

**PONDICHERRY ASHOK HOTEL CORPORATION LTD**

**UNIT: HOTEL PONDICHERRY ASHOK**

**CORRIGENDUM/ ADDENDUM**

**Dated : 27<sup>th</sup> April, 2018**

**Engagement of Transaction Advisor for long term lease (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok, Pondicherry,**

- A. In response to the queries raised by prospective bidders the following corrigenda / addendum are being incorporated as part of the RFP (Ref. No : HPA/RFP/TA/17-18) after approval of IMG.
- B. Bidders are requested to download a copy of this corrigendum/ addendum and to affix seal and sign the same and submit a copy of this with the Bid Submission as a token of having read and understood the changes in the RFP.
- C. Other than the following corrigendum/addendum and new schedule of date there are no other changes in the RFP.

**I. CORRIGENDUM.**

Clause No	Our RFP Terms	RESPONSE/ CLARIFICATION
DATA SHEET - ROW 11- BID SECURITY	Rs. 1,00,000/- (Rupees one Lakh Only) in the form of Demand Draft/ RTGS/NEFT in favour of PAHCL.	Rs. 1,00,000/- (Rupees one Lakh Only) in the form of Demand Draft/ RTGS/NEFT in favour of PAHCL. Bid Security would not be applicable to registered MSMEs. MSME registration and details to be uploaded
DATA SHEET - ROW 12- Tender Fees	Rs. 10,000/- (Rupees Ten Thousand Only) in the form of Demand Draft/ RTGS/NEFT in favour of PAHCL.	Rs. 10,000/- (Rupees Ten Thousand Only) in the form of Demand Draft/ RTGS/NEFT in favour of PAHCL. Bid Security would not be applicable to registered MSMEs. MSME registration and details to be uploaded
3. xvi	The Transaction Advisor will depute one experienced officer on its rolls having minimum 5 years experience in facilitating the process of long term lease (e.g. joint lease, DBFOT, PPP etc.) and post lease matters with ITDC for a period of one year w.e.f. the date of Letter of Intent. ITDC will provide required facilities like suitable office space etc. to meet operational requirements.	The Transaction Advisor will depute one experienced officer on its rolls having minimum 5 years experience in facilitating the process of long term lease (e.g. joint lease, DBFOT, PPP etc.) and post lease matters at ITDC as and when required for a period of one year w.e.f. the date of Letter of Intent.

4	Deliverable Time Schedule		New Delivery Time Schedule			
	DELIVERABLES	Timeline from LOI			Timeline from LOI	
	1	Inception Report	10 days	1	Inception Report	10 days
	2	Detailed Report & Financial Model	30 days	2	Detailed Report & Financial Model	30 days
	3	Issue of RFP Documents	45days	3	Issue of RFP Documents	60 days
	4	Pre Bid Conference	55 Days	4	Pre Bid Conference	70 Days
	5	Submission of Technical & Financial Bid by Bidders	80 Days	5	Submission of Technical & Financial Bid by Bidders	90 Days
	6	Finalization of bids and issuance of Draft LOI	110 days	6	Finalization of bids and issuance of Draft LOI	125 days
	7	Signing of Concession Agreement	120days	7	Signing of Concession Agreement	135 days
5.1	Bidder should be a reputed professional consulting firm / investment banker / merchant banker /financial institution / bank having experience of at least 5 years for providing similar advisory services for long term lease, strategic sale, M&A activities, private equity transaction, PPP transactions in Infrastructure and Hospitality Sector etc. The bidder should enclose the Certificate of Incorporation/Registration Certificate of Partnership Firm/LLP/ Relevant document in respect of other entities evidencing existence for five years or more		Bidder should be a reputed professional consulting firm / investment banker / merchant banker /financial institution / bank having experience of at least 5 years for providing similar advisory services for long term lease, strategic sale, M&A activities, private equity transaction, PPP transactions in Infrastructure / Hospitality Sector etc. The bidder should enclose the Certificate of Incorporation/Registration Certificate of Partnership Firm/LLP/ Relevant document in respect of other entities evidencing existence for five years or more			
9.3	The fee quoted should be unconditional. The travel related expenses and all the other expenses including those related to due diligence would have to be borne by the Transaction Advisor.		The fee quoted should be unconditional. The travel related expenses and all the other expenses including those related to due diligence would have to be borne by the Transaction Advisor. However, the cost of newspaper advertisement would be borne by PAHCL .			

## II. AMENDED SCHEDULE OF DATES

Last date of submission of proposal	9 <sup>th</sup> May, 2018 by 1600 hrs
Date & time of opening of Part-A (i.e. Techno Commercial Bid)	10 <sup>th</sup> May, 2018 at 1100 hrs
Part-B Price Bid:	Date of opening of Part-B i.e. price bid shall be informed separately.

**PONDICHERY ASHOK HOTEL CORPORATION LTD**

**REQUEST FOR PROPOSAL**

**Engagement of Transaction Advisor for *long term lease (e.g. joint lease, DBFOT, PPP etc.)* of Hotel Pondicherry Ashok, Pondicherry, a property of Pondicherry Ashok Hotel Corporation Ltd.(PAHCL), a joint venture company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDIC)**

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PONDICHERRY ASHOK HOTEL CORPORATION LTD

**Section 1: Letter of Invitation**

Ref. No : HPA/RFP/TA/17-18

Date: 18/11/2017

To

All prospective Bidders

**SUB:** **Engagement of Transaction Advisor for *long term lease* (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok, Pondicherry, a property of Pondicherry Ashok Hotel Corporation Ltd. (PAHCL), a joint venture Company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**

Dear Sir/Madam:

Pondicherry Ashok Hotel Corporation Ltd invites proposals to provide the Transaction Advisor services for *long term lease* (e.g. joint lease, DBFOT, PPP etc.) of *Hotel Pondicherry Ashok, Pondicherry*, a property of PAHCL, a joint venture company of **India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**. Further details of the services requested are provided in the Scope of Services of the enclosed RFP Documents.

All information contained in this RFP should be treated as commercially confidential and you are requested to limit dissemination on a need to know basis.

Please note that while all the information and data regarding this RFP is to the best of Authority's knowledge accurate within the considerations of scope of the proposed project, the Authority holds no responsibility for the accuracy of this information and it is the responsibility of the Transaction Advisor (TA) to check the validity of data included in the document.

Yours sincerely,

T.Karikalan

Managing Director (PIPDIC & PAHCL)

## Section 2: Data Sheet

TENDER NO.	No : HPA/RFP/TA/17-18
MODE OF TENDER	Part A - Techno-Commercial Bid  Part B - Price Bid
Date of RFP available to parties for download	From 20.11.2017 Till <b>(17.00 hrs.)</b>
Pre-Bid Meeting Date	Pre –Bid Meeting will be held on 01.12.2017 <b>(15.00 hrs.)</b>
Pre-Bid Meeting Venue	At Hotel Pondicherry Ashok, Pondicherry 605 014
Last Date for submission of queries by the bidders. The bidders need to provide the list of clarification required, if any along with para/clause no.	By 27.11.2017 <b>prior</b> to the pre-bid meeting from <b>10:00 A.M.</b> to <b>5:00 P.M.</b>
Last date of site visit (if required) by the bidders	27.11.2017
Last date of submission of proposal	11.12.2017 by 1700 hrs
Date & time of opening of Part-A(i.e. Techno Commercial Bid)	12.12.2017 at 1500 hrs
Part-B Price Bid:	Date of opening of Part-B i.e. price bid shall be informed separately
Bid Security (Refundable)	Rs. 1,00,000/- (Rupees one Lakh Only) in the form of Demand Draft/ RTGS/NEFT in favour of Hotel Pondicherry Ashok payable at Pondicherry
Tender Fees (Non refundable)	Rs. 10,000/- (Rupees ten Thousand Only) in the form of Demand Draft/RTGS/NEFT in favour of Hotel Pondicherry Ashok payable at Pondicherry

RTGS/NEFT details	Axis Bank A/c No.209010200005661 IFSC CODE: UTIB0000209 Name : Pondicherry Ashok Hotel Corporation Limited
UTR No. (to be provided by the bidder)	
Validity of bids	120 days



### Section 3

COVERING LETTER ON THE LETTER HEAD OF BIDDER MUST BE SUBMITTED BY THE BIDDERS, DULY FILLED IN, SIGNED AND STAMPED IN SEALED ENVELOPE SUPERSCRIBED WITH RFP NO. HPA/RFP/TA/17-18 SO AS TO REACH US BY/BEFORE 11.12.2017 by 1700 hrs-----

Ref.....

Date: .....

To

Managing Director (PAHCL)  
Hotel Pondicherry Ashok  
ECR, KALAPET  
PONDICHERRY – 605 014

**SUB:** Submission of RFP for **Engagement of Transaction Advisor for long term lease** (e.g. joint lease, DBFOT, PPP etc.) **of Hotel Pondicherry Ashok, Pondicherry, a property of PAHCL, a joint venture company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**

REF: HPA/RFP/TA/17-18

Dear Sir,

With reference to your proposal for the above subject, We/I hereby submit our / my bid in two Parts i.e.; Part-A Techno- commercial bid and Part-B Price-bid as per RFP and instructions in the RFP documents.

#### **Part-A: Techno-Commercial Bid:**

The following documents duly filled in, signed and stamped are hereby submitted for the subject matter:

1. Covering letter
2. Your terms and conditions of RFP documents under Section 4 along with Annexure I to X under Section 5 duly signed and stamped on each page in token of acceptance of the same in its entirety.
3. Requisite Bid Security and Tender Fee.
4. Supporting documents for eligibility/ evaluation in accordance with RFP criteria.
5. Any other document as per RFP.

**Part-B: Price bid: As per “PRICE BID” format at Annexure-V.**

We/I hereby declare that We/I have not been debarred or black listed from bidding for contracts in any of the departments of Govt./Semi Govt./Public Sector Undertaking and Local Bodies.

We/I certify that the information given by us/me as per RFP documents is correct and if at any stage the same is found to be incorrect, the contract will be liable to be rejected/terminated and action may be taken against us/me for damages.

We are/I am duly authorized/empowered to sign the RFP documents and my/ ours particulars are as under:-

- a) Name of the Bidder .....
- b) Full Postal Address:.....  
.....  
.....
- c) Fax.....
- d) Phone: Office.....Residence.....
- e) Mobile: .....
- f) E-mail .....

Yours faithfully,

(SIGNATURE OF THE TENDERER WITH SEAL)

## **SECTION-4: REQUEST FOR PROPOSAL**

**Engagement of Transaction Advisor for long term lease (e.g. joint lease, DBFOT,PPP etc.) of Hotel Pondicherry Ashok, Pondicherry, a property of Joint Venture Company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**

### **1. INTRODUCTION**

Pondicherry Ashok Hotel Corporation Ltd (PAHCL or Authority) has decided to invite bids **for long term lease** (e.g. joint lease, DBFOT, PPP etc.) **of Hotel Pondicherry Ashok, Pondicherry, a property of PAHCL, a Joint Venture Company of India Tourism**

**Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**

The Authority has decided to appoint Transaction Advisor (hereinafter referred to as TA or bidder) for determining Feasibility and preparing Financial Model for the Project. If found viable, the Property may be leased out to third party on long term lease basis. The Project would be implemented in accordance with the terms and conditions stated in the

Lease Agreement to be entered into between the Authority and the third party (the “Lease **Agreement**”).]

In pursuance of the above, the Authority has decided to carry out the process for selection of a Transaction Advisor for preparing the various Reports, valuation of Property, Financial Model with various lease options, bidding documents and lease Documents. The Transaction Advisor will prepare all such Reports and Agreement.

A brief information note on “Hotel Pondicherry Ashok, Pondicherry” and the facilities in the property are attached in **Annexure-X**.

### **2. PROPOSAL**

The Authority intends to invite bids **for long term lease** (e.g. joint lease, DBFOT, PPP etc.) **of Hotel Pondicherry Ashok, Pondicherry, a property of PAHCL, a joint venture company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**. The Authority proposes to engage Transaction Advisor from a reputed professional consulting firm, investment bankers, merchant bankers, financial institutions, banks etc. for providing Transaction Advisory services and managing the lease (e.g. joint lease, DBFOT, PPP etc.) process.

### **3. SCOPE OF WORK OF THE TRANSACTION ADVISOR**

The Transaction Advisor will be required to undertake tasks related to all aspects of the proposal culminating into successful completion of the transaction and the scope of work, would, inter alia include but not limited to advising and assisting the Authority on modalities of various long term lease options (e.g. joint lease, DBFOT, PPP etc.) and the timing; preparation of all documents like Preliminary Information Memorandum (PIM), Confidential Information Memorandum (CIM), Request for Proposal (RFP), Confidentiality Agreement etc.; structuring the transaction; suggesting measures to fetch optimum lease/Concession amount; inviting and

evaluating the bids, assisting and professionally guiding during the negotiations, drawing up/signing of the lease agreements and advising on all related matters. The Terms of Reference would include:

- i. Advising on the modalities (e.g. joint lease, DBFOT, PPP etc.) and the timing of the Long term lease of **Hotel Pondicherry Ashok, Pondicherry**, preparing and submitting a detailed operational scheme to successfully implement the Leasing process, indicating tentative timelines for each activity.
- ii. Preparing the deal collateral for the transaction including but not limited to:
  - (a) Preliminary Information Memorandum (“PIM”) with intent of providing information to prospective Lessees (hereinafter referred to as prospective Lessees or Lessees or Investors), Authority/ITDC about **Hotel Pondicherry Ashok, Pondicherry**, and its business to enable them to decide on models of long term lease (e.g. joint lease, DBFOT, PPP etc.) etc
  - (b) Confidential Information Memorandum (“CIM”) covering detailed information about **Hotel Pondicherry Ashok, Pondicherry** and its business.
- iii. Facilitating execution of Non-Disclosure Agreement (“NDA”) and subsequent communication and providing the prospective Lessees / Investors with information on the asset and the transaction.
- iv. Finalizing the process of long term lease (e.g. joint lease, DBFOT, PPP etc.) through competitive bidding.
- v. Supporting PAHCL in setting up of the e-data room and assisting PAHCL in the smooth conduct of the due diligence process.
- vi. Positioning the leasing out of **Hotel Pondicherry Ashok, Pondicherry**, to generate interest among the prospective Lessees / Investors.
- vii. Managing a transparent process of bidding/interest solicitation from potential Lessees / Investors including:
  - (a) Preparation and issuance of advertisement/RFQ/RFP etc; and organizing prebid meeting(s) and site visit(s);
  - (b) Analysis of and framing/drafting replies to queries of prospective Lessees / Investors and making necessary modifications, if required in the bid documents;
  - (c) Invitation and evaluation of bids from prospective Lessees / Investors and preparation of requisite documents leading to final selection of the Lessee / Investor.
- viii. Assisting in negotiations with shortlisted Lessee / Investor, if required.
- ix. Recommending the fair value, reserve price for long leasing considering the valuation; of **Hotel Pondicherry Ashok, Pondicherry** based on the possible methods like relative valuation; DCF, opportunity cost valuation with different scenario(s) or any other suitable method and highlighting the

pros and cons of various methods. While fixing fair value/ reserve price, the report of the Government Approved Asset Valuer of the Transaction Advisor, if required, will be taken into consideration. The Transaction Advisor will consider possible options of Change in Land use and suggest valuation based on different options. The Authority will have the option of second valuation done from any other agency.

- X. Managing a transparent process of bidding/interest solicitation from potential Lessees / Investors including:
  - (a) Preparation and issuance of advertisement/RFP etc; and organizing pre-bid meeting(s) and site visit(s);
  - (b) Analysis of and framing/drafting replies to queries of prospective Lessees / Investors and making necessary modifications, if required in the bid documents;
  - (c) Invitation and evaluation of bids from prospective Lessees / Investors and preparation of requisite documents leading to short listing of Lessees / Investors for negotiations.
- xi. Preparation and execution of requisite agreements (Lease Agreement etc), and all legal documentation required for execution of the transaction on behalf of Authority,
- xii. Ensuring compliance of applicable regulatory requirements including obtaining statutory approvals and clearances, wherever necessary, and coordinating and monitoring the progress of the transaction until its completion.
- xiii. Assist in closure of the transaction.
- xiv. Advising on post-lease matters, if any.
- xv. Providing any other analytical and transactional support required by Authority for successful completion of the transaction.
- xvi. The Transaction Advisor will depute one experienced officer on its rolls having minimum 5 years experience in facilitating the process of long term lease (e.g. joint lease, DBFOT, PPP etc.) and post lease matters with ITDC for a period of one year w.e.f. the date of Letter of Intent. ITDC will provide required facilities like suitable office space etc. to meet operational requirements.

The ToR mentioned above are indicative and non-restrictive in nature. There may be some services relevant but not expressly captured in the aforesaid Scope of Work, which upon being brought to the notice of the Transaction Advisor by Authority will also form an integral and mandatory part of the ToR without any extra cost.

## **4.DELIVERABLES**

The deliverables of the Project are as follows:

<b>S.No.</b>	<b>Deliverables</b>	<b>Timeline from the date of Lol</b>
1	Inception Report	10 days
2	Detailed Report & Financial Model	30 days
3	Issue of RFP documents	45 days
4	Pre-bid conference	55 days
5	Submission of technical & financial bids by bidders	80 days
6	Finalization of bids and issuance of draft LOI	110 days
7	Signing of Concession Agreement	120 days

## **5. ELIGIBILITY**

- 5.1 Bidder should be a reputed professional consulting firm / investment banker / merchant banker / financial institution / bank having experience of at least 5 years for providing similar advisory services for long term lease, strategic sale, M&A activities, private equity transaction, PPP transactions in Infrastructure and Hospitality Sector etc. The bidder should enclose the Certificate of Incorporation/Registration Certificate of Partnership Firm/LLP/ Relevant document in respect of other entities evidencing existence for five years or more.
- 5.2 Bidders should have advised, handled and successfully completed at least two transaction of leasing out /merger/acquisition/takeover/long term lease/PPP transactions of **similar nature** (one project from the Government Sector/PSU/Autonomous body) in Infrastructure/Hospitality/Tourism Projects[sector of operations of the company under long term lease] of the **project size of Rs.100 crore (one hundred crores)** or more, after the period from 1st April, 2012. The bidder shall submit work order and completion certificate/certificate of full and final payment fee received from the Chartered Accountant as per Annexure-VI.
- 5.3 **Financial Capacity:** The Bidder shall have received a minimum of Rs.5 crore (Rs. five crore) per annum as professional fees during each of the three preceding Accounting years. For the avoidance of doubt, professional fees here in above refers to fees received by the Bidder for

providing advisory or consultancy services to its clients. The bidder shall submit Audited Account Statement of last three years. The Bidder shall enclose with its Proposal, certificate from its Statutory Auditors or a Chartered Accountant stating its total revenues from professional fees during each of the past three years in the format as per the Annexure VI.

5.4 The interested parties are required to furnish an Affidavit-cum-Undertaking in the format as in **Annexure-I** regarding 'no conviction' and 'no conflict of interest'.

**6. FORMAT OF THE TECHNICAL BID:**

(A) **Availability of Key Personnel:** The Bidder shall offer and make available all Key Personnel meeting the requirements specified in Sub-clause.

(B) **Conditions of Eligibility for Key Personnel:** Each of the Key Personnel must fulfil the Conditions of Eligibility specified below:

Key Personnel	Educational Qualification	Length of Prof. Experience	Minimum Experience on Eligible Assignments
Team Leader (Lease / Real Estate Expert)	CA/CMA/CF A/MBA/ Graduate in Civil Engineering	10 years	Transaction Advisory experience of leasing / transfer properties preferably Hotels including familiarity with project agreements, tendering arrangements, project structuring, risk management and successful project implementation of at least two hospitality / tourism / real Estate projects.
Finance Expert	CA/MBA/CF A/CMA	5 years	Financial structuring of infrastructure projects, Model preparation, Risk analysis of at least two hospitality/ Infrastructure / tourism / Real Estate projects on leasing properties.
Contract / Legal Expert	Law Graduate	5 years	Preparation of Contracts documents, Contract negotiation and successful project closure of at least two projects on leasing properties.
Human Resource Expert	MBA	5 years	Experience of handling HR related matters / VRS/ HR policies for at least two projects on transferring properties / Mergers / Acquisitions etc
Valuation Expert	Govt. of India Certified Authorized Valuer	5 years	Experience of undertaking valuation of at least two hospitality tourism / Real Estate projects.

Note: An undertaking to be given that if during the process, any of the core team members is not available due to resignation, leave of absence, etc., another person of the same qualification and experience would be made available with the concurrence of the Authority.

## **7.EVALUATION AND SELECTION PROCESS(70:30)**

The evaluation criteria for assessing the proposals of “The Bidder” are as follows, where in technical evaluation will have maximum 70 marks and financial evaluation will have maximum 30 marks.

<b>Sr. No.</b>	<b>Technical Criteria</b>	<b>Particulars</b>	<b>Number</b>	<b>Maximum Points</b>	<b>Sub-Total Marks</b>	<b>Maximum Marks</b>
i.	Turn Over of “The Bidder”	Average Turn Over for the last three financial years i.e FY-2013-14, 2014-15, & 2015-2016  or Accounting year 2014, 2015 & 2016  ( Submit audited balance sheet)	More than Rs. 50.00 Crs	100%		15
			Rs. 40- Less than 50 Crores	75%		
			Rs. 30- Less than 40 Crores	50%		

			Rs. 20 Less than 30 Crores	25%		
			Rs. 05 – Less than 20 Crores	0%		
ii.	Long Leasing properties/ PPP, DBFOT, Experience of “The Bidder” to private sector / Govt. Agencies	Number of projects (successfully completed) in India and overseas in last five years of minimum fees of Rs.25.00 lacs each Project <b>(provide certified copy of completion</b>	More than 6 numbers	100%		15
			05 - 06 numbers	50%		
			03-04 numbers	25%		



		<b>Certificates/ Certificate from CA for receiving all payments on completion of the projects)</b>	02	0%		
iii	Technical approach and methodology					15
iv.	Work Plan					10
v.	Organisation and staffing for execution of the Project					5
vi.	Team Leader(Lease / Real Estate Expert)	CA/MBA/Graduate in Civil Engineering	More than 15 yrs experience  10-15 yrs Exp.	100%  50%	3	10

vii.	Finance Expert	CA/CMA/CFA/MBA	More than 8 yrs experience 05- 08 yrs Exp.	100% 50%	2	
viii.	Contract / Legal Expert	Law Graduate	More than 8 yrs experience 05- 08 yrs Exp.	100% 50%	2	
ix.	Human Resource Expert	MBA	More than 8 yrs experience 05-08 yrs Exp.	100% 50%	2	
x.	Valuation Expert	Govt. of India Certified Authorized Valuer	More than 8 yrs experience 05-08 yrs Exp.	100% 50%	1	

## 8. DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT/JOB:

Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal divided into the following three Chapters:

- a) Technical Approach and Methodology,
- b) Work Plan, and
- c) Organization and Staffing,

### a) Technical Approach and Methodology (max 3 pages):

In this chapter you should explain your understanding of the objectives of the Assignment/job, approach to the Assignment/job, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being

addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies the proposed approach.

**b) Work Plan (max 3 pages).**

The Transaction Adviser should propose and justify the main activities of the Assignment/job, their content and duration, phasing and interrelations, milestones (including interim approvals by the Authority), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here.

**c) Organization and Staffing.**

The Transaction Adviser should propose and justify the structure and composition of his team. Transaction Advisor should list the main disciplines of the

Assignment/job, the key expert responsible and proposed technical and support staff.

The Bidder, who does not score the **minimum technical threshold**, will not be considered for opening of Financial Proposal. Authority reserves the right to judge, appraise, and reject any or all proposals.

**9. REQUIREMENT FOR FINANCIAL BIDS:**

9.1 The Bidder is required to quote a Success fee as a percentage (%) of the transaction proceeds i.e. the amount received in PAHCL account. The fee quoted by the Bidder should include all the applicable taxes, cess, duties etc. excluding GST which shall be reimbursable on production of deposit challan. The fee will be payable in Indian rupees.

9.2 The % (Percentage) Fee quoted by the bidder shall remain **FIRM** till successful completion of transaction.

9.3 The fee quoted should be unconditional. The travel related expenses and all the other expenses including those related to due diligence would have to be borne by the Transaction Advisor.

9.4 The travel related expenses of Government and ITDC/PAHCL employees will be borne by the Government and PAHCL.

9.5 The Bidders will be liable to pay taxes/duties/cess etc. applicable as per prevailing law at their end.

9.6 A drop-dead fee of Rs.10,00,000.00 (Rupees ten lakh only) would be payable to the appointed Transaction Advisor in case the transaction is called off. The payment of the drop-dead fee would be made as under:

- a) 10% if the transaction is called off after freezing of financial model but before issue of RFP for inviting proposals from the prospective buyers.
- b) 50% if the transaction is called off after issuance of the RFP document but before selection of prospective buyers is completed.
- c) 100% if the transaction is called off after the selection of prospective buyer.

## 10. Evaluation of Financial Proposal

For financial evaluation, the % quoted in the financial proposal will be considered. The financial proposal shall be evaluated as follows:

Financial Proposal	lowest bid	100%	30 Marks obtained
	Other bids	Calculation of financial score : $\{(Minimum\ financial\ bid / Financial\ bid\ under\ consideration)\ * 30\}$	

The financial evaluation will be carried out as mentioned above on QCBS. For financial evaluation, the % fee indicated in the Financial Proposal will be considered. The Authority will determine whether the Financial Proposals are complete, unqualified and unconditional. The % indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services.

## 11. Combined and Final Evaluation

Final scores will be arrived at by combining individual score obtained in technical and financial evaluation. The Bidder with highest marks will be designated as Selected TA having the highest combined score.

## 12. BID EVALUATION

12.1 The eligible bidders would be required to demonstrate their credentials before an Inter-Ministerial Group (IMG) through a presentation, covering the areas / criteria listed above, and to bring along 15 copies of the presentation, at the time of presentation. **The date, time and venue for the presentation will be intimated in due course.**

12.2 The IMG would evaluate the Bidders on the criteria mentioned in relevant paragraph as mentioned above based on their presentation and Proposals received and shortlist them for the purpose of opening of their Financial Bids. Only the parties scoring pre-determined marks/score out of 70, which will be announced before presentation, will be technically short-listed.

12.3 After the short-listing of Bidders based on their presentations, the IMG would open the Financial Bids of only the short-listed Bidders. The short-listed bidders, if so desire, may remain present at the time of opening of the financial bids. The marks scored by the short-listed bidders will be announced before opening of the financial bids. The date and time of opening of the financial bids would be announced at the time of the presentations.

12.4 The marks scored by the short-listed bidders in the technical evaluation will then be given a weight age of 70. Similarly, the financial bids of the short listed bidders will be given a weight age of 30. The combined score of technical and financial bids will determine the H1, H2, H3 and so on.

12.5 The party scoring the highest points/marks (H1) based on the above principles would be appointed for the transaction.

12.6 Consortium bids will not be allowed.

12.7 Sub-contracting of the assignment will not be allowed. The appointed Transaction Advisor shall be solely responsible for all the required final deliverables.

### 13. SUBMISSION OF PROPOSAL

Proposals have to be submitted by mentioning the page number on each document and to be submitted in sequence as per the following directions:

(i) **Envelop 1:**

- (a) Covering letter on the Letter Head of Company/Firm for Bid submission by the Bidder enlisting documents attached indicating the page number. Profile of the organization with full particulars of the constitution, ownership and business activities; as well as unabridged Annual Reports or audited accounts for the last three years i.e 2013-14, 2014-15 and 2015-16 to furnish.
- (b) Authority letter authorizing the person of the bidder to sign the proposal and other documents.
- (c) Certificate, duly signed by the authorized signatory of the bidder, as per paragraph 5.3.
- (d) Certificate, duly signed by the authorized signatory of the bidder certifying that in case of appointment, the agreement as per model attached at **Annexure-IX** of this RFP would be signed by the bidder.
- (e) Certificate that in case any of the members of the deal team indicated in the proposal is not available for any reason like resignation etc. a person of equal qualification and experience would be made available with the approval of Authority.

- (f) A certificate that the team assigned for the transaction would have one expert in long term lease (e.g. joint lease, DBFOT, PPP etc.); one expert in valuation, one expert in legal matters and one expert in drafting of transaction documents. The format of the certificate is at **Annexure-III**.
  - (g) The bank draft/pay order/RTGS/NEFT of Rs.10000/- (Ten thousand only) towards tender Fee payable at Pondicherry in favour of **Pondicherry Ashok HotelCorporation Ltd** as non-refundable fee.
  - (h) The bank draft/pay order/RTGS/NEFT of Rs.100000/- (One Lac only) towards Bid Security payable at Pondicherry in favour of **Pondicherry Ashok HotelCorporation Ltd** as refundable fee.
  - (i) A certificate that Performance Guarantee of Rs 10.00 lakh (Ten Lakhs only) valid for a period of 2 years from the date of the appointment letter.
  - (j) A certificate, that the Performance Guarantee would be extended by one more year if the transaction is not completed within a period of 2 years.
  - (k) Certificate on unconditional bid in the format at **Annexure-IV**.
- (ii) **Envelope 2 (sealed):**
- (a) Technical bid along with all schedules, certificates & Annexure, duly filled in, page numbered & signed by authorized signatory of Bidder.
  - (b) Certificate on unconditional bid in the format at Annexure – IV.

(iii) **Cover 3 (sealed):**

The Financial bid should be submitted in the format as per **Annexure-V**: Bids with any conditionality shall stand summarily rejected.

Note: Financial Bid, to be opened only of those parties who qualify in the technical evaluation. The technically qualified bidders shall be informed accordingly for scheduled date and time of opening of Financial Bids.

The proposal should be sent by 1700 hours (IST) on 11.12.2017 to Hotel Pondicherry Ashok, ECR, Kalapet, Puducherry 605014. The proposal must be sent in hard copies only. The proposal received after the appointed day and time will be summarily rejected. For any clarifications or details, the parties are advised to contact Sh. Rajiv Nair 0413-2655160 / Mr. V .Adimoulame 0413-2335116 E-Mail: [gm@ashokresort.com](mailto:gm@ashokresort.com). The envelop-1 and 2 of Technical proposals will be opened by the Tender Opening Committee in the presence of the bidders on 12.12.2017 at 1500 hrs.

#### **14. DISCLAIMER:**

- a) The IMG reserves the sole right to accept or reject any or all proposals thus received without assigning any reason thereof.
- b) The Authority will not be responsible for any delay on account of late submission of Bid. Late receipt of Bid will not be considered.

#### **15. AGREEMENT:**

The Bidder shall be required to enter into a Contract Agreement with the Authority on Non-Judicial Stamp Paper as per norms on the model form of agreement enclosed at Annexure IX.

#### **16. DISPUTE:**

In case of dispute, the decision of the Director-PAHCL will be final.

#### **17. JURISDICTION:**

The jurisdiction of Court will be at New Delhi only.

### **Section-4: Annexures**

#### **Annexure-I:**

#### **AFFIDAVIT CUM UNDERTAKING**

We, the undersigned ("**Bidder**") are submitting our bid in respect of the Request for Proposal No HPA/RFP/TA/17-18 Dated [18.11.2017 ("**Bid**") issued by the Pondicherry Ashok Hotel Corporation Ltd (hereinafter Authority) in relation to **Engagement of Transaction Advisor for long term lease (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok, Pondicherry**, and in this connection we hereby solemnly affirm, declare and undertake as follows:

- (1) Details of the Bidder as disclosed in **Appendix-A** enclosed herewith are true and correct as on date.

- (2) There has been no conviction by any court of law or indictment/adverse order by any statutory or regulatory authority for a Grave Offence against us or any of our Indian Sister Concern(s) or any of our promoters or directors or that of our Indian Sister Concern(s) during the last ten years. We further state that we have not been black listed by any Govt Agency.
- (3) No enquiry/investigations for any Grave Offence is pending against us or any of our Indian Sister Concern(s) or any of our or our Indian Sister Concern's directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency.
- (4) The details of enquiry/investigations for non-Grave Offenses pending against us/our Indian Sister Concern(s)/ our or our Indian Sister Concern's directors, managers and/or other Senior Managerial Personnel by any regulatory authority and/or government agency are disclosed in **Appendix-B** enclosed herewith.
- (5) There is no Conflict of Interest with respect to the Proposed Transaction as on date.
- (6) During the tenure of our engagement for the Proposed Transaction, we shall keep the Authority informed, without delay, of any situations, circumstances, relationships, possible source or potential areas of Conflict of Interest in the format enclosed as **Appendix-C** herewith and we shall not take up work in relation to any such assignment without obtaining prior approval of the Authority and granting of such approval shall be the sole discretion of the Authority and shall be binding on us.
- (7) We ourselves and/or for/with or in association with or on behalf of or through any other Entity, shall not take up any advisory or consulting assignment or render any services on a similar transaction or any other transaction which could have a direct Conflict of Interest, in any manner or capacity to a Competitor of the Authority during the term of our engagement in respect of the Proposed Transaction without prior written approval of the Authority and granting of such approval shall be the sole discretion of the Authority and shall be binding on us.
- (8) We have put in place a robust mechanism to resolve any Conflict of Interest situations and circumstances that may arise or result while conducting our business or rendering of services and where-so-ever any Conflict of Interest or potential for Conflict of Interest may arise, we shall take reasonable steps to resolve the same forthwith in a fair and equitable manner. During the term of our engagement we shall ensure to and continue to exercise adequate due diligence for identifying and removing any areas, source, situations and circumstances of conflict and mitigating the effects of such conflicts to the satisfaction of the Authority, in case any such Conflict of interest (or apparent conflict of interest) arises or results in relation to the Proposed Transaction.
- (9) We have laid down an internal code of conduct for governing our internal procedures and operations and have prescribed the standards of appropriate conduct for our employees and officers for carrying out their duties and responsibilities with a view to appropriately ensuring proper maintenance of professional excellence and standards with integrity, confidentiality,



objectivity and have made provisions for identification, avoidance and resolution of conflict of interests and for disclosure of shareholdings and interests, etc., in terms of applicable laws.

(10) We understand that:

- (i) in cases where existing Conflict of Interest (or apparent conflict of interest) is disclosed by us, the Authority would be entitled to initiate appropriate actions to eliminate or address or mitigate or neutralize the conflict through or by restricting or modifying the work to be performed by using respect of the Proposed Transaction. Authority may also terminate our engagement for the Proposed Transaction, in whole or in part, if such termination is absolutely necessary in view of the Authority to avoid the appearance of a Conflict of Interest.
- (ii) The Authority would be entitled to terminate our appointment if any of the affirmation/declaration/undertaking given by us is found to be false or misleading in any manner or not adhered or fulfilled or complied by us.
- (iii) if at any time after our appointment as a Transaction Advisor, either we or any of our Indian Sister Concern or the respective promoters/directors is convicted by a court of law in India or any indictment/adverse order is passed by a regulatory authority in India for a Grave Offence, we shall stand disqualified from continuing as Transaction Advisor to the Authority and shall be bound to inform them without any delay and shall voluntarily withdraw from the Proposed Transaction failing which the Authority may terminate our appointment after giving an opportunity of being heard.

## **Definitions**

Unless otherwise defined in this Affidavit, the following capitalized terms used herein shall have the meanings set out below:

- 1. Transaction Advisor** means the Bidder and includes bidder(s) who have been selected for the Proposed Transaction by the Authority in terms of the Bid.
- 2. Conflict of Interest:** Conflict of interest in relation to the Proposed Transaction shall without limitation is deemed to exist or have arisen if:
  - (i) The Transaction Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in any activity or business which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Authority or any such activity/association would or may impair his ability to render fair, impartial, technically sound and objective assistance or advice, or unbiased services or may result in it being given an unfair competitive advantage to any other person.
  - (ii) The Transaction Advisor whether itself and/or for/with or in association with/or on behalf of or through any other Entity is engaged in advising and/or have taken up engagement for

advising/consulting any other Entity whether under a formal engagement or otherwise in relation to any transaction/matter

(“**Third Party Transaction**”) which would or may be reasonably expected to directly or indirectly, materially adversely affect the interest of the Authority.

- (iii) The Transaction Advisor has any business or financial interests in any other Entity that would impair, or give the appearance of impairing, impartial decisions in relation to Proposed Transaction, in offering any advice recommendations or in providing technical assistance or other services to the Authority as part of Transaction Advisor’s engagement obligations/ duties.
- (iv) In relation to a strategic sale by the Government of India/Company, the Transaction Advisors has taken up engagement with buyer/potential buyer of such strategic sale or their Sister Concerns.
- (v) Any other situation, possible source or potential areas of interests which may impair Transaction Advisor’s ability to render fair, impartial, technically sound, and objective assistance or advice, or unbiased services in conflict of their professional duties towards Authority in respect of the Proposed Transaction or result in it being given an unfair competitive advantage to any other person.

**3. Company** means PAHCL

**4. Competitor** of the Company means an Entity in India that is engaged in the business substantially similar to the business of the Company. Business of an Entity shall be deemed to be substantially similar to the business of the Company if turnover or profit of such Entity from the business activity(ies) in which the Company in engaged, exceeds 33% of the its total turnover or profit (in any of the last three years).

**5. Entity** shall mean and include an individual, proprietorship, HUF, an association of person/body of Individuals, a partnership firm, limited liability partnership, company or any other persons.

**6. Grave Offence** means offences of such nature that it materially affects the reputation, business or operations adversely or outrages the moral sense of the community and such other offences which may be considered by the Authority as grave on case to case basis after considering the facts and relevant legal principles.

**7. Proposed Transaction** means the transaction to be undertaken by the Authority as described in bid no HPA/RFP/TA/17-18, issued by the ITDC on behalf of PAHCL.

**8. Senior Managerial Personnel’s** means managing director, company secretary, chief executive officer, chief financial officer or persons having equivalent positions and all such other employees of the Entity who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors and include the functional heads.

**9. Sister Concern** in relation to the Transaction Advisor, means any Entity in which the Transaction Advisor has a significant influence or which has “significant influence” over the TransactionAdvisor and includes a group and a joint venture company. Significant influence”

means holding of at least twenty percent or more of total voting rights or the power to participate in and influence the management, financial or operating policy decisions of that Entity, or of business decisions under an agreement or has twenty percent profit sharing in such Entity.

AppendixA, B and C hereto shall constitute and shall be deemed to form an integral part of this document.

## Appendix-A

### BIDDER DETAILS

<b>Name of the Bidder</b>	
<b>Address: Registered Office: Corporate Office Tel: Email:</b>	
<b>Constitution</b>	Company/Partnership/LLP/Others (If selected others, please provide the nature of constitution)
<b>SEBI registration no, if registered with SEBI</b>	
<b>Details of registration with other professional statutory bodies</b>	

## Appendix-B

### DETAILS OF PENDING ENQUIRY/INVESTIGATIONS

S. No	Name of the Concern(s)/concerned person(s) against whom the enquiry/investigation has been initiated	Relationship with the bidder	Name of the investigating agency	Nature of pending enquiry/investigation and law under which the enquiry has been initiated	Brief facts/interim orders /other relevant information in respect of the pending enquiry/investigation

**Appendix-C**

**DETAILS OF PRESENT/POTENTIAL CONFLICTS/FACTS OR INTERESTS  
THAT MAY BE DEEMED AS POTENTIAL CONFLICT OF INTEREST**

<b>S. No</b>	<b>Name of the Entity, in which interests Conflicts exist/may arise</b>	<b>Relations hip of the Bidder with the Entity</b>	<b>Nature/reaso n of conflict/ potential conflict</b>	<b>Duration of the subsistence of conflict, if any</b>	<b>Such other information as may be relevant and material in deciding whether there is a conflict/potential conflict of interest</b>

## **Annexure-II**

### **Format of undertaking on Letter Head of the Bidder for Signing of Transaction Advisory Agreement**

This is to certify that the I/we have perused and understood all terms and conditions laid down in the RFP documents. I/we further certify that we have submitted our proposal for consideration of the Authorities in accordance with terms and conditions of the RFP documents and we undertake to sign Agreement as per format at Annexure-IX and is unconditional.

Seal with signatures of authorized signatory of the Bidder

**Annexure-III**

**FORMAT FOR THE DEAL TEAM**

Certified that the deal team would comprise of the following:

S.No.	Name	Expert in the field of	Qualification	Experience	Remarks
1	Shri	Team Leader (Lease /Real Estate Expert)			
2.	Shri	Finance Expert			
3	Shri	Contract/Legal Expert			
4	Shri	Human Resource Expert			
5	Shri	Valuation Expert			

Certified that during the process, if any of the core team members is not available due to resignation, leave of absence etc. another person of the same qualification and experience would be made available with the concurrence of the Authority.

Seal with Signature of the authorized signatory of the bidder

**Format of Unconditional Bid on Letter Head of the Bidder**

This is to certify that the fee quoted by us for engagement as Transaction Advisor for leasing out (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok, Pondicherry is in accordance with the terms and conditions laid down in the Request for Proposals displayed on the website of the website and is unconditional.

Seal with signatures of authorized signatory of the Bidder



**Format of “Success Fee” on the Letterhead of the Bidder**

S.No.	Description of Work	Transaction fee as a percentage (%) of the transaction proceeds
1	Success Fee payable on successful completion of the Transaction for advisory services for long term lease (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok, Pondicherry including all taxes and duties but excluding GST which shall be reimbursed on production of deposit challans	(In Percentage up to two places after decimal)

Note:

- 1) In case of mismatch in number and the words quoted; the fee in words will be taken as correct for all purposes.
- 2) Since the bid is inclusive of all taxes (Except GST), any additional liability of tax that may arise either on account of change in tax rate or additional taxes by the Central or State Governments, shall be the responsibility of the bidder.
- 3) For the purpose, Transaction Value is defined as the net present value of lease rentals including upfront payment. Net present value will be calculated by applying discounting factor of 11% on future payments/ annual concession fees. Further, the variable component in the concession fees such as annual incremental, index linked charges etc. shall not be considered for calculation of NPV. The Success Fee will be payable within 15 days from the date of payment by the prospective Lessee / Investors (the “Closing Date”). (The Transaction would mean signing of Concession agreement and receipt of first /upfront Transaction amount).

Seal with signatures of authorized signatory of the Bidder

**Abstract of Eligible Assignments of the Bidder** (Refer  
Clause 5.2)

S. No.	Name of Project	Name of Client	Work Order Amount	Full and final Consultancy/Advisory fee received by the Bidder (Rs in crore)
(1)	(2)	(3)	(4)	(5)
1				
2				
3				
4				
5				

The Bidder should provide details of only those assignments that have been undertaken by it under its own name.

**Certificate from the Statutory Auditor/Chartered Accountant**

This is to certify that the information contained in Column 5 above is correct as per the accounts of the Bidder and/ or the clients.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm:

Bidder shall submit the certificate from its statutory auditor or a chartered accountant.

**Financial Capacity of the Bidder**  
(Refer Clause 5.3)

S. No.	Financial Year	Annual Revenue from Professional Fees (Rs. in crores)

**Certificate from the Statutory Auditor/Chartered Accountant**

This is to certify that ..... (name of the Bidder) has received the payments shown above against the respective years on account of professional fees.

(Signature, name and designation of the authorised signatory)

Date:

Name and seal of the audit firm:

The Bidder shall submit the certificate from its statutory auditor or a Chartered Accountant

**CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF**

**(Max 3 pages per CV)**

Proposed Position:

[For each position of key professional separate form Tech-6 will be prepared]:

1. Name of Firm:

[Insert name of firm proposing the staff]:

2. Name of Staff:

[Insert full name]:

3. Education:

[Indicate college/university and other specialized education of staff member, giving names of institutions, degrees obtained, and dates of obtainment]:

4. Membership of Professional Associations:

5. Employment Record:

[Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.]:

From [Year]: To [Year]:

Positions held:

6. Detailed Tasks Assigned

[List all tasks to be performed under this Assignment/job]

7. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned [Among the Assignment/jobs in which the staff has been involved, indicate the following information for those Assignment/jobs that best illustrate staff capability to handle the tasks listed under point 6.] Name of Assignment/job or project:

Year:

Location:

Main project features:

Positions held:

Activities performed:

8. Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any willful misstatement described herein may lead to my disqualification or dismissal, if engaged.

Date:

Place:

[Signature of staff member or authorized representative of the staff] [Full name of authorized representative]:

## Annexure-IX:

### Format of Agreement for Advisory Services

THIS AGREEMENT (hereinafter referred to as 'Agreement') is made at Pondicherry on this ----- day of --  
---- BY AND BETWEEN PONDICHERRY ASHOK HOTEL CORPORATION LIMITED (herein after referred to as  
" PAHCL" which expression shall mean and include its successors and assigns) acting through the  
Managing Director , PAHCL of the ONE PART

And

M/s \_\_\_\_\_ having its registered office at ----- and having its  
offices at Pondicherry (hereinafter referred to as "ABC" which expression shall mean and include its  
successors and permitted assigns of the OTHER PART.

### **WHEREAS**

(I) PONDICHERRY ASHOK HOTEL CORPORATION LIMITED (hereinafter referred to as "PAHCL"), a  
Public Sector Enterprise, under the Ministry of Tourism having its registered office at Hotel Pondicherry  
Ashok, ECR,Kalapet,Pondicherry 605014 engaged in-----.

(II) PAHCL intends long term leasing (e.g. joint lease, DBFOT, PPP etc.) of Hotel Pondicherry Ashok,  
Pondicherry, its only unit to third party . Pursuant to PAHCL having issued an advertisement in \_\_\_\_\_  
and on the official website of ITDC inviting submission of RFP from reputed professional consulting  
firm/investment banker/merchant banker/financial institution/bank to act as Transaction Advisor; ABC  
submitted the RFP.

(III) Further to the presentation made by ABC to the Inter Ministerial Group on ----- and the  
financial bid submitted for the assignment, PAHCL appointed ABC as its Transaction Advisor for the  
proposed long term lease in PAHCL vide letter No-----dated -----.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, THE DETAILED REQUEST FOR PROPOSAL  
CONTAINING THE TERMS AND CONDITIONS, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION,  
THE RECEIPT ADEQUACY AND SUFFICIENCY OF WHICH HEREBY ACKNOWLEDGE, THE PARTIES HEREBY  
AGREE AS FOLLOWS:

1, General Provisions

#### **1.1 Definitions**

1.1.1 Unless the context requires otherwise, the following terms, wherever used in this Agreement shall  
have the following meanings:

- a) 'Agreement' means this Agreement and any subsequent amendments hereto between PAHCL  
and ABC;
- b) 'Authority' means Pondicherry Ashok Hotel Corporation Ltd. (PAHCL)

- c) 'Business Day' means a day other than one on which either ITDC, Central Government Offices, Banks or ABC's Offices are required to close in New Delhi;
- d) 'Company' Company' means PAHCL.
- e) 'Effective Date' means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- f) 'Local Currency' means Indian Rupee or any other lawful currency of the Republic of India;
- g) 'Party or Parties' means PAHCL and ABC or both, as the case may be;
- h) 'Personnel' means persons hired by ABC as employees and assigned to the performance of the Services or any part of the Services;
- i) 'Services' mean the services to be performed by ABC as the Transaction Advisor for this transaction and as described in Clause 3.1.

## **1.2 Relationship between the Parties**

1.2.1 This Agreement shall be construed as establishing a relationship of principal and Transaction advisor and not of principal and agent, between PAHCL on the one part and ABC on the other part.

1.2.2 This agreement shall be binding upon and shall inure to the benefit of PAHCL and ABC and their respective successors and permitted assignees. Neither PAHCL nor ABC shall assign this Agreement or their respective rights or obligations as the case may be under this Agreement without the consent of the other party.

## **1.3 Governing Law**

1.3.1 This Agreement, its meaning and interpretation and the relation between the Parties shall in all respects be governed by and construed in accordance with the laws of the Republic of India.

1.3.2 The parties irrevocably agree that the Indian Courts at New Delhi shall, subject to provisions of Clause 6 have jurisdiction to hear and determine any action or proceedings, and to settle any dispute, which may arise out of or in connection with this Agreement and, for such purpose irrevocably submit to the jurisdiction of such courts.

1.3.3 The Parties irrevocably waive any objection which they might at any time have to the courts referred to above being nominated as the forum to hear and determine any action or proceedings, and to settle any dispute, which may arise out of or in connection with this Agreement and agree not to claim that any such court is not a convenient or appropriate forum.

## **1.4 Headings**

1.4.1 The headings shall not limit, alter or affect the meaning of this Agreement.

## 1.5 Notices

1.5.1 Subject to the provisions of clause 1.5.5, any notice request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing and shall be deemed to have been given or made when sent by registered mail or air courier or facsimile to such Party at the following address and facsimile numbers:

For PAHCL PAHCL, -----

For ABC ABC  
-----  
-----

1.5.2 Notice will be deemed to be effective as follows:

- In case of registered mail or air courier, on delivery; and
- In case of facsimile, two Business Days following confirmed transmission.

1.5.3 Facsimile transmissions shall require to be re-transmitted in the event the Receiving Party communicates illegible transmission and notice in such an event will be deemed to be effective upon receipt of legible transmission.

1.5.4 A Party may change its address and facsimile numbers for notice under this Agreement by giving the other Party notice pursuant to this Clause

1.5.5 Any action required and permitted to be taken, any document required or permitted to be executed under this Agreement may be taken or executed as follows:

On behalf of PAHCL by the Director, PAHCL, -----

For ABC ABC  
-----

## 2. General Provisions

### 2.1 Effective date

2.1.1 This Agreement shall come into force and effect on the Effective Date being -----

----.

## **2.2 Entire Agreement**

2.2.1 This agreement contains all covenants, stipulations and provisions agreed to by the Parties. No agent or representative of either of the parties has authority to make and the parties shall not be bound by or liable for any statement, representation, promise or agreement made prior to the date hereof but not set forth in this Agreement.

## **2.3 Modification**

2.3.1 Modification of the terms of the Agreement including any modification of the scope of the services may only be made by written agreement between the parties. Each party shall give due consideration, and not unreasonably delay a considered response to any proposal for modification made by a Party.

## **2.4 Force Majeure**

### ***Definition***

2.4.1 For the purpose of this Agreement, 'Force Majeure' means an event or circumstance which is beyond the reasonable control of the affected Party and which makes affected Party's performance of its obligation under this Agreement impossible or so impractical as reasonably to be considered impossible in the circumstance and includes but is not limited to war, riots, civil disorder, earthquake, fire, explosion, storm, cyclone flood, drought or other adverse weather or other conditions and situations including breakage of equipment of facilities, structural collapse, air crash, shipwreck etc.

2.4.2 Force Majeure shall not include:

- a) Strikes, lockouts or other industrial action, confiscation or any other action in and/ or by the parties or their employees;
- b) Any event which is caused by the negligence or willful action of a party;
- c) Any event which is in control of a party;
- d) Any event which a diligent party could reasonably have been expected both (a) to have taken into account on the Effective Date of this Agreement and/or thereafter during the terms of the Agreement and (b) to have avoided or overcome in the course of carrying out obligations under this agreement; and
- e) Insufficiency of funds or failure to make any payments.

### ***No Breach of Agreement***

2.4.3 The failure of a party to fulfill any of its obligations under this Agreement shall not be considered to be a breach of or a default under this Agreement in so far as the inability arises from an event of



Force Majeure, provided the party affected by that event has complied with its obligations under para 2.4.4 in respect of such event.

### ***Measure to be taken***

2.4.4 A party affected by an event of Force Majeure shall take all reasonable measure to remove its inability to fulfill its obligations under this Agreement with a minimum of delay and shall notify the other Party in writing of the event concerned as soon as possible and in any event not later than ten days following the occurrence of the event concerned and shall similarly give notice of the restoration of normal conditions as soon as possible. Parties shall together take all reasonable measure to minimize the consequences of any event of Force Majeure.

### ***Extensions of time***

2.4.5 Subject to the above provisions of this Clause 2.4, any period within which a Party shall, pursuant to this Agreement complete any action or task shall be extended for a period equal to the time during which that Party was unable to perform such action as a result of Force Majeure.

### ***Consultation***

2.4.6 Not later than ten days after ABC has served a notice to PAHCL as per Paragraph 2.4.4 notifying its inability to perform a portion of the services as a result of an event of Force Majeure, the Parties shall consult between themselves with a view to agreeing on appropriate measure to be taken in the circumstances.

## **2.5 Earlier Termination**

### ***Termination by PAHCL***

2.5.1 **PAHCL** may by not less than ten days written notice of termination to ABC terminate this agreement if:

- a) ABC is a breach of its obligations under this Agreement and the terms and conditions mentioned in the RFP dated----- and the Affidavit-cum-Undertaking submitted by you at RFP stage and has not remedied the same within thirty days (or such longer period as PAHCL may have subsequently approved in writing) following the receipt by ABC of notice from PAHCL specifying the breach. Provided that ABC shall not be held to be in breach of any obligation under this Agreement if breach arises as a result of failure on the part of PAHCL to meet PAHCL's obligations under this agreement;
- b) ABC fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 6;
- c) ABC is unable as a result of Force Majeure to perform a material portion of the services for a period of not less than sixty days;
- d) ABC becomes insolvent or bankrupt or goes into liquidation or receivership whether compulsory or voluntary;
- e) PAHCL decided at any time to abandon the project;

- f) A suitable party willing to take on lease Hotel Pondicherry Ashok, Pondicherry is not found and PAHCL wishes to appoint another Transaction advisor for the any other action as decided by the ITDC/GOI/PAHCL.
- g) ABC is found guilty of any criminal offence in any court of law or of violation of regulations of a statutory body that material adversely affects its ability to carry out the engagement;
- h) In case the event of a conflict of interest during the engagement that materially adversely affects the ability of ABC to carry out the engagement and not remedied within 15 days of arising due to handling of the transaction by ABC as TransactionAdvisor to the PAHCL for long term leasing of Hotel Pondicherry Ashok, Pondicherry.

### **Termination by ABC**

2.5.2 ABC may by not less than ten days written notice to PAHCL terminate the Agreement if:

- a) PAHCL fails to pay any money to ABC pursuant to this Agreement, which is not subject to dispute pursuant to Clause 6, within thirty days or any further extended period of time as may be agreed between the Parties after receiving written notice from ABC that the payment concerned is due/overdue;
- b) PAHCL is in breach of its obligations under this Agreement and has not remedied the same within thirty days (or such period as ABC may have been subsequently approved in writing) following the receipt by PAHCL of ABC's written notice specifying the breach. Provided that PAHCL shall not be held to be in breach of any obligation under this Agreement if breach arises as a result of failure on the part of ABC to meet ABC's obligations under this agreement;
- c) PAHCL shall have failed to comply with any final decision reached as a result of arbitration pursuant to Clause 6
- d) PAHCL is unable as a result of Force Majeure to perform its obligations for a period of not less than sixty days.

## **2.6 Cessation of Rights and Obligations**

2.6.1 On termination pursuant to any part of Clause 2.5 and / or expiration of this Agreement all rights and obligations of the Parties shall cease, except (i) rights and obligations that have accrued as of the date of termination or expiration (ii) any right which a Party have under law and (iii) the obligations in Clauses 3.2, 3.3 and 4.3.

## **2.7 Cessation of Services**

2.7.1 On the termination of this Agreement by notice of either Party to the other pursuant to Paragraphs 2.5.1 and 2.5.2 ABC will take all necessary steps to bring the services to a close within thirty days of the receipt of the notice of termination. Upon cessation of services either on expiry of termination (including earlier termination) of the agreement hereunder ABC shall hand over to PAHCL such material documents and records prepared directly by ABC in connection with the services whether in final or draft form, complete or in the process of being completed, on paper and if applicable pen drives/CD/DVD/other

electronic media together with material documents and records as provided by PAHCL to ABC save the copies thereof will be allowed to be retained by ABC for their files.

### **3. Obligations of ABC**

#### **3.1 Scope of Services**

3.1.1 PAHCL proposes to transfer on long term lease Hotel Pondicherry Ashok, Pondicherry to a prospective third party, and for that purpose has appointed ABC as Transactionadvisor to advise and assist PAHCL in selection of the prospective Lessees / Investors, to maximize realization from long term leasing of the property.

3.1.2 ABC's scope of services asTransaction Advisor to PAHCL shall include the services to assist and advise PAHCL in identifying, negotiating and concluding the proposed transaction of leasing of Hotel Pondicherry Ashok, Pondicherry. However it is clarified that the decision whether to proceed with and consummate the transaction lies solely with PAHCL and the work and findings of ABC shall not in any way constitute recommendation as to whether PAHCL should or should not consummate the transaction ABC's service shall include the following:

##### ***Phase I: Transaction strategy***

3.1.3 ABC shall, in consultation with PAHCL evolve a transaction strategy covering modalities and timeline for various activities. ABC will assist PAHCL and will not associate in any manner, directly or indirectly, any other party or the buyer in the present transaction, in analyzing possible transaction strategies from the perspective of PAHCL and the prospective Lessees / Investors. ABC would analyze the positive and negative financial aspect of each of these alternative strategies.

3.1.4 Deleted

##### ***Phase II: Partner log***

3.1.5 Working closely with PAHCL, and drawing upon knowledge of ABC or of prospective Lessee / Investor, ABC will develop a list of potential Lessees / Investors with sufficient interest and apparent resources. In doing so, ABC would:

- Use its contacts and industry knowledge; and
- Invite any other parties, eligible in the open bidding (prospective lessee / investor) process, which PAHCL would like to consider.

3.1.6 ABC will obtain and develop information on each of the potential. In doing so, ABC will use its global presence to identify potential investors.

##### ***Phase III: Information Memorandum***

3.1.7 The next phase is to incorporate the financial data and other relevant information of Hotel Pondicherry Ashok, Pondicherry into a Preliminary Information Memorandum/Confidential Information Memorandum. The purpose of this Memorandum is to provide prospective Lessees / Investors with information on the business and the unique points of Hotel Pondicherry Ashok, Pondicherry so as to enable them to decide whether to provide initial indications of interest and initiate serious discussions.

3.1.8 This Memorandum would contain information relating to the following areas:

- Background of Hotel Pondicherry Ashok, Pondicherry and key features that differentiate it from its competitors;
- Current activities;
- Rationale for proposed transaction;
- Product profile;
- Contracts;
- Any other relevant details.

3.1.9 The Information Memorandum so prepared will be made available on a confidential basis to interested lessees / Investors. ABC will take approximately six weeks to prepare the Information Memorandum once ABC has been provided with all the necessary data.

#### ***Phase IV: Pricing Analysis***

3.1.10 ABC will recommend the fair value, reserve price for long leasing considering the valuation of **Hotel Pondicherry Ashok, Pondicherry** based on the possible methods like relative valuation; DCF, opportunity cost valuation with different scenario(s) or any other suitable method and highlighting the pros and cons of various methods. While fixing fair value/ reserve price, the report of the Government Approved Asset Valuer of the Transaction Advisor, if required, will be taken into consideration. The Transaction Advisor will consider possible options of Change in Land use and suggest valuation based on different options. The Authority will have the option of second valuation done from any other agency.

3.1.11 The pricing analysis will be based on illustrative profit projections and the information collected by ABC. The projections would show a possible outcome based on the assumptions as per the business plan to be prepared by ABC.

3.1.12 ABC will present its findings in the form of a Pricing Analysis as per time schedule in the RFP document

#### ***Phase V: Partner Approach***

3.1.13 ABC will initiate contacts with only prospective Lessees / Investors as per the open competitive bidding, if required.

#### ***Phase VI: Negotiations and deal support***

3.1.16 ABC will be present at all meetings and handle all necessary arrangements

#### ***Phase VII: Facilitating due diligence review***

3.1.17 ABC will assist PAHCL/ITDC in the smooth conduct of the due diligence process.

#### ***Phase VIII: Completion of the transaction***

3.1.18 ABC will assist PAHCL in concluding the transaction and drawing up of all legal documents/agreements as required.

### **3.2 Confidentiality**

3.2.1 ABC and Personnel of ABC shall not, during the term of this Agreement, and for a period of one year commencing from the date of terminating or expiry of this Agreement, disclose to any party other than

/PAHCL, other concerned consultants, valuers, lawyers or any information (other than publicly available information) relating to the services, this agreement, PAHCL's business or operations without the prior written consent of PAHCL, unless such disclosure is requested by any statutory or regulatory or judicial/ quasi – judicial authority constituted under the laws of India and having jurisdiction over a Party, or unless such disclosure is required in connection with any litigation affecting a party, or unless such disclosure is necessary to perform ABC's services or obligations under this Agreement or unless such information has entered the public domain other than by a breach of the Agreement.

3.2.2 Provided that no confidentiality is required to be maintained in respect of disclosure required and made on account of marketing strategy/ ies agreed upon among the parties. External professionals appointed, if any will also be bound by such requirement/s of confidentiality as may be stipulated by PAHCL.

### **3.3 Indemnification of PAHCL by ABC**

3.3.1 ABC agrees to indemnify and hold harmless PAHCL officers, employees and representatives of PAHCL (each, an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of the negligence or wilful misconduct of ABC or its personnel in providing the services.

3.3.2 In the event that ABC disputes an indemnity claim of an Indemnified Person, any amounts to be paid by ABC will be finally decided by the Arbitration Tribunal or courts of law. It is understood and agreed that an indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and / or filing of appeals or revision from awards/orders/judgements/decrees, if the Indemnified Person has notice from ABC that legal action and /or appeal is intended.

3.3.3 PAHCL will have to be given notice of a dispute of the claim by ABC within fifteen days of the receipt of Notice of Claim.

### **3.4 Limitation of liability**

3.4.1 In the particular circumstance of this case, PAHCL agree that the aggregate liability of ABC and directors, officers and employees and representatives of ABC (Whether direct or indirect, in contract or tort or otherwise) to PAHCL arising out of this Agreement, including any indemnity liability as per clause 3.3 above, shall be limited to the aggregate fees actually payable to ABC under this Agreement by PAHCL.

### **3.5 Documents Prepared by ABC**

3.5.1 PAHCL and ABC agree that the analysis provided to PAHCL is for the use and information of PAHCL for the proposed transaction of leasing out of Hotel Pondicherry Ashok, Pondicherry.

### **3.6 ABC's Personnel**

3.6.1 For the services ABC shall deploy such personnel as are qualified and experienced, as per the requirement of the project to carry out the services. Provided that in the event PAHCL, at any point in time while the services are being carried out, expressly communicates to ABC the opinion that any of the Personnel need to be substituted for ABC will take into account such opinion and will not unreasonably continue to deploy such personnel to carry out the services.

## **4. Obligation of PAHCL**

### **4.1 Assistance**

4.1.1 PAHCL shall provide to ABC all available relevant information and particulars in the possession of PAHCL and which they have legal authority to provide.

4.1.2 Further, PAHCL shall issue to officials, agents and representatives of ITDC/PAHCL such instructions as it is competent to issue as may be specified by ABC as being necessary or appropriate for the prompt and effective rendering of the services.

4.1.3 In the event that any such information and particulars are not in the possession of ITDC and PAHCL or in the event that ITDC and PAHCL do not have the legal authority to provide information and particulars to ABC or in the event that assistance sought by ABC cannot be provided or in the event that instructions as specified by ABC cannot be issued then PAHCL shall forthwith inform ABC of their inability.

4.1.4 PAHCL shall evolve a proper mechanism to take decisions and to communicate to ABC in writing regarding these decisions. PAHCL shall accept full responsibility for the contents of the document/s or announcement/s that it may require and authorise ABC to issue, sign or execute.

### **4.2 Access to information and decision**

4.2.1 PAHCL shall keep ABC informed of any material developments or facts of proposals in relation to the business or operations of PAHCL and in particular where these may have any effect on the agreement or in execution of ABC's services.

4.2.2 PAHCL shall not require/insist on ABC to issue or approve, or to arrange for the issue or distribution or a particular document or announcement, if at any time ABC becomes aware of information which, in the opinion of ABC after due consultation with PAHCL, renders the document or announcement untrue, incomplete untrue, incomplete or misleading in any material respect.

### **4.3 indemnification of ABC by PAHCL**

4.3.1 PAHCL agrees to indemnify and hold harmless ABC and directors, officers, employees and representatives of ABC (each an "Indemnified Person") from and against any claim, loss or liability (including without limitation reasonable fees and expenses of solicitor and legal counsel) arising out of ABC's engagement hereunder and / or directly or indirectly arising as a consequence of any statement, data, representation or other information, whether included in any information memorandum or advertisement or otherwise given in the performance of the services, which had been provided and/ or approved by PAHCL. Provided that the above mentioned indemnity to Indemnified Person(s) shall only be available in case of the liability or loss arising out of the negligence or wilful misconduct of the PAHCL or its employees under this Agreement.

4.3.2 In the event that PAHCL disputes an indemnity claim of an Indemnified Person, any amounts to be paid by PAHCL will be as finally decided by the Arbitration Tribunal or by the court of law, It is understood and agreed that an Indemnified Person shall not press for any payments to be made on account of an indemnity claim, within the period of limitation prescribed for the preferment and / or filing of appeals or revision from awards/ orders/ judgement/ decree, if the Indemnified Person has notice from PAHCL that legal action and / or appeal is intended.

4.3.3 ABC will have to be given notice of a dispute of the claim by PAHCL within fifteen days of the receipt of Notice of Claim.

4.3.4. In the particular circumstances of this case, ABC agrees that the aggregate liability of PAHCL and its officers, employees and representatives of PAHCL (whether direct or indirect, in contract, tort or otherwise to ABC arising out of this Agreement, including any indemnity liability as per clause 4.3 above shall be limited to the aggregate fees actually payable by PAHCL to ABC under this Agreement.

4.3.5. The provisions of the clauses 3.3 and 4.3 above shall be operative in full force and effect regardless of any termination or expiration of this Agreement.

## **5. Payment of ABC**

### **5.1 Currency of payment**

5.1.1 Except as may be otherwise agreed in this agreement and/or other written agreement between the parties, all payments due to ABC under this agreement shall be made in Indian Rupees.

### **5.2 Payments**

5.2.1 In consideration of the services performed by ABC under this agreement PAHCL shall pay to ABC as per the payment schedule in the RFP.

5.2.2 PAHCL shall pay ABC point ----- percent (-----%) of the gross consideration to be paid by the investor to PAHCL for this transaction as success fee. The success fee shall be payable on the completion of the services as defined in Clause 3.1 signified by the signing of the concessioner agreement by the PAHCL and the investor.

5.2.3 For the purpose, Transaction Value is defined as the net present value of lease rentals including upfront payment. Net present value will be calculated by applying discounting factor of 11% on future payments/ annual concession fees. Further, the variable component in the concession fees such as annual incremental, index linked charges etc. shall not be considered for calculation of NPV. The Success Fee will be payable within 15 days from the date of payment by the prospective Lessee / Investors (the "Closing Date"). (The Transaction would mean signing of Concession agreement and receipt of first /upfront Transaction amount).

5.2.4 The Authority reserves the right to foreclose/terminate the contract at any stage without assigning any reasons. The drop dead fee of Rs.10,00,000 (Rupees ten lakh only) would be payable in such case and shall be restricted as under:

- a) 10% if the transaction is called off after freezing of final model but before issue of RFP for inviting proposals from the prospective buyers.
- b) 50% if the transaction is called off after issuance of the RFP document but before selection of prospective buyers is completed.
- c) 100% if the transaction is called off after the selection of prospective buyer.

### **5.3 Mode of Billing and Payment**

5.3.1 As soon as practicable, after ABC is entitled to receive the amount under Clause 5.2 above, ABC shall send to PAHCL invoice for the payment within 30 days of the date of entitlement and /or date of submission of claim of ABC whichever is later. The said fee/ payment shall be payable by PAHCL to ABC

## **5.4 Changes in Scope of Work**

5.4.1 If PAHCL desires a change in the scope of work beyond the definition of 'Services', payment for the additional work will be determined based on the agreed scope of effort to be employed by ABC subject to the agreement of the parties on all issue involved.

## **5.5 Expenses of Parties**

5.5.1 In performing its services, ABC shall bear the following expenses:

- (a) All fees and expenses related to external professionals appointed by ABC; and
- (b) All out of pocket, travelling/hotel and other cost, charges and expenses incurred by ABC or its officers, employees or agents in connection with performing any services, save and except Clause 5.5.2 which shall be borne by PAHCL.

5.5.2 PAHCL shall bear the following expenses:

- (c) Travelling/hotel and other cost incurred in connection with domestic or international travel of PAHCL personnel, officers and employee;

5.5.3 The parties shall bear the cost of their respective telephone calls, facsimile transmission, couriers, dispatches and postage.

## **6. Arbitration**

### **6.1 Amicable Settlement**

6.1.1 The Parties shall use their efforts to settle amicably all disputes/differences arising out of or in connection with this agreement or its interpretation.

### **6.2 Arbitration**

6.2.1 Any dispute or difference between the Parties as to matters arising under this agreement which cannot be settled amicably within thirty days after receipt by a Party of the other party's request for amicable settlement may be submitted by a Party to arbitration in accordance with the provisions of Paragraph 6.2.2.

6.2.2 Subject to Paragraph 6.2.1 of this Clause 6.2, in the event of any dispute, controversy or claim arising between the Parties hereto out of or in connection with this agreement or interpretation of its terms, including without limitation, its validity, enforcement, breach, performance, termination or expiration, such dispute, controversy or claim shall be finally settled by arbitration. The arbitration shall be conducted at New Delhi in accordance time and rules framed thereunder.

(a) "In the event of any question, dispute or difference arising under the Agreement or in connection therewith, the matter shall be referred to the Director of PAHCL for appointment of sole Arbitrator as per the provisions of the Arbitration and Conciliation Act, 1996 as amended from time to time. The Sole Arbitrator so appointed shall not have any direct or indirect of any past or present relationship or interest in any of the parties. The arbitral proceedings shall be held in Delhi. The laws of India shall govern this agreement. The courts in Delhi shall have exclusive jurisdiction.



## 7. Representations

### 7.1 PAHCL represents and warranties of PAHCL

7.1.1 PAHCL represents and warrants that :

- (a) PAHCL has full power and authority to enter into this agreement and to execute, deliver and perform its obligations under this agreement, and to carry out the transaction contemplated hereby;
- (b) it has taken all necessary steps required for the authorization, execution, delivery and performance of this agreement;
- (c) This agreement constitutes legal, valid and binding obligations upon PAHCL enforceable against it in accordance with the terms hereof;
- (d) No representation or warranty by or information from it contained herein or in any other document furnished by it or on its behalf by PAHCL to ABC contains or will contain any untrue statement of material fact or omit to state a material fact necessary to make such representation or warranty or information not misleading;
- (e) The execution, delivery and performance of this agreement will not conflict with any covenant, agreement, understanding, decree or order to which it is a Party. **7.2 Representation and Warranties of ABC**

7.2.1 ABC represents and warrants that:

- (a) ABC is duly organized. Validly existing and in good standing under the laws of jurisdiction of its incorporation;
- (b) ABC has full power and authority to execute, deliver and perform its obligation under this agreement and to undertake the services contemplated herein;
- (c) ABC has taken all necessary corporate and other action under relevant laws and its constitutional documents to authorise the execution, delivery and performance of this agreement;
- (d) This agreement constitutes legal, valid and binding obligations enforceable against ABC in accordance with the terms hereof;
- (e) ABC is subject to civil and commercial laws of India with respect to this agreement and it hereby expressly irrevocably waives any immunity in any jurisdiction in respect thereof;
- (f) ABC is not debarred from performing the services on account of any litigation;
- (g) The execution, delivery and performance of this agreement will not conflict with any of the terms of the ABC's memorandum and articles of association or any covenant, agreement, understanding, decree or order to which it is party or any ongoing assignment;
- (h) No representation or warranty by or information from it contained herein or in any other document furnished by it to PAHCL 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 or information not misleading.

## **8. Other Terms of Agreement**

### **8.1 Fairness and Good Faith**

#### ***Good Faith***

8.1.1 The parties undertake to act in good faith with respect to one and others rights under the agreement and to adopt all reasonable measures to ensure the realization of the objectives of this agreement.

#### **8.1.2 Integrity and Ethics**

The parties undertake to avoid all forms of corruption by following a system that is fair, transparent and free from influence and prejudice, prior to, during or subsequent to the currency of the contract.

The ABC commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it.

The PAHCL undertakes that during the pre-contract stage, it shall treat all bidders alike and will provide to all bidders the same information and will not provide any such information to any particular bidder which could afford advantage to any particular bidder in comparison to other bidders. Any breach of aforesaid provisions by ABC or its employees or authorized representatives, shall entitle PAHCL to take all or any one of the following actions, wherever required:-

- (i) forfeiture of performance guarantee;
  - (ii) to immediately call-off the pre-contract negotiations without assigning any reason or providing any compensation to ABC;
  - (iii) to debar ABC from participating in any bidding process in future for a minimum period of 5 years.
  - (iv) to cancel all or any other contract signed with the ABC.
- The PAHCL will be entitled to initiate the criminal liabilities as well.

8.1.3 The Parties recognize that it is impractical in this agreement to provide for every contingency and possibility which may arise during the life of the agreement (in respect of the services) and the Parties agree that it is their intention that this agreement shall operate fairly between them and without detriment to the interest of either of them and that if during the term of this agreement, a party believes that this agreement is operating unfairly, the parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute to arbitration in accordance with Clause 6.

### **8.2 Publicity**

8.2.1 The Parties shall consult each other on any publicity, press releases, advertisement and publications and public statements concerning the services and this agreement in advance, before release. If PAHCL completes the transaction, ABC reserves the right to publish an announcement of ABC's

role. The text if any such advertisement will be subject to PAHCL's approval, which will not be unreasonably withheld.

### 8.3 Waivers

8.3.1 No failure or delay of a Party hereto in exercising any right of remedy hereunder shall operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any other or future exercise, of any right and remedy. The right and remedies provided in this agreement are cumulative and not exclusive of any rights and remedies provided by law.

### 8.4 Waiver of Sovereign Immunity

8.4.1 PAHCL hereby waives any immunity from jurisdiction of any court or arbitration proceeding or from any legal process (whether from service of notice, attachment prior to judgment, attachment in aid of execution of judgement or otherwise) in respect of itself and/or any of its property, save and except for military property, military assets, present and future premises and assets of the missions/ consulates and the constitutional authorities and their offices and assets required for scientific and technological activities of PAHCL.

### 8.5 Liability to pay stamp duty

8.5.1 The stamp duty, if any, payable on this agreement and its counterparts shall be paid by PAHCL.

8.6 This agreement has been prepared and signed in two originals, one to be retained by each party.

IN WITNESS WHEREOF of Parties have caused this agreement to be signed as of the day and year first above written.

### Annexure-X

## BRIEF NOTE ON JOINT VENTURE PROPERTY, HOTEL PONDICHERRY ASHOK,PONDICHERRY

### A. HOTEL PONDICHERRY ASHOK

The Hotel Pondicherry Ashok is one of the few beach resorts on the eastern coastline. On one side is the sun and surf washed beach and on the other green exude an exquisite mixture of solitude from maddening crowds.

Location- 150 kms from Chennai Airport, 13 Km from Puducherry Town and 50 meters from Pondicherry University.



### B. PROPERTY CONTOURS

A brief description of the property is given in the table below

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Brief Contours

Ownership  
**joint venture company of India Tourism Development Corporation Ltd (ITDC) and Pondicherry Industrial Promotion Development & Investment Corporation Ltd (PIPDICL)**

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Total land	<b>65.49 acres</b>
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**C. FACILITIES WITHIN THE HOTEL**

**□ Accommodation**

Rooms-22 Nos. (12 Deluxe, 5 Executive, 3 Boutique and 2 Luxury Cottages)



**□ Restaurants and Bars**

The resort has a Pondy Restaurant serving Multicuisine and a Kadalbar. Other facilities include swimming pool, laundry, conference facilities, etc.



**□ Convention and Banquet Facilities**

Hall in 125 seats in Theatre style , Board Room with 15 seats in U Shape,

Sea Side Lawns for Banquets upto 2000pax



**A brief about the facilities available is given as under;**

**Facilities**

Rooms	22Rooms (12 Deluxe, 5 Executive, 3 Boutique and 2 Luxury Cottages).
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Tented accommodations (Licensed out- For 8 40 years from 2014 onwards)	(8 sea facing Premium cottages, 12 Non sea facing Deluxe cottages and 20 standard cottages).
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Restaurant	Multi-Cuisine and Kadal Bar
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**D. OCCUPANCY AND RACK RATES**

The occupancy level and the average rack rates are given below:

<b>YEAR</b>	<b>Occupancy %</b>	<b>Average Room Rent</b>
<b>2011-12</b>	<b>29%</b>	<b>4683</b>
<b>2012-13</b>	<b>24%</b>	<b>4864</b>
<b>2013-14</b>	<b>30%</b>	<b>4675</b>
<b>2014-15</b>	<b>39%</b>	<b>4462</b>
<b>2015-2016 (Prov.)</b>	<b>37%</b>	<b>5157</b>