply with all its obligations set forth in this Agreement

7 PAYMENT AGAINST DEVELOPMENT RIGHTS

7.1 Bid Value Payments

The Developer has already paid 50% of the Bid Value as per the terms and conditions of the RfQ cum RfP dated 9th September, 2011 and the remaining 50% of the Bid Value is to be paid as per the terms and conditions as laid down herein below. A schedule of payment is as follows:

A. STATUS OF AMOUNT OF BID VALUE ALREADY PAID:

- i. 10% of the Bid Value at the time accepting the Letter of Intent;
- ii. 15% of the Bid Value within a period of 30 days from the date of issuance of the Letter of Award (LoA) or extension thereof as permitted;
- iii. 25% of the Bid Value within a period of 90 days from the date of issuance of LoA or extension thereof as permitted alongwith the Bank Guarantee of an amount of 15% of the total Bid Value;

B. SCHEDULE OF AMOUNT OF BID VALUE TO BE PAID:

- i. The remaining 50% of the Bid Value shall be paid by the Developer in eight (8) equal quarterly installments within a period of two years from the date of submission of the above referred Bank Guarantee. An interest @ 15% p.a. shall be charged during this period. In case of any default in payment of the installments, a further penal interest of 3.5%, which makes a total of 18.5% compound interest shall be charged on the Developer for the period of the delay in payment and will be compounded quarterly;
- ii. Issuance of Bank Guarantee shall be in the form prescribed by the Authority and the same shall be valid for a period of 30 months from the date of its issuance. Alternatively, the Bank Guarantee may be issued for a period of 12 months subject to the subsequent extension provision of the same for 12 months and 6 months respectively at the request of the Developer;
- iii. Any default in payment of installments on more than two occasions (quarters) shall give the right to the Authority to invoke the Bank Guarantee and appropriate the sum due including any interest and penal interest thereon;
- iv. The Bidder shall be required to replenish the Bank Guarantee (except when it has been invoked for the last two installments) within a period



of one month from the date of notice to replenish the same by the Authority. Failure to do so shall entitle the Authority to initiate Termination proceedings.

7.2 Mechanism of Payment towards Liquidated Damages

- a. All payments by the Developer to the Authority under the terms of this Agreement shall be made by way of demand draft from a scheduled bank in favour of, "**Lucknow Development Authority**" payable at Lucknow.
- b. Any delay in making any payment in accordance with the payment schedule shall, in addition and without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default as per the terms as stipulated in Article 7.1(B)(i).

8 INDEMNITY

- a. The Developer agrees to indemnify and hold harmless Authority and its officers and employees (each an "Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses (collectively, "Losses") to which Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
 - i. any mis-statement or any breach of any representation or warranty made by Developer or
 - ii. the failure by Developer to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Developer or
 - iii. any claim or proceeding by any third party against Authority arising out of any act, deed or omission by the Developer.
 - iv. For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Indemnified Party to the financial position it would have been in had the Losses not occurred.
- b. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

9 FORCE MAJEURE



9.1 Force Majeure Event

Force Majeure shall mean any event or circumstance or combination of events or circumstances set out below that materially and adversely affects any Party in the performance of its obligations in accordance with the terms of this Agreement, but only if and to the extent that such events and circumstances pertain to the Hotel facility of the Project or has a direct effect on the use of the Project Site, which are not within the affected Party's reasonable control, and/or the effects of which the affected Party could not have prevented through prudent business practices or, through reasonable skill and care, including through the expenditure of reasonable sums of money;

- a. earthquake, flood, inundation and landslide
- b. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- c. fire caused by reasons not attributable to the Developer or any of the employees of the Developer for purposes of the Project;
- d. acts of terrorism;
- e. strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Developer
- f. war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay caused by the events mentioned in this sub article for which no offsetting compensation is payable to the Developer
- g. action of a Government Agency having Material Adverse Effect including but not limited to
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facilities or any part thereof or of the Developer's rights in relation to the Project,
 - ii. any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Developer in any proceedings which is non-collusive and duly prosecuted by the Developer, and
 - iii. any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Developer's breach or failure in complying with the Project requirements, Applicable Laws, Applicable Permits, any judgement or order of a Governmental Agency or of any contract by which the Developer as the case may be is bound.
- h. early determination of this Agreement by Authority for reasons of national emergency or national security.



9.2 Exclusions from Force Majeure Event

Force Majeure shall expressly not include the following conditions, except to the extent resulting from a Force Majeure:

- a. Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts or consumables for the Project;
- b. A delay in the performance of any contractor or supplier;
- c. Non- performance resulting from normal wear and tear typically experienced in a project of this kind; and non- performance caused by, or connected with, the non-confirming party's (a) negligent or intentional acts, errors or omission (b) failure to comply with any of the Laws of India, or (c) breach of, or default under this Agreement.

9.3 Notice of Force Majeure Event

- a. As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other party of the same setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/ mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- b. As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding sub article (a), the Parties shall meet and hold discussions in good faith and where necessary conduct



physical inspection / survey of the Site and the Project Facilities in order to:

- i. assess the impact of the underlying Force Majeure Event;
 - ii. to determine the likely duration of Force Majeure Period and;
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- c. The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding sub article (b) as also any information, details or document, which the other Party may reasonably require.

9.4 Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- a. due notice of the Force Majeure Event has been given as required by the preceding Article 9.3;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Site/ Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;



- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- f. any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

9.5 Effect of Force Majeure Event

a. Termination

If a Force Majeure Event, excluding events described under Articles 9.1 (g) continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 180 days, the Parties may mutually decide to extend this Agreement on mutually agreed revised terms.

b. Termination Notice

If any Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub article (a), it shall issue Termination Notice setting out ;

- i. in sufficient detail the underlying Force Majeure Event;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. any other relevant information.

c. Obligation of Parties

Following issue of Termination Notice by either Party, the Developer shall promptly take all such steps as may be necessary or required to vacate the Project Site within a period of 21 days and hand over the Site alongwith Project Facilities in whatever stage they may be to the Authority free from all Encumbrances.

d. Termination Payment in case of Termination due to Force Majeure

An Independent Consultant shall be appointed by the Authority for calculating the termination payment for termination in consequence of above. The figures mentioned by the Independent Consultant shall be considered final and the Parties shall agree to the same. The cost of such Independent Consultant shall be borne equally by the Developer and the Authority.

9.6 Liability for other losses, damages etc.



Save and except as expressly provided in this Article 9, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

10 EVENTS OF DEFAULT AND TERMINATION

10.1 Events of Default

Event of Default shall mean either Developer Event of Default or the Authority Event of Default or both as the context may admit or require.

a. Developer Event of Default

Any of the following events shall constitute an Event of Default by the Developer ("**Developer Event of Default**") unless such event has occurred as a result of one or more reasons set out under No Breach of Obligations mentioned under Article 5.4

- i. The Developer has failed to complete the construction of the Hotel facility on the extended day provided by the Authority over and above its Scheduled Commercial Operation Date;
- ii. The Developer has deviated from the minimum standards prescribed for Five Star category hotels as per the applicable industry norms;
- iii. The Developer fails to get the "Five Star" category classification in respect of the Hotel facility within a period of six (6) months from the date of issuance of the Project Completion Certificate by the Authority;
- iv. The Developer fails to get in principle approval of the Authority on the standard format of the agreement to be entered upon with the end user/ occupant/prospective buyers of the Commercial Complex facility or any part thereof, before its execution with them and such fact comes/is brought to the knowledge of the Authority.
- v. The Developer has encroached upon any adjoining land, road, pathway or footpath of Authority/ GoUP in any manner whatsoever;
- vi. At any time from the Appointed Date, the Developer fails to adhere to the development requirements for Project Facilities or any part thereof and has failed to remedy the same within 60 days from the date of Preliminary Notice;
- vii. The Developer has failed to make any payments due to Authority and more than 30 days have elapsed since such payment default;
- viii. The Developer has failed to replenish the Bank Guarantee as per the terms of sub article 7.1(B)(iv).



- ix. The Developer divests/transfer its shareholding any time before the Lock in Period.
- x. The Developer is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days from the date of Preliminary Notice;
- xi. Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;
- xii. A resolution for voluntary winding up has been passed by the shareholders of the Developer which jeopardizes the completion of the Hotel facility within the extended time period as may be authorized by the Authority;
- xiii. Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement;
- xiv. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance from the Developer and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xv. The Developer has abandoned the Project Facilities;
- xvi. The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xvii. The Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.

b. Authority Event of Default

The following shall constitute an event of default by Authority ("**Authority Event of Default**"), when not caused by a Developer Event of Default or Force Majeure Event:

- i. The Project Site has not been handed over to the Developer within 30 days from the Appointed Date;



10.2 Termination due to Event of Default

a. Termination for Developer Event of Default

- i. Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of a Developer Event of Default, Authority shall be entitled to terminate this Agreement in the manner as set out under Article 10.2 (a)(ii)
- ii. If Authority decides to terminate this Agreement pursuant to preceding sub article (i), it shall in the first instance issue Preliminary Notice to the Developer. Within thirty (30) days of receipt of the Preliminary Notice, the Developer shall submit to Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default if any (the "Developer's Proposal to Rectify"). In case of non-submission of the Developer's Proposal to Rectify within the said period of 30 days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice, without any obligation to return the Bid Value as paid by the Developer. If the Developer's Proposal to Rectify is submitted within the period stipulated therefor, the Developer shall have further period of 30 days to remedy / cure the underlying Event of Default ("Cure Period"). If, however the Developer fails to remedy / cure the underlying Event of Default within such further period allowed, Authority shall be entitled to terminate this Agreement, by issue of Termination Notice and without any obligation to return the Bid Value as paid by the Developer.

b. Termination for Authority Event of Default

- i. Without prejudice to any other right or remedy which the Developer may have in respect thereof under this Agreement, upon the occurrence of an Authority Event of Default, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Developer decides to terminate this Agreement pursuant to preceding sub article (i) it shall in the first



instance issue Preliminary Notice to Authority. Within 30 days of receipt of Preliminary Notice, Authority shall forward to the Developer its proposal to remedy/ cure the underlying Event of Default ("Authority Proposal to Rectify"). In case of non submission of Authority Proposal to Rectify within the period stipulated therefore, Developer shall be entitled to terminate this Agreement by issuing Termination Notice with a right to claim back the Bid Value as paid by it.

- iii. If Authority Proposal to Rectify is forwarded to the Developer within the period stipulated therefore, Authority shall have further period of 30 days to remedy / cure the underlying Event of Default. If, however Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice with a right to claim back the Bid Value as paid by it.

c. Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof(if applicable); and,
- iv. any other relevant information.

d. Obligation of Developer in case on Termination

Following issue of Termination Notice by the Authority, the Developer shall promptly take all such steps as may be necessary or required to ensure that the Site and the Project Facilities are handed back to Authority as instructed by Authority, on the Termination Date free from any Encumbrance along with any payment that may be due by the Developer to the Authority.

e. Withdrawal of Termination Notice



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

Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

f. Termination Payments

- i. Upon Termination of this Agreement on account of the Authority Event of Default, Authority shall release the Bid Value paid by the Developer to the Authority.
- ii. Upon Termination of this Agreement on account of Developer Event of Default, Developer shall not be entitled to receive any termination payment from Authority and the Bid Value shall be forfeited by the Authority and the lease granted herein shall terminate automatically.

10.3 Rights of Authority on Termination

- a. Upon Termination of this Agreement for any reason whatsoever, Authority shall have the power and authority to:
 - i. terminate the lease in respect of the Project Site, enter upon and take possession and control of the Project Site/ Project Facilities forthwith, in whatever condition they may be;
 - ii. prohibit the Developer and any person claiming through or under the Developer from entering upon / dealing with the Project Facilities;
 - iii. shall have the right over the payments which are liable to be paid to Authority as per the terms of this Agreement.

b. Notwithstanding anything contained in this Agreement, Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Developer/ contractor in connection with the Project, and the



hand over of the Project Facilities and Project Site by the Developer to Authority shall be free from any such obligation.

11 CONVERSION TO FREEHOLD RIGHTS OF THE PROJECT SITE

11.1 Ownership

Subject to the terms of the Agreement, the ownership of the Project Site, including all improvements made therein by the Developer, shall at all times until the Commercial Operation Date vest with the Authority.

11.2 Developer's Obligations

- a. The Developer shall on the date of completion of construction of the Hotel facility approach the Authority for the issuance of the Project Completion Certificate, which certificate shall not be unreasonably withheld by the Authority. Within 15 days of being approached by the Developer for the issuance of Project Completion Certificate, the Authority shall send the PMC, to the Project Site in order to evaluate the completion of the construction of the Hotel facility. The PMC shall prepare a report on the same and submit a copy of the report to the Authority within seven days of the visit to the Project Site and based upon the assessment of the PMC, the Authority shall issue the Project Completion Certificate within a period of 7 days from the date of submission of the report or if there are certain deficiencies which need to be fulfilled before the issuance of the certificate, shall notify the Developer in writing within the same time period asking the Developer to remove the identified deficiencies within a period of 30 days. The Developer shall make all its efforts to remove the deficiencies in the completion of the Project within the specified time period and submit a report on the same to the PMC. The Authority shall verify the removal of the deficiencies through PMC. The PMC shall submit its report of the inspection of the Project Site in the same manner as above and if the Authority is satisfied with completion of the Project, it shall issue the Project Completion Certificate within a period of seven days from the date of submission of the compliance report by the PMC. Otherwise, it shall continue to follow the same method of getting the deficiencies removed until the PMC gives a positive compliance report.
- b. Upon the issuance of the Project Completion Certificate by the Authority and subject to Article 5.2.3 (c), the Developer shall procure the classification of the Hotel facility as of "Five Star" or above category from the concerned agency under the Ministry of Tourism, GoI within a period of 6 months from the date of getting the Project Completion Certificate. It is only after getting such certification that the Developer shall be entitled to get the Project Site registered in its own name/ get freehold rights in respect of the Project Site and the Authority shall



cooperate with the Developer in all possible manner to give it the freehold rights in the Project Site. However, any expense incurred in such conversion of the leasehold rights into freehold rights in respect of the Project Site shall be exclusively borne by the Developer.

- c. After getting the freehold rights in respect of the Project Site, the Developer shall be the lawful and exclusive owner of the Site and Project Facilities thereon.

12 DISPUTE RESOLUTION

12.1 Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub article (b) below.
- b. The Parties may refer such Dispute to the Authority, for amicable settlement. Upon such reference, the Parties shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 12.2 below.

12.2 Arbitration

a. Procedure

Subject to the provisions of Article 12.1, any Dispute which is not resolved amicably shall be finally settled by the panel of arbitrators. Each party shall appoint one arbitrator of its choice and the two arbitrators shall appoint the third arbitrator who shall be the presiding arbitrator. The place of arbitration shall be at Lucknow.

b. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English only and, if oral hearings take place, English shall be the only language to be used in the hearings.

c. Enforcement of Award

The Parties agree that the decision or award from the panel of arbitrators shall be final and binding upon the Parties.



12.3 Performance during Dispute

Pending the submission of and/or decision on a Dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

13 REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Developer

The Developer represents and warrants to Authority that:

- a. it is duly organized, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. there are no actions, suits, proceedings or investigations pending or to the Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally



binding order of any Government Agency which may result in Material Adverse Effect;

- i. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. no representation or warranty by the Developer contained herein or in any other document furnished by it to Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- k. no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Developer to any person to procure the Project for its development.
- l. Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project Site and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:
 - i. the form and nature of the Project Site, including the sub-surface conditions,
 - ii. the hydrological and climatic conditions,
 - iii. the extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
 - iv. the means of access to the Project Site
- m. The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters



set forth above and hereby confirms that Authority shall not be liable for the same in any manner whatsoever to the Developer.

13.2 Representations and Warranties of Authority

Authority represents and warrants to the Developer that:

- a. Authority has the full power and authority to sell the Project Site and grant development rights in respect of the Project;
- b. Authority has taken all the necessary action to authorize the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d. There are no suits or other legal proceedings pending or threatened against Authority in respect of the Project Site / Project facilities.

13.3 Obligation to Notify Change

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

14 MISCELLANEOUS

14.1 Assignment and Charges

- a. The Developer shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the Authority.
- b. The Developer shall not create nor permit to subsist any Encumbrance over the Project Facilities or any part thereof at any time until the Commercial Operation Date except with prior written consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- c. Restraint set forth in sub articles (a) and (b) above shall not apply to:



- i. Pledges / hypothecation of goods / moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital/project financing providers for the Project subject to such Lenders recognizing at the time of creation of such security the first right of the Authority to be adequately compensated in case of any default by the Developer under the financing agreement and the Lenders enforcing the security thereunder including the Site and Project Facilities herein; No freehold rights on the Site shall be provided by the Authority unless the Authority has been compensated for all its dues from the Developer and if the obligation of constructing the Hotel facility is not fulfilled by the Developer or any subsequent party taking over the possession and control of the Site in view of the Lenders enforcing their security against the Developer;
- ii. assignment of Developer's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them subject to Lenders acknowledging Authority's rights in terms of preceding sub article;
- d. The Developer shall ensure inclusion of Authority's rights as mentioned above at the time of creation of such security and/or assignment in respect of the Site and/or the Project Facilities and shall submit a copy of the financing documents to the Authority immediately after execution.

14.2 Interest

- a. Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest in terms of Article 7.1(B)(i) from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same.

Provided that stipulation regarding interest for delayed payments contained in this Article 14.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.



14.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Lucknow shall have the jurisdiction over all matters arising out of or relating to this Agreement.

14.4 Waiver

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

14.5 Survival

Termination of this Agreement

- a. shall not relieve the Developer, the Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

14.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on



the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

14.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the Authority:

Authorized Representative
The Authority

If to the Developer:

Authorized Representative,

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- i. in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and
- ii. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

14.8 Severability

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



Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

14.9 Language

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

14.10 Exclusion of Implied Warranties etc.

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

14.11 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of Authority by:

(Signature)

(Name)

(Designation)

For and on behalf of DEVELOPER by:

(Signature)

(Name)

(Designation)

In the presence of:

1)

2)



Schedule I. Details of Project Site

1. Land having an area of approximately 2.48 Hectares situated in Village Jiamau, Tehsil & District Lucknow (Uttar Pradesh) bearing Khasra Nos. 195(s), 196(s), 205(s), 209(s), 201/2, 202, 203, 204, 206/1/1, 206/2/2, 207(s), 208 and 222.
2. The Site is located on newly developed 08 lane road connecting Kalidas Marg to Lucknow-Faizabad Highway which is a 60.0 metre wide road as per the Master Plan. Thus the actual site boundary begins beyond the road widening margin for 60.0 metre wide road. The Site is in the vicinity of Dr. Bhimrao Ambedkar Samajik Parivartan Sthal, Samajik Parivartan Prateek Sthal, located near Dr. Bhimrao Ambedkar Gomti Vihar opposite Dr. Bhimrao Ambedkar Park.
3. Land Use of the Site is Commercial (Sub City Centre)
4. Ground Coverage is 40%
5. Permissible Activities shall be as per the Zoning Regulations of prevailing Lucknow Master Plan-2021