

PART-I

**Rules for Licensing of various Business
Premises in ITDC Hotels/Units**

(Short Title -ITDC Licensing Rules 2018)

- Annexures:** -
- I. Application Form for Submission of Tender
 - II. Particulars of Bidder
 - III. Terms and Conditions for Submitting Tenders
 - IV. Instructions for Submitting Tenders
 - V. Draft License Agreement
 - VI. Format for Power of Attorney
 - VII. Check-List for Enclosures
 - VIII. Format for Letter of Intent

INTRODUCTION

1. In order to have proper utilization of the capacity without upsetting the normal product/service range, the space/premises consisting of Restaurants, Offices and other areas should be licensed out to augment the profits of the Hotel / Units.
2. These rules have been framed to streamline the licensing process and will be referred to as "***ITDC Licensing Procedure 2018'***".
3. These rules are to be implemented with due regard to directives/guidelines issued by Govt of India and CVC from time to time. Discrepancies, if any, are to be put up to BoD for incorporation of amendments.

DEFINITIONS

4. **Premises.** Space intended to be used as a source of revenue on licensing basis, such as shops/F&B outlets/office spaces/business premises/vacant open area in ITDC Hotels/Units, would be referred to as premises in these rules. However, it will not include the space allotted for Antennas / Mobile Towers.
5. **Application Service Provider (ASP).** The agency appointed by ITDC to conduct e-auctioning/tendering process. ASP would allocate a web address –URL for the e-tendering.

6. **Unit Licensing Committee (ULC)**. A standing committee constituted by the Head of the hotel/unit to recommend licensing of premises including determination of Reserve License Fee (as defined below). The ULC should mandatorily have members from the Unit, Accounts department and Hotel Operations department. For Operations, the F&B Manager can be a Member for F&B related areas and for other areas the Front Office Manager can be nominated as Member. When sufficient number of officers are not present, non-executives may be included in the ULC. The Committee should be chaired by Resident Manager (RM) or in the absence of RM, by the senior most Member of the Committee.
7. **Technical Evaluation Committee (TEC)**. A committee constituted by the Corporate Head of the Hotel Division to open and evaluate the tender documents. This Committee must comprise at least three members, one of which should be from Accounts/Finance division and one from Hotel division. Members could be drawn from Corporate Headquarters or from any of the units/hotels of ITDC. The Member Secretary of ULC would also act as the Member Secretary of TEC. This committee is constituted for a particular tender or a set of particular tenders and stands dissolved after declaration of technically qualified bidders or in the event of re-tendering.
8. **Reserve License Fee**. The minimum license fee per month, below which a starting bid shall be considered as invalid. Applicable taxes etc shall be extra to this amount.
9. **Moratorium Period**. Moratorium period is the period allowed to the licensee for setting up the shop/business in the allocated premises.
10. **Upfront Money**. It is the amount to be paid by the licensee before signing of agreement and taking over the possession of the premises. This amount is equal to the 50% of the License fee plus taxes quoted by the licensee, for the entire normal moratorium period.

APPLICATION

11. These rules shall be applicable to licensing of all premises of ITDC hotels and units. These rules shall take effect from the date of its approval by the Board of Directors.
12. These rules would be applicable to the JV units on adoption by the respective JV Boards.
13. Nothing contained in these rules shall alter the terms and conditions of commercial relationships of ITDC, or any of its Units with the Licensees, with whom agreements have been signed prior to the promulgation of these rules. The relationship with the existing licensees shall continue to be governed by the terms of agreement with them **except clause 59 A hereinafter.**

(Clarification: - In the existing Licensing policy 2013, as per Clause 59, liquor through direct vend is not permitted. In the Licensing Rules 2018 as per

clause 59, the direct vend code is also being permitted. As per newly inserted clause 59A, it shall be applicable to the existing licensees.)

AMENDMENTS/DEVIATIONS

14. Amendments to these rules or any deviation from these rules would require the approval of the Board of Directors.

PROCEDURE

Overview

15. The licensing of premises must be given on fixed license fee basis and not on revenue sharing basis.

16. The licensing procedure would follow a three-stage system whereby potential licensees shall be required to submit technical and financial bids through e tendering. The first stage would be online submission of both the technical and financial bids by the bidder. Then evaluation of on-line technical bids and verification of original documents shall be carried out by ITDC.

The second stage would involve opening of financial bids of the technically qualified bidders to ascertain the H1 bid.

At the third stage, e auction would be conducted for all technically qualified bidders. The H1 bid amount or the RLF, whichever is higher, shall be the starting point of e auction.

H1 bidder would be bound to accept the premise on his quoted bid in cases where there is no further participation of other/ any bidders in the auction provided the bid is not less than RLF.

16A. For the tendering of shops, a minimum threshold Reserve License Fee of Rs. 50,000/- pm is fixed for conducting e-tendering. If the Reserve License Fee of any shop is less than Rs. 50,000/- per month, tendering may be done conventionally.

17. The process of e-tendering shall be carried out by appointing an Application Service Provider (ASP).

18. **Special Cases on Nomination Basis.** When there is a requirement to provide premises to Govt agencies or CPSUs/SPSUs, a negotiated rate of licensing and terms may be offered with the approval of BoD.

Appointment of ASP

19. The ASP shall be appointed by Corporate Head of IT Division, ITDC on contract in accordance with the prevailing rules and regulations of ITDC in respect of outsourcing.

Steps for Licensing

20. Licensing shall be progressed through the following steps:-

- a) Formulation and Approval of Proposal
- b) E – tendering
- c) Technical evaluation
- d) Opening and evaluation of financial bids

- e) E Auctioning
- f) Issuance of LOI
- g) Agreement and Handing Over of Possession

Formulation and Approval of Proposal

21. The Licensing process of fresh tendering must be initiated by the Head of the Unit/GM of the Hotel at least 06 (six) months before the due date of expiry of the original period or the first renewal period as the case may be. Head of the Unit/GM of the Hotel shall be responsible for any delay in the initiation of tendering process.

22. **Formulation of Proposal.** The premises are to be always licensed out on "as-is-where-is" basis. Proposal for licensing of premises is to be examined by the duly constituted ULC, who must examine all relevant aspects with special reference to the following:-

- (a) Details of the premises, location, size and drawing.
- (b) Past history of premises.
- (c) The nature of business intended to be conducted in the premises.
- (d) Impact of licensing on the image of the hotel/organization and the alternative use, if any, of the space/premises etc.
- (e) Financial benefits of licensing out vis-à-vis the departmental operation of the venture inter alia giving details of estimated year wise income.
- (f) Any other pros and cons of giving the premises on license vis-a-vis running it departmentally.
- (g) Anticipated capital expenditure, if any.
- (h) Qualifying criteria/parameters for selection of licensee.
- (i) Proposed reserve license fee, if any. (see Para 23 below).

23. **Reserve License Fee:** As approved by the Corporation.

24 **Approval by Competent Authority.**

In cases where the purpose of Licensing out is not the same, the proposal is to be put up to the Corporate Headquarters after concurrence of the Head of the Unit, where it shall be examined by Hotel Division in consultation with F&A Division before seeking the approval of C&MD through proper channel.

Tendering

25. On approval of the proposal by the MD, the entire processing of case till award of Letter of Intent (LoI) shall be the responsibility of ULC. ULC shall prepare a tender document as per Annexure I to VII. The detailed instructions for preparing the tender document are contained in the abovementioned Annexure.

26. In order to elicit sufficient response from vendors, so as to have adequate competition, the ULC must do a preliminary market survey to identify sufficient willing vendors. If required, a notice for Expression of Interest (with no commitment) may be published for market survey. The qualifying requirements

and terms of conditions may be drafted suitably to balance the requirements of quality and adequacy of competition.

27. As regards various miscellaneous parameters of the tender document, the following rules shall apply:-

- a. **Renewal of License.** The tender shall state clearly that the license agreement can be renewed only once as per the conditions prescribed in the agreement. Second renewal shall not be allowed under any circumstances. Even the first renewal shall be permitted at the discretion of the licensor and licensee would have no right to claim renewal on any ground whatsoever.
- b. **Duration of Licensing and Escalation Rates.** With due regard to factors such as the amount of investment required to be incurred by the licensees, pay-back period, gestation period for establishing a business etc, the duration of licensing, duration of first renewal and escalation rates for the various categories of premises would be as follows:-

| Serial | Category of Premises | Original Agreement Period (Yrs) | 1st Renewal Period (Yrs) | Annual Escalation Rates |
|--------|---|---------------------------------|--------------------------|--|
| (i) | Shops/Offices/Business premises/Beauty Parlor | 05 | 05 | 2nd year - Nil 3rd and subsequent Years - 7 % |
| (ii) | F&B outlets /Art Gallery | 05 | 05 | 2nd year - Nil 3rd and subsequent Years - 7% |
| (iii) | Spa/Destination Spa | 10 | 05 | 2nd year - Nil 3rd and subsequent Years - 7 % |

- c. **Publication of NIT.** NIT inviting applications for licensing out the premises should be published on the ITDC website as well as on the government website viz www.tender.gov.in and e-procurement website viz www.eprocure.gov.in. In case the unit has its own website, the NIT should be published on that website also. A brief notification of this NIT should be published in the two of the most popular English and Hindi (or regional language) local newspapers. In case of units in non-metros, NITs to be published in the dailies of nearest metro also.

d. In the interest of economy, the press notification must state the following only:-

- i. Tender Reference Number.
- ii. A brief description of the premises, such as location, type of business activity envisaged and approx area.
- iii. Reserve Licensing Fee.
- iv. The URLs of the websites on which the details are available and from where the tender documents can be downloaded.

- v. That the premises would be licensed out through a process of e-tendering and e-auctioning.
- vi. The last date of submission of tender and also date and time of opening of the technical bids. The last date of submission of tender should be at least 15 days after the first date of availability of tender documents. This duration may be increased at the discretion of the Corporate Head of the Hotel Division.
- vii. Contact details for clarifications.
- viii. That any further amendment would be published on the ITDC's website only.
- ix. Bidding would done through e-tendering through website (URL details)

28. **Details to be Included in the NIT.** The following details must invariably be highlighted in the instructions to bidders:-

- a. The tendering process is governed by the Licensing Rules of ITDC.
- b. That the tendering process would involve technical qualification round followed by opening of financial bid and e-auctioning and hence technical bid and financial bid is to be submitted.
- c. Reserve Licensing Fee.
- d. The business activity permitted in the premises and the duration for which licensing is being done, including explicit mention of renewal period.
- e. The EMD and the cost of tender document, as applicable, is to be submitted through online payment or through any other mode as prescribed by ITDC.
- f. The bid is to be submitted online through URL by the prescribed time.
- g. The EMD should be equal to 01 month's reserve licensing fee subject to a minimum as tabulated below:-

| Particulars | EMD for Delhi based units | EMD for units outside Delhi |
|---|----------------------------------|------------------------------------|
| Shops / Offices / Business premises / Beauty Parlor | Rs. 1 lakh | Rs. 50,000 |
| F&B outlets / Art Gallery | Rs. 10 lakhs | Rs. 2 lakhs |
| Health Club/ Destination Spa | Rs. 10 lakhs | Rs. 4 lakhs |

29. **Tender Fee.** Tender fee would be as applicable from time to time.

Pre-bid Meeting

30. A pre-bid meeting may be held by the ULC with the prospective bidders well before submission of bids, for discussions/clarifications with regard to the

terms and conditions of the tender and the draft License Agreement. The bidder, if he/she so desires, may inspect the premises and/or conduct due diligence before submission of the bids. The bidders would be informed that they must exercise full caution while submitting their technical bids and verify the correctness and completeness of documents as per the requirements given in the tender document and the check-list. They are also to be informed that in case the bidder(s) is interested in attending training/mock drills they can contact directly to ASP for e-bidding as well as e-auctioning before participating in the formal e-tendering.

31. The minutes of this meeting along with clarifications offered during the meeting are to be published on the websites on which the NIT was issued.

Opening of Tender Documents

32. The tender documents shall be opened on line on authorization by at least two members of the Technical Evaluation Committee (TEC) through digital signature, at the scheduled date and time as specified in the NIT. The bidders are to be given the option of participating on line or being present at the time of opening the bids

33. **Insufficient Bids**. In order to consider tender, it is essential that at least three bids are received in response to the NIT. In case less than three bids are received, actions are to be taken as follows:-

- a. One extension for submission of bids of a minimum period of 15 days is to be given with the approval of Head of the Unit.
- b. This extension must be published in the same manner and through the same media as the original tender had been published.
- c. In case of the number of bids remaining less than three before the technical evaluation stage, despite extension of date, the ULC will submit the proposal whether to retender or to proceed with the opening of technical bids with due regard to the following
 - i. Whether it is possible to dilute the technical and commercial requirements.
 - ii. Whether such dilution is likely to elicit better response at all.
 - iii. Relative advantages/disadvantages of dilution of technical/commercial requirements vis-a-vis dilution of competition.
 - iv. The possibility that in case of single vendor situation, the premises would have to be licensed out at the Reserve Licensing Fee only.

The above said proposal shall be submitted to the Corporate Headquarters with the concurrence of the Head of The Unit where it will be examined by

the Hotel Division before seeking the approval of Director (C&M) with the concurrence of Finance.

Technical Evaluation

34. After opening the bids, the TEC must thoroughly scrutinize/verify the correctness and completeness of tender documents as per the requirements indicated in the NIT, with reference to the documents submitted.
 35. The TEC may seek written clarifications to resolve ambiguity or allow amendments to minor inadvertent omissions, which do not materially change the bidder's qualification to make the bid. TEC may also seek deficient documents in writing as long as they have a date of origin not later than the last date of submission of the bids.
 36. A tender which is incomplete in providing desired information subject to provisions of Para 35 above, or is conditional, is to be construed as an invalid tender and rejected summarily.
 37. TEC is to undertake physical verification of original documents of the technically qualified bidders. They are to be given adequate time to present the original documents for verification.
 38. The TEC may invite the bidders to make presentations, if the NIT requires so. GM of the unit should also attend such presentations. After considering the presentations and the documents submitted by the bidders, the TEC may make their final recommendations regarding the technically qualified bidders. These recommendations are to be put up to the Corporate Head of Hotel Division for approval.
 39. In case of a resultant single or two vendor situation, post technical evaluation, the ULC will submit the proposal whether to retender or proceed with e auctioning. At this stage also the same considerations as at para 33 (c) above should be applied by the ULC. The above said proposal shall be submitted to the Corporate Headquarters with the concurrence of the Head of the Unit where it will be examined by the Hotel Division before seeking the approval of Director (C&M) with the concurrence of finance.
- (Clarification: Clause 39 will become applicable only in cases where adequate response was received before technical evaluation but resulted into single or two technically qualified bids)
40. In case of single vendor situation, if it is decided not to retender, the premises may be allotted at Reserve License Fee or quoted amount in the financial bid whichever is higher and e auctioning would not be required.

41. The technically qualified bidder(s) is/are to be informed of the final decision. If the decision is not to re-tender and it is not a single vendor situation the bidders are to be invited to participate in e-auctioning.
42. **Refund of EMD post Technical Evaluation.** The EMDs in respect of disqualified bidders are to be returned within 06 working days of declaration of technically qualified bidders.
43. **Delay in Processing of Tenders.** If due to any unavoidable circumstances, the tender cannot be finalized within the validity period of 90 days, the bidders may be asked to extend the validity of the tender up to the expected period of finalization. This extension must be obtained before conducting commercial bidding process. The decision should be finalized within the shortest period possible and if the validity period has expired after commercial bidding process, the parties should be asked to give their consent in writing, before issue of letter of intent, for extension of the validity period.

e-auctioning

44. **e-auctioning.** When it is decided to proceed with the e-auctioning process, the procedure as given below, is to be followed:-
- a. e-auctioning has to be conducted separately for each premises.
 - b. Member Secretary of ULC would provide the details of the technically qualified bidders to the e-auctioning service provider (ASP) The training/mock drill session is to be organized for the technically qualified bidders (if they wish to attend). The successful bidders are to be informed about the date and time of the mock drill with a notice of at least seven working days with a request for confirmation. This duration may be reduced with the written consent of all the technically qualified bidders. In case none of the bidders is interested in attending the mock drill, mock drill may be skipped.
 - c. After successful completion of training/mock drills, a notice of minimum 03 working days is to be given for formal e-auctioning. E-auctioning must start with the reserved license fee or the financial bid/s received whichever is higher. Initially the bidders are to be given 15 minutes for quoting the monthly Licensing Fee (not including taxes etc). In case any valid bid (higher than the reserve license fee) is received in the stipulated period, the remaining bidders are to be given 10 minutes to revise their bids upwards. This upward revision of bids not to be less than 1% of the reserved price (in multiples of Rs 100). In case no bid is received within the given time, an extension of 10 minutes is to be given. After the expiry of the extended time, bidding is to be closed and bidders are to be informed the final (highest) bided amount.

- d. In case, no bid higher than the reserve price is received, e-auctioning may be conducted again after a notice of two working days. If no bid higher than the reserve price is received after the extension, then the premises is to be retendered.

Issuance of Letter of Intent (LoI)

45. After the closure of the e-auctioning process as explained above, Letter of Intent (LOI) (as per format at Annexure VIII) is to be issued to the highest bidder, within six working days from the date of receiving formal communication from the ASP. LOI must indicate the details regarding security deposit, bank guarantees, post-dated cheques and upfront money to be paid by the successful bidder before signing of agreement.
46. **Refund of EMD**. The EMD in respect of other bidders is to be returned within 06 working days of issuance of LoI.

Signing of Agreement

47. The agreements are to be signed by the Head of the Unit as the Licensor.
48. The highest/successful bidder is to be given 12 working days from the date of issue of Letter of Intent for completing the formalities for signing the agreement. Before signing the agreement, the successful bidder must furnish of the following:-
- a. Security deposit equal to the License Fee plus applicable taxes etc for 03 months in form of DD or through e-transfer. The EMD given by the successful bidder may be adjusted against this deposit.
 - b. Security deposit equal to the License Fee plus applicable taxes etc for 06 months in form of irrevocable bank guarantee from a scheduled bank.
 - c. Postdated cheques of License fee plus applicable taxes etc for the entire period of license. Authenticity of cheques and signatures thereon are to be verified from the Bank, while accepting advance cheques.
 - d. Upfront money in form of DD or through e-transfer for the moratorium period, as defined subsequently.
- 49 . A maximum extension of 30 days to the period for pre-agreement formalities may be accorded by the Corporate Head of the Hotel Division. But such approval can be given only on payment of license fee plus applicable taxes etc for the extension period, prior to the expiry of the original period.
- 50 In case of failure on the part of H1 bidder to sign an agreement within 12 working days or within the extension period as accorded above, the LoI is to be cancelled and EMD forfeited. Thereafter, opportunity is to be given to H-2 to match the rate of H-1 within a period of 15 working days and if he accepts the offer, the tender be awarded to H-2 with the approval of MD. If H-2 does not accept the offer, then fresh tenders are to be called.

51 Occupation of the premises is to be handed over only after formal signing of the Agreement on the same day.

MISCELLANEOUS PROVISIONS

52. Normal Moratorium Period. The normal moratorium periods permissible to various categories with the upfront payment are to be as follows:

- a. F&B outlets - 90 days
- b. Health Club/ Spa / Destination Spa – 180 days
- c. Shops / Offices / Business premises / Beauty Parlour / Art Gallery – --30 days

Note: In case of moratorium period for all outlets, regular license fee (instead of fee applicable for moratorium period) shall start from the date of commercial / official activity or the last date of allotted moratorium period whichever is earlier. It is made clear that during renovation, the licensee shall not commence commercial / official operation.

53. The moratorium period applicable for the category of premises being licensed out, must be indicated explicitly in the NIT. Moratorium period as prescribed at Para 52 above would be admissible on first renewal also in case of F&B and SPA.

54 Extension to the Moratorium Period. A maximum of 03 months extension of these periods, over and above the normal moratorium period, can be permitted by the MD, on request by the licensee on justified grounds of denial of accessibility, services or such other obstructions caused by the Licensor. The License fee payable by the Licensee during the extension period is to be as follows:-

- | | | |
|--------------|---|---------------------------------|
| a. 1st month | - | 50 % of the license fee payable |
| b. 2nd month | - | 60 % of the license fee payable |
| c. 3rd month | - | 70 % of the license fee payable |

55 The moratorium period will start from the date of possession and the annual escalation will be applicable w.e.f. date of possession.

56 Maximum No of Premises that can be Allotted to any Party. Any party who bids for more than one tender for F&B outlets, either in his own name or as a partner in a partnership firm or consortium or Joint Venture Company, is to be given the choice of selection of any two licenses in a unit or three in a city. Any

licensee who is already in possession of two outlets can be permitted one more outlet in the city.

57 Renewal. First renewal is to be made on the recommendation of the Unit Licensing Committee (ULC), for the maximum period as prescribed at Para 27(b) above, subject to the compliance of the following conditions and approval of Dir (C&M):-

- a. That the licensee has not committed a breach of the terms and conditions of the agreement.
- b. The Licensee has not been a defaulter in the payment of license fee and/or other dues and there are no dues outstanding against the licensee.
- c. The Licensee has not been guilty of proved misconduct which has adversely affected the image and reputation of the Licensor.
- d. There is no litigation/dispute pending in any forum/court or otherwise between the licensee and ITDC on account of the outlet in question.
- e. The licensor has been, and is, satisfied with the commercial relationship with the licensee.
- f. The proposed license fee will be based on an annual escalation percentage of @07 % over the license fee for the immediately preceding year and will attract a 07% escalation every subsequent year.
- g. Renewal should be in the name of the existing licensee and no change in constitution of Licensee should be permitted at this stage.

58 Additional Requirements from Consortia. Bid submitted by a Consortium is to comply with the following additional requirements: -

- a. Number of members in a consortium is not to be more than three.
- b. The bid should contain information of each member of the consortium.
- c. An individual bidder cannot at the same time be a member of a Consortium applying for the same tender. Further a member of a particular Consortium cannot be a member of any other consortium applying for the bid.
- d. The members of the consortium shall nominate any one member as their Lead Member. The Lead Member, or a person appointed as his/her attorney would represent the consortium for all transactions related to the Licensing process. The Lead Member, shall be required to meet the criteria as follows:-

- i. He should be the technical member i.e., He must fulfil all the criteria prescribed, in tender document related to his technical capability of carrying on the intended business.
 - ii. He must hold majority of paid up and subscribed share in the consortium and continue to retain the shareholding during the duration of the contract.
- e. The nomination shall be supported by a Power of Attorney as per the format at Annexure VI, signed by all members of the consortium.
- f. The Members of the Consortium shall enter into a Memorandum of Understanding (MoU) for the purpose of making the bid. The MoU shall, inter alia:-
- i. Expressly convey the intent to form a joint venture company, with their respective shareholding commitment(s) in accordance with the prescribed clauses set forth in this Bid document, which would be entered into through the License Agreement and subsequently carry out all the responsibilities as a Licensee in accordance with the terms of the License Agreement.
 - ii. Clearly outline the roles and responsibilities of each member at every stage.
 - iii. Commit the minimum paid up and subscribed equity stake of 15% (lead member having the majority share as per sub-para (d) above) and include a statement to the effect that all the members of the Consortium shall be liable jointly and severally for the execution of the transaction processes in accordance with the terms of the License Agreement.
 - iv. The MoU entered into amongst the members of the Consortium should be specific to the tender and should also contain the above requirements, failing which the Bid shall be considered non-responsive.
 - v. A copy of the MoU should also be submitted along with the Bid.
- g. Any change in the composition of a Consortium will not be permitted during any stage of the bidding process.

59 Operation of Bar. Wherever the facility of Bar exists, the licensee shall be given NOC by the GM of the Hotel for taking the Excise license in the Licensee's own name, subject to acceptance by Excise Department.

However, in case the Excise department does not permit the Licensee to take Bar license in their name, the Bar license shall be in the name of the Hotel. In that event, the procedure as stated in the agreement shall apply.

The Bar will be operated by the licensee in accordance with the relevant statutory rules and regulations. If the Licensor operates its own bar facility, the licensee shall not charge a price for liquor lower than the price charged by the Licensor.

59A. The existing licensees may obtain the Excise license in their own name, in line with clause 59 above. On the request of licensee, the Hotel may permit switchover from the existing arrangement. In such case, procedure and administrative charges for procurement of liquor, as prescribed in the Agreement shall cease to apply.

The switchover shall be allowed by the unit, by issuance of NOC to the Excise Department subject to payment of Annual Fee by the licensee on account of administrative charges to be calculated as under:

(1). Annual fee equivalent to administrative charges collected under clause 19 (h) of the agreement by the unit from the licensee for preceding 12 months.

In case the commercial operation of the licensee is less than 12 months, then the annual fee to be paid by him will be calculated by the following formula:

| | |
|--|-------|
| Administrative charges collected for the entire commercial operation period ----- Number of days of commercial operation | X 365 |
|--|-------|

(2). In case the commercial operation of a licensee has not yet started (referred to as a new licensee), the annual fee shall be calculated by the following formula:

| | |
|--|--|
| Annual fee calculated on the basis of data of other operating licensee in the same unit, applying the formula mentioned at point 1 above | X RLF (as per NIT for the respective outlet) of new licensee |
| RLF (as per NIT for the respective outlet) of the above operating licensee | |

(3). The amount decided in the point 1 & 2 above shall be considered fixed for the balance part of the term of the licensee on annual basis for issuance of NOC in their favour for obtaining the Excise license in their name.

60. Debarring of Parties. Any entity which has been barred by ITDC or by the GoI from participating in the transaction processes and the bar subsists as on the Bid Due Date, would not be eligible to submit the bid, either individually or as a member of a Consortium. If such barring comes to light after signing the agreement, the agreement is to be terminated.

61. Administration of Licensees. ITDC management may frame appropriate terms and conditions for the proper maintenance of fair and equitable commercial relations with the Licensee.

62 Amendment/Modification to the Agreement. The GM of the unit may, at his discretion, allow minor deviations from the terms of agreement, as long as these do not have a commercial and legal implication. In case of any proposal from licensee to change/relax any of the terms and conditions of the agreement, having a commercial implication, the MD may appoint a Commercial Negotiation Committee to arrive at a price for such alteration.

63 Novation. Novation may be permitted at the sole discretion of the Licensor subject to the following:-

- a. That it will be permitted not before one year from the date of commencement of the original license.
- b. The request for novation must be made in writing by the original licensee stating the reason for the same.
- c. The request may be accompanied with a consent letter from the Novatee (the entity in whose favour novation is being proposed). This consent letter must be accompanied with an unqualified and unconditional undertaking from the Novatee that it would accept the novation with all liabilities, declared or otherwise, as on the date of novation. The Novatee must declare that it is aware that after novation the obligations of the original licensee would be extinguished. The Novatee shall also declare that he shall not hold the licensor responsible in any way for any suppression or misrepresentation of facts made by the original licensor.
- d. No change in the terms of original agreement would be permitted at the stage of novation.

- e. The duration of agreement and consideration (License fee and other financial liabilities) apart from other covenants of the Licensee shall remain same as per the original agreement, irrespective of the duration for which the agreement with the old licensee was in effect.
- f. There shall be no outstanding of license fee etc or litigation on the part of the original licensee
- g. The novation shall be executed through a new agreement between the licensor and the novatee. In addition, an indemnity bond will also be given by the Novatee, indemnifying Licensor against all actions, suits, proceedings, accounts, claims and demands whatsoever for or on account of the novation in favour of the Novatee or otherwise in connection with the same, and against all losses, costs, claims, actions, demands, risks, charges, expenses, damages and losses arising in any manner howsoever.

64 Any Dispute, which is not settled, shall be referred to arbitration in accordance with the provisions of the Arbitration & Conciliation Act 1996 (amended from time to time) to the Chairman & Managing Director of the ITDC for appointment of Sole Arbitrator. The Sole Arbitrator so appointed shall not have any direct or indirect or any past or present relationship or interest in any of the parties.

The award given by the arbitrator shall be binding upon 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.

65 Upon the exit of the Licensee, on successful completion of the term/s or upon directions from the ITDC or any legal directions as the case may be, the Licensee is mandated to immediately remove all its goods and installation in the premises and return the vacant possession of the premises in a presentable condition. Any goods, equipment / furniture or related material left behind by the licensee will be confiscated by the unit and is to be disposed off / used by the unit in whichever form, as deemed fit. Any proceeds from the sale of these goods will be forfeited and not be adjustable against any account of the licensee whatsoever.