

## CONTENTS OF RFP DOCUMENT PACKAGE-II

The RFP document package comprises the following documents as listed below, and would additionally include any Addenda issued before the due date of submission of the RFP. Any reference to the RFP Document package includes all the contents unless specifically mentioned otherwise.

	<b>CONTENTS</b>
	• Notice Inviting Tender
Part A	• Instructions to Bidders
Part B	• RFQ Document
Part C	• RFP Document
Part D	• Draft Concession Agreement

***NOTICE INVITING TENDER (NIT)***

## NOTICE INVITING GLOBAL TENDER

### rites/UTIDTC-BOS/IV/2009/Package - I & II

rites Ltd. on behalf of Delhi Transport Corporation invites Individual firms/Joint ventures/ Consortiums interested in the project named BQS BOT IV for Construction, Operation and Maintenance of DTC modern, aesthetic, sleek, commuter and environment friendly Bus Queue Shelters (BQS) to submit their bids. The project consists of two separate package detailed below; bidders can bid either for Package 1 or Package 2 or for both Packages.

Package - I (about 400 Bus Queue Shelters): Approximately covers Ring Road from Dhaula Kaun to ISBT via Raja Garden, parts of North Delhi/adjoining areas; tentative list of BQS is available in RFP document.

Package – II (about 400 Bus Queue Shelters): Approximately covers East and North East Delhi areas, Maharani Bagh, Jamia Millia, Sarita Vihar, Kalindi Kunj etc.; tentative list of BQS is available in RFP document.

- Feature” Details available in RFP document”

Scope of Work: Conceptual design of the BQS as provided by DTC; BQS to be constructed as per approved design at locations decided by DTC; Construction of BQS to be completed within 44 weeks; Operation and Maintenance of Bus-Q-Shelters during Concession period; To raise and realize revenues during concession period; to pay concession fee to DTC; Transfer of Bus - Q - Shelters to DTC at the end of Concession period. Detailed scope of works as per RFP.

Revenue source: The revenue from the Bus – Q Shelters would be from advertisements which would be shared with DTC subject to a minimum concession fee. Details available in RFP. Concession Period: Ten years including implementation period, extendable to fifteen years on mutual consent as per the provisions of RFP.

Eligibility Criteria: The bidder shall meet the experience, minimum net-worth, and minimum average-annual-turnover criteria in the fields of urban infrastructure and advertising including outdoor advertising as laid down in RFP.

Bid Process: The bidding for the project would be in single submission comprising two stages. First stage would be for pre-qualification of bidders based on eligibility criteria and evaluation of technical parameters of the bidders based on their bids containing the details of construction, operation and maintenance of the Bus- Q - Shelters. The second stage would be the evaluation of financial bids of pre-qualified and technically qualified bidders. Detailed bid process in available in RFP.

Submission of Bids: The interested bidders are requested to submit their technical and commercial bids, sealed in separate envelopes, into a one bigger sealed envelope super-scribed as “Proposal for DTC Bus – Q – Shelters on BOT basis RITES/UT/DTC-BQS/IV/PACKAGE 112009”. Full details are available in RFP. The Bids should reach the office of General Manager (Urban Transport), RITES office at the address given below on or before 15<sup>th</sup> June 2009 by 3:00 pm.

Interested bidders may procure the Request for Proposal (RFP) document form the office of General Manager (Urban Transport), RITES (address given below) during office hours on any working day between 13<sup>th</sup> May 2009 and 12<sup>th</sup> June 2009 on payment of Rs. 10,000/- (Rs. Ten Thousand only) through Demand Draft drawn in favour of Delhi Transport Corporation, Delhi payable at Delhi. The RFP document can also be downloaded form DTC website <http://www.dtc.nic.in>. of RITES website <http://www.rites.com>. and the bid submitted along with a demand draft as mentioned above.

General Manager (UT)  
**rites LTD. RITES BHAWAN**  
PLOT NO1, SECTOR 29,  
**GURGAON – 122001, HARYANA**

## **DISCLAIMER**

The information contained in this Request for Proposal (RFP) document package provided on behalf of Delhi Transport Corporation (DTC) is being provided to all interested Bidders on the terms and conditions set out in this RFP document.

This RFP document is not an Agreement and is not an offer or invitation to any other party. The purpose of this RFP document is to provide bidders with information to assist the formulation of their proposal submission. This RFP document does not purport to contain all the information Bidders may require. This RFP document may not be appropriate for all persons, and it is not possible for DTC to consider the investment objectives, financial situation and particular needs of each bidder. Each bidder should conduct its own investigation and analysis, and should check the accuracy, reliability and completeness of the information in this RFP document and obtain independent advice from appropriate sources. DTC and their advisors make no representation or warranty and shall incur no liability financial or otherwise under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the RFP document.

DTC may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP document.

***PART A***  
***INSTRUCTIONS TO BIDDERS***

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## **A-1 LETTER OF INVITATION**

- 1.1 Delhi Transport Corporation (DTC) operates nearly 2500 Bus Queue Shelters (BQS). In this current project DTC proposes to construct and operate about 400 BQS on BOT basis. The identified locations of these 400 BQS are provided in para 3.2 below. The DTC envisages constructing modern, aesthetic, sleek, commuter and environment friendly international standard BQS in keeping with Delhi's aspirations to function as a World Class City.  
This is one of the projects catering to the requirements of ensuing Commonwealth Games to be held in Delhi in year 2010.
- 1.2 DTC appointed RITES as Bid Process Managers for this assignment.
- 1.3 This Request for Proposal (RFP) Package is issued from the office of General Manager (Urban Transport), RITES Ltd. on behalf of DTC to Private Sector Parties (PSPs)/ firms (which include companies, partnership firms, proprietary concerns, etc.) who are interested in bidding for the Project either individually or as a consortium or joint venture of such firms for undertaking Construction, Operation & Maintenance and Transfer of approximately 400 Bus-Q-Shelters on Build – Operate – Transfer (BOT) basis.
- 1.4 The Private Sector Party (PSP) would be required to develop the Bus-Q-Shelters by undertaking construction, operation & maintenance of the Bus-Q-Shelters and other facilities during the concession period and transfer the same to DTC thereafter. The Concessionaire would be permitted to earn revenue from advertisement and will have to pay Concession Fee as per his financial offer accepted by DTC. The bid can not be lower than the Minimum monthly Concession Fee prescribed over the concession period as per the details in the Concession Agreement
- 1.5 A two-stage bidding process is being adopted for the project:
  - (a) Stage I involves (i) qualification, which includes submission of a Request for Qualification (RFQ) by the bidders and evaluation of the same by RITES/DTC and (ii) evaluation of submitted Technical Proposal of only those bidders who are qualified in sub-stage (a) (i) above, as per the evaluation criteria laid down in the RFP Document Package.
  - (b) Stage II consists of evaluation of Financial Proposal of only those bidders who are found to have submitted proof of meeting the eligibility criteria as in sub-stage (a) (i) above and whose technical proposals are found to be responsive to the requirements of the RFP Document Package and who score the required qualifying marks in the evaluation of their technical bid as in (a) (ii) above.

- (c) The RFP Document Package comprises
1. Part A: Instructions to Bidders
  2. Part B: Request For Qualification (RFQ) Document
  3. Part C: Request For Proposal (RFP) Document
  4. Part D: Draft Concession Agreement
- 1.6 All data provided as a part of the RFP Document Package is for guidance and general information purposes. The same should be verified by the bidder for use as a part of preparing their proposals for the project.
- 1.7 Stages I and II proposal documents duly completed and sealed in respective envelopes and as per the procedure explained herein must be delivered to RITES office at the address given below on or before **15.06.09** by 1500 Hrs IST (3 pm IST).

**General Manager (Urban Transport)**  
**RITES LTD.**  
**RITES BHAVAN,**  
**PLOT NO 1, SECTOR 29,**  
**GURGAON, HARYANA 122 001, INDIA**

## A-2 PROJECT BRIEF

### 2.1 BACKGROUND

Delhi Transport Corporation (DTC) which was functioning under the administrative control of Govt. of India, was taken over by Govt. of NCT, Delhi on 05.08.96.

DTC at present operates about 5000 bus stops in the city out of which approximately 2500 have been provided with Bus Queue Shelters.

DTC intends to provide modern, aesthetic, sleek, commuter and environment friendly Bus – Q – shelters at various locations in Delhi. Work of constructing such BQS at about 648 locations on BOT basis through private sector participation has been awarded till date. Now DTC wishes to install similar BQS at 400 more locations.

The proposed Bus – Q – Shelters will be located on roads/areas such as

- Delhi Sectt. – Laxmi Nagar- Nirman Vihar- karkari X-ing- Ram Vihar
- Laxmi Nagar Xing –Mother Dairy and Mother Dairy - Hasan Pur Depot
- Khichri Pur – Kalyan Puri and Kondli - Mayur Vihar Phase-III - Mayur Vihar Phase III - Dallu Pura
- Mayur Vihar Phase –III Xing - Doctor Apartment
- Mayur Vihar Ph –I - Mayur Vihar Pocket-IV
- Noida Border - Noida Xing
- ISBT - Shahdara Border - Shahdara Border - Gazipur Dairy Farm
- Kalyan Puri - Patpar Ganj Xing
- TT Post - Kailash Nagar
- Geeta Colony – Krishna Nagar
- Seelam Pur - Yamuna Vihar C-4
- Babarpuri - Durga Puri Xing - Loni DDA Flats
- Durga Puri Chowk - Loni Border
- Wazirabad Xing - Harsh Vihar (Border)
- Dilshad Garden Area and Gagan Cinema (Sunder Nagar) - Dilshad Garden
- Jheel - Radhu Place
- Karkardoma Court - Jhilmil
- Business Studies - Vivek Vihar
- Vivek Vihar (T) - Vivek Vihar ITI
- Vivekanand Woman Collage - ESI Hospital
- Shastri Park - Khajuri Chowk
- P.P.G. Depot - Swami Dayanand Marg.
- Ghazi Pur Xing - Akshar Dham Mandir
- Mayur Vihar Ph-I - Trilok Puri
- Kondli Xing to Ghazi Pur Xing
- Maharani Bagh, Okhla –Jamia Millia - Sarita Vihar

The tentative list of the proposed sites/locations is available in the RFP document.

The roads/areas/locations may change for reasons beyond the control of DTC such as ongoing development works conflicting with BQS construction. The indicative list of the proposed BQS is given in **Table A**.

## **A-3 PROJECT FRAMEWORK**

### **3.1 IMPLEMENTATION STRATEGY**

DTC intends to develop the project on “Build, Operate and Transfer” (BOT) basis by inviting Private Sector Party (Concessionaire) to finance, construct, operate and maintain the Bus-Q-Shelters during the specified Concession Period. DTC will enter into a Concession Agreement with the Concessionaire for ten years extendible to fifteen years on mutual consent of the Owner and the Concessionaire on the same terms and conditions of the original Concession for construction, operation and maintenance of the Bus-Q-Shelters. During the period the Concessionaire shall carry out the services as per the technical specifications, performance standards and guidelines given as part of the Concession Agreement.

The Bus Q Shelters shall be transferred to DTC at the end of the Concession Period in sound condition as per Concession Agreement.

The construction period for the project will not be more than 48 weeks within which the Concessionaire will complete the construction of BQS as per the requirements, technical specifications and standards.

The Concessionaire would be given the right to collect the revenues from advertisement during the concession period as per the Concession Agreement. The Concessionaire shall pay DTC Concession Fee as provided in the Concession Agreement. The Concession Fee shall be payable in accordance with clause 11.1 (i) of Draft Concession Agreement contained herein.

DTC shall appoint the Independent Engineer. The tenure of the Independent Engineer, under this Concession Agreement, shall be for the period from the date of signing of Concession Agreement and ending on the Commercial Operations Date. DTC shall also constitute a Steering Group comprising such persons as it deems fit within 30 days of signing of Agreement. The Steering group shall include 1 (one) representative of the Concessionaire.

The title, interest, ownership and rights with regard to Bus-Q-Shelters constructed by the Concessionaire for DTC along with fixtures/fittings provided therein shall vest with the DTC except that these will be operated and maintained by the Concessionaire as agreed in this Agreement. The assets created by the Concessionaire will be under the possession of the Concessionaire during the period of the Concession and will be transferred to DTC upon the expiry or earlier termination of the Concession Agreement. These assets will not be encumbered by the Concessionaire in any circumstances in any manner whatsoever subject to Article 22 of Draft Concession Agreement contained herein.

### **3.2 SCOPE OF WORK**

1. Construction of Bus- Q- Shelters as per approved design. The maximum time period for completing the construction is 48 weeks.
2. Operation and Maintenance of Bus- Q- Shelters during Concession period as specified in the Concession Agreement.
3. The essential services to be provided by the Concessionaire as per Schedule H of Draft Concession Agreement.
4. Collect revenues during concession period through advertisements and pay Concession Fee as indicated in their financial proposal and accepted by the DTC, as provided in the Concession Agreement.
5. Transfer of Bus- Q- Shelters to DTC in sound condition at the end of Concession Period.
6. After handing over of site by DTC the concessionaire shall get upto 10% of the existing BQS as identified by DTC removed at his cost and deposited with DTC for future use such as replacement of damaged BQS in non-BOT areas. In respect of the balance BQS the Concessionaire shall pay the material value at the rate of Rs 15000/- per BQS to DTC irrespective of its type and condition and then get the BQS removed at his cost and dispose the BQS as deemed fit and proper.

**List of Existing bys queue shelters / bus stops for BOT –IV (Package-2)  
Delhi Sectt. – Laxmi Nagar- Nirman Vihar- karkari X-ing- Ram Vihar**

<b>S.No</b>	<b>Location</b>	<b>W.P.T.</b>	<b>Status</b>
1	Delhi Sectt.	ITO	Existing
2	Delhi Sectt.	Ram Vihar	Existing
3	Rainy Well	ITO	Existing
4	Rainy Well	Ram Vihar	Existing
5	Laxmi Nagar	ITO	Existing
6	Laxmi Nagar	Ram Vihar	Existing
7	Laxmi Nagar	Ram Vihar	New Site
8	Shakar Pur	ITO	Existing
9	Shakar Pur	Ram Vihar	New Site
10	Shakar Pur	ITO	Existing
11	Shakar Pur	Ram Vihar	New Site
12	Nirman Vihar	ITO	New Site
13	Nirman Vihar	Ram Vihar	Existing
14	Swasthya Vihar	ITO	Existing
15	Swasthya Vihar	Ram Vihar	New Site
16	New Rajdhani Enclave	ITO	Existing
17	New Rajdhani Enclave	Ram Vihar	Existing
18	Karkari X-ing	ITO	Existing
19	Karkari X-ing	Ram Vihar	Existing
20	Har Gobind Enclave	ITO	Existing
21	Har Gobind Enclave	Ram Vihar	Existing
22	Seni Enclave	ITO	New Site
23	Seni Enclave	Ram Vihar	Existing
24	Jagriti Enclave	ITO	Existing
25	Jagriti Enclave	Ram Vihar	Existing
26	Anand Vihar	ITO	Existing
27	Anand Vihar	Ram Vihar	New Site
28	Ram Vihar	ITO	Existing
29	Ram Vihar	Ram Vihar	New Site

**Laxmi Nagar Xing –Mother Dairy**

30	Laxmi Nagar Xing	PPG	Existing
31	Laxmi Nagar Xing	Laxmi Nagar	Existing
32	Shakarpur School Block	Laxmi Nagar	Existing
33	Shakarpur School Block	PPG	Existing
34	Ganesh Ngr.Staff Qtr.	PPG	Existing
35	Mandawli/ Shiv Mandir Road	Ganeash Nagar	Existing

**Mother Dairy - Hasan Pur Depot**

36	Mother Dairy Xing	Mother Dairy	Existing
37	Mother Dairy Xing	Hasanpur Depot	Existing
38	Dharma Apartment	Hasanpur Depot	Existing
39	Dharma Apartment	Mother Dairy	Existing
40	Govt.Model School	Mother Dairy	Existing
41	Govt.Model School	Hasanpur Depot	Existing
42	Press Apartment	Hasanpur Depot	Existing
43	Press Apartment	Mother Dairy	Existing
44	Saraswati Kunj	Mother Dairy	Existing
45	Saraswati Kunj	Hasanpur Depot	Existing
46	Ras Vihar	Hasanpur Depot	Existing
47	Ras Vihar	Mother Dairy	Existing
48	Balco Apartment	Mother Dairy	Existing
49	Himalaya apartment	Hasanpur Depot	Existing
50	Himalaya Apartment	Mother Dairy	Existing
51	Neethi Apartment	Mother Dairy	Existing
52	Neethi Apartment	Hasanpur Depot	Existing
53	Prince Apartment	Mother Dairy	Existing
54	Chander Vihar	Hasanpur Depot	Existing
55	Chander Vihar	Mother Dairy	Existing
56	Ashirwad Apartment	Hasanpur Depot	Existing
57	Ashirwad Apartment	Mother Dairy	Existing
58	Vijay Laxmi Apartment	Mother Dairy	Existing
59	Vijay Laxmi Apartment	Hasanpur Depot	Existing
60	ParivarApartment	Mother Dairy	Existing
61	Parivar Apartment	Hasanpur Depot	Existing

**Khichri Pur – Kalyan Puri**

62	East Vinod Nagar	Hasanpur Depot	Existing
63	East Vinod Nagar	Trilok Puri	Existing
64	Khichri Pur Village	Hasanpur Depot	Existing
65	Kalyan Puri (Terminal)	Trilok Puri	Existing
66	Kalyan Puri (Terminal)	Trilok Puri	Existing
67	Kalyan Puri (Terminal)	Trilok Puri	Existing

**Kondli - Mayur Vihar Phase-III**

68	Gharoli Dairy Farm	Kalyan Puri	Existing
69	Gharoli Dairy Farm	Mayur Vihar	Existing
70	Mayur Vihar –III	Terminal	Existing
71	Mayur Vihar-III	Terminal	Existing

**Mayur Vihar Phase –III - Dallu Pura**

72	Mayur Vihar-III Khora Colony	Noida	Existing
73	CRPF Camp	Noida	Existing
74	CRPF Camp	Mayur Vihar	Existing
75	A-Block Mayur Vihar-III	Mayur Viha	Existing
76	A-Block Mayur Vihar-III	Noida	Existing
77	Bharti Public School	Noida	Existing
78	Bharti Public School	Mayur Viha	Existing
79	New Kondly A-I	Mayur Viha	Existing
80	New Kondly A-I	Noida	Existing
81	Mayur Vihar-III Xing	Noida	Existing
82	Mayur Vihar-III Xing	Mayur Viha	Existing
83	Mayur Vihar-III Xing	Kondli	Existing
84	Dallu Pura(sewage pump	Kondli	Existing
85	Dallu Pura(sewage pump	Mayur Viha	Existing

**Mayur Vihar Phase –III Xing - Doctor Apartment**

86	Multy Gym.	Mayur Vihar	Existing
87	Multy Gym.	Dallu Pura	Existing
88	High Land Appartment	Dallu Pura	Existing
89	High Land Apartment	Mayur Vihar	Existing
90	Doctors Appartment	Dallu Pura	Existing
91	Doctors Appartment	Mayur Vihar	Existing

**Mayur Vihar Ph –I - Mayur Vihar Pocket-IV**

92	Mayur Vihar –I	Noida Toad	Existing
93	Mayur Vihar –I	Trilok puri	Existing
94	Mayur Vihar –I (Tr.)	Terminal in side	Existing
95	Mayur Vihar –I (Tr.)	Terminal in side	Existing
96	Mayur Vihar –I (Tr.)	Terminal in side	Existing
97	Mayur Vihar –I (Tr.)	Terminal in side	Existing
98	Mayur Vihar-I,Pkt-IV (Arya Smaj Mandir)	Trilok Puri	Existing
99	Mayur Vihar–I, Pkt-IV (Arya Samaj Mandir)	Noida Road	Existing
100	OCS Apartment	Chilla Viilage	Existing
101	Rose Wood Apartment	Noida Road	Existing

**Noida Border - Noida Xing**

102	Mayur Place	Noida	Existing
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103	Mayur Place	Nizammuddin	Existing
104	Samachar Appartment	Nizammuddin	Existing
105	Samachar Appartment	Noida	Existing
106	Mayur Vihar I Xing	Noida	Existing
107	Mayur Vihar I Xing	Nizammuddin	Existing
108	Delhi Police Apartment	Noida	Existing
109	Noida Xing	Noida	Existing

#### **ISBT - Shahdara Border**

110	Shastri Park (Metro Depot)	ISBT	Existing
111	Shastri Park (Metro Depot)	Shahdara Depot	Existing
112	Shyam Giri Mata Mandir	Shahdara Depot	Existing
113	Shyam Giri Mata Mandir	ISBT	Existing
114	Shastri Park	ISBT	Existing
115	Shastri Park	Shahdara Depot	Existing
116	Seelampur Metro Station	ISBT	Existing
117	Seelampur Metro Station	ISBT	Existing
118	Welcome Colony	ISBT	Existing
119	Welcome Colony	Shahdara Depot	Existing
120	Welcome Colony Metro Station	ISBT	Existing
121	Welcome Colony Metro Station	ISBT	Existing
122	Shyam Lal College	ISBT	Existing
123	Shyam Lal College	Shahdara Depot	Existing
124	Telephone Exchange	Shahdara Depot	Existing
125	Dilshad Garden GT Rd.	Shahdara Depot	Existing
126	Dilshad Garden GT Rd.	ISBT	Existing
127	Jhil Mil Xing	ISBT	Existing
128	Jhil Mil Xing	Shahdara Depot	Existing
129	Shahdara Border	ISBT	Existing

#### **Shahdara Border - Gazipur Dairy Farm**

130	Shahdara Border	Gazipur	Existing
131	Surya Nagar	Gazipur	Existing
132	Surya Nagar	Shahdara Depot	Existing
133	Ram Prastha Mandir	Shahdara Depot	Existing
134	Ram Prastha Mandir	Gazipur	Existing

135	Ram Prastha Xing	Gazipur	Existing
136	Ram Prastha Xing	Shahdara Depot	Existing
137	Anand Vihar (Maharaj Pur Check Post)	Gazipur	Existing
138	Anand Vihar (Maharaj Pur Check Post)	Gazipur	Existing
139	Gazipur Depot	Gazipur	Existing
140	Gazipur Depot	Shahdara Depot	Existing
141	Gazipur Village	Shahdara Depot	Existing
142	Gazipur Village	Gazipur	Existing
143	SFS Gazipur	Gazipur	Existing
144	SFS Gazipur	Shahdara Depot	Existing

#### **Kalyan Puri - Patpar Ganj Xing**

145	Super Bazar	Kalyan Puri	Existing
146	Super Bazar	PPG	Existing
147	Chand Cinema	PPG	Existing
148	Chand Cinema	Kalyan Puri	Existing
149	Trilok Puri 13 Block	Chand Cinema	Existing
150	Trilok Puri 13 Block	PPG	Existing
151	Kotla Village	PPG	Existing
152	Kotla Village	Chand Cinema	Existing
153	ITI Khichri Pur	Chand Cinema	Existing
154	ITI Khichri Pur	PPG	Existing
155	Plot-5 Mayur Vihar-I	PPG	Existing
156	Plot-5 Mayur Vihar-I	Chand Cinema	Existing
157	Shashi Garden Xing	Chand Cinema	Existing
158	Shashi Garden Xing	PPG	Existing
159	P.S.Pandav Nagar	PPG	Existing
160	P.S.Pandav Nagar	Chand Cinema	Existing
161	PPG Xing	Chand Cinema	Existing

#### **Chnd Cinema - East Vinod Nagar Depot**

162	Mayur Vihar-II	East Vinod Nagar	Existing
163	East Vinod Ngr. Depot	Chand Cinema	Existing
164	East Vinod Ngr. Depot	East Vinod Nagar	Existing

#### **TT Post - Kailash Nagar**

165	Lalita Park	Kailash Nagar	Existing
166	Lalita Park	ITO	Existing

167	Ramesh Park	Kailash Nagar	New Site
168	Ramesh Park	ITO	Existing
169	Bank Enclave	ITO	Existing
170	Bank Enclave	Kailash Nagar	New Site
171	Kishan Kunj	ITO	Existing
172	Kishan Kunj	Kailash Nagar	New Site
173	Shastri Nagar	Kailash Nagar	New Site
174	Shastri Nagar	ITO	Existing
175	Link Road Pusta	ITO	Existing
176	Link Road Pusta	Kailash Nagar	New Site
177	Shamshan Ghat	Kailash Nagar	New Site
178	Shamshan Ghat	ITO	Existing
179	Gandhi Nagar Pusta	ITO	New Site
180	Gandhi Nagar Pusta	Kailash Nagar	New Site
181	Kailash Nagar Pusta	ITO	Existing
182	Kailash Nagar Pusta	Kailash Nagar	Existing

#### **Geeta Colony – Krishna Nagar**

183	Geeta Colony	Jheel	Existing
184	Geeta Colony	Shamshan Ghat	New Site
185	Jheel Dispensery	Jheel	New Site
186	Jheet Dispensery	Shamshan Ghat	New Site
187	Jheel (Terminal)	Krishna Nagar	New Site
188	Jheel (Terminal)	Krishna Nagar	Existing

#### **Seelam Pur - Yamuna Vihar C-4**

189	Seelam Pur	Seelam Pur	New Site
190	Seelam Pur	Yamuna Vihar	New Site
191	Jafra Bad	Yamuna Vihar	Existing
192	Jafra Bad	Seelam Pur	New Site
193	Jafrabad School	Seelam Pur	Existing
194	Jafrabad School	Yamuna Vihar	Existing
195	Mouj Pur Xing	Seelam Pur	Existing
196	Kabir Nagar	Seelam Pur	Existing
197	Krishana Market	Seelam Pur	Existing
198	Krishna Marg	Yamuna Vihar	Existing
199	C-4 Yamuna Vihar	Yamuna Vihar	Existing
200	C-4 Yamuna Vihar	Seelam Pur	Existing

#### **Babar Pur - Durga Puri Xing**

201	Babar Pur	Seelam Pur	Existing
202	Jyoti Nagar	Nand Nagri	Existing

**Durga Puri Xing - Loni DDA Flats**

203	West Jyoti Nagar	Durga Puri	Existing
204	West Jyoti Nagar	Loni	New Site
205	LIG DDA Flats	Loni	Existing
206	LIG DDA Flats	Durga Puri	Existing
207	MIG DDA Flats	Durga Puri	Existing
208	MIG DDA Flats	Loni	New Site

**Durga Puri Chowk - Loni Border**

209	Loni Xing	Loni	Existing
210	Loni Xing	Durga Puri	Existing
211	Shanti Nagar	Durga Puri	Existing
212	Shanti Nagar	Loni	New Site
213	Indira Puri Police Post	Loni	New Site
214	Indira Puri Police Post	<u>Durga Puri</u>	Existing
215	Indira Puri (Terminal)	<u>Durga Puri</u>	Existing

**Wazirabad Xing - Harsh Vihar (Border)**

216	Wazirabad Xing	Border	Existing
217	Wazirabad Xing	Wazirabad	Existing
218	Guru Nanak Sar	Wazirabad	Existing
219	Gurur Nanak Sar	Border	Existing
220	Rajeev Vihar	Border	Existing
221	Rajeev Vihar	Wazirabad	Existing
222	Khazoori	Wazirabad	Existing
223	Khazoori	Border	Existing
224	Bhjan Pura	Border	Existing
225	Bhjan Pura	Wazirabad	Existing
226	B-Block Yamuna Vihar	Wazirabad	Existing
227	B-Block Yamuna Vihar	Border	Existing
228	Yamuna Vihar(Brij Pur)	Border	Existing
229	Yamuna Vihar(Brij Pur)	Wazirabad	Existing
230	C-Block Yamuna Vihar	Wazirabad	Existing
231	C-Block Yamuna Vihar	Border	Existing
232	Gokul Puri	Border	Existing
233	Dr.B R.Ambedkar College	Wazirabad	Existing
234	MIG Flat Lonie Rd.	Border	Existing
235	MIG Flat Loni Rd. Xing	Wazirabad	Existing
236	Ashok Nagar	Wazirabad	Existing
237	Ashok Nagar	Border	New Site
238	Nand Nagri Depot	Border	Existing
239	Nand Nagri Depot	Wazirabad	Existing

240	Bank Colony	Wazirabad	Existing
241	Bank colony	Border	Existing
242	Gagan Cinema	Border	Existing
243	Gagan cinema	Wazirabad	Existing
244	Harsh Vihar	Wazirabad	Existing
245	Harsh Vihar	Border	Existing

#### **Dilshad Garden Area**

246	Govt.school Dilshad Garden	G.T.Road	Existing
247	Govt.school Dilshad Garden	Nand Ngri Depot	Existing
248	Dilshad Garden	--	Existing
249	Dilshad Garden	--	Existing
250	Dilshad Garden	--	Existing
251	E-Block Dilshad Garden	--	Existing
252	A-Pocket Dilshad Garden	--	Existing
253	GTB Hospital	Nand Nagri	Existing
254	GTB Hospital	GT Road	Existing
255	GTB Xing	GT Road	Existing
256	GTB Xing	Nand Ngri	Existing

#### **Gagan Cinema (Sunder Nagar) - Dilshad Garden**

257	Sunder Nagar	Gagan Cinema	Existing
258	Sunder Nagar	Dilshad Garden	Existing
259	Anand Gram Ashram	Dilshad Garden	New Site
260	Anand Gram Ashram	Gagan Cinema	Existing
261	Tahir Pur	Dilshad Garden	Existing
262	Tahir Pur	GTB Hospital	Existing
263	GTB Enclave	GTB Hospital	Existing
264	GTB Enclave	Dilshad Garden	New Site
265	Kushat Ashram	Dilshad Garden	Existing
266	Kushat Ashram	Gagan Cinema	Existing
267	O-Block Dilshad Garden	Gagan Cinema	New Site
268	O-Block Dilshad Garden	Dilshad Garden	New Site
269	Shalimar Garden Xing	Dilshad Garden	New Site
270	Shalimar Garden Xing	Gagan Cinema	New Site
271	SeemaPuri Depot	Gagan Cinema	New Site
272	SeemaPuri Depot	Dilshad Garden	Existing
273	Old Seema Puri	Dilshad Garden	Existing
274	Old Seema Puri	Gagan Cinema	Existing
275	J&KPkt.Dilshad Garden	Gagan Cinema	Existing
276	J&KPkt.Dilshad Garden	Border	Existing

#### **Jheel - Radhu Place**

277	Pandit Park	Radhu Place	New Site
278	Pandit Park	Jheel	New Site
279	Shiv Puri	Jheel	Existing
280	Rasheed Market	Jheel	Existing
281	Khureji	Radhu Place	New Site
282	Guru Angad Nagar	Jheel	Existing
283	Guru Angad Nagar	Radhu Place	Existing
284	Radhu Place	Jheel	Existing
285	Radhu Place	Radhu Place	New Site

#### **Karkardoma Court - Jhilmil**

286	Karkardoma Court	Jhilmil	Existing
287	Karkardoma Court	Karkardoma	Existing
288	Rishab Vihar	Jhilmil	New Site
289	Rishab Vihar	Karkardoma	New Site
290	A-Block Suraj Mal Vihar	Jhilmil	New Site
291	A-Block Suraj Mal Vihar	Karkardoma	New Site
292	Suraj Mal Park	Jhilmil	New Site
293	Suraj Mal Park	Karkardoma	Existing
294	Kasturba Nagar	Jhilmil	Existing
295	Kasturba Nagar	Karkardoma	Existing

#### **Business Studies - Vivek Vihar**

296	Businees Collage Girls School	Vivek Vihar	Existing
297	Jhilmil Colony Phase-II	Businees Collage	Existing
298	Jhilmil Colony Phase-II	Vivek Vihar	Existing
299	Jhilmil Colony ( B-Block)	Businees Collage	Existing
300	Jhilmil Colony ( B-Block)	Vivek Vihar	Existing
301	Dhobi Ghat Jhilmil	Vivek Vihar	Existing
302	Dhobi Ghat Jhilmil	Businees Collage	Existing

#### **Vivek Vihar (T) - Vivek Vihar ITI**

303	Vivek Vihar(T)	ITI	Existing
304	Vivek Vihar(T)	ITI	Existing
305	Mahila Collage	ITI	Existing
306	Ram Vihar D-Block	Border	Existing
307	Vivek Vihar Girls School	Border	Existing
308	Vivek Vihar Girls School	Vivek Vihar	New Site
309	Vivek Vihar ITI	Border	Existing

#### **Vivekanand Woman Collage - ESI Hospital**

310	Vivekanand Woman Collage	Jhilmil	Existing
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311	Vivekanand Woman Collage	ITI	Existing
312	ESI Hospital	Jhilmil	Existing
313	ESI Hospital	ITI	Existing
314	P.S. Vivek Vihar	Jhilmil	Existing
315	P.S. Vivek Vihar	ITI	Existing
316	Shreshta Vihar	Suraj Mal Vihar	Existing
317	Shreshta Vihar	Border	Existing
318	Yojana Vihar	Border	Existing
319	Yojana Vihar	Suraj Mal Vihar	Existing
320	Yamuna Velodrum	Border	Existing
321	Yamuna Velodrum	Suraj Mal Vihar	New Site
322	DDA Flats Karkardoma	K.K.X-ing	Existing
323	DDA Flats Karkardoma	Suraj Mal Vihar	Existing

#### **Shastri Park - Khajuri Chowk**

324	Shastri Park	Khureji	Existing
325	Shastri Park	Seelam Pur	Existing
326	Kauth ware	Seelam Pur	New Site
327	Kauth Ware	Khajuri Chowk	New Site
328	Kartar Nagar	Khajuri Chowk	Existing
329	Kartar Nagar	Seelam Pur	Existing
330	Gamri Extn.	Khajuri Chowk	Existing
331	Gamri Extn.	Seelam Pur	New Site
332	Khajuri Xing	Seelam Pur	New Site
333	Khajuri Xing	Khajuri Chowk	New Site

#### **P.P.G. Depot - Swami Dayanand Marg.**

334	Hasanpur Village	Shahdara	Existing
335	Hasanpur Village	PPG	Existing
336	Hasanpur Depot	Gaji Pur	Existing
337	Hasanpur Depot	Shahdara	Existing
338	Gagan Vihar	Shahdara	Existing
339	Jagat Puri F-1 Block	Shahdara	Existing
340	Jagat Puri F-Block	Gaji Pur	Existing
341	Jagat Puri A Block	Shahdara	Existing
342	Jagat Puri A Block	Gaji Pur	Existing
343	Radhey Puri	Shahdara	Existing
344	Radhey Puri	Gaji Pur	Existing
345	Arjun Nagar	Shahdara	Existing
346	Arjun Nagar	Gaji Pur	Existing
347	Hans Apartment	Shahdara	Existing
348	Hans Apartment	Gaji Pur	Existing

349	East Krishna Nagar	Shahdara	Existing
350	Krishna Nagar A Block	Gaji Pur	Existing
351	Swarn Cinema	Shahdara	Existing
352	Swarn Cinema	Gaji Pur	Existing
353	East Azad Nagar	Gaji Pur	Existing
354	East Azad Nagar	Shahdara	Existing
355	Jharkhand	Shahdara	Existing
356	Jharkhand	Gazi Pur	Existing
357	Kant Nagar Ext.	Shahdara	Existing
358	Kant Nagar Ext.	Gaji Pur	Existing

#### **Gh8azi Pur Xing - Akshar Dham Mandir**

359	Ghazi Pur Xing	Akshar Dham	Existing
360	Khichari Pur	Akshar Dham	Existing
361	Khichari Pur	Ghazi Pur	Existing
362	East Vinod Nagar Depot	Akshar Dham	New Site
363	East Vinod Nagar Depot	Ghazi Pur	New Site
364	Samas Pur Jagir Village	Akshar Dham	Existing
365	Samas Pur Jagir Village	Ghazi Pur	Existing

#### **Mayur Vihar Ph-I - Trilok Puri**

366	Trilok Puri 36 Block	Mayur Vihar	Existing
367	Trilok Puri 36 Block	Trilok Puri	Existing
368	Trilok Puri 26 Block	Trilok Puri	Existing
369	Trilok Puri 26 Block	Mayur Vihar	Existing

#### **Kondli Xing to Ghazi Pur Xing**

400	Kondli Xing	Ghazi Pur	New Site
371	Kondli Xing	Kondli	New Site
372	Ghazi Pur Dairy Farm	Kondli	New Site
373	Ghazi Pur Dairy Farm	Ghazi Pur	Existing
374	DDA Mkt. Ghazi Pur	Ghazi Pur	New Site
375	DDA Mkt Ghazi Pur	Kondli	New Site

#### **Maharani Bagh, Okhla –Jamia Millia - Sarita Vihar**

376	Bharat Nagar	Bharat Ngr. Xing	Existing
377	Sarita Vihar	Apollo Hospital	Existing
378	Sarita Vihar	Kalindi Kunj	Existing
379	Jasola Vihar	Kalindi Kunj	Existing
380	Shahin Bagh	Apollo Hospital	Existing
381	Shahin Bagh	Kalindi Kunj	Existing
382	Kalindi Kunj	Apollo Hospital	Existing

383	Kalindi Kunj	Noida	Existing
384	Sarita Vihar A-Block	DDA Road	Existing
385	Sukhdev Vihar	NSIC	Existing
386	Bharat Nagar Xing	Bharat Nagar	Existing
387	Bharat Nagar Xing	Holi Family	Existing
388	Tamoor Nagar	Ring Rd.	Existing
389	Tamoor Nagar	Escort Hospital	Existing
390	Kalindi Kunj	Shahin Bagh	Existing
391	Thokar No. 8	Shahin Bagh	Existing
392	Shahin Bagh	Unani Hospital	Existing
393	Nai Basti	Okhla	Existing
394	Okhla Terminal	Batla House	Existing
395	Batla House	Okhla (Terminal)	Existing
396	Okhla Terminal	Batla House	Existing
397	Unani Hospital	Nai Basti	Existing
398	Jamia Nagar	Ansari auditorium	Existing
399	Ansari Auditorium	Jamia College	Existing
400	Jamia College	Holy Family	Existing

\*\*\*\*400 -BQS\*\*\*\*

**Note:** The list is indicative only and is subject to correction for any factual or other errors. Further, locations may be changed for reasons beyond the control of DTC. The Bidders must themselves verify sites and other details as needed for bidding.

#### **A-4 BIDDER'S RESPONSIBILITY BEFORE BID/PROPOSAL SUBMISSION**

- 4.1 The Bidder shall be responsible for all the costs associated with the preparation of the Proposal and participation in the selection process. DTC and RITES Ltd. will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the selection process.
- 4.2 The Bidder shall ensure that the bid is complete in all respects and conforms to all requirements indicated in the RFP document. Incomplete bids are liable for rejection.
- 4.3 **Site visit, traffic & other studies and field investigations, if any:**  
The Bidders shall visit and examine the sites and obtain for

themselves, at their own responsibility and cost, all the information and data that may be necessary for submission of offer and entering into Concession Agreement for construction of the Bus-Q-Shelters, and subsequent operation and maintenance of the same. The Bus-Q-Shelter related information, which has been provided in this RFP document, is intended only to guide the bidders in preparing their Proposal. DTC shall not stand guarantee for and shall not be held responsible for the veracity of details which have been made available in this document.

- 4.4 **Costs associated with Visits and Field Investigations, if any:** The costs of visiting the sites, and undertaking any further studies and investigations shall be at the Bidder's own expense. The Bidder and any of his personnel or agents can visit sites.
- 4.5 **Familiarity with Clearances:** The Bidder should be familiar with the clearances required from various Authorities to commence / undertake this Project. A Bidder shall be deemed to have carried out all relevant and necessary checks with relevant Authorities.
- 4.6 The Bidders are advised to inspect and examine each site and its surroundings and satisfy themselves in all respect before submitting their offer. A bidder shall be deemed to have full knowledge of the site whether he inspects it or not and no extra charges consequent upon any lack of understanding or otherwise shall be allowed.
- 4.7 It would be deemed that by submitting the Bid, the Bidder has:
- Made a complete and careful examination of the RFP document
  - Obtained all relevant information about the project.
  - Familiarised himself with the applicable laws and permissions/clearances required as well as relevant orders of the Supreme Court of India and Delhi High Court in respect of display of advertisements.
  - Carried out due diligence as required to take up the Project.
- 4.8 DTC shall not be liable for any mistake or error on the part of the Bidder in respect of, inter alia any of the clauses 4.1 to 4.7 above.

#### **A-5 Limitation on Bidding and Award**

Bids for BQS BOT IV are being invited in two separate Packages which are two different contracts. Bidders can bid for Package 1 or for Package 2 or for both Package 1 and Package 2.

In case the same Bidder is found to be the successful Bidder in both Package 1 and Package 2 then he shall be awarded both Packages.

## **A - 6 COST OF DOCUMENT**

- 6.1 The RFP document Package is priced at Rs. 10000/- (Rupees Ten Thousand only) payable in the form of Demand draft drawn in favour of *CMD, DTC* payable at Delhi. **The Bidders who are downloading the RFP document from the website shall deposit (in the form of a Demand Draft) the said cost of the document along with the Bid.**

## **A-7 CLARIFICATIONS TO RFP DOCUMENTS**

- 7.1 The prospective Bidding Firm requiring any clarification of the RFP documents may notify to General Manager (U.T) RITES in writing by post, courier or by facsimile at the address given below.

**General Manager (Urban Transport)**

**RITES LTD.**

**RITES Bhavan,**

**Plot no.1, Sector 29**

**Gurgaon 122001**

**FAX: 0124 – 2571638**

The Queries should also be sent by e-mail to [banga@rites.com](mailto:banga@rites.com).

Bidders are expected to send their queries in writing at least 2 days prior to the pre-bid meeting.

- 7.2 DTC/RITES reserves the right to respond to only those clarifications/ questions of Bidders which DTC/RITES, in their sole discretion consider to be relevant and necessary. Nothing in this section shall be taken or read as compelling or requiring DTC/RITES to respond to any questions to provide any clarification. No extension of any deadline will be granted on the basis or grounds that DTC/RITES has not responded to any question or provided any clarification.

## **A –8 PRE-BID MEETING**

- 8.1 A pre-bid meeting shall be held for providing clarifications and replies to the queries of bidders.
- 8.2 The pre-bid meeting shall be held on **22.05.09 at 10.30 AM** at India Habitat Centre, Lodi Road New Delhi.. In case of any modification in the venue the same shall be intimated to the bidders and shall be uploaded on the website.

- 8.3 Clarifications, if any, including the text of the questions raised and the responses given, would be sent by courier/fax/email to all prospective Bidders who have purchased the document or attended the pre-bid meeting. The clarifications shall also be displayed on the website of DTC and RITES Ltd. Any modifications of the RFP document package, which may become necessary as a result of the Pre-bid meeting or otherwise, shall be through the issue of an addendum.
- 8.4 The RFP document will be frozen on **29.05.09**.
- 8.5 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder. However, all clarifications as also modifications presented in the Addendum will be legally binding on all the Bidders irrespective of their attendance at the Pre-Bid Conference.

## **A-9 BID SECURITY**

BID submitted in response to the Request for Proposal Document Package shall be accompanied by a BID Security of Rs 15 million (Rupees fifteen million only) in the form of Demand Draft in favour of CMD, DTC payable at Delhi.

In case a bidder is submitting bids for both Package 1 and Package 2 then two Demand Drafts for Rs 15 million (Rupees fifteen million only) each as above shall be submitted.

## **A-10 VALIDITY OF BID**

- 10.1 Bid shall remain valid for a period of **120 days** from the Proposal Submission Due Date. DTC reserves the right to reject any Bid, which does not meet this requirement.
- 10.2 Any Bid not accompanied with an acceptable Bid Security is liable for rejection.
- 10.4 The amount of Bid security of the unsuccessful Bidders would be returned without interest after the acceptance of the letter of award by the successful bidder.
- 10.5 The amount of Bid security of the successful Bidder would be returned without interest when the successful Bidder has signed the Concession Agreement and furnished the Performance Security for implementation.
- 10.6 The Bid security is liable to be forfeited under the following conditions:
1. If the Bidder withdraws the Proposal during the period of Bid validity.

2. In the case of a successful Bidder, if the bidder fails to sign the Concession Agreement along with required Performance Security within the stipulated time.

## **A-11 CLARIFICATION FROM BIDDERS**

To assist in the evaluation of Bid submitted by bidders, DTC/RITES may, at its discretion, ask any bidder for clarification of its Proposal. The request for clarification and the response thereto shall be in writing.

## **A-12 LANGUAGE**

The Bid submission and all related documents should be in English language. Supporting documents and printed literature furnished by bidders with the Proposal may be in any other language provided that they are accompanied with appropriate translations in the English language. Any document, which is not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail.

## **A-13 PROPOSAL DOCUMENTATION**

- 13.1 The Proposal should have no overwriting. All corrections are to be carried out by crossing and rewriting by the Bidders themselves and all such corrections must be initialed by the person signing the Proposal.
- 13.2 The Proposal and its copies shall be typed or written in indelible ink and the authorized representative of the Bidder shall initial each page. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person (s) signing the Bid.

## **A-14 DTC RIGHT TO ACCEPT AND REJECT PROPOSAL**

Notwithstanding anything contained in the RFP document, DTC reserves the right to accept or reject any proposal, at any time without assigning any reason. Further DTC also reserves the right to cancel the tender process at any time or stage without assigning any reason.

## **A- 15 BID/PROPOSAL SUBMISSION DUE DATE**

- 15.1 Bid/Proposal will be received up to **1500 Hours IST (i.e. 3 pm IST) on 15.06.09 at the office of General Manager (UT), RITES LTD, RITES Bhawan, Plot No. 1, Sector 29, Gurgaon (Haryana), INDIA.** Any

Proposal, which is received after the above prescribed deadline shall be returned, unopened.

- 15.2 DTC may, at its discretion, extend the Bid/Proposal Submission Due Date.

## **A-16 SUBMISSION OF OFFERS**

The bidder shall prepare and submit their proposals in original and one copy clearly marking ORIGINAL and COPY and as per the procedure detailed below:

- i. The original Bid Security (Demand draft in favor of CMD/DTC) of the required value and in approved format shall be sealed separately in an envelope mentioning:

**“Envelope - A1 “BID SECURITY FOR BUS – Q – SHELTERS ON BOT (IV) Package 2”**

- ii. The original and copy of qualification documents shall be sealed separately in an envelope mentioning:

**“Envelope – A2 “QUALIFICATION PROPOSAL FOR BUS–Q-SHELTERS ON BOT (IV) Package 2”**

- iii. The original and copy of the Technical Proposal (RFP) shall be sealed separately in the envelope mentioning:

**“Envelope – A3 “TECHNICAL PROPOSAL FOR BUS – Q – SHELTER ON BOT (IV) Package 2”**

- iv. The original and copy of the Financial Proposal shall be sealed separately in the envelope mentioning :

**“Envelope – B “FINANCIAL PROPOSAL FOR BUS – Q – SHELTER ON BOT (IV) Package 2” – NOT to BE OPENED on XXXXX**

- v. The original and copy of the Qualification Proposal (RFQ), Technical Proposals (RFP) and Financial Offers shall also be sealed separately before sealing in their respective envelopes of A2, A3 and B respectively.

- vi. All the above envelopes viz. 'A1', 'A2', 'A3' and 'B' along with the original bid documents issued / downloaded ( including all amendments and clarifications issued by DTC/RITES) duly signed by authorized signatory on all pages shall then be sealed in one outer envelope
- vii. The inner and outer envelopes shall be addressed to RITES LTD and marked as below:  
**"Tender for DTC Bus Q Shelters on BOT (IV) Package 2" To be OPENED on 15.06.2009 at 3.30 PM**
- viii. The outer as well as inner envelopes shall indicate the name and address of the Bidder to enable the Proposal to be returned unopened in case it is received late.
- ix. If the outer envelope is not sealed and marked as above, RITES/DTC will assume no responsibility for the misplacement or premature opening of the Proposal.
- x. In case the bid document is downloaded from the web site and not purchased, the Bid must be accompanied by a draft of Rs. 10,000/- in favour of CMD, DTC payable at Delhi,
- xi. The bid must be delivered at the address provided in clause **A-15** above not later than the time and date stipulated above.
- xii. Submission of Bids or any part thereof, by fax, e-mail or other electronic means will not be accepted. It is the responsibility of Bidder alone to ensure that its bid is delivered at the prescribed address within the stated deadline.

### **A-17 LATE BIDS**

BIDS received after the BID Submission Due Date and Time shall not be accepted and will be returned unopened.

### **A-18 OPENING OF BIDS**

The BIDS as received by due date and time shall be opened by the DTC / RITES at the office of the General Manager (U.T.) RITES, RITES Bhawan Plot No 01, Sector-29, Gurgaon-122001 **at 1530 hrs IST on due date of Bid submission** in the presence of bidders who choose to be present. On opening of the outer envelope it will be checked if it contains:

- i) Bid Security (Envelope A1)
- ii) Qualification Proposal (Envelope A2)

- iii) Technical Proposal (Envelope A3)
  - iv) Financial Proposal (Envelope B)
  - v) Original tender document with amendments issued , duly signed
  - vi) Bank Draft of Rs. 10,000/- if documents were downloaded from web site and not purchased
1. The Bid Security envelope will be opened first and will be checked for requisite value and format. Thereafter the Qualification Proposals shall be opened to check whether all Appendices 1 to 8 have been submitted. The qualification Proposals shall be processed further subsequently for completeness in other aspects.
  2. If the documents do not contain Bid Security, or not of required value or in unacceptable form, the offers submitted are liable for rejection.
  3. The Technical and Financial proposals shall not be opened on that day and shall be kept separately in the safe custody of RITES to be opened and evaluated later on as per the procedure detailed herein.

## **A-19 CONFIDENTIALITY**

RITES will treat all information submitted as part of Proposal in confidence and would require all those who have access to such material to treat the same in confidence. RITES will not divulge any such information unless it is ordered to do so by any Authority that has the power under law to require its disclosure.

## **A-20 TEST OF RESPONSIVENESS**

Prior to evaluation of Bids/Proposals, it will be determined whether each Bid/Proposal is responsive to the requirements of the RFP document. The Bid will be considered responsive if the Bid:

- a. is received by the Due Date and time of submission or any extension thereof.
- b. is signed, sealed and marked as stipulated in clause A-16
- c. is accompanied by the Bid Security in requisite format for specified amount.
- d. is accompanied with the Bank Draft of Rs. 10,000 in case the bid documents were downloaded from web site and not purchased.

- e. contains the information as requested in the RFQ document, as per check list enclosed (available in Part B).
- f. mentions the validity period as set out in clause A-10

Decision of DTC regarding responsiveness of bids shall be final and binding; DTC reserves the right to reject any Proposal submission which it considers non-responsive.

## **A-21 EVALUATION AND COMPARISON OF PROPOSALS**

DTC / RITES will evaluate and compare the proposal determined to be responsive in accordance with Clause No A-20 and as per the procedure detailed below. In the event of any discrepancy between 'ORIGINAL' and 'COPY' the contents of 'ORIGINAL' shall prevail.

### **21.1 RFQ Evaluation**

DTC / RITES will evaluate the pre-qualification proposals (RFQ) of the various bidders as per the pre-defined eligibility criteria. Technical offer of only those bidders will be opened who fulfill the pre-qualification requirements. Evaluation of the qualification proposals will be on Pass / Fail basis.

### **21.2 Technical Evaluation**

Technical proposals of only those firms, who have been pre-qualified, shall be opened for further evaluation. Technical proposals will be evaluated for their compliance of responsiveness to various tender requirements.

DTC/ RITES will carry out a detailed evaluation of the BIDS in order to determine whether the technical aspects are in accordance with requirements set forth in the BID Documents. In order to reach such a determination, the DTC/RITES will examine and compare the various technical aspects of the BIDS on the basis of the information supplied by the Bidders, taking into account the following factors:

1. Overall completeness and compliance and deviations from the DTC's Requirements to the Proposal/ conditions. The BID that does not meet minimum acceptable standards of completeness, consistency and detail will be rejected as non-responsive.
2. Working methods and program demonstrating that how the Bidder will achieve the performance standards within the time frame.

3. Bidders shall be asked to make a presentation to DTC/RITES on technical proposal.

Each responsive Bid shall be given a technical score based on weightages assigned to various parameters of technical proposal as given below. A proposal may be rejected at this stage if it is non responsive or if it fails to achieve minimum technical score of 65 out of 100.

**The scheme of scores is as follows:**

Head	Score
<p><b>ORGANISATIONAL SET UP</b></p> <p>As per clause C-4.1.1 of RFP</p> <p>a) Organizational structure during Construction, Operation and Maintenance Period</p> <p>b) CVs of the key persons including task assigned to them</p>	<b>10</b>
<p><b>TECHNICAL DETAILS &amp; SUBMISSIONS</b></p>	<b>20</b>
<p>As per clause C-4.1.2 of RFP</p> <p><b>Construction Schedule:</b></p> <p>Detailed Construction Schedule with deployment of man and machinery including bar chart. The minimum details required are as follows:</p> <p>a) taking over of sites in lots of BQS from DTC</p> <p>b) major activities including procurement, testing, construction activities, etc</p> <p>c) completion of each lot of BQS</p>	
<p>As per clause C-4.1.5 of RFP</p> <p><b>Employment Schedule:</b></p> <p>This shall consist of a chart showing deployment of monthly manpower (including skilled and unskilled labour of various categories) commensurate with the Construction Schedule and the Operation and Maintenance schedule.</p>	
<p><b>Design information</b></p>	

<b>CONSTRUCTION METHODOLOGY</b>	<b>10</b>
<b>OPERATION &amp; MAINTENANCE SCHEDULE</b>	<b>15</b>
As per clause C-4.1.3 of RFP <b>Operation Schedule:</b>  The operational schedule will consist of the procedures and practices to be followed in keeping the facility working and the processes followed for operations. Daily operational schedules for the BQS including housekeeping, security / watch ward, lease agreement monitoring will form part of this schedule	
As per clause C-4.1.4 of RFP <b>Maintenance Schedule:</b>  Maintenance schedules would contain time schedules and scope of maintenance work to be taken up, under the routine maintenance and regular maintenance.	
<b>REVENUE GENERATION MODEL &amp; PHILOSOPHY</b>  As per clause A-21.2 of RFP	<b>15</b>
<b>PROVIDING SOLAR SYSTEM FOR LIGHTING</b>  As per clause A-21.2 of RFP	<b>5</b>
<b>PRESENTATION ON PROPOSAL</b>	<b>5</b>
<b>Experience in construction of BQS on BOT:</b> Score allocation by range will be as under:	<b>15</b>
<b>Up to 500 BQS</b>	<b>5</b>
<b>501 to 1000 BQS</b>	<b>10</b>
<b>More than 1000 BQS</b>	<b>15</b>
<b>Undertaking for specified early completion of construction subject to minimum saving of 4 weeks</b>	<b>5</b>

<b>TOTAL</b>	<b>100</b>
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Only those bidders, whose aggregate technical score is above stipulated minimum technical score, will be qualified for the purpose of opening of financial bids and evaluation thereof.

The Technical and Financial offers of those bidders who do not qualify the pre-qualification criteria and the financial proposal of those bidders who do not qualify the technical evaluation shall be returned unopened and no claim in this regard shall be entertained.

### **21.3 OPENING OF FINANCIAL BID AND EVALUATION**

- a. DTC/RITES would intimate the date and venue of the opening of the financial Proposal of only those bidders who qualify and those who pass technical evaluation with a request to be present at the time of the Financial Bid opening.
- b. The Financial Bids would be opened and read out aloud on the said date and venue in the presence of the representatives of the bidders who choose to be present.
- c. Evaluation of Financial Proposal shall include the following:
  - 1) Check for completeness of Proposal (Part Bids shall not be accepted.)
  - 2) Concession fee as percentage of accrued revenue as quoted in Appendix 9.
  - 3) The amount quoted in words will prevail over the amount quoted in figures.
- d. The Concession Fee is governed as follows:
  - (a) During the first year from date of signing of Concession Agreement Rs 10,000/- per BQS per month for those BQS for which provisional/final COD has been issued
  - (b) during the second year from date of signing of Concession Agreement, the higher of the two following amounts:

- (i) Rs 4.00 million per month for 400 BQS, to be increased or decreased at the rate of Rs 10,000/- per BQS per month depending on the actual number of BQS operated
  - or
  - (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue
- (c) during subsequent years the higher of the two following amounts:
- (i) amount as in (b) (i) above increased at 10% per year w.r.t previous year
  - or
  - (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue.

During the first year from signing of Concession Agreement Concession fee shall be paid monthly. During subsequent currency of the Concession Agreement, the minimum concession fee shall be paid quarterly in advance as per clause 11.1 of Draft Concession Agreement and additional fee, if any as per the quote of the Concessionaire, shall be paid within thirty days from the end of the quarter.

## **A-22 SELECTION AND NOTIFICATION**

The highest financially evaluated bidder would be selected as successful bidder and would be intimated through a "Notice of Award".

## **A-23 AWARD OF CONTRACT**

23.1 Upon issuance of the "Notice of Award" the selected/preferred bidder shall have to communicate the acceptance of the contract through a "Letter of Acceptance" within 10 (ten) days of issue of the Notice of Award and sign the Concession Agreement within 30 days of issue of "Notice of Award".

23.2 If the Concession Agreement is not signed by the selected bidder within 30 days of issuance of the "Notice of Award", then DTC reserves the right to withdraw the offer, and proceed ahead in any manner it deems fit. In such an eventuality, the Bid Security of selected bidder would be forfeited.

The successful bidder would have to furnish Performance Security for implementation and Operation periods as specified in the Schedule of Agreement, before signing of the Concession Agreement and till that time, the Bid Security of the successful Bidder would remain effective and in possession of DTC.

#### **A-24 EXTENSION OF VALIDITY OF BID**

In exceptional circumstances, prior to expiry of the original Bid Validity Period, DTC may request the pre-qualified Bidders in writing to unconditionally extend the Bid Validity Period for a specified additional period.

***PART B***  
***REQUEST FOR QUALIFICATION (RFQ)***

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## **B – 1 ELIGIBILITY CRITERIA**

### **1.1 GENERAL**

This invitation to furnish RFQ is open to all national or international firms (which include companies, partnerships,, proprietary concerns etc.) who are interested in bidding for the Project either individually or as a consortium / joint venture of such firms. In case of Consortium or Joint Venture, the lead firm (which shall be a single entity) shall be specified and fully empowered to represent the Consortium/ Joint Venture. The lead firm shall have a minimum stake of 26% in the Consortium/ Joint Venture.

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

An Applicant/ Consortium member should, in the last **three** years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract nor have had any contract terminated for breach by such Applicant/ Consortium member.

### **1.2 QUALIFICATION CRITERIA**

1.2.1 Qualification criteria for the Bidder as detailed below are based on financial capability, technical expertise and similar project experience. The eligibility criteria detailed in the following paragraphs are applicable whether the Bidder applies for Package 1 or Package 2 or both Packages 1 and 2.

In case of more than one member with experience in outdoor advertising, then mean of their Average Annual Turnover and Net Worth weighted by shares in Consortium shall be considered.

- (a) The bidder shall have at least three years of experience in urban infrastructure and advertising including outdoor advertising as laid down below.
- (b) The Bidder shall have Average Annual Turnover (AATO) of at least Rs 500 million in advertising in the preceding three financial years out of which at least Rs 300 million shall be from outdoor advertising and at least Rs 1500

million in urban infrastructure works (design/ manufacture/ construction/ operation and maintenance of projects such as Parking Lots/ Street Furniture/ Commercial Area Development/ Transportation/ Real Estate Development) in the preceding three financial years.

- (c) The Bidder shall have Minimum Net Worth of Rs 400 million as on the last day of the previous financial year

In case Bidder is Consortium/Joint Venture, it should satisfy the following conditions:

- (a) The bidder shall have at least three years of experience in urban infrastructure and advertising including outdoor advertising as laid down below.
- (b) The Lead Firm shall be an advertising firm which shall have Average Annual Turnover of at least Rs 500 million in advertising in the preceding three financial years out of which at least Rs 300 million shall be from outdoor advertising and  
Minimum Net Worth of the Lead Firm as on the last day of the previous financial year shall be Rs 300 million.
- (c) The Bidder shall consist of at least one firm having experience in urban infrastructure works (design/ manufacture/ construction/ operation and maintenance of projects such as Parking Lots/ Street Furniture/ Commercial Area Development/ Transportation/ Real Estate Development) with AATO of at least Rs 1500 million in the preceding three financial years and  
Minimum Net Worth of the firm having experience in urban infrastructure works as on the last day of the previous financial year of Rs 300 million.

For foreign bidders the above eligibility will be ascertained by taking foreign exchange rate as Rs 50 (fifty Indian Rupees) to one United States Dollar.

- 1.2.2 In case of wholly owned subsidiaries of firms/companies intend to use experience and financial capability of their parent companies, a parent company guarantee in the required format (Appendix 5) shall be submitted along with the RFQ submission and the information required to be submitted as at Appendix 2, Appendix 3 and Appendix 4 of the RFQ shall be submitted separately for the Parent entity and the subsidiary.

1.2.3 To qualify for the Stage II the bidders would have to meet the qualifying criteria described in 1.2.1 and 1.2.2 mentioned above.

## **B-2 DISQUALIFICATION**

2.1 Even though a Bidder appears to meet the pre-qualifying criteria, he could be disqualified if the Bidder :

- a) Made misleading or false representations in the forms, statements and attachments submitted in proof of the qualification requirements;
- b) Has Record of poor performance such as abandoning the works, not properly completing the contract, inordinate delays in completion, litigation history, or financial failures, etc.
- c) Is black listed / barred by GOI/Delhi Govt agency /Central PSU/ as on date of submission of the bids.
- d) Submitted the RFQ, which is not accompanied by the required documentation or is non-responsive.
- e) Failed to provide clarifications related thereto
- f) Such firm or any member of such consortium has already submitted the RFQ or is a member of a Consortium which has already submitted the RFQ.
- g) any member of the Bidder Consortium is replaced or withdraws, except with prior written permission of DTC and
- h) the Bidder fails to submit No Dues Certificate issued by Accounts Department of DTC at its Headquarters.

2.2 If any such information which would have entitled DTC to reject or disqualify the bidder becomes known after the bidder has been qualified, DTC reserves the right to cancel the qualification of the Bidder at any later stage.

## **B-3 QUALIFICATION FOR NEXT STAGE**

3.1 Based on the information submitted in RFQ, RITES/DTC will carry out an evaluation of the qualifications of the Bidder and will evaluate the technical bids of those Bidders who qualify.

## **B-4 CONTENTS OF RFQ**

4.1 The Request for Qualification submitted by the Bidder shall contain the following sections:

1. Letter of Application (Appendix 1)
2. Organisational Information (Appendix 2)
3. Financial Information (Appendix 3)
4. General Experience Record (Appendix 4)
5. Format for Parent Company Guarantee (Appendix 5), if applicable.
6. Format of MOU in case of Consortium/Joint Venture (Appendix 6)
7. Format of Declaration by the Bidder (Appendix 7)
8. Check List (Appendix 8)

4.2 The RFQ shall include the above information in the formats given in the appendices and any other statement of information in support of qualification criteria.

4.3 The documentary evidence of the Bidder's qualifications to implement the Project, shall establish to the DTC's satisfaction that the Bidder has the financial, managerial, technical, procurement and other capabilities necessary to perform the contract and, in particular, meets the experience and other required criteria. The documentary evidence shall include any other material required to be compiled and submitted by Applicants in accordance with these instructions. This shall include but not be limited to the following:

1. Audited financial statements for last three years up to end of last financial year (Balance Sheets, Profit and Loss Account and cash flow statements and Annual Reports) as required to conform to the RFQ requirements.
2. Summary statement of turnover for past three financial years, and present net worth certified by a Chartered Accountant.
3. Certified Copies of original documents in support of legal constitution of the firm and place of business.

4. Experience in Qualifying projects (as given in NIT) with details of projects completed as well as under way and contractually committed as per Appendix 4 along with clients details and Letter of Completion or Letter of Award from Client.
  5. A Power of Attorney, authorising the signatory of the RFQ to submit the Bid and
  6. No Dues Certificate issued by Accounts Department of DTC at its Headquarters.
- 4.4 RFQ submitted by a Consortium/Joint Venture shall comply with the following requirements:
1. The RFQ shall include all the information required above for each bidder/Consortium partner.
  2. All pages of the RFQ shall be signed so as to be legally binding on all partners.
  3. The Lead partner holding a minimum equity/profit sharing of 26%, shall be designated as leader, this authorization shall be evidenced by submitting with RFQ a Power of Attorney signed by legally authorized signatories of all partners in favour of the lead partner.
  4. Original MOU signed by all the members of JV/ Consortium partners with joint & several responsibility for all the works under scope of work and indicating their respective equity/share holding or profit sharing.
  5. Once RFQ has been submitted by or on behalf of a Consortium, if any member withdraws from the Consortium, the consortium shall be disqualified, unless the remaining members can demonstrate to the satisfaction of DTC their continued ability to fulfill the qualification criteria set out in RFQ.

## **B-5 SIGNING AND SUBMISSION OF RFQ**

- 5.1 RFQ shall be prepared in two copies. The original and copy of the RFQ shall be typed and shall be signed by the Bidder or a person or persons duly authorised to bind the bidder to the contract. The person or persons signing the RFQ shall initial all pages of the RFQ, except for un-amended printed literature.
- 5.2 Any interlineations, erasures or cutting shall only be valid if the person or persons signing the RFQ initial them.

- 5.3 The Bidders shall seal the original RFQ and the copy as per the procedure detailed.

## **B-6 EVALUATION AND FURTHER PROCESS**

- 6.1 Based on the RFQ submitted by the bidders, RITES/DTC will carry out an evaluation of the qualifications of such Bidders. If at any time during the evaluation process, RITES/DTC requires any clarification in order to carry out the evaluation, it reserves the right to request for information from any Bidder, and the Bidder concerned will be obliged to respond to any request for such information and to supply the same to RITES/DTC within such reasonable timeframe as required.
- 6.2 Any unsolicited information after submission of RFQ shall not be entertained.
- 6.3 DTC/RITES will evaluate whether Bidders who have submitted responsive RFQ are qualified for further evaluation of Technical Proposal and Financial Proposal for satisfactorily implementation of the Project.
- 6.4 An affirmative determination will be a prerequisite for the DTC / RITES to consider the Technical Proposal submitted by the bidder.
- 6.5 This document and the appendices constitute no form of commitment on the part of DTC / RITES, whether in respect of the selection or otherwise. Furthermore, this RFQ document confers neither the right nor expectation on any party to participate in the selection process. DTC reserves the right to reject any or all RFQ proposals, if it considers necessary to do so, and/or to withdraw/ modify the Selection Process or any part of the selection process or to vary any of its terms at any time without giving any reason or incurring any liability thereto.

# REQUEST FOR QUALIFICATION

## Appendix 1

### Letter of Application

(Letterhead of the Bidder/Lead Partner, including full postal address, telephone, fax, email addresses)

Date:.....

General Manager (URBAN TRANSPORT)

RITES LTD.

RITES BHAVAN

PLOT NO 1, SECTOR 29

GURGAON 122001

Sir,

1. Being duly authorised to represent and act on behalf of .....(hereinafter "the Bidder"), and having reviewed and fully understood all the qualification information provided, the undersigned hereby apply to be qualified by you as a prospective bidder for the project involving "Construction, Operation and Maintenance of Bus-Q-Shelters on BOT basis"
2. Attached to this letter are certified copies of original documents defining:
  - a) The applicant's legal status
  - b) The principal place of business; and
  - c) The place of incorporation (for bidders which are corporations); or the place of registration (or Income Tax registration) and the nationality of the owners (For bidders who are partnerships or individually-owned firms).
  - d) MOU (in case of consortium/Joint Venture)
  - e) All documents as specified in RFQ and RFP in respective envelopes

DTC and/or RITES LTD and its authorised representatives are hereby authorised to conduct any inquiries or investigations to verify the statements, documents, and information submitted in connection with

this application, and to seek clarification from our bankers and client regarding any financial and technical aspects. This letter of any institution, to provide such information deemed necessary to verify statements and information provided in this application, or with regard to the resources, experience, and competence of the Bidder.

This application is made in the full understanding that:

- a) Our bid will be subject to verification, by DTC/RITES, of all information submitted for qualification at the time of bidding;
- b) DTC reserves the right to:
  - Amend the scope of work under this project; in such event, bids will only be called from qualified bidders who meet the revised requirements; and
  - Reject or accept any application, cancel the qualification/Bid process, and reject all applications; and
- c) DTC shall not be liable for any such actions and shall be under no obligation to inform the Applicant of the grounds for them.

Appended to this application, we give details of the participation of each party, including capital contributions and Profit and Loss arrangements, as per requirements of the RFQ Document.

- 3. We confirm that in the event of our bid is successful resulting in award of contract, the same will be:
  - a) Signed so as to legally bind all partners jointly and severally; and
  - b) Submitted with a consortium/joint venture agreement providing the joint and several liability of all partners/

Consortium members in the event contract is awarded to us

4. As a Lead firm, we would have a minimum of 26% equity or profit sharing participation in the Joint venture/ Consortium
5. We confirm that we agree with the terms and conditions provided in RFP/RFQ and the Concession agreement. The RFQ and RFP submitted by us shall be valid for the period of 120 days from the last date of submission.
6. The Bid Security of Rs. 15,000,000 (Rupees fifteen million) in the form of Demand Draft in favour of CMD, DTC payable at Delhi is enclosed herewith.
7. The undersigned declares that the statements made and the information provided in the duly completed application are complete, true, and correct in every detail.

Signed
Name
For and on behalf of (name of Bidder) OR For and on behalf of (name of Consortium / Joint venture )

# REQUEST FOR QUALIFICATION

## Appendix 2

### General & Organisational Information

All individual firms and all members of a Consortium are requested to complete the information in this form.

**1. Firm Particulars (for each firm in case of Joint Venture/Consortium)**

No.	Particulars
1.	Name of Firm
2	Head office address:
3	Contact Person:  Telephone:
4.	Fax: E-mail:
5.	Place for incorporation/registration: Year of incorporation/registration:

2. A Power of Attorney authorising the signatory of the bid to commit the Bidder(s).
3. Applicants shall submit the following information:
  - I. Legal Status
  - II. Place of registration
  - III. Principal business and place for business
4. A certified copy of Applicant's Current Memorandum and Articles of Association or other relevant constitutional documents and (where relevant) those of its immediate and all superior holding companies.
5. Attach Brochure and details of each Firm(s) pertaining to Ownership structure, business areas/activities, business growth revenue details, Experience details, staff details and capability statement.

# REQUEST FOR QUALIFICATION

## Appendix 3

### Financial Information

1. Annual Turnover (in Indian Rs or US Dollars.): For the last three financial years duly certified by the Statutory Auditors of the Company
2. The bidder shall have total present net worth (on the last day of the previous financial year) duly certified by the Statutory Auditors of the Company (The net worth as indicated in audited annual accounts only shall be considered).
3. Audited Financial reports for the last three years: balance sheets, profit and loss statements, summary of net cash accruals, gearing level, auditor's reports, etc. List them and attach certified copies.

# REQUEST FOR QUALIFICATION

## Appendix 4

### Experience Record

Bidders should provide information on projects undertaken as specified in eligibility criteria in NIT, in last three years.

The information should be submitted in separate sheets for each member of the consortium/Joint Venture in the format at Table 1 below.

**Table 1**

<b>Year</b>	<b>Name of Work</b>	<b>Name of Client with contact details</b>	<b>Contract No. and Date</b>	<b>Value of Contract in Rs.</b>	<b>Date Started</b>	<b>Date Completed</b>	<b>Role of Bidder and Remark</b>

**FORMAT OF PARENT COMPANY GUARANTEE**

Brief Description of Contract  
\_\_\_\_\_  
Name and Address of Owner  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(together with successors and assigns.)

\_\_\_\_\_ (hereinafter called the "Contractor") is submitting an offer in response to Owner's Request for Proposal and that the conditions of Owner's Request for Proposal require Contractor's offer to be supported by a parent company guarantee.

In consideration of the Owner awarding the Contract to the Contractor, we, \_\_\_\_\_, irrevocably and unconditionally guarantee to Owner as a primary obligation, the due performance of all the Contractor's obligations and liabilities under the contract, including the Contractor's compliance with all its terms and conditions according to their true intent and meaning.

If the Contractor fails to so perform his obligations and liabilities and comply with the terms and conditions of the Contract, we undertake to indemnify the Owner, on demand in writing by the Owner, against and for all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable under the Contract.

This guarantee shall be effective when the Contract becomes effective. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if the Owner enters into the contract with a person other than the Contractor, this guarantee shall become void and ineffective. This guarantee shall continue in full force and effect till such time it is confirmed by the Owner, in writing, that all the Contractor's obligations and liabilities under the Contract have been discharged.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Owner and the Contractor from time to time. We hereby authorize them to agree to any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other

indulgence whatsoever by the Owner to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Owner, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the laws of India.

Any dispute or difference under this guarantee shall be referred for arbitration of the Chairman-cum-Managing Director of the Owner, and in case he is unable to so act, by any person nominated by him. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996. Any award made pursuant thereto shall be final and binding on us.

We confirm that we shall pay the amount demanded by the Owner pursuant to this guarantee notwithstanding the reference of any dispute relating thereto to arbitration as stipulated above.

We confirm that the benefit of this guarantee may be assigned in such manner as may be deemed appropriate by the Owner.

Date: \_\_\_\_\_  
\_\_\_\_\_

Signature:

**FORMAT FOR MEMORANDUM OF UNDERSTANDING (MOU)**

(On Non – judicial stamp paper of Rs 100/- or if in India or such equivalent document duly attested by Notary Public)

**This Memorandum of Understanding (MoU)** entered into this \_\_\_\_ day of \_\_\_\_ 2009 at \_\_\_\_\_

Among

M/s \_\_\_\_\_ (hereinafter referred to as"\_\_\_\_\_") and having registered office at \_\_\_\_\_ **Member of the First Part and the Lead Partner**

And

M/s \_\_\_\_\_ (hereinafter referred to as"\_\_\_\_\_") and having registered office at \_\_\_\_\_ **Member of the Second Part**

And

M/s \_\_\_\_\_ (hereinafter referred to as"\_\_\_\_\_") and having registered office at \_\_\_\_\_ **Member of the Other Part**

The expressions of -----and ----- (which expression shall unless repugnant to the context or meaning thereof mean and indicate its successors and assignees) shall collectively be referred to as" The Consortium" and / or "the Members" as the case may be and individually as "the Member"

**WHEREAS** Delhi Transport Corporation (herein after called "Owner") has invited Global Bids for Construction, Operation, Maintenance and transfer of Bus-Q-Shelters on BOT basis (name of the work) (herein after called the "Project").

**AND WHEREAS** the Members have studied the Bid documents and had discussions for formation of a Consortium / JV for jointly bidding for the said Project for implementation, Operation, Maintenance and transfer of the Project (in case successful) and have reached an understanding on the following points with respect to the Members' rights and obligations towards each other and their working relationship.

**IT IS HEREBY AS MUTUAL UNDERSTANDING OF THE MEMBERS AGREED AND DECLARED AS FOLLOWS:**

That the Members will jointly submit the Bid Proposal for the said Project, execute and implement (in case successful) the same as per the terms & conditions, specifications and other obligations as per the Agreement with the Owner.

M/s ----- shall be the Lead Member of the CONSORTIUM / JV for all intents and purpose and shall:

be authorized for all or any of the acts, deeds or things necessary or incidental for submission of the offer, responding to queries and submission of information/ documents, execute and implement (in case successful) the Project as per the terms & conditions, specifications and other obligations as per the Agreement with the Owner with regard to the same on behalf of the consortium

represent the Consortium in its dealing with the Owner and receive instructions for and on behalf of any or all Members of Consortium

All Members of the Consortium / JV shall be jointly and severally liable for the execution and due performance of the contract with the Owner in accordance with the contract terms

All members of the consortium/JV shall be bound by all acts, representations, deeds and things of the lead member with respect to the Bid/Project.

**ROLES AND RESPONSIBILITIES**

Following distribution of responsibilities will be followed in the event of the CONSORTIUM Proposal is accepted by Owner.

<b>Sl. No.</b>	<b>Activities</b>	<b>Responsibilities</b>

That, in case successful, M/s\_\_\_\_\_,and M/s\_\_\_\_\_, (the Members of the Consortium / JV) will carry out all responsibilities as Contractor in terms of the Agreement with the Owner and have the following share for the execution & due performance of the Contract with the Owner for the said Project

Name of Members	% of share
1. M/s.	
2. M/s.	
3. M/s.	

That this MoU shall be governed in accordance with the laws of India and Indian courts shall have exclusive jurisdiction to adjudicate disputes arising from the terms herein.

That this MOU shall remain valid for the period of validity of the Offer submitted by the Consortium / JV and in case successful, till signing of the detailed Consortium Agreement for the due performance of the Contract with the Owner for the said Project.

In witness whereof the Parties affirm that the information provided is accurate and true and have caused this MoU to be duly executed on the date and year above mentioned.

**Signed by**

1. First Party
2. Second Party
3. Other Party

**Witness:**

- 1.
- 2.
- 3.

**DECLARATION BY THE BIDDER**

(Affidavit on Non-Judicial Stamp Paper of Rs 10/- duly attested by Notary/Magistrate)

This is to certify that we, M/s -----, in submission of this Bid confirm that:

- i) We have not made any misleading or false representation in the forms, statements and attachments in proof of the qualification requirements.
- ii) We do not have record of poor performance such as abandoning the work, not properly completing the contract, inordinate delays in completion , litigation history or financial failures etc.
- iii) Business has never been banned with us by any Central / State Government Department / Public Sector undertaking or Enterprise of Central / State Government
- iv) We have submitted all the supporting documents and furnished the relevant details as per prescribed format
- v) The information and documents submitted with the Tender by us are correct and we are fully responsible for the correctness of the information and documents submitted by us.
- vi) We understand that in case of any statement/information/document furnished by us is found to be incorrect or false, our Bid Security in full will be forfeited.

Seal, Signature and Name of Authorised signatory

## Appendix 8

### CHECK LIST

Sl. No	Article No.	Description	Remarks
<b>Instruction to Bidders ( Outer Envelope)</b>			
1	A5 -1	The RFP Document downloaded from website (should accompany with Demand Draft of Rs 10,000/- as document package charges)	Yes/No
2	A 15	Bid Documents and amendments/clarifications are submitted duly signed on all pages	Yes/No
<b>Bid Security (Envelop A1)</b>			
3	A 8	Bid Security (Envelop A1) for Rs. 15 Million is submitted in required format	Yes/No
<b>Qualification Proposal (Envelope A2)</b>			
1	Appendix 1	Letter of Application	Yes/No
1	B.1.1	In case of Joint venture /consortium the lead partner (and strategic partner, if required) should have minimum stake of 26%	Yes/No
2	B.1.2.1 & Appendix 3	Annual Turnover – Statement duly certified	Yes/No
3	B.1.2.1 & Appendix 3	Net Worth - Statement duly certified	Yes/No
4	Appendix 3	Audited Annual Reports for all members for last 3 years	Yes/No
5	B.1.2.2 & Appendix 4	Expérience information	Yes/No
7	Appendix 2	Firm Particulars, Ownership details, Contact information	Yes/No
8	Appendix 2	Article of Association and Memorandum, Details of registrations etc	Yes/No
9	Appendix 4	General Experience Record	Yes/No
10	Appendix 5	Parent company Undertaking	Yes/No
11	Appendix 6	MOU for Consortium/JV	Yes/No
12	Appendix 7	Declaration by the Bidder	Yes/No
12	B.4.3.5 Appendix 2	A power of attorney, authorizing the signatory of the Bid to commit the Bidder	Yes/No
<b>Technical Proposal (Envelope A 3)</b>			
1	C-4-1.1	Organisation Structure during construction, operation & maintenance	Yes/No

Sl. No	Article No.	Description	Remarks
2	C-4-1-2	Construction schedule	Yes/No
3	C-4-1-3	Operation Schedule	Yes/No
4	C-4-1-4	Maintenance Schedule	Yes/No
5	C-4-1-5	Employment Schedule	Yes/No
6	C-4-1-6	Design Concept & Details	Yes/No
<b>Financial Proposal (Envelope B)</b>			
7	C-2	Table 1 Table 2 Table 3 Table 4 Appendix 9 (Given in Financial Bid – RFP Part C)	Yes/No Yes/No Yes/No Yes/No Yes/No

- Note:** i. Only one figure shall be quoted for in Appendix – 9.
- ii. Copy of Check List shall be enclosed with Outer Envelope, Envelope A1, A2, A3 and B as indicated.

***PART C***  
***REQUEST FOR PROPOSAL(RFP)***

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## **C-1 APPRAISAL OF THE DESIGN**

### **1.1 Design Description**

The conceptual design has been selected and approved by DTC and the drawing of which has been made the part of the tender documents. Minimum size of Bus-Q-Shelter is 9.00 m x 2.00 m and maximum size is 9.00 m x 3.00 m, the shelter size of 9.00 m x 2.00 m is applicable only where width of footpath required for Shelter of size 9.00 m x 3.00 m is not available. The detailed specifications have also been made the part of the tender documents as Schedule G of the Draft Concession Agreement.

The advertisement area is also indicated on the drawings and Article 4 of Draft Concession Agreement.

The Concessionaire is allowed to defer placement of panels which are mandatory for holding advertisements on top of BQS. COD as per clause 9.3 (e) of Draft Concession Agreement can be issued for BQS without the top panels but which are otherwise completed as per Concept Design, so that payment of Concession Fee to DTC is commenced.

The Bidder shall submit his Bid after he evaluates the above factors. Alternatives to Conceptual design are not permitted. Subject to the Drawing and specifications contained in the Draft Concession Agreement and approval by the Independent Engineer, sizes of the structural members can be rendered more economical by the Concessionaire.

In addition, the bidders have to provide "Rain Water Harvesting" at all possible locations. Solar Panels and Batteries for lighting in BQS and for the advertisements is preferred option.

Operation of BQS lighting on solar power shall attract rebate as mentioned in clause 11.4 of Draft Concession Agreement.

Example: 100 BQS operated on solar power

(a) During the first year from date of signing of Concession Agreement i.e., say October 2009 to September 2010 rebate attracted is Rs  $(10,000 \times 100) / 3 =$  Rs 3,30,000/- per month.

(b) during second year from date of signing of Concession Agreement i.e., October 2010 to September 2011 when Fee as per quote is Rs 135,60,000 the rebate shall be as follows:

Case of minimum fee: Rebate is Rs  $(10,000 \text{ per month} \times 100 \text{ BQS} \times 3 \text{ months})/3 = \text{Rs } 10,00,000.$

**or**

Rebate is Rs  $100/400 \times (135,60,000/3) = \text{Rs } 11,30,000.$

Facilities for disabled/handicapped persons are mandatory. Digital clock of superior quality shall be installed and the Concessionaire shall be responsible for display of correct time. Photo-luminous paint meeting the relevant BIS specifications as applicable to road traffic signs will be used on the BQS name plate on the front facia (below the advertisement board) for better visibility at night. To facilitate access to all commuters a ramp not steeper than 1:12 will be provided from the road level to the BQS on atleast one side as shown in the Drawing which forms part of the Draft Concession Agreement.

## **1.2 Planning**

The Concessionaire shall construct structurally sound and aesthetically appealing facilities as per plans approved by the DTC. However, in areas where deviations are necessitated due to space or location constraints, the DTC may consider permitting such variations. The requisite services as may be essential from the users' points of view would be provided by the Concessionaire.

## **1.2 Scope Of Works**

The project scope would include the following major activities:

### **(1) Construction Works**

This includes the following:

- (a) Design of BQS meeting the requirement and specifications.
- (b) Construction of modern user and environment friendly Bus-Q-Shelters as per the design/drawings and specifications approved by DTC.

Non completion of BQS within stipulated time period shall invite penalty as detailed in concession agreement.

**(2) Operational Management**

This includes Bus-Q-Shelters operations i.e. regular cleaning of the shelter and its surrounding areas, functioning of user amenities, functioning of clock, display and updating of route maps and commuter information, availability of basic infrastructure requirements such as electricity, proper drainage, waste removal, etc. and any other essential task/activities would form part of operations.

Display of GPS/GSM or other technology based digital information system, if installed, will not be responsibility of the concessionaire under this agreement.

**(3) Maintenance Works**

It will include routine and periodic maintenance works in the Bus-Q-Shelters but shall not be limited to the following:

- (a) Civil, electrical and mechanical works for the Bus-Q-Shelters
- (b) Furniture and Equipment maintenance and servicing

**(4) Transfer of BQS**

On completion of concession period or prior termination of the contract, all the BQS shall be transferred to DTC as provided in the Concession agreement.

The bidder shall be solely responsible for employing adequate staff to perform the obligations as provided in concession agreement. The successful bidder shall be solely responsible for complying with all the applicable laws as well as for paying the salaries, wages, dues, PF & ESI etc. of such employees. No such employee shall be deemed to be employee of DTC for any purpose whatsoever.

## 1.4 Services to Be Provided

- i. **Water Supply Arrangement:** The Concessionaire shall arrange adequate water for general cleanliness of the Bus-Q-Shelter.
- ii. **Electricity Supply:** The Concessionaire shall ensure adequate electricity supply for proper lighting of the Bus-Q-Shelter and advertisements. DTC shall only facilitate the concessionaire for getting an electricity connection, However the concessionaire shall be solely responsible for arranging and providing the same and bear all costs for connection as well as regular payment of necessary charges. Concessionaire shall provide solar lighting at BQS (if opted).
- iii. **Landscaping:** The Concessionaire shall put flowering plants and other shrubs around each Bus-Q-Shelter to the extent possible on both sides as per the approval of the DTC and maintain the same in good condition at all times.
- iv. **Cleaning of the Bus-Q-Shelter:** The Concessionaire shall ensure regular cleaning of the Bus-Q-Shelter.
- v. **Garbage Disposal:** The Concessionaire shall install litterbins as specified near the Bus-Q-Shelter and disposal of the collected waste shall be the responsibility of the Concessionaire.
- vi. **Safety & Security:** The safety and security of the Bus-Q-Shelter rests with the Concessionaire. The Concessionaire shall maintain security personnel, gadgets as required as part of the maintenance services.
- vii. Any other work as needed and agreed upon jointly by DTC and the concessionaire.

## C-2 PROJECT COST

The project cost would include the cost of construction comprising civil, electrical and other costs and the recurring annual cost associated with operation and maintenance of the BQS over the concession period. The concessionaire shall also pay required taxes such as service tax, advertising tax, entertainment tax, all local taxes etc.

**C-3 REVENUE GENERATION SOURCES**

Advertisement is the only source of revenue from Bus-Q-Shelters.

**Bidder is expected to make his own estimates of revenue before submitting their Proposals. No Claim shall be entertained in this regard at any stage.**

**C-4 DETAILS TO ACCOMPANY RFP**

**4.1 Technical Proposal**

The Bidder shall submit the following along with the Proposal in sufficient details to enable evaluation of their grasp of the work and ability to execute it within the Time of Completion.

**4.1.1 Organizational Structure during Construction, Operation and maintenance period**

The Bidder shall submit their proposed organizational structure during Construction, operation and maintenance stages commensurate with targeted Project Completion Schedule and O & M manual which will form the basis of Employment Schedule. The Bidder shall also enclose CV's of the key persons including tasks assigned to them.

**4.1.2 Construction Schedule**

This shall consist of a detailed program of construction with supporting calculations, deployment of man and machine showing bar chart in sufficient details, beginning and completion of various sections of Work and the date and order in which the Bidder Proposes to carry out different parts of the Works. This construction schedule shall form the basis for preparation of detailed CPM schedule to be furnished after the award of the Concession. The schedule shall, as a minimum, show the following details

- (a) The requirement of taking over of sites in lots of 25 Bus Q Shelters
- (b) Schedule of all major activities including procurement, material testing, construction activities etc.
- (c) Completion of each lot of 25 Bus Q Shelters.

It may be noted that the site handing over shall be in lots of 25 Bus Shelters at a time The entire work of construction of the BQS has to be completed within 48 weeks from the Commencement Date including testing of the same.

#### **4.1.3 Operation Schedule**

The operational schedule will consist of the procedures and practices to be followed in keeping the facility working and the processes followed for operations. Daily operational schedules for the BQS including housekeeping, security/ watch ward, lease agreement monitoring will form part of this schedule

#### **4.1.4 Maintenance Schedule**

Maintenance schedules would contain time schedules and scope of maintenance work to be taken up, under the routine maintenance and regular maintenance.

#### **4.1.5 Employment Schedule**

This shall consist of a chart showing deployment of monthly manpower (including skilled and unskilled labour of various categories) commensurate with the Construction Schedule and the Operation and Maintenance schedule.

#### **4.1.6 Patent Right**

Bidder shall have no rights what so ever regarding patent etc. of the design and nothing shall be claimed from DTC in this regard.

#### **4.1.7 Undertaking for early completion**

In order to secure the benefit of the score of five points in the technical score, the Bidder shall fill the undertaking at Form 1.

#### **4.2 Financial Proposal:**

**No details related to financial proposal is to be included in technical proposal.** The bidder would submit the financial Proposal giving the following:

- **Cost estimates of Bus –Q- Shelters**

The bidder shall prepare a cost (item wise) and cash flow estimates for executing the work, along with a break-up of

the O & M expenses for the Concession Period (Table 1 and 2). The above information is required as backup and will not be used for evaluating the financial proposal.

- After handing over of site by DTC the concessionaire shall get upto 10% of the BQS as identified by DTC removed at his cost and deposited with DTC for future use such as replacement of damaged BQS in non-BOT areas. In respect of the balance BQS the Concessionaire shall pay the material value at the rate of Rs 10,000/- per BQS to DTC irrespective of its type and condition and then get the BQS removed at his cost and dispose the BQS as deemed fit and proper. This cost component should be included in their cash flow.

- **Revenue Generation Estimates**

The Bidder shall indicate the estimated Revenue Generation during the concession period (Table 3)

- **Concession Fee**

The Concession Fee is governed as follows:

(a) During the first year of Concession period i.e., first year from date of signing of Concession Agreement Rs 10,000/- per BQS per month for those BQS for which provisional/final COD has been issued

(b) during second year of Concession period i.e., the second year from date of signing of Concession Agreement, the higher of the two following amounts:

(i) Rs 4.00 million per month for 400 BQS, to be increased or decreased at the rate of Rs 10,000/- per BQS per month depending on the actual number of BQS operated

or

- (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue
- (c) during subsequent years the higher of the two following amounts:
  - (i) amount as in (b) (i) above increased at 10% per year w.r.t previous year
  - or
  - (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue.

Accrued revenue is defined as “the gross amount billed by the Concessionaire to its Agent/Client, as the case may be, in an arms length transaction.”. An ‘arms length transaction’ is defined as “a transaction in which the parties (a) are unrelated and unconnected and have no overt or covert common interest, (b) are dealing from equal bargaining positions and (c) neither party is subject to the other’s control or dominant influence. Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.”

At the end of each quarter, along with Audited Financial Statements, the Concessionaire shall furnish to Owner DTC a certificate to the effect that it has not entered into any transaction, in whatsoever form, with the Agents/Clients other than those that fall in the category of an ‘arms length transaction’.

During the first year from signing of Concession Agreement Concession fee shall be paid monthly. During subsequent currency of the Concession Agreement, the minimum concession fee shall be paid quarterly in advance as per clause 11.1 of Draft Concession Agreement and additional fee, if any as per the quote of the Concessionaire, shall be paid within thirty days from the end of the quarter.

**Example:**

Financial bid as per Appendix 9 of RFP is 30% of accrued revenue.

**Concession fee is computed as follows:**

- (a) During the first year from date of signing of Concession Agreement i.e., say October 2009 to September 2010 Rs 10000 per BQS per month x 400 BQS operated = Rs 40,00,000 per month.

The fee of Rs 40,00,000 for say October 2009 shall be paid not later than 10<sup>th</sup> of October 2009.

(b) during second year from date of signing of Concession Agreement i.e., October 2010 to September 2011 when accrued revenue for October 2010 is Rs 150,00,000, November 2010 is Rs 142,00,000 and December 2010 is Rs 160,00,000 the higher of the two following amounts:

(i) Rs 40,00,000 per month for 400 BQS operated x 3 = Rs 120,00,000

**or**

(ii)  $30/100 \times \text{Rs } 150,00,000 + 30/100 \times \text{Rs } 142,00,000 + 30/100 \times \text{Rs } 160,00,000 = \text{Rs } 135,60,000$

i.e., Rs 135,60,000

For say quarter October 2010 to December 2010 Rs 120,00,000 shall be paid not later than 10<sup>th</sup> of October 2010 and balance Rs 15,60,000 shall be paid not later than 30<sup>th</sup> January 2011.

(c) during third year from date of signing of Concession Agreement i.e., October 2011 to September 2012 when accrued revenue for October 2011 is Rs 140,00,000, November 2011 is Rs 142,00,000 and December 2011 is Rs 150,00,000 the higher of the two following amounts:

(i) Rs 44,00,000 per month for 400 BQS operated x 3 = Rs 132,00,000

**or**

(ii)  $30/100 \times \text{Rs } 140,00,000 + 30/100 \times \text{Rs } 142,00,000 + 30/100 \times \text{Rs } 150,00,000 = \text{Rs } 129,60,000$

i.e., Rs 132,00,000

For say quarter October 2011 to December 2011 Rs 132,00,000 shall be paid not later than 10<sup>th</sup> of October 2011.

and so on till end of Concession Period.

The bidder shall quote the percentages as in (b) in the prescribed format given in **Appendix - 9**.

Submission of RFP (Technical and Financial) by fax, e-mail or other electronic means will not be accepted. It is the responsibility of Bidder alone to ensure that its RFP (Technical and Financial) is delivered at the prescribed address by the stated deadline.

## **TECHNICAL PROPOSAL**

### **Form 1: Undertaking For Early Completion**

We undertake to complete the construction and secure provisional/final COD of all 400 BQS offered by DTC not later than ----- weeks which period is less than the scheduled completion date of 48 weeks from the date of signing of Concession Agreement. The above period shall be modified in proportion to any change in scope in accordance with Article 13 of Draft Concession Agreement. We undertake to pay the penalty as prescribed in Article 9.2 © of Draft Concession Agreement for delay as reckoned with respect to the above period of completion offered by us.

**Authorised Signatory  
(with Stamp of the concessionaire)**

## FINANCIAL BID

**Table 1:Construction Price Schedule**

*(Item-wise break up of construction cost to be indicated under the following heads)*

Sl. No.	Brief Item Description	Unit	Quantity	Rate (Rs.)	Amount (Rs.)	Sub Total (Rs. Million)
1	<b>CIVIL WORKS</b>					
	<b>Sub total for Civil Works</b>					
2	<b>Electrical Works (including Solar Panels etc.)</b>					
	<b>Sub total for Electrical Works</b>					
3	<b>Rain Water Harvesting and Horticulture Works</b>					
	<b>Sub total for Rain water Harvesting and Horticulture Works</b>					
A	<b>TOTAL CONSTRUCTION (1+2+3)</b>					
4	<b>Pre-Operative Expenses</b>					
5	<b>Interest During Construction (IDC)</b>					
6	<b>Contingencies</b>					

7	Taxes, Works Tax etc					
8	Supervision including Independent Engineer Costs					
9	Any Other Cost Head					
<b>B</b>	<b>TOTAL LANDED PROJECT COST (A+4+5+6+7+8+9)</b>					

## FINANCIAL BID

**Table 2: Operation and Maintenance Price Schedule**

S. N.	Item	Unit	Quantity	Rate (Rs.)	Amount (Rs.)
1	Operation and Maintenance cost of BQS and facilities (equipments, tools & plants, spares & inventory etc)	year			
2	Operation and Maintenance cost towards Electricity Charges	year			
3	Operation and Maintenance cost towards Manpower deployed	year			
4	Operation and Maintenance cost towards Administration	year			
5	Operation and Maintenance cost towards Security	year			
6	Any Other Costs	year			
	<b>TOTAL O &amp; M COST (Schedule 2)</b>				

## SUMMARY OF COSTS

S. No.	Schedule	Cost (Rs. Million)
1	Total Landed Project Cost (Table 1)	
2	Total O & M Cost (Table 2)	
	Grand Total	

## FINANCIAL BID

**Table 3: Estimate of Accrued Revenue**

<b>Year</b>	<b>Estimated Average Monthly Accrued Revenue (Rs million)</b>	<b>Estimated Yearly Accrued Revenue (Rs million)</b>
First Year of Concession Period		
Second Year of Concession Period		
Third Year of Concession Period		
Fourth Year of Concession Period		
Fifth Year of Concession Period		
Sixth Year of Concession Period		
Seventh Year of Concession Period		
Eighth Year of Concession Period		
Ninth Year of Concession Period		
Tenth year of Concession Period		

Accrued revenue is defined as “the gross amount billed by the Concessionaire to its Agent/Client, as the case may be, in an arms length transaction, An ‘arms length transaction’ is defined as “a transaction in which the parties (a) are unrelated and unconnected and have no overt or covert common interest, (b) are dealing from equal bargaining positions and (c) neither party is subject to the other’s control or dominant influence. Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.”

## FINANCIAL BID

**Table 4: Minimum Concession Fee**

Year	Minimum Concession Fee during the Concession Period (Rs million)	
	Monthly	Yearly
First Year of Concession Period	Rs 10000/- per BQS per month is payable for those Bus Queue shelters for which provisional COD/COD has been obtained from Independent Engineer i.e., Rs 4 million	Rs 10000/- per BQS per month is payable for those Bus Queue shelters for which provisional COD/COD has been obtained from Independent Engineer i.e., Rs 48 million.
Second Year of Concession Period	4.00	48.00
Third Year of Concession Period	4.40	52.80
Fourth Year of Concession Period	4.84	58.08
Fifth Year of Concession Period	5.32	63.89
Sixth Year of Concession Period	5.86	70.28
Seventh Year of Concession Period	6.44	77.30
Eighth Year of Concession Period	7.09	85.03
Ninth Year of Concession Period	7.79	93.54
Tenth year of Concession Period	8.57	102.89
<b>Total</b>		<b>699.81</b>

## FINANCIAL BID

### Appendix 9

#### FORMAT FOR CONCESSION FEE

We agree to pay as follows:

- (a) During first year from date of signing of Concession Agreement monthly Concession Fee of Rs 10000/- per BQS per month is payable for those Bus Queue shelters for which provisional COD/COD has been obtained from Independent Engineer.
- (b) During second year from date of signing of Concession Agreement monthly Concession Fee as -----% of monthly accrued revenue subject to minimum of Rs 4.00 million per month and
- (c) During subsequent years monthly Concession Fee as in (b) above subject to minimum of Rs 4.00 million per month increased at 10% w.r.t previous year.

**Authorised Signatory  
(with Stamp of the concessionaire)**

**Note:**

- a. Only one figure (in percentage) is to be quoted. Quoting of more than one figure will make the bid liable for rejection.
- b. The figure quoted should be in multiples of 0.5%
- c. In case the highest bid being equal in respect of more than one bidder, the financial offer shall be submitted again by the highest bidders to break the tie (not lower than original bid).

***PART D***  
***DRAFT CONCESSION AGREEMENT***

**DRAFT CONCESSION AGREEMENT**

**FOR**

**CONSTRUCTION, OPERATION AND  
MAINTENANCE OF  
ABOUT 400 BUS QUEUE SHELTERS  
ON BOT BASIS**

**----- 2009**

**DELHI TRANSPORT CORPORATION**

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|

## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this the ----- day of --  
----- Month ----- Year at New Delhi.

### BETWEEN

THE Chairman and Managing Director (CMD), Delhi Transport Corporation, having its Head Office at Indraprastha Estate, New Delhi 110002 through Chief General Manager (Tech), D.T.C, in his executive capacity (hereinafter referred to as "DTC" or the "Concessions Authority", which expression shall include its successors and assigns ).

### AND

M/s -----, a company incorporated under the Companies Act, 1956, having its registered office at ----- (hereinafter referred to as the "Concessionaire" or the "Consortium", "Company", which expression shall include its permitted successors and assigns).

### WHEREAS

- A. DTC has conceived and is desirous to implement a project envisaging construction, operation and maintenance and transfer of approximately 400 Bus-Q-Shelters (more particularly described as per list in Schedule 'A') and hereinafter referred to as "the Project" with private sector participation on Build, Operate and Transfer (BOT) basis ;
- B. DTC invited tenders from eligible firms / companies / consortium/ joint venture for implementing the Project;

In response to the aforesaid invitation for tenders, DTC received bids from several bidders including from the Consortium through the Lead Partner of the Consortium Company for implementing the Project.

- C. DTC, after evaluating the aforesaid bids, accepted the bid submitted by the Consortium and issued the Letter dated ----- to the Consortium through Lead Partner `-----`, which was duly acknowledged by -----.
- D. In accordance with the said tender of DTC and bid submitted by the Consortium, DTC has agreed to grant to the Concessionaire the Concession (as hereinafter defined) for the Concession Period, to construct, operate and maintain the Project and at the end of the Concession Period to transfer the Bus-Q- Shelters to DTC, on the terms, conditions and covenants hereinafter set forth in this Agreement. The Consortium has now named itself as -----.

- E. The Concessionaire, after due diligence, hereby accepts the Concession granted and undertakes to implement the Project in terms of this Concession Agreement .

NOW THEREFORE in lieu of the mutual promises and considerations set out herein and annexed alongwith, DTC and the Concessionaire (each individually a "Party" and collectively "Parties" hereto) hereby agree to be bound by the provisions of this Agreement ,

In witness whereof the parties have executed this Agreement as of the date month and year first above written.

For and on behalf of  
Delhi Transport Corporation

For and on behalf of  
-----

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 DEFINITIONS

In this Agreement , the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meanings hereinafter respectively assigned to them:

**"Accounting Year"** means the financial year (Financial year for the purpose of turnover and net worth is acceptable as per the bidder's financial year. But the financial year for other purposes including execution/implementation/ operation and maintenance of the work pertaining to this tender will be as per the DTC's financial year i.e. from 1st April to 31st March)

**"Agreement "** means this Agreement including Schedules 'A' through 'L' hereto, and any amendments thereto made in accordance with the provisions of this Agreement .

**"Applicable Laws"** means all laws, promulgated or brought into force and effect and all Rules and Regulations made and all Notifications and Guidelines issued there under by the Government of India, Government of National Capital Territory of Delhi, MCD, DTC, Statutory Authorities and other local bodies including all judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement .

**"Applicable Permits"** means all clearances, permits, authorisations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project and to provide the Project Facility in accordance with this Agreement .

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

**“Change in Law”** means the occurrence of any of the following after the date of this Agreement :

- a. the enactment of any new Indian law;
- b. the repeal, modification or re-enactment of any existing Indian law:
- c. the commencement of any Indian law which has not entered into effect until the date of this Agreement ;
- d. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement ; or
- e. any change in the rates of any of the taxes.

**“COD”** means the Commercial Operations Date of the Project which shall be the date on which the Independent Engineer has issued the Completion Certificate or the Provisional Certificate upon completion of construction of the Project and which shall, subject to the provisions of this Agreement, be not later than 4 weeks plus 48 weeks from the date of signing of this Agreement .

**“Commencement Date”** means the date on which the physical possession of first lot of 25 BQS such that BQS in each lot are at contiguous locations and location of the stretch of each lot is decided by DTC is handed over by DTC to the Concessionaire which shall not be later than 4 weeks from the date of this Agreement.

The handing over of sites shall be linked to agreed construction schedule.

**“Completion Certificate”** means the certificate issued by the Independent Engineer pursuant to Article 9.3 (d).

**“Concession”** shall have the meaning ascribed thereto in Article 2.1.

**“Concession Fee”** is the amount payable by the concessionaire to DTC for grant of concessions under this Agreement as given in Schedule I.

**"Concession Period"** means the period as applicable specified in Article 2.2.

**"Concessionaire"** means ----- shall include its successors and permitted assigns expressly approved by DTC.

**“Consortium”** means the consortium consisting of (i) AAAA (ii) BBBB and (iii) CCCC formed/acting pursuant to the Memorandum of Understanding dated ----- (Schedule ‘J’) entered into by them, for the purpose of bidding for the Project and in the event of being successful to implement the Project as Concessionaire by forming a Company under Companies Act 1956.

**"Construction Works"** means all works and tasks / activity necessary to achieve commercial operation of the Project in accordance with this Agreement .

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default.

**"Dispute"** shall have the meaning ascribed thereto in Article 19.1.

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 19.

**"Drawings"** means all of the drawings, designs, calculations and documents pertaining to the Project as set forth in Schedule 'F' and shall include "as built" drawings of the Project.

**"DTC"** means Chairman cum Managing Director (CMD) of Delhi Transport Corporation. CMD / DTC or any other officer authorized by CMD will be the legal authorized officer for signing all legal documents and giving all kind of notice, change of location of the BQS, addition or deletion of BQS and other works relating to BOT-IV.

**"DTC Engineer"** means the Engineer designated by DTC under written communication to the Concessionaire, to undertake, perform and carry out such functions, duties, responsibilities, services and activities as set forth in Schedule 'E' hereto and elsewhere in this Agreement .

**"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets including situation leading to relocation of Bus Q Shelters.

**"Encumbrance"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having effect on the security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, and physical encumbrances and encroachments on the Project Site.

**"Equity"** means the sum expressed in Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any member of the Consortium or by any of its

shareholders to the Concessionaire for meeting equity component of the Total Project Cost.

**"Force Majeure Event"** shall have meaning ascribed thereto in Article 15.1.

**"Good Industry Practice"** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance by the Concessionaire of its obligations and in the operation and maintenance of the Project in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

**"Government Agency"** means the Government of India, the Government of National Capital Territory of Delhi, DTC, MCD or any State government or government department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

**"Implementation Period"** means the period beginning from the date of signing of Agreement and ending on the COD. The Implementation Period shall be the estimated construction period (not exceeding 48 weeks) plus a reasonable time (upto 4 weeks from date of signing of this Agreement) required by the Concessionaire for all preconstruction activities such as investigation/study, designing, obtaining necessary approvals etc..

**“Independent Engineer”** means the Independent Engineer appointed pursuant to Article 6.1.

**“Indirect Political Event”** shall have the meaning ascribed thereto in Article 15.3.

**“Maintenance Manual”** shall have the meaning ascribed to it in Article 9.5.

**"Maintenance Programme"** shall have the meaning ascribed to it in Article 9.6.

**"Material Adverse Effect"** means material adverse effect on (a) the ability of the Concessionaire to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement .

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

**“MCD”** means Municipal Corporation of Delhi

**“Minimum Maintenance Requirements”** means minimum maintenance requirements for the maintenance of the Project as set forth in Schedule ‘H’.

**“Non Political Event”** shall have the meaning ascribed thereto in Article 15.2.

**"O&M"** means the operation and maintenance of the Project during Operations Period including but not limited to functions of maintenance, collection and retention of Fees and charges and performance of other services incidental thereto.

**"O & M Expenses"** mean the expenses incurred by or on behalf of the Concessionaire, duly certified by its Statutory Auditors for all regularly scheduled and reasonably anticipated O&M functions during Operations Period, including, without limitation (a) all cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all franchise, excise, property, advertisement and all levies by government agencies other taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the Project/Project Facility at its full design capacity, (e) all repair, replacement and maintenance costs of the Project/Project Facility, and (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the Project according to the Specifications and Standards at its full design capacity.

**"Operations Period"** means the period commencing from COD and ending at the expiry of the Concession Period. However Bus Q Shelters for which provisional/final COD has been issued in lots of 25 (as provided in the Agreement ) shall be operated and maintained from date of issue of Provisional/final Certificate as above.

**"Parties"** means the parties to this Agreement collectively and "Party" shall mean either of the Parties to this Agreement individually.

**"Performance Security"** means the Performance Security for construction or Performance Security for operation and maintenance (and for payment of Concession Fee) as applicable in terms of Article 3.

**“Person”** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

**“Political Event”** shall have the meaning ascribed thereto in Article 15.4.

**"Project"** means the project described in Schedules ‘A’ and ‘B’ which the Concessionaire is required to design, engineer, procure, construct, operate, maintain and transfer in accordance with the provisions of this Agreement .

**“Project Agreement s”** means this Agreement .

**"Project Assets or Project Facilities"** means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Project Site in the form of license, right of way or otherwise, (ii) tangible assets such as civil works including foundations, embankments, pavements, drainage works, lighting facilities, sign boards, electrical works for lighting on the Project, equipment for the Project.

**"Project Completion"** shall have the meaning ascribed thereto in Article 9.2.

**"Project Completion Schedule”** means the progressive Project milestones set forth in Schedule ‘C’ for the implementation of the Project.

**“Project Site”** means the Bus Stops particulars whereof are set out in Schedule ‘A’ on which the Project is to be implemented and the Project Facility is to be provided in accordance with this Agreement .

**"Provisional Certificate"** shall have the meaning ascribed to it in **Article 9.3(e)**.

**"Punch List"** shall have the meaning ascribed thereto in Article 9.3(e).

**"Scheduled Project Completion Date"** shall have the meaning set forth in Article 9.2(b).

**"Specifications and Standards"** means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule 'G' and any modifications thereof, or additions thereto as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by DTC.

**"Statutory Auditors"** means a reputed firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Concessionaire.

**"Steering Group"** means the Steering Group constituted pursuant to Article 7.1.

**"Termination"** means termination of this Agreement and the Concession hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement /Concession due to expiry by efflux of time to the Concession Period in the normal course

**"Termination Date"** means the date on which the Termination occurs which shall be the date on which Termination Notice (as per article 16.2) has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement .

**“Termination Notice”** means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement.

**“Termination Payment”** means the aggregate of the amounts payable by DTC to the Concessionaire under this Agreement upon Termination including Termination Payment receivable by the Concessionaire pursuant to Articles 15 and 16.

**“Tests”** means the tests to be carried out to determine the Project Completion and its certification by the Independent Engineer prior to commencement of commercial operation of the Project.

**“Total Project Cost”** means the lowest of the following:

- a Actual capital cost of the Project upon completion of the Project as certified by the Statutory Auditors; or
- b Total project cost as set forth in the tender Documents.

**“Transfer Date”** is the date of transfer of project facilities by the concessionaire to DTC on completion of concession period or on termination of Agreement.

## **1.2 Principle of Interpretation**

- a. The Article numbers, headings and marginal headings in this Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Agreement .
- b. Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any

organisations having legal capacity to sue and be sued in their names.

- c. Words importing the singular also include the plural and vice-versa where the context requires.
- d. Words importing one gender also include other gender.
- e. In case of ambiguities or discrepancies in this Agreement , the following shall apply;
  - (i) between two Articles of this Agreement , the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
  - (ii) between the Articles and the Schedules, the Articles shall prevail;
  - (iii) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
  - (iv) between the dimensions scaled from the drawings and their specific written dimensions, the latter shall prevail;
  - (v) between any value written in numerals and that in words, the latter shall prevail.

Any word not specifically defined herein shall have the same meaning as is given in the standard Oxford Dictionary, with reference to the context in which it is used.

**1.3 This Contract Agreement comprises of the following:**

- a. Notice Inviting Tender, Instructions to Bidders, Request for Qualification, Request For Proposal
- b. Bid as submitted by the Bidder
- c. Notice of Award
- d. Letter of Acceptance by the Bidder
- e. Concession Agreement

## ARTICLE 2

### CONCESSION AND PROJECT SITE

#### 2.1 GRANT OF CONCESSION

- a) Subject to and in accordance with the terms and conditions set forth in this Agreement, DTC hereby grants and authorises the Concessionaire to investigate, study, design, construct, operate and maintain the Project Facility and to exercise and/or enjoy the rights to collect revenue from displaying advertisements at earmarked locations on Bus Q Shelters as set forth in this Agreement (collectively “the Concession”). The Concessionaire shall pay prescribed Concession Fee to DTC for grant of above Concession.

**Stand Fee:** Any Stand fee paid by Bus operator(s) to DTC will not be part of concessionaire’s revenue and concessionaire has no right / claim over this.

- b) The title, interest, ownership and rights with regard to Bus-Q-Shelters constructed by the Concessionaire for DTC along with fixtures/fittings provided therein shall vest with the DTC except that these will be operated and maintained by the Concessionaire during the concession period as agreed in this Agreement. Title, interest in and ownership of land remains with the land owning agency.
- c) The Concessionaire is allowed to defer placement of panels which are mandatory for holding advertisements on top of BQS. COD as per clause 9.3 (e) of Draft Concession Agreement can be issued for BQS without the top panels but which are otherwise completed as per Concept Design, so that payment of Concession Fee to DTC is commenced.

## **2.2 CONCESSION PERIOD**

The Concession hereby granted is for a period of ten years extendible to fifteen years on mutual consent of the Owner and the Concessionaire on the same terms and conditions of the original Concession commencing from the date of signing of Agreement during which the Concessionaire is authorised to implement the Project and to operate and maintain the Project in accordance with the provisions hereof.

### **Provided that;**

In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the date of signing of Agreement and ending with the Termination Date.

## **2.3 ACCEPTANCE OF THE CONCESSION**

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project and to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement.

## **2.4 PROJECT SITE**

DTC hereby undertakes to handover to the Concessionaire physical possession of the Project Site (Bus-Q-Shelters) free from Encumbrance together with the necessary rights of way/way leaves for the purpose of implementing the Project in accordance with this Agreement but subject to the rights of DTC and the land owning agency. The handing over of the sites in lots of 25 BQS at a time such that BQS in each lot are at contiguous locations and location of the stretch of each lot is decided by DTC shall commence within 30 days from the date of this Agreement. The handing over of sites shall be linked to agreed construction schedule.

Handing over / taking over physical possession of the site (s) shall comprise the following stages:

- (a) batch-wise offer of sites to the Concessionaire by DTC
- (b) Joint Survey by DTC and Concessionaire of each site of the batch and
- (c) Preparation of site plan of each site by the Concessionaire based upon joint survey and its approval by DTC.

DTC confirms that upon the Project Site being handed over pursuant to the preceding para, the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at Concessionaire's costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

## **2.5 USE OF THE PROJECT SITE**

The Concessionaire shall not without prior written consent or approval of DTC use the Project Site for any purpose other than for the purposes of the Project/the Project Facility.

## **2.6 INFORMATION ABOUT THE PROJECT SITE**

The information about the Project Site set out in Schedule 'A' is provided by DTC in good faith and with due regard to the matters for which such information is required by the Concessionaire. DTC agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which DTC may now possess or may hereafter come to possess. DTC, however, makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site.

## **2.7 PEACEFUL POSSESSION**

DTC warrants that:

- (a) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to whomsoever for the use of Project Site or any part thereof for the project during the concession period except the payment of Concession Fee.
- (b) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement , remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person / Company claiming any right, title or interest in or over the Project Site or any part thereof DTC shall, if called upon by the Concessionaire, defend the Concessionaire against such claims and proceedings and also keep the Concessionaire indemnified against any direct loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge which shall be limited to depreciated cost of the BQS.

## **2.8 RIGHTS AND TITLE OVER THE PROJECT SITE**

- (a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement. However the concessionaire is not to sublet any of the site/facility or to subcontract whole or part of the work/facilities.
- (b) The Concessionaire shall allow access to, and use of the Project Site/ Project Facility for the authorities/agencies laying telegraph lines, electric lines or such other public purposes as DTC may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 30 days at a stretch at any location.
- (c) DTC is planning to provide suitable (such as GPS/GSM based) digital passenger information services in DTC Bus Q Shelters

located in different parts of Delhi. Such displays (including electronic advertisement rights on such displays) shall be provided and maintained by agencies selected by DTC at earmarked place. The concessionaire shall permit the same without any rights & claims. The proportion of size of route map and passenger information system shall be decided by DTC. DTC shall also have right to install other facilities including security and surveillance instruments like CCTV, information kiosks etc. as may be required under statute or by the order of the Govt. or by DTC. However, it shall be ensured that the area available for display of advertisements is not reduced from the area stipulated in Article 4 and visibility of the same is not hampered in any way.

- (d) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site and Project Facilities subject to Article 22 herein.

## **ARTICLE 3**

### **PERFORMANCE SECURITY**

#### **3.1 PERFORMANCE SECURITY**

The Concessionaire shall, as the Performance Security for due and punctual performance of its obligations during Construction and Operation, deliver to DTC, before or at the time of the execution of this Agreement a Demand Draft for Rs 20 (twenty) million in favour of CMD, DTC. In case a bidder who submitted bids for both packages is evaluated to be highest financial bidder in the both packages, then two separate demand drafts for Rs twenty million each as above shall be submitted in favour of CMD/DTC.

This amount shall be returned without interest to the Concessionaire 90 days after handing over of the BQS to DTC on expiry of Concession period. The performance Security shall be returned after deducting the claims if any.

#### **3.2 FRESH PERFORMANCE SECURITY**

In the event of appropriation of the Performance Security by DTC followed by issue of Intimation of Appropriation to Concessionaire in accordance with the provisions of Article 16, the Concessionaire shall within 30 (thirty) days of the Intimation of Appropriation furnish to DTC fresh Performance Security failing which DTC shall be entitled to terminate this Agreement in accordance with the provisions of Article 16. The provisions set forth in Article 3.1 above shall apply mutatis mutandis to such fresh Performance Security.

## ARTICLE 4

### REVENUE

#### 4.1 COLLECTION AND APPROPRIATION OF REVENUE FROM ADVERTISEMENT

i) Subject to the provisions of this Agreement , the Concessionaire shall during Operations Period be entitled to demand and collect revenue for display of advertisements at the Project Site as earmarked in the conceptual drawing as per the Agreement . The area of advertisement on each Bus Q Shelter shall not exceed the following:

- a Back Panel : 4.75 m x 1.5 m
- b Roof Top Front : 9 m x 1.2 m
- c Roof Top Side Panels : 3m x 1.2 m (2 numbers)

ii) The Concessionaire shall neither put any advertisement nor collect any revenue until it has received provisional/final Completion Certificate from the Independent Engineer. The completion certificate can be issued in stages of minimum 25 Bus Q Shelters at a time.

4.2 The Concessionaire shall familiarize itself with and be solely responsible for compliance with all Applicable Laws including specifically in respect of display of advertisements.

4.3 The revenue collected during Operations period shall be deposited in Escrow Account as per Article 21 of this Agreement .

## ARTICLE 5

### OBLIGATIONS AND UNDERTAKINGS

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement , the Parties agree and undertake as under:

#### 5.1 GENERAL OBLIGATIONS OF THE CONCESSIONAIRE

The Concessionaire shall adhere to the provisions of this Agreement and construct the BQS as per schedule and pay the Concession Fee as per the Agreement . It may be noted that the “Time is essence of the Contract”.

The Concessionaire shall interalia at its own cost, expense and consequences be responsible and liable for / to

- (i) Investigate, study, design, construct as per specifications, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement , Good Industry Practices and Applicable Laws;
- (ii) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (iii) Ensure that services of water supply, sewerage, drainage, electricity, telephone etc. at the site or in the vicinity, encountered during the period of construction/operation/maintenance of the Bus-Q-Shelters are not damaged. (In case of any shifting of utilities required during construction, the Concessionaire will not have to bear the charges of such shifting. However, all the coordination work with concerned

Agencies including the clearances/permissions for shifting of utilities will be the responsibility of the Concessionaire )

- (iv) After handing over of site by DTC the concessionaire shall get upto 10% of the BQS as identified by DTC removed at his cost and deposited with DTC for future use such as replacement of damaged BQS in non-BOT areas. In respect of the balance BQS the Concessionaire shall pay the material value at the rate of Rs 10,000/- per BQS to DTC irrespective of its type and condition and then get the BQS removed at his cost and dispose the BQS as deemed fit and proper.
- (v) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, Agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project. A prototype BQS shall be installed within 2 to 3 weeks of date of commencement and got approved from DTC before proceeding for further installations.
- (vi) Provide all assistance to the Independent Engineer/DTC Engineer and Steering Group as they may reasonably require for the performance of their duties and services under this Agreement ;
- (vii) Provide to the DTC/Independent Engineer & Steering Group reports on a regular basis during the Implementation Period and the DTC & Steering Group during Operations Period in accordance with the provisions of this Agreement ;
- (viii) The Concessionaire shall adhere to the provisions of all laws of the land including municipal laws and bylaws and rules in connection with display of advertisements on Bus Q Shelters. The Concessionaire shall also pay/ ensure payment of advertisement tax, service tax, other taxes & levies if any, in

respect of the advertisements displayed on the Bus-Q-Shelters. Concessionaire shall also adhere to the rulings of High Court and Supreme Court in this regard.

- (ix) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement ;
- (x) Develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xi) Not place or create nor permit any worker or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement ;
- (xii) Notwithstanding any provision in this Agreement be solely responsible for structural design, safety, stability, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards as per Agreement during construction as well Operation and Maintenance Period and be liable for any claims arising there from.
- (xiii) Ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;

- (xiv) Operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including  
  
but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xv) Ensure that Project Site and facilities created are not defaced by any kind of writings/posters
- (xvi) Follows all labour laws and regulations and pay the wages, deposit PF& ESI contributions and other dues to its workers in time. Concessionaire shall indemnify DTC from any claims in this regard and submit certificates with details of PF and ESI deposited for each of its employee (and employees of its contractors for which DTC is likely to be Principle Employer under this Contract) every quarter.
- (xvii) Employ at all times adequate and suitable staff to perform its obligations under the Agreement provided that no such employee shall be deemed to be an employee of DTC for any purpose whatsoever.
- (xviii) Provide bus route map as approved by DTC at each Bus-Q-Shelter.
- (xix) Transfer of BQS to DTC in sound condition on the Transfer Date.
- (xx) Before commencement of construction of the Project;
  - a) submit to the Independent Engineer with due regard to Project Completion Schedule and Scheduled Project Completion Date, its design and construction time schedule;

- b) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project and to deal with the Independent Engineer/the Steering Group and to be responsible for all necessary exchange of information required pursuant to this Agreement ;
  - c) undertake, do and perform all such acts, deeds and tasks/activities as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement ;
- 
- (xxi) At all times, afford access to the Project Site, to the Steering Group, the authorised representatives of DTC, the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
  - (xxii) Apply for and obtain all necessary clearances and/or approvals for the construction of Bus-Q-Shelters.
  - (xxiii) Bear all costs and charges/liability for special or temporary sites required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement .
  - (xxiv) Be responsible for making good loss due to theft or damage to the assets immediately at its own cost and shall continue to keep the Bus-Q-Shelters operational and available for public use, at all times, within the Concession Period.

- (xxv) To maintain true and correct audited books of accounts/records under the Agreement which could be inspected by DTC at any point of time after giving a reasonable notice.
- (xxvi) To maintain a complaint redressal mechanism.
- (xxvii) To settle all third party commitments made by the Concessionaire.
- (xxviii) To settle all claims, losses etc. on account of any default /obligations under the Agreement .
- (xxix) Any other obligation as necessary under the spirit of this Agreement .

## **5.2 OBLIGATIONS OF DTC**

### **DTC shall:**

- (i) Start handing over the physical possession of the Project Site to the Concessionaire within 30 days from the date of this Agreement, free from any Encumbrance. The handing over shall be in lots of 25 BQS at a time such that BQS in each lot are at contiguous locations and location of the stretch of each lot is decided by DTC and linked to the agreed construction schedule.
- (iii) Grant or where appropriate provide necessary assistance as far as practicable to the Concessionaire in securing Applicable Permits, permissions and approvals required for implementation and operation of the project. However, the concessionaire shall be liable to pay such fee or deposits to the concerned authorities as may be necessary.

## **ARTICLE 6**

### **INDEPENDENT ENGINEER**

#### **6.1 APPOINTMENT OF INDEPENDENT ENGINEER**

- (a) DTC shall by the date of signing of Concession Agreement, appoint the Independent Engineer having necessary expertise to undertake, perform and carry out the duties, responsibilities, services and activities set forth in Schedule 'D' and elsewhere in this Agreement and communicate the same to the Concessionaire. The tenure and the scope of work and the reports to be submitted by the Independent Engineer shall be as set out in the Schedule 'D'.
- (b) The Independent Engineer shall submit to the Steering Group/DTC reports at least once every month or more frequently as the situation may warrant, on the progress of implementation of the Project. Such reports of the Independent Engineer shall include but not be limited to the matters and things set forth in said Schedule 'D'.
- (c) The Independent Engineer shall submit bills for periodic payment in accordance with terms of its appointment to DTC. Upon certification of such bills being intimated in writing by DTC, the Concessionaire shall within 15 days of such intimation, pay to DTC 50% of the amount of the bills certified by DTC.
- (d) If either party disputes any advice, instruction or decision of the Independent Engineer, the same shall be resolved in accordance with the Dispute Resolution Procedure set forth in Article 19.

## **6.2 TERMINATION AND FRESH APPOINTMENT**

If DTC shall have reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, DTC may terminate the appointment of the Independent Engineer and appoint another Independent Engineer in accordance with Article 6.1 (a) above.

## **ARTICLE 7**

### **STEERING GROUP**

#### **7.1 CONSTITUTION**

DTC shall within 30 days of this Agreement constitute a Steering Group comprising such persons as it deems fit which shall include 1 (one) representatives of the Concessionaire so nominated by the Concessionaire within 7 days of signing of this Agreement .

#### **7.2 FUNCTIONS**

The Steering Group shall hold meetings at least once every fortnight to review the progress during the Implementation Period and once every two months during the Operations Period. The Steering Group shall carry out such functions and exercise such powers as are determined by DTC from time to time.

## **ARTICLE 8**

### **DRAWINGS**

#### **8.1 PREPARATION OF DRAWINGS**

The Concessionaire shall prepare at its cost, charge and expense, shop and working Drawings for Bus –Q- Shelters in accordance with the Specification and Standards. The Concessionaire may, for this purpose, adopt with or without any modifications the Drawings, if any, made available by DTC, provided, notwithstanding such adoption, the Concessionaire shall be solely responsible for the adequacy of the Design and Drawings.

#### **8.2 REVIEW AND APPROVAL OF DRAWINGS**

- (a) The Concessionaire shall promptly and in such sequence as is consistent with the Project Completion Schedule, submit a copy each of all Drawings to the Independent Engineer.
- (b) While forwarding the Drawings to the Independent Engineer pursuant to sub-Article (a) above, the Concessionaire shall represent that it has determined and verified that the design and engineering including field construction criteria related thereto are in conformity with the Specifications and Standards.
- (c) Within 7 (seven) days of the receipt of the Drawings, the Independent Engineer shall review the Drawings and convey his comments/observations, if any, thereon to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards. It is expressly agreed that notwithstanding any review or failure to review by the Independent Engineer or any comments/observations of the Independent Engineer, DTC shall not be liable for the adequacy of the Drawings

and that the Concessionaire shall solely be responsible thereof and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement .

- (d) If the comments/observations of the Independent Engineer indicate that the Drawings are not in conformity with the Specifications and Standards, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to the Independent Engineer within 5 days for further review. The Independent Engineer shall give its observations and comments, if any, within 5 (five) days of the receipt of such revised Drawings. Provided, however, that any observations or comments of the Independent Engineer or failure of the Independent Engineer to give any observations or comments on such revised Drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.

All drawings will be approved by DTC after considering the recommendation by the Independent Engineer.

- (e) The Concessionaire shall be responsible for delays in Project Completion and consequences thereof caused by reason of any Drawings not being in conformity with the Specifications and Standards and shall not be entitled to seek any relief in this regard from DTC.
- (f) Within 30 (thirty) days of the COD, the Concessionaire shall furnish to DTC three copies of "as built" Drawings duly vetted by the Independent Engineer reflecting the Project as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facility.

## ARTICLE 9

### PROJECT IMPLEMENTATION AND OPERATIONS

#### 9.1 MONITORING AND SUPERVISION DURING IMPLEMENTATION

(a) The Concessionaire shall submit to the Independent Engineer, a programme supported with BAR Chart for construction of the Bus Q-Shelters in a phased manner so as to cause least inconvenience to the Public. Most of the construction work shall be carried out during night hours/restricted hours (leaving peak traffic time) keeping in view the safety of pedestrian traffic. The Concessionaire shall give to the Independent Engineer, its construction schedule with complete programme for different stages of execution, including planning, designing, fabrication, and erection etc. of the Project.

The Bus –Q-Shelters falling on Delhi MRTS Corridors and HCBS/BRT corridors if any, require coordination with DMRC and DIMTS for finalising the locations.

(b) During the Implementation Period, the Concessionaire shall furnish to DTC / Independent Engineer fortnightly reports on actual progress of the Construction Works and furnish any other relevant information as may reasonably be required by DTC.

(c) For the purposes of determining that the Construction Works are being undertaken in accordance with BS Codes, Specifications and Standards and Good Industry Practice and for quality assurance, the Concessionaire shall carry out such Tests at such time and frequency and in such manner as may be required by the Independent Engineer or as may be necessary in accordance with BS Codes and Good Industry Practice. The Concessionaire shall with due diligence carry out all such Tests in accordance with the

instructions and under the supervision of the Independent Engineer. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such Test results. The Independent Engineer shall furnish the results of such Tests to the Steering Group/DTC within seven days thereof and also promptly report to the DTC the remedial measures taken by the Concessionaire to cure the defects/deficiencies if any indicated in the Test results.

- (d) If the Independent Engineer reasonably determines that the rate of progress of the construction of the Project is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date, it shall so notify the Concessionaire and the DTC. Thereupon, the Concessionaire shall within 15 (fifteen) days thereof notify to DTC and the Independent Engineer about the steps it proposes to take to expedite progress and make up the time so as to achieve COD.

## **9.2 PROJECT COMPLETION**

- (a) The Project shall be deemed to be complete only when the Completion Certificate is issued by the Independent Engineer in accordance with the provisions of Article 9.3(d) (the "Project Completion").
- (b) The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than 48 weeks from the Commencement Date ("the Scheduled Project Completion Date").
- (c) If Project Completion is not achieved as per Schedule C for any reason other than Force Majeure the Concessionaire shall be liable to pay liquidated damages for delay beyond the Scheduled Date, to the extent of Rs. 20,000 (Rs. Twenty Thousand) per Bus Q Shelter

per week or part thereof for delay of every week or part thereof, Provided that such liquidated damages do not exceed in aggregate Rs. 5,20,00,000 (Rs. Fifty two million). Provided further that nothing contained in this sub-Article (c) shall be deemed or construed to authorise any delay in achieving Project Completion. Concessionaire agrees and accepts that these amounts represent a fair and reasonable pre-estimate of the likely damages to be suffered by DTC and shall not dispute the same in any manner.

(d) If the COD does not occur within 60 days from the Scheduled Project Completion Date, DTC shall, subject to the provisions of this Agreement relating to excuse from performance of the Concessionaire's obligations hereunder, be entitled to terminate this Agreement in accordance with the provisions of Article 16.2.

### **9.3 TESTS**

The concessionaire has to carry out tests on all materials as required by related codes of practices at its own cost either in his own laboratory or an approved laboratory. The sampling of materials shall be also as per relevant codes and manuals.

(a) At least 30 (Thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer and the DTC of the same and shall give notice to them of its intent to conduct Tests. The Concessionaire shall give the Independent Engineer and the DTC at least 10 (ten) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests.

(b) All Tests shall be conducted in accordance with the Applicable Laws and Applicable Permits. The DTC shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of

the Project or any part thereof does not meet the Specifications and Standards. The DTC may designate a representative with suitable qualifications and experience to witness and observe the Tests.

- (c) The Independent Engineer shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the DTC copies of all Test data including detailed Test results.
- (d) Upon the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate (the "Completion Certificate").
- (e) The Independent Engineer may at the request of the Concessionaire issue a provisional certificate of completion ("Provisional Certificate") if the Tests are successful and all parts of Project can be legally, safely and reliably opened for commercial operation though certain works or activities/tasks forming part thereof are not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire ("Punch List"). However where placement of panels for holding advertisements on top of BQS has been deferred by Concessionaire, such placement shall not form part of Punch List, provided that the Concessionaire notifies Independent Engineer and DTC as to those BQS where placement is deferred. The COD thus issued is provisional in the context of Concession Fee as per clause 11.1.1 of this Agreement. All Punch List items shall be completed by the Concessionaire within 30 (Thirty) days of the date of issue of such Provisional Certificate. Upon completion of all Punch List items to the satisfaction of the Independent Engineer, it shall issue the Completion Certificate to the Concessionaire with a copy marked to DTC. In the event of the Concessionaire's failure to complete the Punch List items within the said period of 30 (Thirty)

days, DTC may, without prejudice to any other rights or remedy available to it under this Agreement , have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to DTC on demand the entire costs incurred by DTC in completing the Punch List items.

- (f) If the Independent Engineer certifies in writing that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
  
- (g) The Concessionaire shall bear all the expenses relating to Tests under this Agreement .

#### **9.4 OPERATION AND MAINTENANCE**

The Concessionaire shall operate and maintain the Project/Project Facility and if required, modify, repair or otherwise make improvements to the Project/ Project Facility to comply with Specifications and Standards, and other requirements set forth in this Agreement , Good Industry Practice, Applicable Laws and Applicable Permits. More specifically, the Concessionaire shall be responsible for :

- (i) Undertaking daily cleanliness of the Project Facility.
  
- (ii) Ensuring the safety and security of the Project Facility.
  
- (iii) undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, lighting, clock and signage;

- (iv) undertaking maintenance works in accordance with Maintenance Manual and the Maintenance Programme;
- (v) preventing any encroachments or any unauthorised usage of the Project Facility;
- (vi) adherence to the safety standards
- (vii) updating of route maps and other information at its own cost as required from time to time.
- (viii) Ensure functioning of solar lights (if provided) and rain water harvesting.
- (ix) Any other maintenance activity as required under this Agreement .

## **9.5 MAINTENANCE MANUAL**

The Concessionaire shall in consultation with the DTC and Independent Engineer evolve not later than 30 (thirty) days before the Scheduled Project Completion Date, a manual for the regular and preventive maintenance (the "Maintenance Manual"), and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complies with the Specifications and Standards. The Concessionaire shall supply, at least one month before the COD, 5 (five) copies of the Maintenance Manual to the DTC. The maintenance manual shall be approved by the Independent Engineer and DTC.

## **9.6 MAINTENANCE PROGRAMME**

- (a) Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire shall provide to DTC, its

proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Schedule 'H' necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

- (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
  - (ii) criteria to be adopted for deciding maintenance needs;
  - (iii) preventive maintenance schedule;
  - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
  - (v) intervals for major maintenance and the scope thereof.
- (b) Maintenance shall include replacement of equipment, consumables, horticultural maintenance and repairs to equipment, pavements, structures and other civil works which are part of the Project/Project Facility.
- (c) The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter and debris.
- (d) The Concessionaire shall be responsible for the maintenance of the drainage within the individual Bus –Q- Shelter in accordance with Good Industry Practice.

## **9.7 DE-COMMISSIONING**

- (a) If DTC, in public interest, is of the opinion that there exists an Emergency or any other situation such as road reengineering, implementation of other projects etc. which warrants decommissioning and closure or relocation of whole or any part including shifting of the Project/Project Facility, DTC shall notify to the concessionaire to de-commission and close the whole, or the relevant part of the Project for so long as such Emergency or any other situation and the consequences thereof warrant. The DTC may issue such directions as it may deem appropriate to the Concessionaire for dealing with such Emergency or any other situation and the Concessionaire shall abide by the same.
- (b) The Concessionaire shall re-commission the Project/Project Facility or the affected part thereof on receiving the instructions from DTC in this regard. In such a case the cost of relocation of the Bus Q Shelters shall be borne by the concessionaire upto a maximum of 5% per year (not cumulative) of number of Bus Q Shelters installed by the concessionaire. In a given year if the number of Bus Q Shelters to be relocated are more than 5%, the cost of relocation of Bus Q Shelters exceeding 5% shall be borne by DTC at rates not exceeding those calculated as per CPWD manuals/DSR.
- (c) In case the decommissioning or closure is of permanent nature then DTC will allocate alternate site if available. In case alternate locations are not made available DTC shall pay the depreciated cost of Bus Q Shelters to the concessionaire. The rate of depreciation shall be 5% per annum. The Concession Fee shall also be adjusted proportionately.
- (d) No adjustment in Concession Fee shall be made if the decommissioning is not exceeding a period of 15 days at a stretch.

- (e) Concessionaire shall not decommission any part of the Project facility without permission from DTC

## **9.8 RECTIFICATION OF DEFECTS**

- (a) Save and except as otherwise expressly provided in this Agreement , if the Project or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage in a manner so as to make the Project conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement .
- (b) In the event the Concessionaire does not maintain and/ or repair the Project or part thereof up to and in accordance with the Specifications and Standards and / or in accordance with the Maintenance Programme or the Maintenance Manual or the O&M Inspection Report, as the case may be, and fails to commence remedial works within (7) Seven days of notice, DTC shall without prejudice to its rights/remedies under this Agreement , including Termination, be entitled to undertake the repair and maintenance of the Project at the risk and cost of the Concessionaire. The Concessionaire shall, reimburse to DTC within seven days of demand the costs and expenses incurred for undertaking such repairs and maintenance. .
- (c) If the Concessionaire commences any works for curing any defects or deficiencies in the Project, it shall complete such works expeditiously in accordance with Good Industry Practice.
- (d) The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not

available on account of any of the following, for the duration thereof:

- (i) Force Majeure Event;
- (ii) Compliance with a request from DTC or the directions of any Government Agency the effect of which is to close all or any part of the Project.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project for use provided they can be safely operated and kept open for users.

#### **9.9 MONITORING AND SUPERVISION DURING OPERATIONS**

- (a) The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and shall submit reports of such inspection ("Maintenance Reports") to the DTC
- (b) The DTC Engineer shall undertake periodic (at least once every calendar month but once every week during monsoon) inspection of the Project jointly with the Concessionaire to determine the condition of the Project including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and make out a report of such inspection (the "O&M Inspection Report") and forward it to the Concessionaire. The O&M Inspection Report shall set forth defects and deficiencies, if any, and may also require the Concessionaire to undertake such tests as may be specified by the DTC Engineer for the purpose of determining that the Project is at all times in conformity with the Specifications

and Standards. The Concessionaire shall within 15 (Fifteen) days of the receipt of the O&M Inspection Report from the DTC Engineer remedy the defects and deficiencies and undertake such tests, if any, set forth therein, without any delay and furnish compliance thereto and/or results thereof to the DTC Engineer along with a report (O&M Inspection Compliance Report) specifying in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. Where the remedying of such defects or deficiencies and/or undertaking such tests is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight and finally the O&M Inspection Compliance Report.

## **ARTICLE 10**

### **FINANCING ARRANGEMENT**

#### **10.1 FINANCING ARRANGEMENT**

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as may be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner. The Project Assets/ Facilities of this Project can not be hypothecated or used to get financing for this Project or any other project. Repayment to Lenders if any shall be protected through operation of the Escrow Account as stipulated in Article 21 of this Concession Agreement.

## ARTICLE 11

### CONCESSION FEE

#### 11.1 THE CONCESSION FEE

11.1.1 The Concession Fee is governed as follows:

- (a) During the first year from date of signing of Concession Agreement Rs 10,000/- per BQS per month for those BQS for which provisional/final COD has been issued
- (b) during second year from date of signing of Concession Agreement, the higher of the two following amounts:
  - (i) Rs 4.00 million per month for 400 BQS, to be increased or decreased at the rate of Rs 10,000/- per BQS per month depending on the actual number of BQS operated
  - or**
  - (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue
- (c) during subsequent years the higher of the two following amounts:
  - (i) amount as in (b) (i) above increased at 10% per year w.r.t previous year
  - or**
  - (ii) amount calculated on the basis of the percentage, quoted by the Bidder, of accrued revenue.

During the first year from signing of Concession Agreement Concession fee shall be paid monthly in advance while opting the provisional COD/COD. During subsequent period of the Concession Agreement, the minimum concession fee shall be paid quarterly in advance and additional fee, if any as per the quote of the Concessionaire, shall be paid within thirty days from the end of the quarter along with quarterly audit report.

11.1.2 The Concessionaire shall pay all duties and taxes in consequence of its obligations under this Concession Agreement , including customs

and excise duties, advertisement tax, VAT, service tax, any cess, levy, duty, tax or charge etc and the Concession Fee shall not be reduced for such costs.

11.1.3 The Concession Fee shall be paid in accordance with 11.1.1 above not later than the 10th day of the first month of the quarter or of the month as the case maybe. Any delay in payment of the concession fee will attract a simple interest of 18% per annum (1.5% per month) on the unpaid amount of Concession Fee on per day basis for the entire period of delay. The period of delay will be reckoned from the first day of the month in which the quarterly concession fee becomes due. For example, if the concession fee is paid on the 15th day of the first month of the quarter, then interest will be charged for 14 days, on the concession fee payable for that quarter.

11.1.4 Any payments by DTC to the Concessionaire shall be made only through the mechanism of adjustment of the Concession Fee. Any reference to such payments shall indicate the mechanism of such adjustment to the Concession Fee. No actual payments shall be made by the DTC.

Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.

11.1.5 Concessionaire will deduct appropriate TDS as required under the Income Tax Act 1961 from all the payment to be made to DTC unless exemption certificate is provided by DTC. TDS certificate(s) shall be issued for such deductions.

11.1.6 Accrued revenue is defined as “the gross amount billed by the Concessionaire to its Agent/Client, as the case may be, in an arms length transaction.”. An ‘arms length transaction’ is defined as “a transaction in which the parties (a) are unrelated and unconnected and have no overt or covert common interest, (b) are dealing from equal

bargaining positions and (c) neither party is subject to the other's control or dominant influence. Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.”

11.2 At the end of each quarter, along with Audited Financial Statements, the Concessionaire shall furnish to Owner DTC a certificate to the effect that it has not entered into any transaction, in whatsoever form, with the Agents/Clients other than those that fall in the category of an 'arms length transaction'.

11.2.1 The Concessionaire shall maintain books of accounts recording all receipts, income, expenditure, payments, assets and liabilities in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. At the end of each quarter, the Concessionaire shall provide Audited Financial Statements. The Concessionaire shall appoint, and have during the subsistence of this Agreement as its statutory auditors, a firm chosen by it from the mutually agreed list of reputable firms of Chartered Accountants. All fees and expenses of the statutory auditors shall be borne by the Concessionaire.

11.2.2 In view of the revenue model being that of revenue sharing, accountants authorized by DTC shall be provided access by the Concessionaire to all Financial documents including advertising orders placed by Clients, receipts etc. at a reasonable notice of not more than one week.

11.2.3 Concessionaire specifically agrees that the Concession Fee shall be paid notwithstanding any cause whatsoever and shall not be withheld on any ground whatsoever.

### **11.3 PROCEEDS FROM SALE OF CARBON CREDITS**

Proceeds from sale of Carbon Credits that can be generated from this Concession can be enjoyed solely by the Concessionaire and DTC waives its right to revenue from Carbon Credits. Any taxes payable by the Concessionaire on this account shall be borne by the Concessionaire.

### **11.4 REBATE ON ACCOUNT OF USE OF RENEWABLE ENERGY SOURCES**

Item D on page 7-24 of the Outdoor Advertisement Policy of Municipal Corporation of Delhi, 2007, reads as follows:

#### **``Electricity from Renewable energy sources**

To promote conservation of electricity, it is important that the illumination at all outdoor advertising devices shall draw from power from alternate renewable resources like Solar power. This would help save lot of electricity that could be of use to general public. To promote the advertisers and licensee of the advertising devices they shall be given a 1/3 (one third) rebate on monthly licensee fee, this would encourage them to make necessary investments in the procuring technology. This would also help in reducing the licensee cost for paying for consumption of electrical power from Discoms.``

Accordingly if the Concessionaire uses devices which draw from renewable resources like Solar power for **all** illumination, he shall be given a 1/3 (one third) rebate on the Concession fee for the package in proportion to the number of BQS operating on solar power, irrespective of whether the BQS operating on solar power is with top panel or not.

## **ARTICLE 12**

### **INSURANCES**

#### **12.1 INSURANCE DURING THE IMPLEMENTATION PERIOD**

The Concessionaire shall, at its cost and expense, purchase and maintain during the Implementation Period such insurances as are necessary, including but not limited to the following:

- (a) builders' all risk insurance;
- (b) workmen's compensation insurance;
- (c) third party insurances;
- (d) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction, at replacement value) including rioting and all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

#### **12.2 INSURANCE DURING THE OPERATIONS PERIOD**

The Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against:

- (a) loss, damage or destruction of the Project Facility, at replacement value;
- (b) the Concessionaire's general liability arising out of the Concession;
- (c) liability to third parties; and

- (d) any other insurance that may be necessary to protect the Concessionaire and its employees, including rioting and all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

### **12.3 INSURANCE COMPANIES**

The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project Facility through Indian insurance companies and if so permitted by DTC, through foreign insurance companies backed by Indian companies, to the extent that insurances are necessary to be effected through them.

### **12.4 EVIDENCE OF INSURANCE COVER**

The Concessionaire shall, from time to time, provide to DTC copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement .

### **12.5 APPLICATION OF INSURANCE PROCEEDS**

All moneys received under insurance policies shall be deposited in Escrow Account and promptly applied by the Concessionaire towards repair or renovation or restoration of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible and in such manner that the Project Facility or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as it was before such damage or destruction, normal wear and tear excepted. Decision of DTC in this regard shall be final.

## **12.6 VALIDITY OF THE INSURANCE COVER**

The Concessionaire shall pay the premium payable on such insurance policy (ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to DTC. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 15 Days' clear notice of cancellation is provided to DTC in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement , DTC may at its option purchase and maintain such insurance and all sums incurred by the DTC therefore shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the DTC by exercising right of set off against revenue or otherwise.

## **12.7 ALL INSURANCE POLICIES SHALL BE IN THE JOINT NAME OF CONCESSIONAIRE AND DTC.**

## **ARTICLE 13**

### **CHANGE OF SCOPE**

#### **13.1 CHANGE OF SCOPE**

During the implementation period, the number of Bus Q Shelters can be increased or decreased by 20% irrespective of the perceived or estimated financial viability of the location of the individual BQS or cluster of BQS without any change of conditions of this Agreement. The Concession Fee shall be adjusted proportionately for the change of scope.

The final decision in this regard will rest with Chairman cum Managing Director, DTC or any other officer authorised by him.

- 13.2 The project sites listed in Schedule A` of this Concession Agreement are subject to relocation if required. in case of any difficulty at a particular site DTC reserves the right to provide replacement location which shall be contiguous to the project.

## **ARTICLE 14**

### **CAPACITY AUGMENTATION**

#### **14.1 CAPACITY AUGMENTATION IN THE PROJECT**

- (a) The DTC may, within 1 year of achieving of COD, decide to augment the capacity of the project by increasing the number of Bus-Q-Shelters by up to 25% of the 400 BQS. In such an event the Concessionaire shall augment the capacity. The monthly Concession Fee in such case shall be increased in proportion to the increase in the number of the Bus-Q-Shelters, on pro-rata basis.
  
- (b) The original Concession Period shall not be modified due to capacity augmentation and the handing over of all the BQS (original as well as augmented) shall be together on the Transfer Date.

## **ARTICLE 15**

### **FORCE MAJEURE**

#### **15.1 FORCE MAJEURE EVENT**

As used in this Agreement , a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Articles 15.2, 15.3 and 15.4 respectively which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect on the Project.

#### **15.2 NON POLITICAL EVENT.**

For purposes of Article 15.1 hereinabove, a Non-Political Event shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, lightning, earthquake, cyclone, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works);
- (ii) radioactive contamination or ionizing radiation;
- (iii) general strikes or boycotts (other than those involving the Concessionaire, its Contractors or their respective employees/representatives or attributable to any act or omission

of any of them) interrupting supplies and services to the Project for a continuous period exceeding 15 (fifteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 15.3;

- (iv) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by DTC;
- (v) any event or circumstances of nature analogous to any of the foregoing.

### **15.3 INDIRECT POLITICAL EVENT**

For purposes of Article 15.1 hereinabove, an Indirect Political Event shall mean one or more of the following acts or events :

An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo which prevents collection of revenue by the Concessionaire for a period exceeding a continuous period of 30 (thirty ) days in an Accounting Year.

### **15.4 POLITICAL EVENT**

For purposes of Article 15.1 hereinabove, a Political Event shall mean one or more of the following acts or events by or on account of DTC, or any other Government Agency:

- (i) change in Law, only when provisions of Article 17 cannot be applied;

- (ii) expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors.

## **15.5 EFFECT OF FORCE MAJEURE EVENT**

Upon occurrence of any Force Majeure Event, the following shall apply:

- (a) there shall be no Termination of this Agreement;
- (b) where the Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (c) where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to operate the Project and/or to collect revenue, but if it is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the DTC, be extended by the period for which collection of revenue remains affected on account thereof; and
- (d) costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Article 15.6 hereinafter.

## **15.6 ALLOCATION OF COSTS DURING SUBSISTENCE OF FORCE MAJEURE**

Subject to the provisions of Article 15.5 hereinabove, upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:

- (a) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent the Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by DTC to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim ;
  
- (b) DTC may at its option reimburse the Force Majeure Costs to the Concessionaire in cash (through adjustment in the Concession Fee) or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of 90 days specified in preceding sub- articles (b) or (c) as the case may be.

For avoidance of doubt, Force Majeure Costs shall not include loss of revenues or any indirect costs but only direct costs attributable to the Force Majeure Event.

## **15.7 DISPUTE RESOLUTION**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **15.8 LIABILITY FOR OTHER LOSSES, DAMAGES ETC.**

Save and except as expressly provided in this Article 15, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 15.

## **15.9 DUTY TO REPORT**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a)** The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement .
- (b)** Any notice pursuant to this Article 15.9 shall include full particulars of:

  - (i)** the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 15 with evidence in support thereof;
  - (ii)** the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement ;

- (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 15.9 and such other information as the other Party may reasonably request the Affected Party to provide.

#### **15.10 EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence: and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement , it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

If the Force Majeure Event continues for more than six months, DTC may in its sole discretion terminate the Agreement.

## ARTICLE 16

### EVENTS OF DEFAULT AND TERMINATION

#### 16.1 EVENT OF DEFAULT

Notwithstanding anything herein contained, breach by Concessionaire of the terms and conditions of this Agreement , and specifically any of the following events of default means the Concessionaire Event of Default.

##### **Concessionaire Event of Default**

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Events of Default") unless such event has occurred as a result of a DTC Event of Default or a Force Majeure Event:

- (1) the Concessionaire fails to commence the Construction Works within 30 days from the Commencement Date;
- (2) The Concessionaire fails to open and establish an Escrow Account within six months from signing of Concession Agreement and / or any Default by either the Concessionaire or the Escrow Agent in the performance of their respective obligations under the Escrow Agreement resulting, in the opinion of Lenders Representative/DTC, in a breach of the Escrow Agreement.
- (3) the Concessionaire fails to achieve COD within 48 *weeks* from the Commencement Date;

- (4) any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (5) the Concessionaire creates any Encumbrance on the Project Site/ Project Facility in favour of any Person;
- (6) the aggregate shareholding of the members of the Consortium/Sponsors falls below the minimum prescribed under Article 20.1 (xi) or the strategic partner reduces his shareholding or withdraws before the lock in period of 5 years;
- (7) the transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Agreement, or (b) all or part control of the Concessionaire except where such transfer in the reasonable opinion of DTC does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Agreement;
- (8) a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- (9) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreement s, and provided that:

- (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreement s;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreement s and has a creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
  - (iii) this Agreement remains in full force and effect.
- (9) the Concessionaire suspends or abandons the operations of the Project without the prior consent of DTC, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) on account of a breach by DTC of its obligations under this Agreement;
- (10) the Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (11) the Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days;
- (12) The Concessionaire has neglected or failed to regularly and properly maintain the Bus-Q-Shelters in clean and hygienic conditions and to keep the Bus-Q-Shelters in a state of good repair at its own cost;

- (13) the Concessionaire is otherwise in Material Breach of this Agreement and wishes to surrender. The surrender may be accepted only for complete package of the Bus-Q-Shelters. The decision of DTC regarding accepting the surrender shall be final and binding;
- (14) repeated non payment of salaries, wages and other dues of its employees (including employees of his contractors) including depositing PF and ESI premiums in time;
- (15) the Concessionaire fails to pay the Concession Fee in time;
- (16) non settlement of 3<sup>rd</sup> party claims on DTC as a consequence from the fault of the Concessionaire.

## **16.2 TERMINATION DUE TO EVENT OF DEFAULT**

### **TERMINATION FOR CONCESSIONAIRE EVENT OF DEFAULT**

- (1) Without prejudice to any other right or remedy which DTC may have in respect thereof under this Agreement , upon the occurrence of a Concessionaire Event of Default, DTC shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, DTC shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach/default is not cured within a period of 60 (sixty) days from the date of the Preliminary Notice (Cure Period) DTC shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that
  - (a) if the default is not cured within 30 (thirty) days of the Preliminary Notice, DTC shall be entitled to appropriate

the Performance Security followed by issue of Intimation of Appropriation to Concessionaire

- (b) if the default is not cured within 30 (thirty) days of issue of Intimation of Appropriation and a fresh Performance Security is not furnished within the same period in accordance with Article 3.2, DTC is entitled to issue the Termination Notice.

(2) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement :

- (i) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
- (ii) the Cure Period shall not in any way be extended by any period of suspension under this Agreement ;
- (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by DTC or any Government Agency hereunder the applicable Cure Period shall be extended by the period taken by DTC or the Government Agency to accord the required approval.

### **16.3 RIGHTS OF DTC ON TERMINATION**

Upon Termination of this Agreement for any reason whatsoever, DTC shall have the power and authority to:

- (i) take possession and control of Project Assets forthwith;

- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Assets/dealing with the Project or any part thereof;
  
- (iii) DTC shall not be responsible for any payment due by the Concessionaire to his sub contractors / lenders or any other agencies. All such matters have to be settled by the Concessionaire.

## **ARTICLE 17**

### **CHANGE IN LAW**

#### **17.1 CHANGE IN LAW**

This Agreement shall be in force and binding on both the parties hereto till the expiry of the Concession Period and no change in law or other circumstances shall affect the respective rights and obligations of the parties. No claim of whatsoever nature shall be made by one party on the other on account of any such change in law or other circumstances.

## **ARTICLE 18**

### **HANDOVER AND DEFECT LIABILITY PERIOD**

#### **18.1 HANDING OVER OF THE PROJECT ASSETS**

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period or prior termination of this Agreement , as the case may be, hand over free from encumbrances and peaceful possession of the Project Assets including Project Site/Facility in sound condition at no cost to DTC.

#### **18.2 JOINT INSPECTION AND REMOVAL OF DEFICIENCY**

The handing over process shall be initiated at least 6 months before the actual date of expiry of the Concession Period by a joint inspection by the DTC Engineer and the Concessionaire. The DTC Engineer shall, within 15 days of such inspection prepare and furnish to the Concessionaire a list of works/jobs/additions/alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works, within the stipulated time period the DTC shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by DTC in this regard shall be reimbursed by the Concessionaire to DTC within 7 days of receipt of demand. For this purpose, DTC shall without prejudice to any other right/remedy available to it, under this Agreement , have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by DTC to the Concessionaire to the extent required/ available and to recover deficit amount, if any, from the Concessionaire.

### **18.3 RECOVERY OF BALANCE CONCESSION FEE**

The Concession Fee due if any at the end on Concession Period shall be recovered by DTC from the Performance Security and the balance amount in Escrow Account. The balance remaining unrecovered amount, if any, shall be paid by the Concessionaire to DTC along with the Concession Fee payable for the last quarter.

## **ARTICLE 19**

### **DISPUTE RESOLUTION**

#### **19.1 AMICABLE RESOLUTION**

- (a) Save where expressly stated otherwise in this Agreement , any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the Parties and failing such resolution of the same, in accordance with the procedure set forth in sub-article (b) below.
  
- (b) Either Party may require the Dispute to be referred to Chairman, DTC for amicable settlement. Upon such reference, both the Parties and the Chairman or his nominee (who can be an employee of DTC dealing the project or otherwise) shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably resolved within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 19.2 below.

#### **19.2 ARBITRATION**

a) Arbitrators

Any Dispute which is not resolved amicably as provided in Article 19.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of three arbitrators chosen from a panel of five arbitrators on the list of arbitrators available or furnished by with

DTC. One arbitrator is to be chosen by each Party and the third to be appointed by the two arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

The Concessionaire cannot invoke Arbitration clause unless the Concessionaire has remitted up-to-date Concession fee to DTC. Further during the tenure of the arbitration, Concessionaire should pay the entire Concession fee without break, including performing all other contractual obligations.

**b) Place of Arbitration**

The place of arbitration shall be New Delhi.

**c) Language**

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

**d) Procedure**

The procedure to be followed within the arbitration / arbitral tribunal and the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

**e) Enforcement of Award**

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any Court or Tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a

judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.

**f) Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties equally subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the said Party.

**g) Performance during Arbitration**

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

## ARTICLE 20

### REPRESENTATIONS, WARRANTIES AND DISCLAIMER

**20.1** The Concessionaire represents and warrants to DTC that:

- (i) it is duly organised, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement ;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, Agreement , understanding, decree or order to

which it is a party or by which it or any of its properties or assets is bound or affected;

- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Concessionaire which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement ;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (xi) the aggregate equity shareholding of the members of Consortium/Sponsors in the issued and paid up equity share capital of the Concessionaire shall not be less than (a) 51% (fifty one per cent) until expiry of 3 (three) years following COD, and (b) 26% (twenty six per cent) during the remaining Operations Period;
- (xii) each member of Consortium was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested DTC to enter into this Agreement

with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement ;

- (xiii) subject to receipt by the Concessionaire from DTC of the Termination Payment and any other amount due under any of the provisions of this Agreement , in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Assets shall pass to and vest in DTC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or DTC;
- (xiv) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to DTC or to any Government Concessionaire in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xv) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of DTC in connection therewith.

## **20.2 DISCLAIMER**

- (a) Without prejudice to any express provision contained in this Agreement , the Concessionaire acknowledges that prior to the execution of this Agreement , the Concessionaire has after a complete and careful examination made an independent evaluation of the traffic volumes, specifications and Standards, Project Site

and all the information provided by DTC, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that DTC shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **ARTICLE 21**

### **ESCROW ACCOUNT**

#### **21.1 ESCROW ACCOUNT**

The Concessionaire shall open and establish an Escrow Account within six months from signing of Concession Agreement with a Nationalized Bank (Escrow Bank) as approved by DTC through a tripartite Agreement and all revenues collected by the Concessionaire through advertisement shall be exclusively deposited therein.

##### **21.1.1 Disbursements from Escrow Account**

As long as any monies are due and payable by the Concessionaire to DTC and/or the Lender under the Agreement, the Concessionaire shall maintain the Minimum Balance in the Escrow Account. The Minimum Balance shall be placed as a Term Deposit and no withdrawals shall be permitted from the same without prior written consent from DTC and the Lender. The Minimum Balance shall be the aggregate of the following:

- i. one quarter concession fee due to DTC
  - ii. installment amount equivalent to one principal repayment amount for one month and interest repayment amount for one month payable by Company to the Lender and
  - iii. one quarter O & M Expenses incurred by the Concessionaire directly or through O&M Contractor
- (i) The Concessionaire shall give, at the time of the opening of the Escrow Account, irrevocable instructions by way of an Escrow Agreement to the Escrow Bank instructing, inter alia, that the deposits into the Escrow Account following the retention of the Minimum Balance shall be appropriated firstly for payment of

Concession Fee to DTC and thereafter in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due unless otherwise expressly provided in the instruction letter:

- (a) All taxes due and payable by the Concessionaire;
  - (b) Payment of Provident Fund, ESI and other Statutory Instalments, if due
  - (c) Any payments and damages due and payable by the Concessionaire to DTC pursuant to this Agreement
  - (d) The whole or part of the expense on repair work or O&M expense incurred by DTC on account of exercise of any of its rights under this Agreement provided DTC certifies to the Escrow Bank that DTC had incurred such expenses in accordance with the provisions of this Agreement ;
  - (e) O & M Expenses incurred by the Concessionaire directly or through O&M Contractor, if any, subject to the items and ceiling in respect thereof as set forth in the Agreement but not exceeding monthly liability on this account per month
  - (f) All expenses in connection with and relevant to the Construction of the Project Work by way of payment to the contractors and
  - (g) Balance if any as per the instructions of the Concessionaire.
- (ii) Notwithstanding anything to the contrary contained in the Escrow Agreement , upon termination of this Agreement , all amounts standing to the credit of the Escrow Account shall be appropriated and dealt with in the following order:

- (a) all quarterly payments due to DTC from the Concessionaire under this Agreement ;
- (b) any payments and damages due and payable by the Concessionaire to DTC pursuant to this Agreement ;
- (c) all Taxes due and payable by the Concessionaire;
- (d) PF, ESI and Statutory dues to its employees (including employees of its contractors);
- (e) all accrued Debt Service Payments;
- (f) all accrued O&M Expenses;
- (g) any other payments/claims arising out of/ required to be made under/on account/attribution to this Agreement.

## **21.2 DURATION OF THE ESCROW ACCOUNT**

The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 21.1.1 above have been fully discharged.

**21.3** The Format of the Escrow Agreement is placed at Schedule K.

## **ARTICLE 22**

### **MISCELLANEOUS**

#### **22.1 ASSIGNMENT AND CHARGES**

- (a) Subject to sub-articles (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of DTC, which consent DTC shall be entitled to decline without assigning any reason whatsoever.
- (b) Subject to sub-article (c) herein below, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which Concessionaire is a party except with prior consent in writing of DTC, which consent DTC shall be entitled to decline without assigning any reason whatsoever.
- (c) The restraint set forth in sub-articles (a) and (b) above shall not apply to liens/encumbrances arising by operation of law in the ordinary course of business of the Project

#### **22.2 LIABILITY AND INDEMNITY**

- (a) General Indemnity
  - (i) The Concessionaire shall indemnify, defend and hold DTC harmless against any and all proceedings, actions and, third party claims arising out of a breach by the Concessionaire of any of its obligations under this Agreement;

- (ii) DTC will indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of DTC and/or arising out of a breach by DTC, its officers, servants and agents of any obligations of DTC under this Agreement.
  
- (b) Without limiting the generality of this Article 22.2 the Concessionaire shall fully indemnify, save harmless and defend DTC including its officers servants, agents and subsidiaries from and against any and all claims, loss and damages, costs and expenses arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) failure in payments of taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors or (d) any act or omission of Concessionaire or any of its employees, agents or representatives;
  
- (c) Without limiting the generality of the provisions of this Article Article 22.2, the Concessionaire shall fully indemnify, save harmless and defend the DTC from and against any and all damages which the DTC may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or

related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for DTC a license, at no cost to DTC, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing;

(d) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 22.2 (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction;

(e) Defence of Claims

(i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or

asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and its reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22.2, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action suit or proceeding and the liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled;

- (ii) If the Indemnifying Party has exercised its rights under Article 22.2(d) above, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the indemnifying Party (which consent shall not be unreasonably withheld or delayed);
- (iii) If the Indemnifying Party exercises its rights under Article 22.2(d) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel

and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

- (1) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (2) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (3) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either;
  - (a) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
  - (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement; provided that if sub-Articles (2), (3) or (4) of Article 22.2(e)(iii) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **22.3 GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement .

### **22.4 WAIVER**

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

## **22.5 SURVIVAL**

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

## **22.6 AMENDMENTS**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

## **22.7 NOTICES**

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

If to DTC :-The Chairman cum Managing Director  
I.P. Estate D.T.C. New Delhi 110002.  
Fax No. 011--23400877  
If to the Concessionaire :

M/s-----

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or such addresses, telex numbers, or facsimile numbers as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## **22.8 SEVERABILITY**

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

## **22.9 NO PARTNERSHIP**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

#### **22.10 LANGUAGE**

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

#### **22.11 EXCLUSION OF IMPLIED WARRANTIES ETC.**

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

#### **22.12 COUNTERPARTS**

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

## **SCHEDULE - A**

### **PROJECT SITES**

The sites may be subject to relocation, if required. The list is purely indicative and tentative. In case of any difficulty at a particular site, DTC reserves the right to provide replacement location which shall be contiguous to the project. In the site location, DTC reserves the rights to delete/add any BQS site without any claim from the party. The final decision in this regard will vest with CMD,DTC or any other officer authorised by him.

#### **TABLE A: TENTATIVE LOCATION OF 400 BQS (Tentative locations as given in the RFP document)**

## **SCHEDULE - B**

### **PROJECT FACILITY**

Following facilities are to be constructed, built, installed, erected or provided by the Concessionaire in the Project Site as per specifications provided in Schedule G and relevant codes of practices.

The Conceptual Drawing of Bus-Q-Shelter is enclosed in Schedule F.

1. B.Q.S. with features as per drawing Enclosed (Schedule F)
2. Rain water harvesting at B.Q.S.
3. Solar panel (Optional)



## **SCHEDULE - D**

### **INDEPENDENT ENGINEER'S SERVICES (During Implementation Period)**

#### **TERMS OF REFERENCE**

##### **1. OBJECTIVES**

The Independent Engineer shall be required to:

- (i) Act independently on behalf of both DTC and the Concessionaire to review and monitor all activities associated with design, construction, operation and maintenance to ensure compliance with provisions of the Concession Agreement .
- (ii) Visit, inspect, and report to DTC / Steering Group on various aspects of the project and carry out all such activities as are provided in the Concession Agreement . Without prejudice to this, the scope of services of the Independent Engineer shall be as specified in paras 2 to 4 below.

The Independent Engineer shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations other than those expressly provided in the Concession Agreement .

##### **2. SCOPE OF SERVICES**

###### **2.1 Pre-implementation Period**

- (i) Review the Project Report prepared by the Concessionaire.
- (ii) Review the Implementation Schedule submitted by the Concessionaire.
- (iii) Proof checking of designs, calculations and working drawings prepared by the Concessionaire for the construction of various

components of the Project Facility in accordance with provisions of the Concession Agreement .

- (iv) Review the adequacy of site investigations to be carried out by the Concessionaire.
- (v) Review the environmental management plan for the Project during Implementation Period and Operations Period`
- (vi) Review the proposed quality assurance and quality control procedures during the Implementation Period and Operations Period.
- (vii) Review the safety measures proposed during Implementation Period and Operations Period

## **2.2 Implementation Period**

- (i) Monitor quality assurance and quality control during Implementation period.
- (ii) Review the material testing results, mix designs and order special tests of materials and/or completed works, and/or order removal and substitution of substandard materials and/or works as required.
- (iii) Ensure that the construction work is carried out in accordance with the Specifications and Standards and Good Industry Practice.
- (iv) Identify delays in completion and recommend to the Steering Group/ Concessionaire the remedial measures to expedite the progress.
- (v) Review “As Built” drawings for each component of the works prepared by the Concessionaire.
- (vi) Review the safety measures provided by the Concessionaire.
- (vii) Supervise and monitor various Completion Tests as provided in the Concession Agreement
- (viii) Issue Provisional Completion Certificate or the Completion Certificate, as the case may be, in accordance with the provisions of the Concession Agreement .

- (ix) Review and approve the Maintenance Manual prepared by the Concessionaire.

### **2.3 General**

- (i) Design a Management Information System (MIS) for monitoring of the Project by DTC.
- (ii) Determine and recommend changes to the Project Completion Schedule, Scheduled Project Completion Date and the Concession Period in accordance with the Concession Agreement .
- (iii) Mediate and assist in resolving disputes between DTC and Concessionaire.

### **3. INTERACTION WITH STEERING GROUP**

The Independent Engineer shall interact with the Steering Group / DTC on a regular basis.

### **4. REPORTING REQUIREMENTS**

The Independent Engineer shall prepare and submit to the Steering Group / DTC three copies and to the Concessionaire two copies each of the following reports.

- Implementation Period
- Monthly Progress Report
- Various other reports as provided in the Concession Agreement such as Completion Report.

**5. PERIOD OF SERVICE**

The period of services shall be the Implementation Period.

Fee of Independent Engineer

The fee of the Independent Engineer is to be shared equally by DTC and the Concessionaire.

## **SCHEDULE - E**

### **DTC ENGINEER'S SERVICES (During Operations Period)**

#### **TERMS OF REFERENCE**

##### **1. OBJECTIVES**

The DTC Engineer shall be required to:

- (i) To review and monitor all activities associated with operation and maintenance to ensure compliance with provisions of the Concession Agreement .
- (ii) Visit, inspect, and report to Steering Group on various aspects of the Project and carry out such other activities as provided in the Concession Agreement . Without prejudice to this, the scope of services of the DTC Engineer shall be as specified in para 2 to 4.

The DTC Engineer shall have no authority to relieve the Concessionaire of any of their duties or to impose additional obligations other than those expressly provided in the Concession Agreement .

##### **2. SCOPE OF SERVICES**

Review work plan and schedules of various operation and maintenance activities.

- (i) Review and ensure compliance with Maintenance Programme, Minimum Maintenance Requirements and the Maintenance Manual.
- (ii) Supervise actions undertaken by DTC's contractor(s) to carry out maintenance obligations of the Concessionaire at the risk and

cost of the Concessionaire in the event of his failure to carry out the same.

- (iii) Undertake audit of the traffic using the Project at least once a month.
- (iv) Review and inspect the Project at least once a month during the Operations Period and submit an Inspection Report thereafter to DTC.
- (v) Mediate and assist in resolving disputes between DTC/STG and Concessionaire.

## **SCHEDULE- F**

### **DRAWINGS**

The Conceptual Drawing of Bus-Q-Shelter is enclosed. Other drawings and details are as provided by the concessionaire with the bid and detailed design stage and as approved by DTC.



## **SCHEDULE - G**

### **SPECIFICATIONS AND STANDARDS**

1. The Bus Q Shelters shall be constructed as per the conceptual drawings made available by DTC. However, the bidders may suggest any minor modifications which may be incorporated in their offers. Under any circumstances the basic concept of the Bus Q-Shelters shall remain the same.
2. The detailed design of the Bus Q Shelters is to be carried out by the Concessionaire.
3. All the structural members of the Bus Q-Shelters shall be of stainless steel of ASTM 304 grade.
4. The covering of the roof shall be made of polycarbonate sheet, not less than 10 mm thick, - colour to be got approved (preferably transparent) from the Engineer-in-Charge. The fixing to be done in a manner so as to make the roof leak proof. As roof top advertisements are permitted, necessary arrangement for fixing the advertisement panels and replacement of advertisement.
5. Dark orange coloured shade prefab cement concrete tiles or other approved tiles shall be provided in the flooring over the base of lean cement concrete in the area not less than 30 sq. m.
6. The minimum clear roof height between the flooring and the ceiling shall be 2.50 metres.
7. Ramp to road level as prescribed shall be provided.

8. Lighting in all BQS shall be mandatory. The necessary electricity connection shall be obtained by the Concessionaire and he shall pay all charges for installation and maintenance as also the electric consumption charges. Solar system for power supply, if suggested by the Concessionaire, will be arranged for by the Concessionaire as per the requirement.
9. Every Bus Q-Shelter shall be provided with Rain Water Harvesting System for the roof area. Any overflow of water from the Rain Water Harvesting should be drained to S W Drain.
10. The area of advertisement has been restricted shall be as per the conceptual drawing and provision in Article 4 of this Agreement . The rear panel should be illuminated and glazed with toughened glass or polycarbonate sheet of required thickness. Similar arrangement shall be made for roof top advertisements.
11. All the necessary electrical fittings/fixers shall be used of standard specifications and the work shall be got done through approved licensed electrician/wireman with a certificate to this effect. The fixtures should be water proof.
12. In case sub standard/defective material is used the same shall be replaced by the Concessionaire at its own cost. In case of any dispute in this regard decision of DTC shall be final.
13. The seat shall be of stainless steel of same specifications and shall be perforated.
14. In no case the specifications below those mentioned in the drawing attached with the tender documents/adopted in construction of sample Bus Q-Shelters shall be allowed. However, richer specifications may be adopted.



Back Face – DTC approved social message should be written which shall keep on changing from time to time as per the direction of DTC.

20. The bidder shall submit a programme supported with BAR Chart for construction of Bus Q-Shelters in a phased manner so as to cause least inconvenience to the public. Most of the construction work shall be carried out during night hours/restricted hours (leaving peak traffic time) keeping in view the safety of pedestrians/traffic. The bidder should give their complete programme for different stages of execution i/c, planning, designing, fabrication, and erection etc. complete.
21. Facilities for Handicapped persons such as ramps, tactile flooring, railings and beepers shall be provided as per requirement.
22. A litre bin of appropriate type and size shall be provided by the Concessionaire.
23. Entire colour scheme and samples of the materials shall be got approved prior to use in the construction of Bus Q-Shelters.
24. The execution of civil works, maintenance and watch and ward should be got done preferably through ISO certified companies.
25. In case of any dispute regarding specifications, the relevant IS code shall be bound to be adopted.
26. The Concessionaire shall obtain a Completion Certificate in case of each Bus Q-Shelter from the Independent Engineer.
27. The design of Bus-Q-Shelters including installation should be such that the superstructure can be relocated easily to an alternate location.
28. Digital clock of superior quality shall be installed and the Concessionaire shall be responsible for display of correct time.

29. Photo-luminous paint meeting the relevant BIS specifications as applicable to road traffic signs will be used on the BQS name plate on the front fascia (below the advertisement board) for better visibility at night.
  
30. To facilitate access to all commuters a ramp not steeper than 1:12 will be provided from the road level to the BQS on atleast one side as shown in the Drawing which forms part of the Draft Concession Agreement.

## **SCHEDULE - H**

### **MINIMUM MAINTENANCE REQUIREMENTS**

1. All Bus Q Shelters, seats and the surrounding areas are to be kept cleaned at all times. The liter bins should not be overflowing at any time and disposal of garbage to be arranged to as required.
2. The advertisement panels to be kept clean from dust, stains etc. at all times. It is to be ensured that posters etc. are not posted on any of the panels and on structural part of Bus Q Shelters.
3. No leakage from roof to be permitted.
4. Proper drainage is maintained and no accumulation of water, liquid etc. is allowed at any time.
5. The lighting arrangement at the Bus Q Shelters is functional at all times. Electrical safety is to be ensured for users as well as Concessionaire's staff.
6. All structural members, seating arrangements and advertisement panels are to be inspected and maintained in good condition as per the maintenance manual.
7. Broken floor tiles are to be replaced within 3 days of such event. For this purpose it is advised that the Concessionaire maintains a minimum inventory of similar tiles at his store.
8. The staff provided should be literate and courteous toward the users and assist handicapped and old age users.
9. The flower plants and shrubs are to be maintained and watered regularly and the wastes to be disposed off.
10. Security of all assets to be ensured at all Bus Q Shelters.
11. The advertisements on panels to be changed during off peak periods – preferably during night hours.

## SCHEDULE - I

### Minimum Concession Fee

Year	Minimum Concession Fee during the Concession Period (Rs million)	
	Monthly	
First Year of Concession Period	Rs 10000/- per BQS per month is payable for those Bus Queue shelters for which provisional COD/COD has been obtained from Independent Engineer i.e., Rs 4 million	Rs 10000/- per BQS per month is payable for those Bus Queue shelters for which provisional COD/COD has been obtained from Independent Engineer i.e., Rs 48 million
Second Year of Concession Period	4.00	48.00
Third Year of Concession Period	4.40	52.80
Fourth Year of Concession Period	4.84	58.08
Fifth Year of Concession Period	5.32	63.89
Sixth Year of Concession Period	5.86	70.28
Seventh Year of Concession Period	6.44	77.30
Eighth Year of Concession Period	7.09	85.03
Ninth Year of Concession Period	7.79	93.54
Tenth year of Concession Period	8.57	102.89
<b>Total</b>		<b>699.81</b>

## **SCHEDULE - J**

### **MEMORANDUM OF UNDERSTANDING**

Where the Project is being implemented by a Consortium, the Memorandum of Understanding entered into by them for the purpose of implementing the Project may be appended.

(As submitted with the offer)

## SCHEDULE - K

### FORMAT OF ESCROW AGREEMENT

This Escrow Agreement (“**Agreement**”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20---- by and between:

M/s. **Delhi Transport Corporation**, a company within the meaning of the Companies Act, 1956 having its Head Office at Indraprastha Estate New Delhi 110002 **acting** through Chief General Manager (Tech), D.T.C. hereinafter referred to as the “**DTC**” (which expression shall, unless repugnant to the subject or context thereof, include its successors, administrators and executors) of the FIRST PART;

#### AND

M/s. -----, a company incorporated under the Companies Act, 1956 of India and having its registered office at -----, hereinafter referred to as the “-----” or “Company”(which expression shall unless it be repugnant to the context or meaning thereof mean and include its successors and permitted assigns) of the SECOND PART;

#### AND

----- **Bank Limited**, a company incorporated under the Companies Act, 1956 of India and carrying on business as a banking company under the Banking Regulation Act, 1949, having its registered office at -----, hereinafter referred to as “**Escrow Agent**” (which expression shall unless it be repugnant to the context or meaning thereof mean and include its successors and permitted assigns) of the THIRD PART.

The DTC and the Company shall hereinafter collectively be referred to as the “**Appointees**” and individually as “**Appointee**”.

The DTC, the Company and the Escrow Bank shall hereinafter collectively be referred to as the “**Parties**” and individually as “**Party**”.

**WHEREAS:**

- A. The Company is in the business of construction of Bus Queue Shelters on Build, Operate & Transfer (BOT) basis and has agreed to construct ----- Bus Queue Shelters (BQS) (can be increased upto ----- ) on Build, Operate & Transfer (BOT) basis in Delhi for the DTC.
- B. The Lender (defined hereinafter) has granted/ agreed to grant credit facilities to Company for the purpose of setting up the **Project** (defined hereinafter), meeting the working capital requirements of the Project .
- C. In order to secure the payment of concession fees, the Company is required to open and establish an Escrow Account with a Scheduled Commercial Bank (Licensed by RBI) as approved by the DTC, wherein all funds constituting the Financing Package for meeting the Total Project Cost shall be credited to such Escrow Account. During Operations Period all revenues collected by the Concessionaire through advertisement shall be exclusively deposited therein.
- D. The Company has accordingly approached the Escrow Bank for opening the Escrow Account and to act as an Escrow Bank for distributing the amounts deposited into the Escrow Account and the Escrow Bank has agreed to open the Escrow Account and act, as Escrow Bank subject to the terms and conditions contained herein.

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties intending to be bound legally, agree as follows

## **ARTICLE 1 DEFINITIONS**

- 1.1 For the purposes of this Agreement, the following terms shall have the meanings set forth below unless otherwise specified:
- 1.1.1 “**Agreement**” shall mean this Agreement including the Schedules hereto.
- 1.1.2 “**Business Day**” shall mean a day, not being a Saturday or a Sunday or a holiday notified under section 25 of the Negotiable Instruments Act, 1881, on which banks are open for business in New Delhi.
- 1.1.3 “**Business Hours**” shall mean the hours between 9.30 a.m. and 6.30 p.m. on a Business Day.
- 1.1.4 “**Concession**” shall mean right to construct, maintain and operate ----- BQS (can be extended upto ----- BQS) granted to Company by DTC pursuant to the Concession Agreement.
- 1.1.5 “**Concession Agreement**” shall mean agreement dated ----- signed between Company and DTC to construct, maintain and operate -----BQS (can be extended upto -----BQS) in Delhi.
- 1.1.6 “**Concession Fee**” shall mean the monthly fees payable by the Company to the DTC for grant of “**Concessions**”
- 1.1.7 “**Concession Fee Due Date**” shall mean the 10<sup>th</sup> day of each calendar month starting from the month of ----- till the month of ----- or till such period as may be extended by DTC Company jointly in writing.
- 1.1.8 “**Minimum Balance**” shall mean the aggregate of
- i. one quarter concession fee due to DTC (as per details provided by Company to the Escrow **Agent**)
  - ii. installment amount equivalent to one principal repayment amount for one month and interest repayment amount for one month payable by Company to the Lender and
  - iii. O & M Expenses for one quarter incurred by the Company directly or through O&M Contractor

- 1.1.9 “**Escrow Account**” shall mean the current account numbered \_\_\_\_\_ maintained with the Escrow Bank in the name of “**DTC – Company Escrow A/c**”.
- 1.1.10 “**Escrow Amount**” shall mean the Receivables deposited directly in the Escrow Account in terms of this agreement.
- 1.1.11 “**Lender**” shall mean ----- **BANK LIMITED** a banking company incorporated under the Companies Act, 1956 and licensed under the Banking Regulation Act, 1949 and having its Registered Office at -----  
-----.
- 1.1.12 “**Project**” shall mean construction, operation and maintenance of -----  
-- Bus-Q-Shelters allotted by DTC to Company on BOT basis for ten years extendible to fifteen years on mutual consent of the Owner and the Concessionaire on the same terms and conditions of the original Concession.
- 1.1.13 “**Receivables**” means monies received or to be received by the Company from its Debtors in relation to the concession agreement for -  
----- BQS (can be increased up to ----- BQS).

## 1.2 **Construction**

- 1.2.1 Any reference in this Agreement to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended, modified, extended or re-enacted whether before or after the date of this Agreement and to all statutory instruments orders and regulations for the time being made pursuant to it or deriving validity from it.
- 1.2.2 The meanings set forth for defined terms in this ARTICLE and all pronouns shall be equally applicable to both the singular and plural masculine, feminine or neuter forms as the context may require.
- 1.2.3 The headings of the several ARTICLES and sub clauses of this Agreement are intended for convenience only and shall not in any way affect the meaning or construction of any provision therein.
- 1.2.4 References to ARTICLES, recitals, clauses are, unless the context otherwise requires, to recitals, to clauses to this Agreement.
- 1.2.5 Words or phrases used in this Agreement which are not defined in ARTICLE 1 may be defined in the context in which they are used, and shall have the respective meaning there designated, unless the context otherwise requires.

## ARTICLE 2

### APPOINTMENT

- 2.1 The Company hereby appoints the Escrow Agent to act as trustee for Lenders Representative/DTC in connection herewith and authorises the Escrow Agent to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Agent by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Agent accepts such appointment pursuant to the terms hereof.
- 2.2 The Escrow Agent hereby agrees to act as such and to accept all payments and other amounts to be delivered to or held by the Escrow Agent pursuant to the terms of this Escrow Agreement. The Escrow Agent shall hold and safeguard the Escrow Account during the term of this Escrow Agreement and shall treat the amount in the Escrow Account as monies deposited by Company with the Escrow Agent, as agent for the benefit of the Lenders Representative/DTC, or their nominees, successors or assigns, in trust in accordance with the provisions of this Escrow Agreement. In performing its functions and duties under this Escrow Agreement, the Escrow Agent shall act as agent for Lenders Representative/DTC.
- 2.3 The Company also hereby declares that all right, title and interest in and to the Escrow Account and Payments made from the Escrow Accounts shall be vested in the Escrow Agent and held in trust for Lenders Representative/DTC and the Company in accordance with the terms of this Agreement and as their respective interests are provided for herein. Amounts deposited in the Escrow Account from time to time shall be held by the Escrow Agent in trust and received and applied as provided in and in accordance with this Agreement. No person other than the Lenders Representative/DTC and the Company shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.
- 2.4 The rights of Company/DTC in the monies held in Escrow Account are set forth in their entirety in this Escrow Agreement and Company/DTC shall have no other rights against or to the monies in the Escrow Account.
- 2.5 The Appointees hereby authorize the Escrow **Agent** to open a bank account under the name and style "**DTC – Company Escrow A/c**" with ----- Bank Limited ("**Escrow Account**") and further authorize the Escrow Agent to operate and close the said Escrow Account subject to the terms contained herein.

- 2.6 The Company undertakes to issue instructions to its debtors, to deposit all receivables due and payable to the Company, directly into the Escrow Account and in case the monies are received directly by Company, Company undertakes to deposit the said monies in the Escrow Account.

The Company undertakes to credit into the Escrow Account all proceeds received pursuant to any insurance claims.

The Escrow Agent agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account;

- 2.7 The Escrow Agent and the Company shall agree (after consultation with Lenders Representative and DTC) on the detailed mandates, terms and conditions and operating procedures for the Escrow Account but in the event of any inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

- 2.8 The Escrow Account shall be established with the ..... Branch of the Escrow Agent. The Escrow Account shall be denominated in INR.

- 2.9 This Agreement shall remain in full force and effect so long as amounts remain outstanding from the Company in respect of the Financial Assistance received by it from the Lenders or its obligations to DTC, unless terminated earlier by the mutual consent of the parties or otherwise in accordance with the provisions of this Clause.

The Company may, by not less than 45 days prior notice to the Escrow Agent, DTC and the Lenders Representative, terminate this Agreement and appoint a new Escrow Agent, provided that the new Escrow Agent is acceptable to Lenders Representative and DTC and arrangements are made satisfactory to Lenders Representative DTC for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Agent.

- 2.10 The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O & M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.4.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF ESCROW AGENT AND APPOINTEES

- 3.1 The Escrow **Agent** hereby represents and warrants to the Appointees as follow:
- 3.1.1 The Escrow **Agent** is competent and free to enter into this Agreement.
- 3.1.2 The Escrow **Agent** is not under any disability, restriction or prohibition, which might prevent the Escrow **Agent** from performing or observing any of its obligations under this Agreement.
- 3.1.3 The Escrow **Agent** shall hold the all the amounts deposited into the Escrow Account without claiming any right of lien, in accordance with the terms of this Agreement.
- 3.1.4 Each of the Appointees hereby represent and warrant to the Escrow **Agent**as follows:
- it has the power and authority to execute this agreement and perform its obligations hereunder;
  - its obligations under this agreement constitute legal, valid and binding obligations enforceable in accordance with the terms of this agreement; and
  - it has obtained all regulatory/statutory approvals for carrying our the underlying transaction of transfer of shares to the purchaser
  - the Escrow **Agent** is not required to obtain any regulatory, legal or statutory approval for performing its obligations under this agreement.
  - it is not aware of any legal, quasi legal, administrative, arbitration, mediation, conciliation or other proceedings, claims, actions, governmental investigations, orders, judgements or decrees of any nature made, existing, threatened, anticipated or pending by or against it which may prejudicially affect the due performance or enforceability of this agreement or any obligation, act, omission or transaction contemplated hereunder.

## ARTICLE 4 OPERATION OF THE ESCROW

- 4.1 On and from the signing of this agreement, the Company shall instruct its Debtors to credit all receivables due payable to Company into the Escrow Account by way of a cheque/demand draft drawn in favour of the Escrow Account or electronic fund transfer to “DTC – Company Escrow A/c” and in all cases, ensure that all such monies are duly credited to the abovementioned escrow account.

The Company further agrees and undertakes that as long as any monies are due and payable by the Company to DTC and/or the Lender under the Agreement, the Company shall maintain the Minimum Balance in the Escrow Account. The Minimum Balance shall be placed as a Term Deposit with a tenor of \_\_\_\_\_ months and no withdrawals shall be permitted from the same without prior written consent from the DTC and the Lender. The Escrow **Agent** shall pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

On or prior to three Business Days from each Concession Fees Due Date, the Company shall intimate to the Escrow **Agent** the number of BQS in operation, the concession fees payable on the immediate next Concession Fee Due Date, the amount of service tax payable on the fees due and amount of TDS deductible, if any.

- 4.2 Unless otherwise instructed by the Appointees, the Escrow **Agent** shall, upon receipt of the Concession Fee Intimation, apply the Escrow Amount in the Escrow Account in the following order and priority by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment /Date(s). :

- i) firstly for payment of Concession Fee to DTC and thereafter in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter:
- iii) Retain such sum in the Escrow Account so as to maintain Minimum Balance as mentioned in Clause 4.2 above, if such balance is not maintained

Appropriate the balance funds in the Escrow Account for the payment of various expenses in the following order of priority.

- a) All taxes due and payable by the Concessionaire
- b) Payment of Provident Fund, ESI and other Statutory Instalments, if due
- c) Any payments and damages due and payable by the Concessionaire to DTC pursuant to this Agreement
- d) The whole or part of the expense on repair work or O&M expense incurred by DTC on account of exercise of any of its rights under this Agreement provided DTC certifies to the Escrow Bank that DTC had incurred such expenses in accordance with the provisions of this Agreement ;
- e) O & M Expenses incurred by the Concessionaire directly or through O&M Contractor, if any, subject to the items and ceiling in respect thereof as set forth in the Agreement but not exceeding monthly liability on this account per month
- f) All expenses in connection with and relevant to the Construction of the Project Work by way of payment to the contractors
- g) Balance if any as per the instructions of the Concessionaire.

#### **4.3 Application of insurance proceeds**

Notwithstanding anything in this Agreement the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Amount and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Highway, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.4 Application of Insufficient Funds**

As provided in Clause 4.4, the application of funds in the Escrow Account shall be in the serial order of priority set forth therein. If the funds available for payment to the Parties listed in Clause 4.4 are sufficient to pay a portion, but not all, of the amounts required to be paid to any one Party listed in Clause 4.4, the Escrow Agent shall apply such funds in the serial order of priority set forth in Clause 4.4, until exhaustion thereof.

#### **4.5 Withdrawals following Event of Default**

- a Notwithstanding anything to the contrary contained in the Escrow Agreement , upon termination of this Agreement , all amounts standing to the credit of the Escrow Account shall be appropriated and dealt with in the following order:
- b all quarterly payments due to DTC from the Concessionaire under this Agreement ;
- c any payments and damages due and payable by the Concessionaire to DTC pursuant to this Agreement ;
- d all Taxes due and payable by the Concessionaire;
- e PF, ESI and Statutory dues to its employees (including employees of its contractors);
- f all accrued Debt Service Payments;
- g all accrued O&M Expenses;
- h any other payments/claims arising out of/ required to be made under/on account/attributable to this Agreement.

4.6 If on any date the balance available in the Escrow Account is insufficient to affect debit as mentioned in clause 4.5 (a.) and/or on receipt of intimation by the Escrow Agent from the Lender regarding default by Company in the repayment of the credit facilities, the Appointees hereby authorize the Escrow Agent to prematurely encash the Minimum Balance placed as Term Deposit and appropriate the lesser of (i) the Minimum Balance and (ii) the difference between the amount payable to DTC and/or the Lender (as intimated to the Escrow Agent) and the balance in Escrow Account.

4.7 On release of any of the portion of the Escrow Amount in the manner specified above, the Appointees shall not hold the Escrow Bank liable

for such release. The Company will be solely responsible to ensure the authenticity and the order of payments as set out in ARTICLE 4.3 or 4.4. For the avoidance of doubt, the Escrow Agent shall not have any liability to ensure authenticity and the order of payments as set out in ARTICLE 4.3 or 4.4.

- 4.8 No withdrawals will be allowed from Escrow Account except to the extent provided above.

**ARTICLE 5**  
**ESCROW AGREEMENT DEFAULTS**

If the Company is in breach of any of its obligations under this Agreement and, following a notice of default from Lenders Representative/DTC, fails to remedy the same:

- (A) in the case of a failure to deposit funds received by the Company in the Escrow Account, by depositing the same in the Escrow Account within five Business Days of receipt of such notice;
- (B) in the case of a breach consisting of causing the Escrow Agent to transfer funds to any Company Account in breach of the terms of this Agreement, by depositing the relevant funds in the Escrow Account in which such transfer should have been made within five Business Days of receipt of such notice.
- (C) in the case of any other breach, by remedying the same within five (5) Business Days to the satisfaction of Lenders Representative/DTC;

the same shall constitute a Default under this Agreement..

The Company and the Escrow Agent agree and confirm that any Default by either the Company or the Escrow Agent in the performance of their respective obligations under this Agreement resulting, in the opinion of Lenders Representative/DTC, in a breach of this Agreement, shall qualify as an Event of Default under the Concession Agreement.

## **ARTICLE 6 MISCELLANEOUS**

### **6.1 Closure of Account**

The Escrow Agent shall, at the request of the Company made on or after the payment by the Company of all outstanding amounts under the Financing Documents / Concession Agreement and upon confirmation of receipt by the Lenders Representative/ DTC, close the Escrow Account and pay any amount standing to the credit thereof to the Company.

Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall remain in full force and effect till the Transfer Date mentioned in the Concession Agreement provided however if shall certify to the Escrow Agent that Concession Agreement and/or the Concession has been terminated on account of default of the Company under the Concession Agreement, then notwithstanding anything to the contrary contained herein, all the amounts standing to the credit of the Escrow Account shall be dealt with in accordance with provisions of Clause 4.4.

### **6.2 Successors and Assignors**

This Agreement shall be binding on and shall ensure to the benefit of the Parties and their respective successors and permitted assigns.

### **6.3 No Set Off**

The Escrow Agent agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to the amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is declared by the Escrow Agent that the monies and properties held by the Escrow Agent shall not be considered as part of the assets of the Escrow Agent and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Agent be wholly excluded from the assets of the Escrow Agent in such bankruptcy or liquidation.

### **6.4 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier, registered or certified mail or facsimile. The address for service of each Party and its facsimile number is set out under its name on the signing pages hereto. All notices shall be effective upon

actual receipt save that where a notice is received after 5.30 p.m. on a Business Day or on a day that is not a Business Day, such notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing a Party giving or making a notice or communication by facsimile shall promptly deliver a copy of such notice or communication personally, by courier or mail to the addressee of such notice or communication.

Any Party may by notice change the addresses and/or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### **6.5 Waiver**

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the rights of the relevant Party to enforce any provision in accordance with its terms.

#### **6.5 Severability**

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

#### **6.6 Amendments**

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of all the Parties.

#### **6.7 Governing Law**

This Agreement shall be governed by and construed in accordance with Indian law.

#### **6.8 Regulatory Approvals**

The Escrow Agent shall use its best efforts to procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Agent represents and warrants that it is not aware of any reason why such regulatory approvals will not be ordinarily granted to the Escrow Agent.

#### **6.9 Notification of Balances**

Seven Business Days prior to each Payment Date (and for this purpose the Escrow Agent shall be entitled to rely on an affirmation by the Company and/or Lenders`Representative/ DTC as to the relevant Payment Dates), the Escrow Agent shall notify Lenders`Representative/ DTC of the balance of the Escrow Account as at the close of business on the immediately preceding Business Day.

IN WITNESS whereof the Company has caused its Common Seal to be affixed hereto and to a triplicate hereof on the date first above written and the Escrow Agent, DTC and the Lenders Representative have caused the said triplicate to be executed by the hands of their authorised officials.

## **6.10 Enforcement**

In the event either Party shall resort to legal action to enforce the terms and provisions of this Escrow Agreement, the prevailing Party may recover from the other Party the costs of such action including, without limitation, reasonable attorney`s fees.

## **6.11 Arbitration**

**6.11.1** Any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement or the consequences of its nullity) between the parties and which continues to be unresolved for 30 days shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996.

### **6.11.2 The arbitration shall be conducted as follows:**

- (a) The venue of arbitration shall be New Delhi.
- (b) The Parties shall appoint a single arbitrator. In the event the Parties cannot agree upon an arbitrator, each Party shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator, in case the dispute is between two Parties of this Agreement. However, in case the dispute is between all the Parties then each Party shall appoint one arbitrator. In the event the arbitrators are even in number, the arbitrators shall together appoint the presiding arbitrator.

**6.11.3** The arbitration award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.

## **6.12 Jurisdiction**

Subject to ARTICLE 10.6 the Parties agree that the courts of New Delhi alone and no other courts shall have the jurisdiction to entertain

and try any disputes arising from and out of the provisions of this Agreement.

### **6.13 Indemnity**

The Appointees hereby indemnify and agree to save, keep harmless and indemnified the Escrow Agent against any and all claims, liabilities, demands, proceedings, action, losses, damages, penalties, judgments, costs, expenses or Deposit Amounts of any kind which may be imposed on, incurred by or asserted against the Escrow Agent in its capacity as an Escrow Agent and in any way relating to or arising out of this Agreement or any action taken or omitted by the Escrow Agent in enforcing or preserving the rights of the Appointees under this Agreement or otherwise sustained or incurred by the Escrow Agent in complying with any instructions from the Appointees, except in cases of bad faith, gross negligence or willful misconduct.

### **6.14 Violation of Terms**

Without prejudice to the provisions of this Agreement, the Parties agree that each Party shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Party from committing any violation or enforce the performance of the covenants, obligations and representations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including without limitation a right for recovery of the amounts due under this Agreement and related costs and a right for damages.

### **6.15 Counterparts**

This Agreement may be executed in as many counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement and instrument. This Agreement may also be executed by the parties by fax and on such execution this agreement shall constitute valid and binding obligation of each parties of the terms contained herein.

### **6.16 CONFIDENTIAL INFORMATION**

The Parties hereby agree to hold, and to cause its directors, partners, officers, employees and agents to hold, in strictest confidence the existence and provisions of their Agreement or other material related to the transactions embodied under this Agreement. The Parties shall not disclose such information to any third party, except as reasonably may be required for the fulfillment of this Agreement. Notwithstanding the

foregoing, the obligation of confidentiality shall not apply to any disclosure (i) of information that is in or enters the public domain other than by reason of a breach by the Person receiving such information (ii) of information that was in the possession of the receiving Person prior to its disclosure to such Person, or (iii) required by law, regulation, legal process, or order of any court or governmental body having jurisdiction provided, however, that prior to such disclosure, the Party who is required to disclose the information shall inform the other Parties and consult with the Parties as to the information which will be disclosed and, provided, further, that the information so disclosed shall be limited to, that legally required to be disclosed pursuant to such law, regulation, legal process, or order of any court or regulatory / government authority. The provisions of this ARTICLE shall survive this Agreement and continue to remain in full force and effect.

**ARTICLE 7**  
**LIABILITY OF THE ESCROW AGENT**

- 7.1 The duties of the Escrow Agent hereunder will be limited to the observance of the express provisions of this Agreement and the Escrow Agent shall not be entitled or expected to use any discretion in that regard.
- 7.2 All the terms and conditions in connection with the Escrow Agent's duties and responsibilities, are contained solely in this Agreement and the Escrow Agent is not expected or required to be familiar with the provisions of any other agreement, and shall not be charged with or bound by any responsibility or liability in connection with the observance of the provisions of any such other agreement. No implied duties or obligations shall be read or deemed to be read into this agreement against the Escrow Agent
- 7.3 The Escrow Agent shall be fully protected in acting and relying upon the written instructions, whether sent in original or by facsimile, signed by the authorized signatories of the Appointees and of any other entity in pursuance of the provisions contained in this Agreement notwithstanding the fact that the signatures on facsimile instructions cannot be authenticated. If there are any changes in the name and / or the specimen signatures of the authorized signatories, then the same should be provided immediately in writing to the Escrow Agent, provided that this shall not affect or render illegal any act done by the Escrow Agent prior to the date of receipt of such changes in accordance with the earlier instructions.
- 7.4 The Escrow Agent will not be liable to ensure that any law, statutory requirements or Regulations are complied with and shall be entitled to act merely in accordance with the directions/instructions as issued in accordance with ARTICLE 4.
- 7.5 Except as herein expressly provided, none of the provisions of this agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur financial liability or expense in the performance of any of its duties hereunder. For clarity, it is agreed that all reasonable costs, charges and expenses to be incurred or incurred by the Escrow Agent in the performance of its duties under the escrow arrangement herein contained or in taking or defending any action or proceeding shall be borne and paid by the Appointees and if incurred by the Escrow Agent shall be forthwith reimbursed to the Escrow Agent by the Appointees.
- 7.6 The Escrow Agent is hereby authorized to comply with and obey all orders, judgments, decrees or writs entered or issued by any court, and in the event the Escrow Agent obeys or complies with any such order, judgment, decree or writ of any court, in whole or in part, it shall not be liable to any of the Appointees, nor to any other person or entity, by

reason of such compliance, notwithstanding that it shall be determined that any such order, judgment, decree or writ be entered without jurisdiction or be invalid for any reason or be subsequently reversed, modified, annulled or vacated.

- 7.7 The Escrow Agent may rely on and will be protected in acting or refraining from acting upon any written notice, instruction, instrument, statement, request or document furnished to the Escrow Agent, which the Escrow Agent believes to be genuine and to have been signed or presented by the Appointees.
- 7.8 It is expressly agreed by the Parties that the obligations of the Escrow Agent under this Agreement are contingent upon the Appointees fulfilling their obligations under this Agreement.
- 7.9 It is expressly agreed by the Parties that in the event the Appointees fail to comply with their respective obligations hereunder, the Escrow Agent shall not be liable or responsible for any consequences in any manner whatsoever.
- 7.10 The Appointees agree to provide all documents, regulatory approvals etc, if so requested by the Escrow Agent so as to comply with any legal/statutory requirement or for the purpose of performing its obligations hereunder, failing which the Escrow Agent shall not be bound to comply with its requirements under this Agreement.
- 7.11 On the termination of this Agreement, the Escrow Agent shall be discharged from all its obligations, duties and liabilities and shall not be liable for any action taken or not taken by it under the terms hereof.

SIGNED AND DELIVERED BY

)  
..... within named Escrow Agent )  
by the hand of )  
.....  
an authorised official of the )  
Escrow Agent )

Address:

Fax/Facsimile Number:

Attention:.....

SIGNED AND DELIVERED by )  
..... within named Lenders )  
Representative by the hand of )  
..... )  
)  
an authorised official of the Lenders )

Representative

Address:

Fax/Facsimile Number:

Attention: .....

SIGNED AND DELIVERED by )  
DTC within named by the hand of )  
..... )  
an authorised official of the DTC )

Address:

Fax/Facsimile Number:

Attention:.....

THE COMMON SEAL OF ..... )

has pursuant to the Resolution )  
of its Board of Directors passed in )  
that behalf on the ..... day of .....20--- )  
hereunto been affixed in the presence of )  
Shri ..... and Shri ..... )  
Directors who have signed these )  
Presents in token thereof and )  
Secretary/authorised )  
Person who has countersigned the )  
Same in token thereof. )

Address:

Fax/Facsimile Number:

Attention:.....