



**RFP DOCUMENT FOR  
CONSTRUCTION, OPERATION AND  
MAINTENANCE OF SMART BUS-Q-  
SHELTERS AT VARIOUS LOCATIONS  
IN AGRA ON BUILT, OPERATE AND  
TRANSFER (BOT) BASIS WITH  
ADVERTISING RIGHTS UNDER PPP  
MODE**

July 2022

**AGRA SMART CITY LIMITED  
OFFICE OF NAGAR NIGAM  
AGRA, UTTAR PRADESH - 282002**

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## **INSTRUCTION TO BIDDER FOR SUBMISSION OF E-BIDS**

### **A. Submission of e-Bids:**

The Bid Submission module of e-procurement website <http://etender.up.nic.in> enables the bidders to submit the e-bids online against this bidding published by the purchaser. Bid may be submitted only during the period and time stipulated in the bidding. Bidders are advised to start the Bid Submission process well in advance so that they can submit their bids in time. The bidders shall submit their bids taking into account the server time, displayed in the e-procurement website. This server time is the time by which the bid submission activity will be allowed till the permissible time on the last date of submission stipulated in the schedule. The bidders cannot submit their bids after the completion of bid submission period. For delay in submission of bids due to any reasons, shall be responsibility of the bidder. The bidders shall follow the instructions mentioned herein under for submission of their e-bids.

- i. For participating in bids through the e-bidding system, it is necessary for the bidders to be the registered users of the e-procurement website <http://etender.up.nic.in>. The bidders shall first register themselves on the e-bidding website, if they have not done so previously, using the option “Click here to enroll” available on the home page of the website.
- ii. In addition to the normal registration, the bidder has to register with their Digital Signature Certificate (DSC) in the e-bidding system and subsequently he/ she will be allowed to carry out his /her bid submission activities. Registering the Digital Signature Certificate (DSC) is a one-time activity. Before proceeding to register their DSC, the bidder shall first log on to the e-bidding system using the User Login option on the home page with the logging ID and Password with which they has registered as per clause i above. For successful registration of DSC on e-procurement website <http://etender.up.nic.in> the bidder must ensure that they possess class-2 /Class-3 DSC issued by any certifying authorities duly approved by Controller of Certifying Authorities. The bidder is also advised to register their DSC on E-procurement website well in advance before bid submission period & time so that they do not face any problem while submitting their e-bid against this bidding. The bidder can perform User Login creation and DSC registration exercise as described in clauses above even before bid submission period starts. The purchaser shall not be held responsible if the bidder tries to submit their e-bid at the last moment of submission of bid, but could not submit due to DSC registration problem.
- iii. The bidder can search for active biddings through “Search Active Biddings” link, select a bidding in which they are interested in and then move it to “My Biddings” Folder using the option available in the Bid Submission menu. After selecting and viewing the bidding, for which the bidder intends to bid, from “My Biddings” folder, the bidder can place their bid by clicking “pay Offline” option available at the end of the view bidding form. Before this, the bidder should download the bidding document and price Schedule/Bill of Quantity (BOQ) and study them carefully. The bidder shall keep all the documents ready as per the requirements of bidding document in the PDF format except the Price Schedule/Bill of Quantity (BOQ) which shall be in the XLS Format (EXCEL sheet).
- iv. After clicking the “Pay offline” option, the bidder shall be redirected to the relevant page of Terms and conditions. The bidder shall read the Terms and conditions before proceeding to fill in the

Bidding fee EMD offline payment details. After entering and saving the Bidding Fee and EMD details, the bidder shall click “Encrypt & Upload” option given in the offline payment details form so that “Bid Document Preparation and Submission” window appears to upload the documents as per technical (Fee details, Qualification details, Bid Form and Technical Specification details) and financial (Bid Form and Price Schedule/BOQ) schedules/packets given in the bidding details. The details of the Demand Draft or any other accepted instrument which is to be sent physically in the original before opening of technical bids, should tally with the details available in the scanned copy and the data entered during with submission time otherwise the bid submitted shall not be accepted.

- v. Next, the bidder should upload the Technical Bid Documents for fee details (Bidding fee and EMD), Qualification details as per PQC, and Financial Bid documents as per bidding document. Before uploading, the bidder has to select the relevant Digital Signature Certificate. They may be prompted to enter the digital signature Certificate password, if necessary. For uploading, the bidder should click “Browse” button against each document label in Technical and Financial schedules/packets and then upload the relevant PDF/XLS files already prepared and stored in the bidder’s computer.
- vi. The Bidder shall click “Encrypt” next for successfully encrypting and uploading of required documents. During the above process, the bid documents are encrypted/ locked electronically with the DSC’s of the Bid openers to ensure that the bid documents are protected, stored and opened by concerned bid openers only.
- vii. After successful submission of bid documents, a page giving the summary of bid submission will be displayed that the process of e- bid submission is completed. The bidder can take a printout of the summary using the “print” option available in the window as an acknowledgement for future reference.
- viii. Purchaser reserves the right to cancel any or all Bids without assigning any reason.
- ix. The Bidders are advised to upload the scanned documents with minimum of 150 dpi scanner to ensure readable uploaded e- Bids.

**B. Deadline for Submission of E-Bids:**

- i. E-Bids (Technical and Financial) must be submitted by the bidders at e-procurement website <http://etender.up.nic.in> not later than 17:30 Hrs on Dated 05 Aug 2022
- ii. The Purchaser may, at his discretion, extend this deadline for submission of bids by amending the bid documents.

**C. Late Bids:**

- i. The server time indicated in the Bid Management window on the e-procurement website <http://etender.up.nic.in> will be the time by which the bid submission activity will be allowed till the permissible date and time schedule in the bidding. Once the bid submission period is over, the bidder cannot submit their bid. Bidder has to start the Bid Submission well in advance so that the submission process is completed within the scheduled period, failing which; it shall be the bidder’s responsibility.

**D. Withdrawal and Resubmission of E-Bids:**

- i. At any point of time, a bidder may withdraw their bid submitted online before the completion of bid submission period. For withdrawing, the bidder shall first log in using their login ID and password and subsequently by their Digital Signature Certificate on the e-procurement website <http://etender.up.nic.in> The bidder shall then select “My Bids” option in the Bid Submission menu. The page listing all the bids submitted by the bidder shall be displayed. Click “View” to

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see the details of the bid to be withdrawn. After selecting the “Bid Withdrawal” option, the bidder has to click “Yes” to the message “Do you want to withdraw this bid?” displayed in the Bid Information window for the selected bid. The bidder also has to enter the reason for withdrawing the bid and upload the same for withdraw before clicking the “Submit” button. The bidder has to confirm again by pressing “Ok” button before finally withdrawing their selected bid.

- ii. The bidder has to request the purchaser with a letter, attaching the proof of withdrawal and submission of bid security/EMD in the office of purchaser for taking back the bid security/EMD as per the manual procedure.
- iii. No bid may be withdrawn in between the period fixed for last date of submission of bids and the period of expiry. Withdrawal of a bid during this interval may result in the Bidder’s forfeiture of their bid security.
- iv. The bidder can resubmit their bid as and when required till the scheduled bid submission end date and time. The bid submitted earlier will be replaced by the new one. The bid security submitted by the bidder earlier will be used for revised bid and the new bid submission summary generated after the successful submission of the revised bid will be considered for evaluation purposes. For resubmission, the bidder shall first log in using their Login ID and Password and subsequently by their Digital Signature Certificate on the e-procurement website <http://etender.up.nic.in> The bidder should then select “My Bids” option in the Bid Submission menu. The page listing all the bids submitted by the bidder will be displayed. Click “View” to see the details of the bid to be resubmitted. After selecting the “Bid Resubmission” option, click “Encrypt & Upload” to upload the revised bid documents by following the methodology provided in clauses E to G
- v. The bidders can submit their revised bids as many times as possible by up loading their bid documents within the schedule period for submission of e-bids.
- vi. No bid can be resubmitted subsequently after the period for submission of bids is over.

- E.** Bidders are advised to study the bid Document carefully. Submission of bids against the tender notice shall be deemed to have been done after careful study and examination of the procedures, terms and conditions stipulated in the bid Documents with full understanding of its implications.
- F.** The bid document is available at e-procurement website <http://etender.up.nic.in> Interested bidders may view, download the bidding document, seek clarification and submit their bid online up to the prescribed date and time through uploading on e-procurement website <http://etender.up.nic.in>
- G.** The bidders are required to submit the cost of bidding document as stated above through demand draft/ Banker’s cheque in favor of Chief Executive Officer, Agra Smart City Ltd payable at Agra, prior to 15:00 Hrs. on date of the scheduled date & time of opening of Prequalification cum Technical Bid failing which bid shall not be considered/opened.
- H.** All bids must be accompanied by a Bid Security (EMD) in the form of Demand Draft/Bank Guarantee in prescribed proforma of scheduled Bank which shall be duly pledged in favour of “Chief Executive Officer Agra Smart City Ltd” payable at Agra. The scanned copy of bid document fee (RFP Document Cost), Earnest Money Deposit/Bid Security, Power of attorney must be up loaded electronically along with all the bid documents. **The original copy of bid document fee, EMD, Power of Attorney made in the name of individual who signed bid document digitally through DSC & Validity Commitment in prescribed pro forma provided in bid document on non- judicial stamp paper of Rs 100.00 each should be furnished to the Conference hall, Agra Smart City Limited, Agra before 15:00 Hrs. on date of opening of Prequalification cum Technical Bid of submitted Bid, failing which the bid shall not be considered/ opened.**



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- I.** The bids shall be electronically opened in the presence of bidder's representatives, who choose to attend, at the prescribed venue, date and time mentioned above.
- J.** The Purchaser reserves the right to cancel any or all the bids/ annul the bidding process without assigning any reason thereof.
- K.** In the event of date specified for bids opening, being declared a holiday then the bid shall be opened on next working day at schedule time.
- L.** All the required documents shall be submitted/ uploaded by the bidder electronically in the PDF format. However, the Financial Bid should be submitted in the XLS format.
- M.** No deviation from the Technical specification & Technical Conditions shall be acceptable.



## **Contents of RFP Document**

The RFP document comprises the 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.

### **CONTENTS**

**Volume 1 - Instructions to Bidders**

**Volume 2 - Project Information Memorandum and Formats for Bid Submission**

**Volume 3 - Draft Concession Agreement**

## **Disclaimer**

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

This RFP is not an Agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in submitting their technical details and making their financial offers pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Project Information Memorandum, may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein. The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

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

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

# Volume 1 - Instructions to Bidders

## 1 INSTRUCTIONS TO BIDDERS

### 1.1 LETTER OF INVITATION

Agra Smart City Limited (ASCL), a Special Purpose Vehicle (SPV) was setup to implement the development work at the city level. One of such development work is Construction, Operation and Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode. ASCL envisages constructing approximately 206 ( out of which 20 locations would be taken up in phase-1) smart, aesthetic, sleek, culturally viable, commuters and environment friendly international standard BQS on BOT basis keeping in view with Agra aspirations to function as a Tourism City of Uttar Pradesh. The information regarding the number and tentative location of BQS is given in this RFP document. The BQS will cover an area of approx. 30mt. (10m x 3m)/ may change as per the availability of area at the individual site. It will also provide space for Passenger Information Systems and Public Information System like City maps/ Tourist Map etc. It will be based on the concept design as provided in the RFP document. This Request for Proposal, issued from the office of ASCL, invites 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 (Lead member + 2) of such firms. The Private Sector Party (PSP) would be required to Build, Operate, Maintain and Transfer the Project facility to ASCL after the expiry of the Concession period. The Concessionaire shall, during operation period, be entitled to collect revenue from external parties through display of advertisement at the BQS at earmarked spaces as defined in the concession agreement. This RFP Document Package comprises

- ✚ Volume 1 – Instructions to Bidders
- ✚ Volume 2 – Project Information Memorandum and Formats for Bid Submission
- ✚ Volume 3 - Draft Concession Agreement

ASCL has adopted a two-stage process (collectively referred to as the "**Bid Process**") for selection of the Bidder for award of the Project. The first stage (the "**Prequalification cum Technical Stage**") of the process involves qualification and evaluation of interested parties/ consortia in accordance with the provisions of this RFP documents. The eligibility criteria for pre-qualification shall be as follows:

#### 1.1.1 PRE QUALIFICATION EXPERIENCE:

For demonstrating technical capacity and experience, the Bidder shall have:

- a) Experience in the field of advertising in Bus-Q-Shelters, malls, public places etc. for minimum Seven years and
- b) Experience in Urban Infrastructure (design/ manufacture/ construction/ operation and maintenance of projects such as Bus-Q-Shelters / Parking lots/ Street Furniture/ Commercial Area Development/ Transportation) for minimum Seven years.

In support of above Copy of work order, Concession agreement, Completion Certificate should be attached.

**Note:**

For evaluation of technical experience for pre-qualification, experience of any one/all member of the consortium shall be required to fulfil the criteria. The information shall be furnished as per **Annexure – 2** (Format for Similar type of Experience) as provided in the RFP document.

**1.1.2 FINANCIAL CAPABILITY:**

For demonstrating financial capability, the Bidder shall have:

- a) Minimum Net-Worth of INR 15 lakhs in the last audited financial year ending March 31, 2021.
- b) Minimum Annual Sales/ Turnover of INR 1 Crores (or equivalent) in last three Audited Financial Years i.e. FY 2018-19, FY 2019-20 and FY 2020-21.

In case of a Consortium, the Financial Capability of all members whose equity share capital is not less than 26% of the subscribed and paid-up equity of the Bidder shall be taken into consideration. The information shall be furnished as per **Annexure- 2** (Format for Financial Capability) as provided in the RFP document. **Only those bidders who meet the eligibility criteria for pre-qualification as given above shall qualify for evaluation of technical proposals as per the marking system given in Clause 2.3.2.3 of the RFP document.** The Financial Bid of only those bidders who fulfil the technical qualification criteria shall be opened. The Financial Bid, which shall stipulate the concession fee along with other amounts that the bidder is willing to pay to ASCL as per the Financial Bid format.

**1.2 DATA PROVIDED**

All data provided as a part of the RFP Document is for guidance and general information purposes. The same should be verified by the bidder for use as a part of preparing their submissions for the project. During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Concession including implementation of the Project.

**1.3 BID SECURITY AND RFP DOCUMENT COST**

A Bidder shall provide Bid Security/EMD as per Clause A(iv) and G of Instruction to Bidder for Submission of E-Bids for an amount equivalent to Rs. 2.00 lakhs. This Bid Security shall be refundable not later than 180 (One Hundred Eighty) days from the Bid due date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security as per RFP document. The Bidders will have an option to provide Bid Security in the form of a demand draft in favour of The Chief Executive Officer, Agra Smart City Limited payable at Agra or a Bank Guarantee for the requisite amount in the prescribed format as given in Annexures of this document. The validity period for the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended till the decision to award the contract at the instance of ASCL. The Bid shall be summarily rejected if it is not accompanied by the Bid Security in the prescribed format.

The RFP document cost is Rs.5000 plus GST acceptable through Demand Draft in favor of Chief Executive Officer, Agra Smart City Ltd payable at Agra. The bid document should be downloaded from the government website of <http://etender.up.nic.in> The scanned copy of RFP document cost



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in the form of Demand Draft from Nationalized/Scheduled Bank shall be enclosed at the time of submission of bid. The cost of RFP document shall not be refunded under any circumstances. The Bid shall be summarily rejected if it is not accompanied with the RFP document cost.

#### **1.4 BID PARAMETER**

As per the selection criteria, bidders are required to quote the consolidated concession fee for all the sites (details given in the RFP itself) that it offers to pay to ASCL from the date of signing of the Concession Agreement. **The total Concession fee shall be the criterion for the selection of the Bidder.** Total amount of concession fee quoted by the bidder shall be escalated by 5% per year on cumulative basis and such escalated amount shall be payable for subsequent years. The criteria for selection of the bidder shall be the one who offers the highest concession fee which shall be payable to ASCL. The bidder shall quote only one figure as per the financial bid format. Any ambiguity in respect of the quoted price by the bidder shall render the bid liable for rejection.

The successful bidder shall have to pay the total concession fee for the respective year by seventh day of the commencement of the year. The first of such instalment shall be payable w.e.f. 121st day from the date of signing of the agreement. The Concession period shall be 15 years from the date of signing of the Concession Agreement.

#### **1.5 SCHEDULE OF BIDDING PROCESS**

The ASCL shall endeavour to adhere to the following schedule:

<b>S.No.</b>	<b>Event Description</b>	<b>Date</b>	<b>Time</b>
1.	Issue of RFP document	09-7-2022 to 05-8-2022	Office hrs.
2.	For Receiving Queries	16-7-2022	Office hrs.
3.	Pre-Bid meeting	20-7-2022	1430 hrs
4.	Authority's response to Queries by	27-7-2022	
5.	Submission of Technical Bids till	05-8-2022	1730 hrs.
6.	Opening of Technical Bids at	08-08-2022	1500 hrs.

#### **1.6 SUBMISSION OF BIDS**

The Pre-qualification cum Technical and Financial Bids duly completed shall be submitted online and as per the procedure explained in Instruction to Bidder for Submission of E-Bids and this RFP on or before 1730 Hrs IST on Aug 05, 2022. The physical payment of bid security and RFP document cost shall be provided at below address before 15:00 Hrs. on date of opening of Prequalification cum Technical Bid of submitted Bid and after uploading copy of the same on the eprocurement website.

**The address for submission is:**

The Chief Executive Officer  
Agra Smart City Limited (ASCL),  
ASCL Nagar Nigam, Mahatma Gandhi Road,



Sursadan Crossing,  
Agra – 282002, Uttar Pradesh

## **1.7 COMPENSATION IN CASE OF DEFAULT**

ASCL will have to be compensated by the concessionaire, in case of default on its part with respect to cleanliness, routine maintenance, periodic maintenance, safety of BQS and its components as also for violating the location and specified area norms for advertisement as set out in the Concession Agreement. The extent of compensation shall be as per the Concession Agreement.

## **1.8 BIDDER'S RESPONSIBILITY BEFORE SUBMISSION**

### **1.8.1 COST OF PREPARING BIDS:**

The Bidder shall be responsible for all the costs associated with the preparation of the submission and participation in the selection process. ASCL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the selection process.

### **1.8.2 BIDS TO BE COMPLETE:**

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.

### **1.8.3 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 submissions 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 submissions. ASCL shall not stand guarantee and shall not be held responsible for the veracity of details which have been made available in this document.

### **1.8.4 SITE VISIT AND COST ASSOCIATED WITH INVESTIGATIONS:**

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. The Bidders are advised to inspect and examine the site in general and its surroundings and satisfy themselves in all respect before submitting the technical and financial bids.

### **1.8.5 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. ASCL shall not be liable for any mistake or error on the part of the Bidder in respect of any of the clauses above.

## **1.9 COST OF DOCUMENT**

The RFP document cost is Rs.5000 plus GST acceptable through Demand Draft in favor of Chief Executive Officer, Agra Smart City Ltd payable at Agra. The bid document should be downloaded from the government website of <http://etender.up.nic.in> The scanned copy of RFP document cost



in the form of Demand Draft from Nationalized/Scheduled Bank shall be enclosed at the time of submission of bid. The cost of RFP document shall not be refunded under any circumstances. The Bid shall be summarily rejected if it is not accompanied with the RFP document cost.

## **1.10 CLARIFICATIONS TO RFP DOCUMENTS**

### **1.10.1 RAISING OF QUERY:**

The prospective Bidding Firm requiring any clarification of the RFP documents may notify to the CEO in writing by post, courier or by facsimile at the address given below:

The Chief Executive Officer  
Agra Smart City Limited (ASCL),  
ASCL Nagar Nigam, Mahatma Gandhi Road,  
Sursadan Crossing,  
Agra – 282002, Uttar Pradesh

Queries should also be sent by e-mail to [amcagra1@gmail.com](mailto:amcagra1@gmail.com)

### **1.10.2 RESPONSE TO QUERY**

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

## **1.11 PRE-BID MEETING**

A pre-bid meeting shall be held for providing clarifications and replies to the queries of bidders. The pre-bid meeting shall be held at 1430 hrs on Jul 20, 2022 in Meeting Hall of ASCL. In case of any modification in the venue the same shall be intimated to the bidders and shall be uploaded on the website. 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 attended the pre-bid meeting. The clarifications shall also be displayed on the website [www.nagarnigamagra.com](http://www.nagarnigamagra.com), <http://etender.up.nic.in>. Any modifications in the RFP document, which may become necessary as a result of the Pre-bid meeting or otherwise, shall be through the issue of an addendum. 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 a legal binding on all the Bidders irrespective of their attendance at the Pre- Bid Conference.

## **1.12 VALIDITY OF BID AND BID SECURITY**

### **1.12.1 VALIDITY OF BID**

Bid shall remain valid for a period of 120 days from the date of submission of Price Bids. ASCL reserves the right to reject any Bid, which does not meet this requirement.

### **1.12.2 VALIDITY OF BID SECURITY AND ITS DISCHARGE**

The Bid security shall be valid for 180 days from the bid due date. Any Bid not accompanied with an acceptable Bid Security is liable for rejection. The Bid security of the unsuccessful Bidders would be returned after the acceptance of the Letter of Award by the successful bidder. The Bid security of the successful Bidder will be discharged when the successful Bidder has signed the Concession Agreement and furnished the Performance Security for implementation.

### **1.12.3 FORFEITURE OF BID SECURITY**

The Bid security is liable to be forfeited under the following conditions:

- a) If the Bidder withdraws the Proposal during the period of Bid validity.
- b) Withdrawal of bid between the period fixed for last date of submission of bids and the period of expiry
- c) In the case of a successful Bidder, if the bidder fails to deposit the required upfront amount as stipulated in clause and further fails to sign the Concession Agreement within the stipulated time or fails to furnish the required Performance Security within the stipulated time.
- d) if the bidder submits the conditional bid.

### **1.13 CLARIFICATION FROM BIDDERS**

To assist in the evaluation of Bid submitted by bidders, ASCL may, at its discretion, ask any bidder for clarification of its submission. The request for clarification and the response thereto shall be in writing. The bidder shall, however not be permitted to modify its bid in any manner whatsoever while responding to the clarifications sought by ASCL.

### **1.14 LANGUAGE**

The Submissions in response to Bid 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.

### **1.15 BID PROPOSAL DOCUMENTATION**

The Submissions made by the bidder should have no overwriting and corrections. All corrections are to be carried out by crossing and rewriting by the Bidders themselves and all such corrections must be initialled by an authorized person. All the alterations, omissions, additions, or any other amendments made to the Proposals shall be initialed by the person/(s) signing the Bid. The technical proposal shall be shall be duly paginated. The Bidders are advised to upload the scanned documents with minimum of 150 dpi scanner to ensure readable uploaded e- Bids.

### **1.16 ASCL RIGHT TO ACCEPT AND REJECT THE BIDS**

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

### **1.17 BID SUBMISSION DUE DATE**

Pre-qualification cum Technical bid and Financial Bid shall be submitted online in the e-procurement website <http://etender.up.nic.in> by **1730 hrs IST on 05 Aug, 2022**. Bid may be submitted only during the period and time stipulated in the bidding. ASCL may, at its discretion, extend the due date for submission of the bids. For the purpose of this document the term “Bid Due Date” shall mean the date for submission of the Bids.

### **1.18 SUBMISSION OF PRE-QUALIFICATION CUM TECHNICAL PROPOSAL**

#### **1.18.1 DOCUMENTS/ITEMS COMPRISING THE BID**

The Bid submitted by the Bidder shall consist of as follows:

- a) the Scan copy of RFP Document Cost and Bid Security in prescribed format as per RFP Requirements
- b) pre-qualification cum Technical Bid in conformity with the RFP in the prescribed bid form and shall be supported by all other documents as well as technical and commercial information required in accordance with the bid documents. Bidder is required to submit details of documents as per the Formats and Annexure-2 of bid document. Failure to provide the documents as prescribed may result in rejection of bid.
- c) the financial bid as per Annexure -11 and Annexure - 12 of the RFP document.

#### **1.18.2 POWER OF ATTORNEY:**

Power of attorney must be up loaded electronically along with all the bid documents. The original copy of Power of Attorney made in the name of individual who signed bid document digitally through DSC & Validity Commitment in prescribed pro forma provided in bid document on non- judicial stamp paper of Rs 100.00 each should be furnished to The Chief Executive Officer, Agra Smart City Limited (ASCL), ASCL Nagar Nigam, Mahatma Gandhi Road, Sursadan Crossing Agra before 15:00 Hrs. on date of opening of Prequalification cum Technical Bid of submitted Bid, failing which the bid shall not be considered/ opened.

### **1.19 LATE SUBMISSIONS**

The server time indicated in the Bid Management window on the e-procurement website <http://etender.up.nic.in> will be the time by which the bid submission activity will be allowed till the permissible date and time schedule in the bidding. Once the bid submission period is over, the bidder cannot submit their bid. Bidder has to start the Bid Submission well in advance so that the submission process is completed within the scheduled period, failing which; it shall be the bidder’s responsibility.

### **1.20 WITHDRAWAL AND RESUBMISSION OF E-BIDS**

As per clause D of Instruction to Bidder for Submission of E-Bids

### **1.21 PRE-QUALIFICATION CUM TECHNICAL AND FINANCIAL BID OPENING**

The Pre-qualifications cum Technical Bids as received by due date and time shall be opened by the ASCL at the office of The Chief Executive Officer, ASCL Nagar Nigam, Agra – 282002, Uttar Pradesh at 1500 hrs IST on 08.08.2022 in the presence of bidders who choose to be present. The time and

date of the Bid opening of the Pre-qualifications cum technical proposals has already been given in Bid Schedule Process. The Pre-qualifications cum technical proposals of only those bidders shall be opened who has provided the physical payment of bid security, RFP document cost and Power of Attorney. The opening of Financial Bids shall be notified by the ASCL to every participating/qualified bidder.

## **1.22 CONFIDENTIALITY**

ASCL will treat all information submitted as part of Submission in confidence and would require all those who have access to such material to treat the same in confidence. ASCL 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.

# Volume 2 – Project Information Memorandum and Formats for Bid Submission

## 2 PROJECT INFORMATION MEMORANDUM AND FORMATS FOR BID SUBMISSION

### 2.1 PROJECT BACKGROUND

The Agra Smart City Limited is engaged in the implementation of the Smart City Mission projects in Agra and as part of this endeavour, the Authority has decided to undertake Construction, Operation and Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode.

### **2.1.1 AGRA**

Agra is the city of the inimitable Taj Mahal. It is as loved by Indians as it is by foreigners who throng here in large numbers to admire its beauty. Along with Delhi and Jaipur, Agra forms the Golden Triangle of tourism in India. Situated in Uttar Pradesh, it borders Sadabad and Hathras on the north, Bharatpur on the Far-Western Region, Tundla, Firozabad and Fatehabad on the east and Dholpur to the south and Mathura- Vrindavan to the North West. Agra is synonymous with the Taj Mahal; however there's lot more to the city than this world-famous monument. Right from the epic Mahabharata to the Mughal Dynasty, Agra has been monumental and has played a significant role in shaping India's history. Agra has two UNESCO World Heritage sites which is Agra fort and Taj Mahal however Taj Mahal features in the 50 most popular tourist destinations in the world.

### **2.1.2 MOBILITY IN AGRA**

Public transportation is a form of travel offered locally that enables more people to travel together along designated routes. Public transport is the hallmark of a good transportation system for a city. For a state like Uttar Pradesh, which is earmarked as the "Heritage State", as it provides good impetus to the tourist population, the role of public transport is vital, particularly to reduce the use of personalized transport. To keep the public transportation system in line with the state-of-art and to fulfil passenger requirements, it is essential to provide not only clean transportation but also safe and connected transportation.

As per the report received from UPSRTC, the number of vehicles in Agra has grown by 45% from 4.25 lakhs in 2003-04 to 6.15 lakhs in 2010 of which 76% are two wheelers. This has had an impact on the average journey speed, which is less than 15kmph on nearly 65% of the network. Heavy congestion is witnessed in the city during the peak hours, however it is more pronounced during the morning peak hours when nearly 65% of the major road network comprising of MG road, NH2 and other arterial roads has average journey speed less than even 10 kmph. The increased vehicle ownership has also affected the trip rates for the city.

Agra, Mathura City Transport Service Ltd. covers the entire city and is used by daily commuters like office goers, students, senior citizen and ladies. The buses majorly operate on two routes, i.e., urban (within city) and nearby Agra. There are 3 entry points to the Agra city and majority of buses in urban area ply on 4 routes.

The existing public transport system available for performing inter-city trips mainly consists of buses operated by UPSRTC and private operators. The intra-city travel within the city is primarily through buses, tempos, auto rickshaws and cycle rickshaws. The city bus service in Agra City operates through private operators. As on date, buses are operational on 8 circular routes and 6 direct routes in Agra City. Average length of the said routes is 21 kms. A total of 293 CNG buses are operational on these routes. However, it has been observed that a large number of buses are operating on profitable routes rather than prescribed routes.

### **2.1.3 BUS TRANSPORT IN AGRA**

Just like any other global city, Agra is also facing pollution in air giving birth to various air-borne diseases. To minimize this, along with Non-Motorized Transport [NMT], like, cycle, rickshaws,

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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pedestrian walking, etc. public transport has a very crucial role to play. To cater to this, currently, UPSRTC [Uttar Pradesh State Road Transport Corporation] is plying City and Regional buses to various locations across the City and neighbouring Regions from the following locations:

- a) Bijli Ghar [Agra Fort]- City and Regional Buses
- b) Idgah Bus Depot- City and Regional Buses
- c) Transport nagar- Regional Buses
- d) Bhagwan Talkies- City and Regional Buses
- e) Jeevan Jyoti, Dayal Bagh- City Buses

- a) Bijli Ghar [Agra Fort]- City and Regional Buses

⊕ City bus routes plying from **Bijli Ghar** are:

- ✚ Bah [38km.]
- ✚ Kheragarh [8km.]
- ✚ Fatehabad- Pinhat [26/55 km.]
- ✚ Shamshabad Road [16km.]
- ✚ Tundla [5/33km.]
- ✚ Firozabad [39km.]

⊕ Regional bus routes plying from **Bijli Ghar** are:

- ✚ Tundla
- ✚ Eta
- ✚ Kashganj
- ✚ Rishikesh
- ✚ Haridwar
- ✚ Firozabad
- ✚ Jhalesar
- ✚ Bah
- ✚ Kheragarh
- ✚ Shamshabad

- b) Idgah Bus Depot- City and Regional Buses

⊕ City bus routes plying from **Idgah Bus Depot** are:

- ✚ Fatehpur Sikri [35 km.]

⊕ Regional bus routes plying from **Idgah Bus Depot** are:

- ✚ Firozabad
- ✚ Jagnair
- ✚ Ghorakhpur
- ✚ Shikohabad
- ✚ Manpuri
- ✚ Kanpur
- ✚ Mathura, Delhi

- + Jaipur
- + Muraina, Gwalior

c) Transport nagar- Regional Buses

- ⊕ Regional bus routes plying from **Transport Nagar** are:
  - + Mathura, Delhi
  - + Noida
  - + Meerut
  - + Aligarh
  - + Muradabad

d) Bhagwan Talkies- City and Regional Buses

- ⊕ City bus routes plying from **Bhagwan Talkies** are:
  - + Airport [17km]
  - + Jaipur Highway [15km]
  - + Rhot Nahar [37km]
  - + Sawla [23km]
  - + Agra Cantonment [20km]
  - + Sikandra
  - + Water works- Workshop
- ⊕ Regional bus routes plying from **Bhagwan Talkies** are:
  - + Mathura

e) Jeevan Jyoti, Dayal Bagh- City Buses

- ⊕ City bus routes plying from Jeevan Jyoti, Dayalbagh are:
  - + Agra Cantonment Railway Station

#### 2.1.4 BUS SHELTERS IN AGRA

*Excerpted from Public Space Amenities: A Guide to their Design and Management of in Downtowns, Neighbourhood Commercial Districts and Parks, published by Project for Public Spaces.*

**A good bus** shelter is an essential part of any successful urban mass-transit system. What constitutes "good," however, depends upon your point of view. From the perspective of the city agency that is responsible for its management, a good shelter is one that has low maintenance requirements and is vandal-resistant. From the rider's point of view, an ideal shelter is one that allows visibility and easy access to the bus, is comfortable and convenient, provides clear information, and is safe.



Both viewpoints are equally important to consider, because an unused shelter is a waste of money and an unnecessary maintenance problem. A well-designed, comfortable shelter can make waiting for a bus a pleasant -- and even interesting -- experience! Unfortunately, many poorly designed shelters also exist.

Out of 201 locations where bus halts in Agra, there are only 25 locations which have a bus shelter out of which many are not in use because some have been vandalized, some are being used as shelters for the homeless, at some buses do not stop because of poor planning, etc. On the contrary, there are locations, where buses do stop and passengers wait under a tree, but there are no bus shelters.

#### **2.1.4.1 IS A BUS SHELTER NEEDED?**

There are some general guidelines that are being followed in deciding whether or not a bus shelter is needed. Situations where a shelter is required include the following: neighborhoods where buses run infrequently; commercial areas with frequent service and high levels of ridership; areas where security is a problem; neighborhoods where there are many older or infirmed people; and areas where inclement weather is common.

#### **2.1.4.2 LOCATION**

Bus shelters are being located near retail stores that have products related to bus riders' needs (e.g. bakery, flower shop, newsstand, etc.) and are open late at night; near office building entrances within view of a security guard; near street vendors; and in conjunction with other amenities such as telephones, benches, and so on.



Specific guidelines for locating bus shelters are noted below:

Bus shelters near intersections are being set back from the crosswalk approximately 10 feet to avoid conflicts with pedestrian traffic. If a bus stop is on the far side of an intersection, the shelter is being located a minimum of 40 feet from the crosswalk to allow adequate room for the bus to stop. A distance of 3 feet is being kept between the bus shelter and the curb for free movement in boarding and exiting from the bus. Bus shelters long side are being paralleled to the sidewalk to minimize interference with pedestrian traffic. Exit and entry openings are being oriented so that people are protected from the wind. However, the side of the shelter facing the street is open to allow passengers to board or exit the bus easily. Elements such as information kiosks or vendors that can obstruct the view of oncoming buses are being located "down-stream" from the shelter.

### 2.1.4.3 DESIGN

Some bus shelters are being designed to reflect the city of Agra. This is being accomplished through the use of local materials, design details and reflecting the unique characteristics of Agra.



Within this context, these four general qualities are kept into account- visibility, accessibility, comfort and convenience, and information.

#### ⊕ **Visibility**

People must be able to see the bus coming. Poorly designed shelters that obstruct views of approaching buses will force people to leave the shelters to watch for oncoming buses.

#### ⊕ **Accessibility**

People must be able to board the bus conveniently. To many riders this is the most important aspect of a bus shelter's design, because people like to be close to the point where the bus door will open so they will be sure of getting on. The shelter should not obstruct this process of boarding.

#### ⊕ **Comfort and Convenience**

Shelters should provide a place to sit, protection from weather, and a feeling of safety and security.



#### ⊕ **Information**

People need to know when a bus will arrive and where it will go. This is especially important for people who are unfamiliar with the service, such as tourists.

### 2.1.5 AGRA NAGAR NIGAM

Agra Nagar Nigam (ANN) is a local government committed to provide basic infrastructure facilities including entertainment facilities to the people of the city. ANN is very well known for managing the city by using private sector participation as well as introduction of innovative mechanism in management to serve people efficiently. City has prepared different plans for improving services and to nullify gap between services and demands. The other key agencies in the city and sub-region which are responsible for urban planning and urban management functions include Agra Development Authority, Public Works Department and Jal Kal Vibhag.

In 2011, Agra had a population of 15,85,704 with 71.58% literacy. The increase in population has led to increase in the number of motorised transport vehicles. This increase has led to traffic congestion, road accidents, air and noise pollution. To minimise this, Agra Nagar Nigam is committed to promote Public Transport, like, City Buses run by UPSRTC [Uttar Pradesh State Road Transport Corporation] and Modern [functional] Bus Shelters with advertisement booths in the city of Agra.

Therefore, Agra Nagar Nigam through Agra Smart City Limited (ASCL) decided to float a Request for proposal for Construction, Operation and Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate And Transfer (BOT) basis with Advertising Rights under PPP Mode for a period of 15 years. In this project, Smart Bus-Q-Shelters would be constructed at various locations of the city which are shown in Annexure – 4 of this RFP – Description for Smart Bus-Q-Shelters.

ASCL is now issuing “Request for Proposal” (RFP) and inviting Technical and Financial Proposals from the interested bidders to Built, Operate and Transfer (BOT) the Project. The project is proposed to be implemented by selected bidder against rights for display advertisements for a period of 15 years in Agra city which includes the construction period of 6 months. The project shall be developed as per the Standards and Specifications stated in this RFP and best industrial practices in India. The project would be completely financed by the Concessionaire. In consideration the Concessionaire shall have access to revenue accruing Advertisement rights at designated spaces in the Smart Bus-Q-Shelters as specified in this RFP.

## **2.2 PROJECT FRAMEWORK**

### **2.2.1 IMPLEMENTATION STRATEGY**

ASCL intends to develop the project on “Build, Operate and Transfer” (BOT) basis by inviting Private Sector Party (Concessionaire) to construct, operate and maintain the Bus Shelters for a specified Concession Period of 15 (Fifteen) years. ASCL will enter into a Concession Agreement with the Concessionaire for the implementation of the project on Public-Private Partnership (PPP) mode. The Concessionaire, during the Concession period, shall carry out the services as per the technical specifications, performance standards and guidelines given as part of the Concession Agreement which forms a part of this RFP document. The Bus Shelters shall be transferred to ASCL free of cost, after the expiry of the Concession Period, in sound condition as per Concession Agreement. The implementation period for the project will not be more than six months within which the Concessionaire will complete the Construction of Smart Bus Shelters as per the requirements, technical specifications and standards. The title, interest, ownership and rights with regard to Bus Shelters (including all its associated elements i.e. advertisement panels etc) constructed by the Concessionaire for ASCL along with fixtures/fittings provided therein shall vest with the ASCL except that these will be operated and maintained by the Concessionaire as agreed. The assets created by the Concessionaire will be under the possession of the Concessionaire during the period of the Concession except under specific circumstances, as defined in the Concession Agreement, and will be transferred to ASCL 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 terms & conditions of Concession Agreement.

### **2.2.2 REVENUE GENERATION:**

The Concessionaire shall, during operation period, be entitled to collect revenue from external parties through display of advertisement at the Smart Bus Shelters at earmarked spaces as defined in the concession agreement but the type of advertisement shall have to be approved by the ASCL so that no objectionable advertisement is placed on surface of Bus Shelter.

### **2.2.3 SCOPE OF WORK:**

The project scope would include the following major activities:

- a) **Construction Works:** This includes construction of smart, modern user and environment friendly Bus Shelters as per the design/drawings and specifications approved by ASCL. Preference would be given to the designs depicting various architectural features of cultural importance, like, arches, sun- shading devices, domes, jalis, etc. The design needs to be merged with the urban scape and the prevailing traffic movement.
- b) **Operational Management:** This includes Bus 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 be responsibility of the concessionaire under agreement period.
- c) **Maintenance Works:** It will include routine and periodic maintenance works in the Bus Shelters but shall not be limited to the following:
  - ⊕ Civil, electrical and mechanical works for the Bus Shelters
  - ⊕ Furniture and Equipment maintenance and servicing
  - ⊕ Maintenance and overall cleanliness.
- d) **Transfer of Smart Bus-Q-Shelters:** On completion of concession period or prior termination of the contract, all the Smart Bus Shelters shall be transferred to ASCL on the free of cost. 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 ASCL for any purpose whatsoever. The Design philosophy for Construction, Operation & Maintenance of the Smart Bus-Q-Shelters Concept as **Annexure-1**

#### **2.2.3.1 SERVICES TO BE PROVIDED INCLUDING THE MAINTENANCE:**

- a) **Water Supply Arrangement:** The Concessionaire shall arrange adequate water for general cleanliness of the Bus Shelter.
- b) **Electricity Supply:** The Concessionaire shall ensure adequate electricity supply for proper lighting of the Bus Shelter and advertisements. ASCL 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 consumption and other charges. Concessionaire shall provide required equipment for storage of solar energy and supply of electrical energy at Bus Shelters. If some grant/ central Assistance schemes are their in the systems, ASCL shall provide administrative support to avail the facility.
- c) **Landscaping:** The Concessionaire shall put flowering plants and other shrubs around each Bus Shelter to the extent possible on both sides as per the approval of the ASCL and maintain the same in good condition at all times.

- d) **Cleaning of the Bus Shelter:** The concessionaire shall ensure regular cleaning of the Bus Shelter. This shall include sweeping of the floor of Bus Shelter at least thrice a day.
- e) **Garbage Disposal:** The concessionaire shall install litter bins as specified near the Bus Shelter and disposal of the collected waste at appropriate location shall be the responsibility of the Concessionaire.
- f) **Safety & Security:** The safety and security of the Bus Shelter rests with the Concessionaire. The Concessionaire shall -maintain security personnel, gadgets as required as part of the maintenance services.
- g) Any other work as needed and agreed upon jointly by ASCL and the Concessionaire.

## **2.2.4 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 Smart Bus Shelters over the concession period. The concessionaire shall also pay required taxes such as GST, entertainment tax, all statutory fees and taxes etc. as applicable under the law.

## **2.3 ELIGIBILITY CRITERIA AND EVALUATION OF BIDS**

### **2.3.1 PRE-QUALIFICATION**

The Eligibility Criteria for pre-qualification shall be as follows:

#### **2.3.1.1 TECHNICAL EXPERIENCE**

For demonstrating technical capacity and experience, the Bidder shall have:

- a) Experience in the field of advertising in Bus-Q-Shelters, malls, public places etc. for minimum Seven years for city of minimum population of 4 lakh.
- b) Experience in Urban Infrastructure (design/ manufacture/construction/ operation and maintenance of projects such as Bus-Q-Shelters /Parking lots/ Street Furniture/ Commercial Area Development/ Transportation) for minimum Seven years.

**Note:** For evaluation of technical experience for pre-qualification, experience of any one member of the consortium shall be required to fulfill the criteria. The information shall be furnished as per Annexure-2

#### **2.3.1.2 FINANCIAL CAPABILITY**

For demonstrating financial capability, the Bidder shall have (approved by CA):

- a) Minimum Net-Worth of INR 15 lakhs (or equivalent) in the last audited financial year ending March 31, 2020).
- b) Minimum Annual Turnover of INR 1 Crores (or equivalent) in last three Audited Financial Years i.e. FY 2018-19, 2019-20 and 2020-2021. In case of a Consortium, the Financial Capability of Lead member only shall be taken into consideration. The information shall be furnished as per Annexure-2 (Format -for Financial Capability). Only those bidders who meet the eligibility criteria for pre-qualification as given above shall qualify for evaluation of technical proposals as per the marking system given in below. The Financial Bid of only those bidders who fulfill the technical qualification criteria shall be opened. The Financial Bid, which shall stipulate the concession fee along with other amounts that the bidder is willing to pay to ASCL as per the Financial Bid format.

c) Consortium – The lead firm shall have a minimum stake of 26% in the Consortium.

### **2.3.2 TECHNICAL BID ELIGIBILITY**

For qualifying for evaluation of technical proposal the bidder shall fulfill the following conditions of eligibility:

#### **2.3.2.1 TECHNICAL EXPERIENCE**

For demonstrating technical capacity and experience, the Bidder shall have:

- a) Experience in the field of advertising in Bus-Q-Shelters, malls, public places etc. for minimum seven years AND
- b) Experience in Urban Infrastructure (design/ manufacture/construction/ operation and maintenance of projects such as Bus-Q-Shelters /Parking lots/ Street Furniture/ Commercial Area Development/ Transportation) for minimum seven years

**Note:** For evaluation of technical experience of Technical Bid, experience of any one member of the consortium shall be required to fulfill the criteria. The information shall be furnished as per Annexure-2 (Format for Technical Experience) as provided in the RFP document.

#### **2.3.2.2 FINANCIAL CAPABILITY**

For demonstrating financial capability, the Bidder shall have:

- a) Minimum Net-Worth of INR 15 lakhs (or equivalent) in the last audited financial year ending March 31, 2020).
- b) Minimum Annual Turnover of INR 1 Crores (or equivalent) in last three Audited Financial Years i.e. FY 2018-19, 2019-20 and 2020-21. In case of a Consortium, the Financial Capability of Lead member only shall be taken into consideration. The information shall be furnished as per Annexure-2 (Format for Financial Capability) as provided in the RFP document. Only those bidders who meet the eligibility criteria as given in this clause shall qualify for evaluation of technical proposal as per the marking system.

#### **2.3.2.3 MARKING SYSTEM**

<b>ITEMs</b>	<b>Maximum Marks</b>
For demonstrating technical capacity and experience, organizational set up and experience in different cities of similar size i.e. more than 4 lakhs For upto 2 cities – 5 For more than 2 cities- 10	10
Technical details, designs & drawings of the bus shelter, as per the site requirement of Agra including advertisement design and concept. For giving basic design of the bus shelter - 20 For extra feature within the bus shelter -10 For unique innovative design - 10	40
Placement drawing of Bus shelter on each proposed site, construction methodology & Schedule	20

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

Operation & maintenance Strategy	10
Revenue generation model & philosophy	10
Proposed Lighting system (conventional /solar powered)	10
<b>Total</b>	<b>100</b>

**2.3.2.4 TECHNICAL EVALUATION**

Technical proposals will be evaluated for their compliance of responsiveness to various bid requirements. ASCL 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 ASCL 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:

- a) Overall completeness and compliance and deviations from the ASCL requirements to the Proposal/conditions. The Bid that does not meet minimum acceptable standards of completeness, consistency and detail will be categorized as non responsible and shall be liable for rejection.
- b) Working methods and program demonstrating that how the Bidder will achieve the performance standards within the time frame. Each responsive Bid shall be given a technical score based on weight ages 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 60 out of 100. Only those bidders, whose aggregate technical score is above stipulated minimum technical score, will be qualified for the opening of financial bids and evaluation thereof. ASCL shall notify to qualified bidders the outcome of technical evaluation. The financial proposal of those bidders who do not qualify the Pre-qualification cum technical evaluation shall be rejected and no claim in this regard shall be entertained.

**2.3.3 OPENING OF FINANCIAL BID AND EVALUATION**

At the end of evaluation of Pre-qualification cum technical proposals, ASCL shall invite bidders who have submitted substantially responsive Pre-qualification cum technical proposals and who have been determined as qualified, for opening of financial bids. The bidders shall then be requested to attend the opening of Financial Bids. The schedule and venue for opening of financial bids shall be duly intimated to the substantially responsive bidders well in time. Following shall be read out and recorded at the time of opening of financial bids: The name of the bidder, Whether there is a modification or a substitution, The bid price i.e. the Concession Fee quoted by the bidder payable to ASCL w.e.f. 121st day from signing of the Concession Agreement with 5% escalation per annum on cumulative basis for subsequent years. Any other details the ASCL may consider appropriate. A summary of the financial offers made by various bidders shall be tabulated and a copy of the same shall be put up on the website of ASCL. ASCL shall then evaluate the financial bids of all the responsive bidders. In case of difference in the offer quoted by the bidder in figures and the words, the offer quoted in words shall prevail.

**2.3.4 SELECTION AND NOTIFICATION**

The highest financially evaluated bidder, based on the quoted concession fee and accepted by the ASCL would be selected as successful bidder and would be intimated through a “Letter of Award”.



### **2.3.5 AWARD OF CONTRACT**

Upon issuance of the “Letter of Award” the selected bidder shall have to communicate the acceptance of the contract through a “Letter of Acceptance” within 15 (Fifteen) days of issue of the Letter of Award and sign the Concession Agreement within 40 (Forty) days of issue of “Letter of Award”. The successful bidder shall be required to furnish Performance Security for implementation 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 shall continue to be in possession of ASCL. If the bidder fails to deposit the upfront amount and/or the Performance Security as per preceding paragraphs and subsequently fails to sign the Concession Agreement within 40 days of issuance of the “Letter of Award”, ASCL shall reserve 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.

### **2.3.6 EXTENSION OF VALIDITY OF BID**

In exceptional circumstances, prior to expiry of the original Bid Validity Period, ASCL may request the Bidders in writing to extend the Bid Validity Period (and also the bid security validity) for a specified additional period. A bidder shall be at liberty to refuse to concede to such a request to extend validity of his bid without forfeiting his Bid Security. However a bidder conceding to the request shall not be permitted to modify his bid in any manner whatsoever.



# ANNEXURES

## **ANNEXURE 1 - DESIGN PHILOSOPHY FOR CONSTRUCTION, OPERATION & MAINTENANCE OF THE SMART BUS SHELTERS CONCEPT**

The concept of Smart Bus Shelters envisages maximum utilization of available space, i.e., the waiting space along with boarding-alighting space. Concept shall be clear from the sketch/conceptual design provided with the document. The BS may be in the form of a Single Shelter Unit (SSU). The SSU shall be wider, and will cover an area of approx. 30sqm. (10.0m x 3.0m). Size may vary as per the space availability at respective site/place. Spaces for Passenger Information Systems and Public Information Systems like maps etc. are provided with Advertisement spaces at SSU. These will be based on the concept design as provided.

### **Smart Bus-Q-Shelter Planning:**

Salient features of a typical bus shelter as per the requirements are as follows:

1. The maximum area of shelter shall be used by the public to provide better level of comfort. This provides easiness between boarding alighting and waiting space.
2. Absence of backside covering at some part, allow better natural light & Ventilation at the shelter.
3. The desirable platform level at the bus shelter shall be about 400mm above the road carriageway surface.
4. The arrangement of the bus shelter is assessed on a shelter-to-shelter basis and is determined by site constraints and passenger access requirements. However, it is planned in such a way that maximum utilization of space can be achieved for public comfort and adequate circulation space.
5. Sufficient space for queuing and passenger flow to be ensured at the shelter. However, the available space may be constrained by local site conditions. Besides this, the other considerations should be:
  - a) Adequate capacity for passenger movements.
  - b) Convenience, including good signage relating to system information, circulation and orientation.
  - c) Safety and security, including a high level of protection against accidents.
  - d) Adequate safety measures against fire to be taken.
  - e) Electrical safety standards like ELCB and earthing etc. to be provided.
  - f) Provision of toilet facilities and mobile charging stations
6. Following miscellaneous requirements have to be considered:
  - a) Minimum operating costs are incurred consistent with maintaining efficiency and the safety of passengers.
  - b) Flexibility of operation including the ability to adapt to different traffic conditions and provision for the continuity of operation during any extended maintenance or repair period, etc.
  - c) Provision of good visibility at shelters, Natural light, ventilation and other utilization areas aiding more efficiency and safety.
  - d) Provision of display of passenger information and advertising.
  - e) Provision of vending kiosk/space
7. In order to transfer passengers efficiently from street to footpath and from footpaths to shelter and vice versa, the spatial planning has to be based on established principles of pedestrian flow

- and shall minimize avoidable walking distances and cross-flows between incoming and outgoing passengers.
8. Passenger handling facilities comprise of ramps, walkways and boarding - alighting area, required to process the peak traffic from street to platform and vice-versa. These facilities must also enable evacuation of the shelter under emergency conditions.
  9. The substructure and the super structures that afford maximum transmission of natural light and are architecturally/ aesthetically pleasing to look at are envisaged. The structures/sub components, wherever necessary, shall look compatible with both, modern environment as well as the lesser-built developments along various sections of the bus route corridor. This has to be done without compromising with environmental protection from sun and rain.
  10. Shelter roofs are proposed to be of sleek SS frame with polycarbonate sheet or better material to achieve slender appearance. The disposal of rain water and dirt from the roof should be taken care of.
  11. **Accessibility:** Shelters are design on the concept of free flow of Passenger Traffic. No gates are provided at the shelter. Ramp is provided one side for physically challenged passengers.
  12. **Lighting:** Since the bus operations are scheduled to be extending over a period of 16 hrs, adequate lighting is necessary along with natural lighting, ensuring minimum illumination levels of 60 lux in the waiting, boarding and alighting areas. The uniformity ratio (Average Intensity/ Minimum Intensity) should be 2 (Two). Solar panels and batteries for lighting in B S and for the advertisements is a preferred option.
  13. **Floor/Landing Surfaces:** The floor should be firm, stable and anti skid type, consisting of either concrete or pre polished concrete designer tiles 20 mm thick of approved colour, shape and pattern, in floor jointed with neat cement slurry/binding material, over a bed of 150 mm cement concrete mix of 1:4:8 and 50mm thick cement mortar of 1:6 mix. The non slippery tiles to be laid as per provisions for physically challenged. These should be easily washable and cleanable, acid resistant.
  14. Necessary cut-outs for electric connections, lighting, for advertisement panel's etc should be provided at required places in the sub structure or superstructure in a concealed manner.
  15. **Painting Work-** To be minimized to the extent possible by use of suitable material, however on plastered surfaces, a primer coat and three coats of Plastic paint (duco paint is preferred) and on mild steel members, a primer coat with 2/3 coats of enamel paint. In case of Aluminum section, anodizing of 20 microns is recommended.
  16. **Steel Work/ frames:** Vertical/horizontal members for demarcating and segregating different types of areas, to the extent possible, to be of prefab type, able to house the hanging/fastening of display panels, informative maps etc.
  17. **Roof:** Preferably to be Polycarbonate sheets/any other similar material and Steel work in built up tubular trusses, to be Fire retardant. The characteristics may be summed up as: Virtually unbreakable, high resistance to weathering-temperature variation as per Agra conditions, easily fabricated & installed, Low flammability, Light Weight, Easily Cleaned, Excellent Insulation Properties. The material should also be suitable for Cutting, Drilling, Bending and Thermoforming. The roof has to withstand live loads such as that of the cleaning staff and for monkeys, which jump on roofs.

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

18. **Steel Work as Sub Structure:** Pre-fab to the extent possible, SS Steel in built up tubular trusses including cutting, hoisting, fixing in position, welded and bolted including special shaped washers etc. complete above plinth level.
19. **Area for advertisements:** The minimum areas to be made available for advertisements to the Concessionaire shall be as given below. Of the total area available on internal panels, some area has to be ensured for system information (such area is not included in the area available for advertisement at SSU), the do's and don'ts, guide maps, plans and social messages etc.

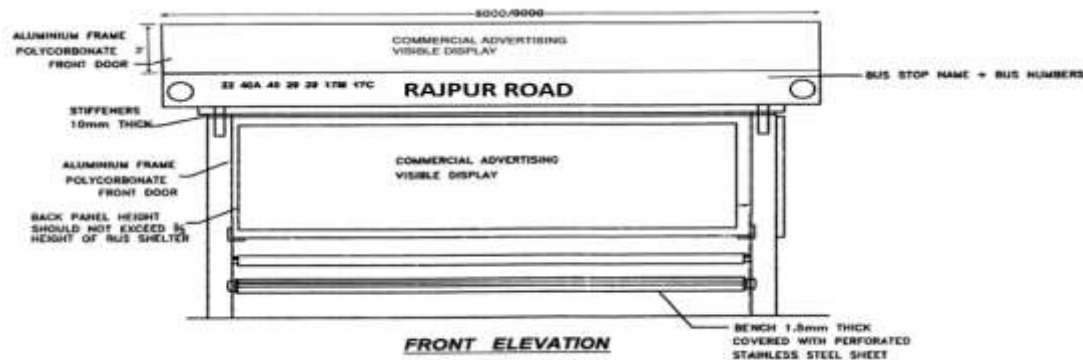
The minimum available areas/spaces:

S.No	Space Size	Area (Sq.m)
1.	Front 9.85 m X 1.05 m	10.3425
2.	Right Side 2.45 m X 1.15 m	2.8175
3.	Left Side 2.45 m X 1.15 m	2.8175
4.	Ad Panel (outer) 1.45 m X 1.685 m	2.44325
5.	Ad Panel (Inner) 1.45 m X 1.685 m	2.44325

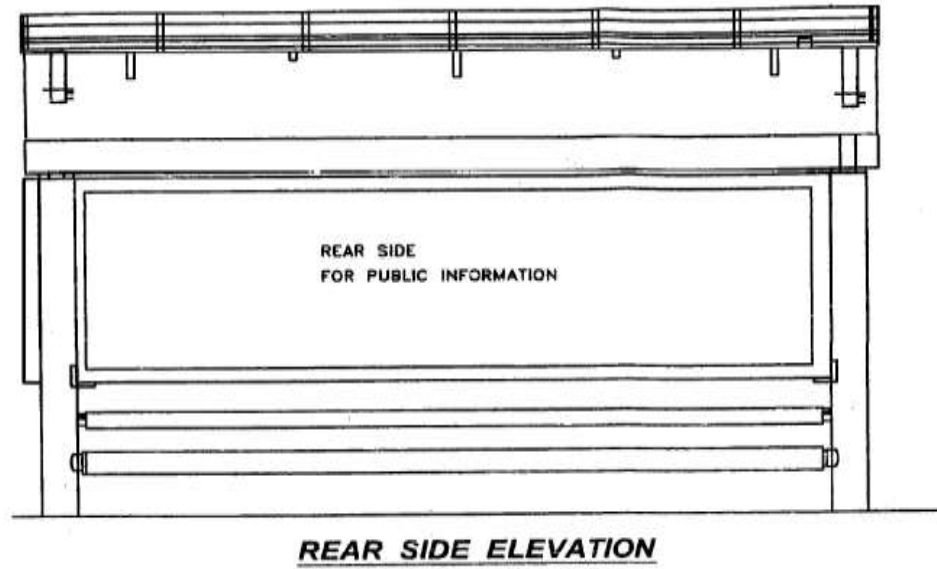
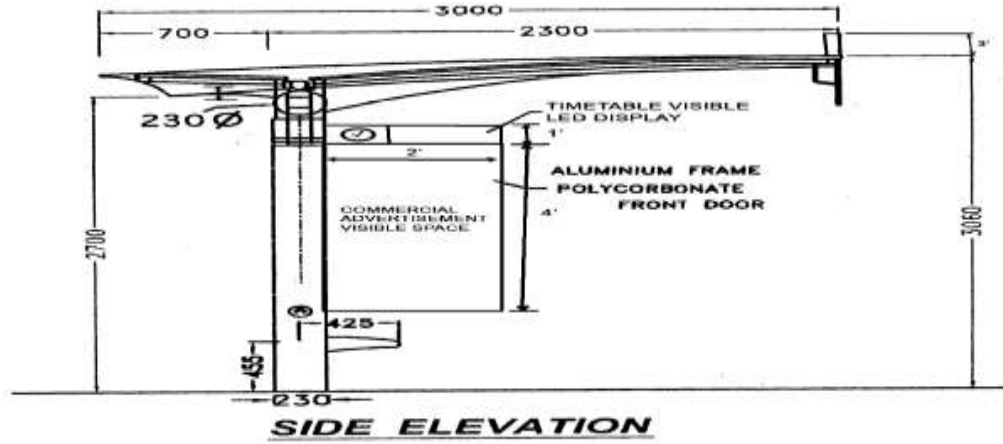
Note:- Before placing the advertisement, the type, product for which ad is proposed, total area etc details should be given and after approval of CEO, ASCL the ad boards should be placed. For above subject to decisions of CEO, ASCL shall be final. The above may change as per the site requirement.

20. Construction materials used should be such that they age well and do not require extensive maintenance or replacement.

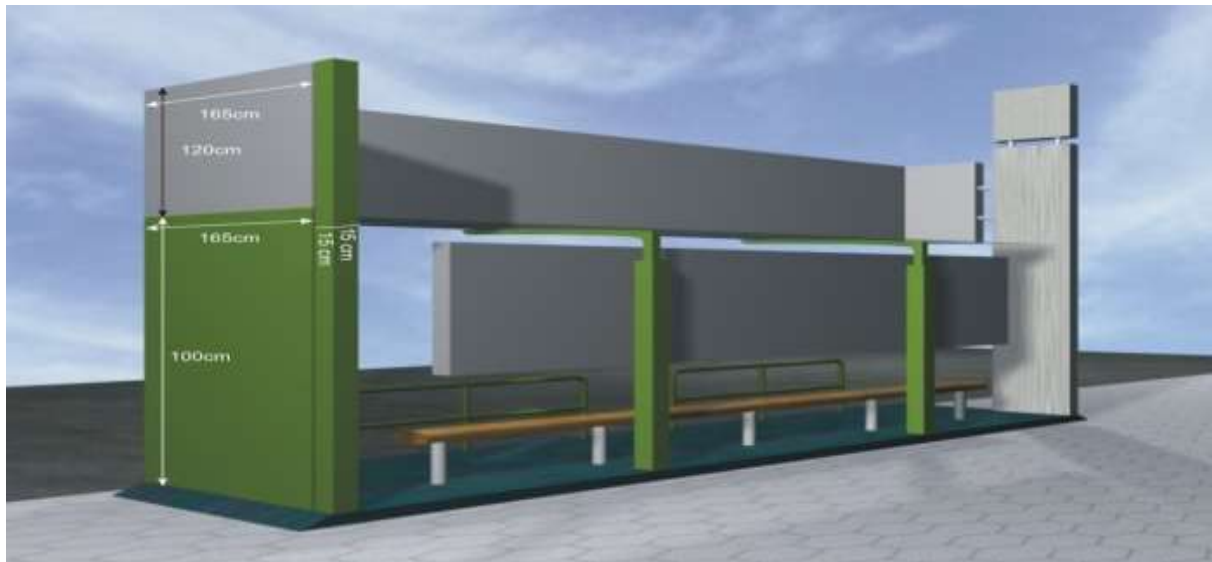
**Proposed Design:**



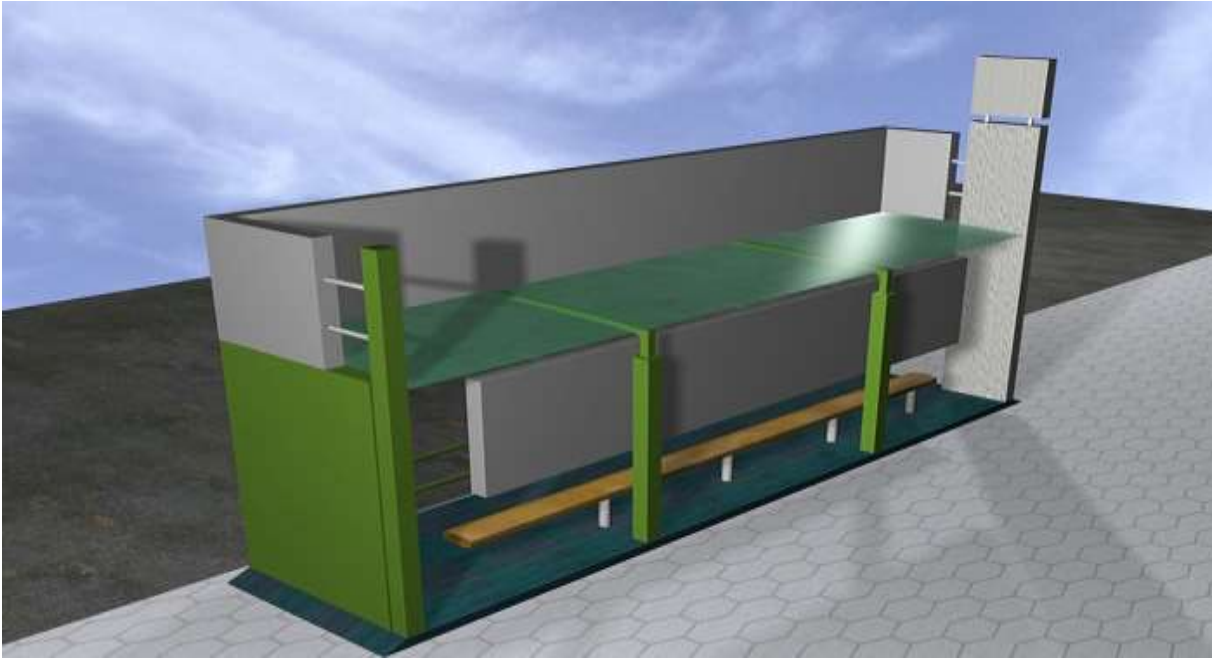
RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE



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Proposed Design -2

**Proposed Design:**



PLAN OF BUS SHELTER



SECTION OF BUS SHELTER

The design explained as above is tentative and bidders have the flexibility to come up with their unique design and features



**ANNEXURE 2 – EXPERIENCE DETAILS**

Bidders should provide information on experience as specified in RFP document (Separate Sheets for each project to be attached giving following details). A summary is also to be provided in following format.

- a) Total value of eligible project works performed in the last seven financial years
- b) A separate sheet should be used for each member of the consortium/Joint Venture and shall be detailed out as indicated in the format.

S.No	Year	Name of Work	Client Name with contact details	Contract No. And date	Contract Value(Rs .)	Date Started	Date Completed	Role of Bidder and Remarks	Project Cost (In Indian Rs.)

**FORMAT FOR TECHNICAL PROPOSAL**

The Bidders are required to submit the specified details and specification of the various street furniture items as a part of Technical proposal. Such details shall include the following in respect of each applicable items:

- a) Drawings (Internal and External) with dimension.
- b) Materials for the various major components / sub-components.
- c) Finishes for the various surfaces and elements.
- d) Expected life of the Bus Shatters.
- e) Other Specifications not covered above.

Additionally, the Technical proposal shall contain the following minimum details in respect of each applicable item:

S.No	Contents of Technical Proposal	Brief Description
<b>Design</b>		
a)	Functional	Describe how does it meet the functional requirement
b)	Maintainability	Describe the Maintenance Requirements
c)	Security & Safety considerations	How is it designed with regard to security & safety considerations
d)	Durability	What is the expected life of the items How frequently will it require replacement
e)	Aesthetics	Provide images of the item various direction Provide indicative images of the B-Q-S

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

f)	Innovativeness	Describe the innovative practices adopted in the design of the items
g)	Environment Considerations	How have the environment considerations been given due attention
<b>Implementation Plan</b>		
a)	Construction Plan	<p>Overall approach for constructing Smart Bus Shelters</p> <ul style="list-style-type: none"> <li>⊕ Schedule of activities / Bar Chart Organization</li> <li>⊕ Phases of Implementation</li> <li>⊕ Advertising planning</li> <li>⊕ Installation planning</li> <li>⊕ Quality Assurance Plan</li> <li>⊕ Environment Management</li> <li>⊕ Safety Management Traffic &amp; Circulation Plan</li> </ul>
<b>O&amp;M Plan</b>		
1.	Operation Plan	<p>Overall approach for Operation</p> <p>Operational Activities</p> <p>Organization structure of the operational team</p> <p>Equipment &amp; Resource at the disposal of the operational team</p> <p>Monitoring and Reporting mechanism</p>
2.	Maintenance Plan	<p>Overall approach for maintenance</p> <p>Details of the preventive/periodical maintenance and break down maintenance proposed to be carried out</p> <p>Maintenance schedule containing activities</p> <p>Organization structure of the maintenance team</p> <p>Equipment &amp; Resource at the disposal of the maintenance team</p> <p>Monitoring and Reporting mechanism</p>

**FORMAT FOR FINANCIAL CAPABILITY**

**1. Turnover Related Data:**

<b>Descriptions</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
<b>Total Turnover</b>			

**2. Net Worth:**

<b>Descriptions</b>	<b>As on 31 March 2021</b>
<b>Total</b>	

**Net-worth** - Net worth shall mean (subscribed and paid up equity plus reserves) less (revaluation reserves plus miscellaneous expenditure not written off plus accrued liabilities).

**Note:**

- i. In case of Bidder being a Consortium, the financial capability criteria must be fulfilled by Lead member/all members.
- ii. The Bidder /Consortium shall submit Audited Balance Sheets/ Annual Reports for the Lead Member in support of the financial date.

SIGNATURE:

NAME:

DESIGNATION:

COMPANY SEAL COMPANY:

DATE:

CA certificate from Statutory Auditor needs to be submitted.

**ANNEXURE 3 – GENERAL AND ORGANISATION 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):

<b>S.No</b>	<b>Particulars</b>	<b>Particulars</b>
a)	Name of the firm	
b)	Head office address	
c)	Contact Person Contact number	
d)	Fax: Email:	
e)	Place and Year of Incorporation and Registration	

2. A Power of Attorney authorizing the signatory of the qualification proposal to commit the Bidder(s).

3. Bidders shall submit the following information:

- a) Legal Status
- b) Place of registration
- c) Principal business and place for business

4 A certified copy of Bidder'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

**ANNEXURE 4 –DESCRIPTION FOR SMART BUS-Q-SHELTERS**

**A. Proposed Bus - Q- Shelters (103\*2=206 nos)**

1. Bhagwan Talkies [South]
2. Soorsadan
3. Naalband Chauraha
4. Collectorate
5. Pratap Pura Chauraha
6. PWD Club Chauraha
7. Awant Bai Chauraha
8. Agra Cantt. Chauraha
9. Idgah Chauraha
10. Kheria Mode
11. Arjun Nagar
12. Arjun Gate
13. Airport
14. Panchkuiyan
15. Kothi Meena
16. Saket Colony
17. Ram Nagar
18. Maruti Estate
19. Bodla
20. Eenth ki Mandi
21. Kargil
22. Sikandra
23. Sadar
24. RM Mode
25. Madhu Nagar
26. Gopal Pura
27. Sewla Sarai
28. Nagla Padma
29. Rohta Nahar
30. Nagla Padma
31. Etorā
32. Kakua
33. Sawla
34. Agra Cantonment
35. Bijli Ghar
36. Amar Singh Gate
37. Purani Mandi
38. Taj View Crossing
39. Runakta
40. Jal Kal

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

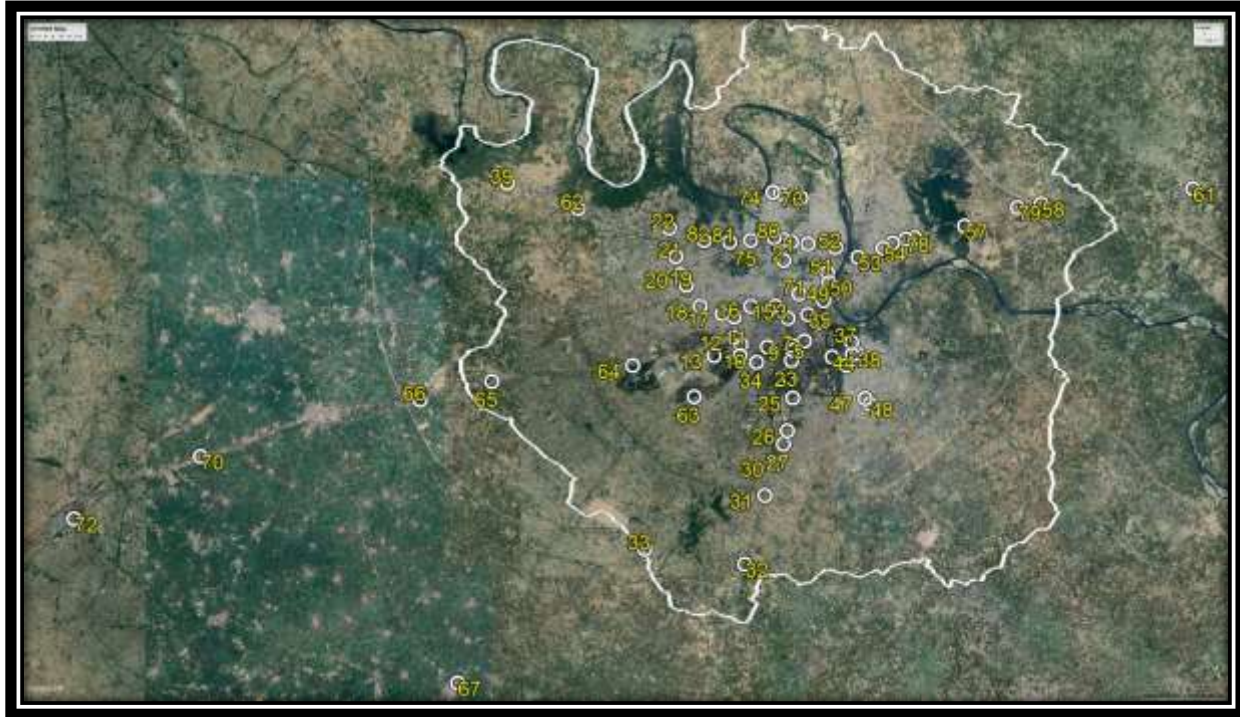
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41. Baikunthi
42. Hubblal
43. Baluganj
44. Commissioner Office
45. Amar Hotel
46. Vibhav Nagar
47. Rajpur Chungi
48. Rajeshwar M
49. Hathi ghat
50. Belanganj
51. Jeevani Mandi
52. Water Works
53. Ram Bagh
54. Royal Public
55. Mandi Samiti
56. Shahadara
57. Chelesar
58. Kuberpur
59. Nagla Rambh
60. Nagla Param
61. Etmadpur
62. Artoni
63. Kheria
64. Patholi
65. Midhakur
66. Mahuar
67. Kirawali
68. Vidyapur
69. Shingarpur
70. Korai
71. Gud ki Mandi
72. Fatehpur
73. Jeevan Jyoti
74. Dayalbagh
75. Khandari
76. Bhagwan Talkies [East] after NH-2 Flyover
77. Sultan Ganj Puliya Crossing
78. Kalindri Vihar Tiraha
79. Yamuna Expressway [Kuberpur]
80. SRK Mall
81. ISBT
82. Guru ka Taal

83. Deewani Chauraha
84. Anjana Talkies
85. Sanjay Place
86. Hari Parvat
87. St. John's
88. Raja Ki Mandi
89. S.N. Medical
90. Nagri Pracharani
91. Subhash Park
92. Dhakran
93. Rawali
94. Sain ki Takiya
95. Basai Police Station
96. Tajnagari Phase-II
97. TDI
98. Hotel Mariott
99. Tora [Hotel Jaypee]
100. Kalal Kheria
101. Yamuna Expressway
102. Hanuman Mandir
103. Fatehabad Road

**In phase -1 bidders need to indicate 20 locations they want to execute and the list of 20 locations need to be submitted along with the bid**

**B. Map Showing the PAN City in the context of Agra Nagar Nigam Limits**



### C. CONCEPTUAL DESIGN FOR THE SMART BUS-Q- SHELTER



**Note:** The scope of work can be increased or decreased depending upon the prevailing circumstances, availability of land and competence of the Successful bidder.

### D. GENERAL SPECIFICATIONS OF SMART BUS SHELTER

1. The design has to be the best in the industry & as per the ongoing practices.
2. The design has to be according to the specifications used by Agra Nagar Nigam or any other agency which have already undertaken and successfully completed such kind of work in India or outside India.
3. The design of the Smart Bus Shelter advertisement booth has to be as such that it can easily accommodate the number of people in that locality for which it has been made.
4. The agency has to calculate the number of people in specified area and proportionally design the Smart Bus Shelter advertisement booth.
5. The successful bidder will prepare the digital map of all the locations and accordingly design.



**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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6. As the number of people in locations selected is different therefore size of the Smart Bus Shelter advertisement booth will also differ according to the sites. Preferable sizes are 10.5m x 3m and 6m x 3m.
7. The slope of the floor of the Smart Bus Shelter advertisement booth should be toward the drain & all to be connected to the drain.
8. Water proofing of the Smart Bus Shelter advertisement booth has to be done in such a way that it doesn't affect the ecology of the area.
9. The shape and size of the Smart Bus Shelter advertisement booth has to be such that people can safely board the bus, are well protected by direct sunlight and rain and experience a new way of being and life.
10. The design has to be very aesthetical in nature.
11. The Nagar Nigam will select the design as per the location of the site and its area.
12. The design has to be safe in all aspects.
13. The design should be such that the Bus don't obstruct the traffic movement.
14. City route Map and Bus Timings need to be installed for easy view.
15. Security/ monitoring camera has to be the part of the overall structure.

#### **E. DEVELOPMENT CONTROL GUIDELINES**

The Concessionaire has to follow the guidelines of AGRA NAGAR NIGAM, PWD, and Indian Road Congress. Etc

The Concessionaire shall be responsible for any injury or damage caused to or suffered by any person or property arising out of or relating to the Smart Bus-Q-Shelter Advertisement Booth & Public Utility and the consequential claim or claims shall be borne by the Concessionaire who will also indemnify and safeguard the AGRA NAGAR NIGAM/ASCL in respect of any such claim or claims.

**ANNEXURE 5 –FORMAT FOR BID SECURITY (EMD)**

This Deed of Guarantee is made on this day of , 2018 at \_\_\_\_\_ by a Scheduled Bank within the meaning of the Reserve Bank of India Act and constituted under the Banking Companies Acquisition and Transfer of Undertakings Act, 1970/1980 and having its Head Office/Registered Office at \_\_\_\_\_ and a Branch Office at , Agra (hereinafter referred to as “the Bank” or “the Guarantor”, which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns) in favour of Agra Smart City Limited having its Registered Office at \_\_\_\_\_ (hereinafter referred to as “ASCL ” which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns).

WHEREAS, the ASCL undertook the process of competitive bidding in order to select the most desirable firm/company for the Construction, Operation And Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate And Transfer (BOT) basis with Advertising Rights under PPP Mode, for which purpose ASCL issued a Request for Proposal (“RFP”) document inviting Bids from the Bidders;

WHEREAS, [name of Bidder] (hereinafter called “the Bidder”) has submitted his Bid dated [date] for the execution of the Works (hereinafter called “the Bid”). In the event of any breach or non-performance of the following terms and conditions contained in the RFP document:

1. if the Bidder withdraws or modifies his Bid during the period of Bid validity specified in the RFP ; or
2. if the Bidder refuses to accept the correction of errors in his Bid; or
3. If the Bidder submits a conditional Bid which would affect unfairly the competitive provision of other Bidders who submitted substantially responsive Bids and/or is not accepted by ASCL , or
4. if the Bidder, having been notified of the acceptance of his Bid by the ASCL during the period of Bid validity and the bidder fails or refuses to provide Performance Security and execute the Agreement in accordance with the RFP documents;

The Guarantor agrees absolutely, irrevocably and unconditionally guarantees and undertakes to pay to ASCL a sum of Indian Rupees .....without any protest or demur and upon receipt of first written demand from ASCL, without having to substantiate his demand, provided that in his demand ASCL will note that the amount claimed by him is due to him owing to the occurrence of any one or more of the conditions, specifying the occurred condition or conditions. This Guarantee will remain in force up to and including the date 60 days after the date of expiration of the Bid Validity or as it may be extended by the bidder on a written request by ASCL, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date. The jurisdiction in relation to this Guarantee shall be the Courts at Agra and Indian Law shall be applicable. The claim in respect of this Bank Guarantee shall be admissible at any of our Agra Branches.

IN WITNESS WHEREOF the Guarantor has executed this Guarantee on this day of and year first herein above written.

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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Signed and delivered by the above named Bank by its Authorized Signatory as authorized by Board Resolution passed on / Power of Attorney dated [.....]

Authorized Signatory

Name:

Designation:

In the presence of:



**ANNEXURE 6 –FORMAT FOR SUBMISSION OF BID**

To,  
The Chief Executive Officer  
ASCL Nagar Nigam  
Mahatma Gandhi Road,  
Sursadan Crossing,  
Agra – 282002, Uttar Pradesh

**Sub: Submission of the bids for Construction, Operation & Maintenance of the Smart Bus-Q-Shelters at various locations in Agra on Built, Operate And Transfer (BOT) basis with Advertising Rights under PPP Mode.**

Dear Sir,

1. With reference to your RFP document dated \_\_\_\_\_, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We acknowledge that the ASCL will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as Concessionaire for the [construction, operation and maintenance] of the aforesaid Project.
4. I/We shall make available to the ASCL any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/We acknowledge the right of the ASCL to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last seven years, we/any of the Consortium Members or our/their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - a) I/We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the ASCL ; and
  - b) I/ We do not have any conflict of interest.
  - c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice,

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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- d) The undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with the RFP document.
9. I/We believe that we/our Consortium satisfy (ies) the Net Worth criteria and meet(s) the requirements as specified in the RFP document.
10. I/We declare that we/any Member of the Consortium, or our/its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.
14. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
15. I/We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Concession Agreement.
16. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
17. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
18. I/We have studied all the Bidding Documents carefully and also surveyed the [bus terminal and the traffic]. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
19. I/ We offer a Bid Security of ..... to the Authority in accordance with the RFP Document. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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20. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or my/our Bid is not opened or rejected.
21. The concession fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and revenue and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the project.
22. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
23. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.
24. We agree to pay to ASCL an upfront amount as indicated in the format for Financial Bid. We also understand that payment of upfront amount shall be a precondition for entering into the Concession Agreement.
25. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

We agree to enter into a tripartite agreement with ASCL, your third party service provider for discharge of all our obligations and the responsibilities to the purchaser as per this contract and to the extent they were applicable to the purchaser.

Dated day of 2018

Signature & Name:

Authorised Signatory for and on behalf of :

Address:

Witness: Signature

Name:

Address:

Occupation:



**ANNEXURE 7 –FORMAT FOR LETTER OF UNDERTAKING**

**(On the Letterhead of the Bidder)**

Date:

To,

The Chief Executive Officer

ASCL Nagar Nigam

Mahatma Gandhi Road,

Sursadan Crossing,

Agra – 282002, Uttar Pradesh

**Sub: Submission of Bid comprising Bid Security, Technical and Financial Bids for Construction, Operation and Maintenance of the Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode.**

Sir/ Madam,

We confirm that we are not barred by Government of Uttar Pradesh (GoUP), ASCL or any other State Government in India (SG) or Government of India (GoI), or any of the agencies of Nagar Nigam /SG/GoI from participating in any category of projects (Construction of Bus-Q-Shelters or otherwise) as on .....(Bid Due Date).

Yours faithfully,

(Signature of Authorised Signatory)

(Name, Title, Address, Date)

**ANNEXURE 8 – FORMAT FOR POWER OF ATTORNEY FOR THE BID  
SIGNATORY**

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

KNOW ALL MEN by these presents that we, \_\_\_\_\_[name of the Company], a company incorporated under the Companies Act 1956, having its Registered Office at \_\_\_\_\_[Address of the Company] (hereinafter referred to as “Company”):

WHEREAS in response to the Request for Proposal (RFP) for the Construction, Operation and Maintenance of the Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode, (“Project”), the Company is submitting Bid Comprising Bid Security, Technical and Financial to The Chief Executive Officer, ASCL, and is desirous of appointing an attorney for the purpose thereof.

WHEREAS the Company deems it expedient to appoint Mr. \_\_\_\_\_son of resident of, holding the post of \_\_\_\_\_as the Attorney of the Company.

NOW KNOW WE ALL BY THESE PRESENTS, THAT [name of the lead member company] do hereby nominate, constitute and appoint \_\_\_\_\_[name & designation of the person] as its true and lawful Attorney so long as he is in the employment of the Company to do and execute all or any of the following acts, deeds and things for the Company in its name and on its behalf, that is to say :

- ⊕ To act as the Company’s official representative for submitting the Bid comprising Technical Bid and Financial Bid for the said project and other relevant documents in connection therewith;
- ⊕ To sign all the necessary documents, papers, testimonials, applications, representations and correspondence necessary and proper for the purpose aforesaid;
- ⊕ To tender documents, receive and make inquiries, make the necessary corrections and clarifications to the Bid and other documents, as may be necessary;
- ⊕ To do all such acts, deeds and things in the name and on behalf of the Company as necessary for the purpose aforesaid.

The common seal of [name of the company] was here unto affixed pursuant to a resolution passed at the meeting of Committee of Directors held on \_\_\_\_\_ Day of \_\_\_\_\_, 2018 in the presence of [name & designation of the person] and countersigned by [name & designation of the person] of the Company of [name of the company]

-----  
[Name & designation of the person]

-----  
[Name & designation of the person]



**ANNEXURE 9 – FORMAT FOR POWER OF ATTORNEY FOR THE LEAD MEMBER OF THE CONSORTIUM**

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

Whereas ASCL has invited Proposals from interested parties for the Construction, Operation and Maintenance of the Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode("the Project").

Whereas, the members of the Consortium are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Bid Document and other connected documents in respect of the Project, and Whereas, it is necessary under the Bid Document for the members of the Consortium to nominate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all such acts, deeds and things as may be necessary in connection with or incidental to the Consortium's proposal for the Project and its execution.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT:

We, M/s. \_\_\_\_\_, and M/s. \_\_\_\_\_(the respective names and addresses of the registered office) do hereby constitute, appoint and authorize M/s. \_\_\_\_\_ as the Lead Member of the Consortium and as our attorney, to do on behalf of the Consortium, all or any of such acts, deeds or things as may be necessary in connection with or incidental to the Consortium's proposal for the Project, including submission of Bid/proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with ASCL , or any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Agreement is entered into with ASCL. We hereby agree to ratify all such acts, deeds and things lawfully done by Lead Member as our said attorney pursuant to this Power of Attorney and that all acts deeds and things lawfully done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this Day of 2018.

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

Company seal & stamp

**ANNEXURE 10 – FORMAT FOR MEMORANDUM OF UNDERSTANDING (MOU)  
(On Non – judicial stamp paper of Rs 100/- if in India or such equivalent document duly attested by Notary Public)**

This Memorandum of Understanding (MoU) entered into this \_\_\_\_ day of \_\_\_\_\_ 2018 at \_\_\_\_\_ Among M/s \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”) and having registered office at \_\_\_\_\_ as Member of the First Part and the Lead Partner And M/s \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”) and having registered office at \_\_\_\_\_ as Member of the Second Part And M/s \_\_\_\_\_ (hereinafter referred to as “\_\_\_\_\_”) and having registered office at \_\_\_\_\_ as 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 ASCL (herein after called “Owner”) has invited Bids for Construction, Operation and Maintenance of the Smart Bus-Q-Shelters at various locations in Agra on Built, Operate and Transfer (BOT) basis with Advertising Rights under PPP Mode (hereinafter called the “Project”). AND WHEREAS the Members have studied the RFP documents and had discussions for formation of a Consortium/JV for jointly bidding for the said Project for Construction, Operation, Maintenance and Transfer of the Project (in case successful) and have reached an understanding on the following points with respect to the Member’s 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 and 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.

**RFP DOCUMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH ADVERTISING RIGHTS UNDER PPP MODE**

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<b>S.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

<b>Name of the Members</b>	<b>% of Share</b>

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:**

First Party:

Second Party:

Third Party:

**Witness:**

- 1.
- 2.
- 3.



**ANNEXURE 11 – LETTER FOR FINANCIAL BID (ON THE LETTER HEAD OF THE BIDDER)**

To,  
The Chief Executive Officer  
ASCL Nagar Nigam  
Mahatma Gandhi Road,  
Sursadan Crossing,  
Agra - 282002  
Uttar Pradesh

Subject: Financial Proposal for Construction, Operation And Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate And Transfer (BOT) basis with Advertising Rights under PPP Mode.

Sir,

Having gone through this Bid document and Draft Concession Agreement and having fully understood the scope of work for the Project as set out in this Bid Document, we are pleased to submit our quote in the form of the Minimum Concession fee to be payable by us to the Concession Authority (ASCL) during first year (MCF) as contained in the duly signed and Sealed Annexure – 12 enclosed herewith as uploaded in etender

We have reviewed all the terms and conditions of the Bid Document and undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be, no deviation from the stated terms in the Bid-Document.

Yours faithfully

For and on behalf of

..... (Name of the Bidder)

(Signature of Authorized Signatory)

Encl: Duly signed and Sealed Annexure – 12



**ANNEXURE 12 – FORMAT FOR FINANCIAL BID**

**CONCESSION FEE FOR SMART BUS-Q-SHELTERS**

1. We agree to pay to ASCL amount quoted in the financial bid ( to be uploaded in etender website) per year on yearly basis in advance for each year by seventh day of the commencement of that year for a period of 15 (Fifteen) years. The first of such instalment shall be payable by us on 121st day from the date of signing of the Concession Agreement between us and ASCL. The form and manner of payment shall be as specified in the RFP document.

**Note:**

- a) This amount of Concession Fee shall be payable by us on yearly basis in advance for the entire concession period to ASCL with effect from signing of the Concession Agreement in the form and manner specified in the RFP document.
- b) We also understand that this concession fee offered by us shall be escalated by 5 (Five) percent every year on compounding basis and we abide ourselves to pay such escalated amount of concession fee to ASCL. The first instalment of such escalated amount of Concession Fee shall be payable by us on the seventh day of the commencement of that year. The first of such instalment shall be payable by us on 121st day from the date of signing of the Concession Agreement between us and ASCL.
- c) Quoting of negative CF amount is not permissible.

**Terms and conditions:**

- ⊕ The Concession Period is for 15 (Fifteen) years from the date of signing of Concession Agreement.
- ⊕ The number of BQS are at present 20 in phase -1 , but this number may increase or decrease as per the new road development and may decrease as and when required by the CEO, ASCL, Agra.
- ⊕ For any increase or decrease in the number of BQS from the above stated figure of 20, the concession fee shall be adjusted on proportionate basis.
- ⊕ GST and all other applicable taxes shall be payable by the concessionaire at its own cost to the authorities concerned.
- ⊕ Only one figure of Concession fee is to be quoted for the financial offer. Quoting more than one figure will render the bid liable for rejection.
- ⊕ In case the highest bid being equal in respect of more than one bidder, on being called upon by ASCL, the financial offer shall be submitted again by such highest bidders to break the tie. The revised offer shall, however, not be lower than the originally quoted figure. Any revised offer lower than the original offer shall be liable to be rejected.

Authorized Signatory

(Stamp of the Concessionaire to be affixed)



**DRAFT CONCESSION  
AGREEMENT(DCA) FOR  
CONSTRUCTION, OPERATION AND  
MAINTENANCE OF SMART BUS-Q-  
SHELTERS AT VARIOUS LOCATIONS IN  
AGRA ON BUILT, OPERATE AND  
TRANSFER (BOT) BASIS WITH  
ADVERTISING RIGHTS UNDER PPP  
MODE**

**July 2022**

**AGRA SMART CITY LIMITED  
OFFICE OF NAGAR NIGAM  
AGRA, UTTAR PRADESH - 282002**

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# Volume 3 – Draft Concession Agreement

## **DRAFT CONCESSION AGREEMENT**

Draft Concession Agreement between ASCL, Government of Uttar Pradesh (“ASCL”) acting through \_\_\_\_\_ (designation of authorised officer) and \_\_\_\_\_ (Concessionaire) For Construction, Operation And Maintenance of Smart Bus-Q-Shelters at various locations in Agra on Built, Operate And Transfer (BOT) basis with Advertising Rights under PPP Mode.

This CONCESSION AGREEMENT made on this ----- (insert date) day of ----- (insert month), ----- (insert year) at ----- (insert place of execution),

BETWEEN

ASCL, Government of Uttar Pradesh, having its registered office at ASCL Nagar Nigam, Mahatma Gandhi Road, Sursadan Crossing Agra – 282002, hereinafter referred to as “the Concessing Authority” or “ASCL” which expression shall unless repugnant to the context include the successors and assigns, on the one part

AND

-----, (name of the Successful Bidder), having its registered office at \_\_\_\_\_, hereinafter referred to as “Concessionaire” which expression shall unless repugnant to the context include the successors and permitted assigns, on the other part.

WHEREAS,

- A. ASCL has formulated the Advertisement Policy.
- B. BQS project is initiated as a part of the duties and responsibilities of ASCL. ASCL with an objective of providing BQS services including O&M of the shelters and subsequently invited proposals, through a competitive bid process from eligible parties for implementing the Project. In response thereto, ASCL received proposals from several parties including the Concessionaire for implementing the Project.
- C. Pursuant thereto, after evaluating the aforesaid proposals, ASCL accepted the proposal submitted by the Concessionaire and issued Letter of Acceptance No. (insert Letter No.) Dated \_\_\_\_\_ to the Concessionaire requesting the Concessionaire to execute the Concession Agreement, which the Concessionaire has acknowledged by its Letter No. \_\_\_\_\_ dated \_\_\_\_\_.
- D. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

## ARTICLE 1 - DEFINITIONS AND INTERPRETATIONS

### 1.1 DEFINITIONS

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

**“Additional Cost”** shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

**“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure.

**“Agra”** or **“Agra Municipal Limits”** means the whole urban area falling within the jurisdiction of the ASCL as per the Government of Uttar Pradesh and its notifications from time to time

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

**“Applicable Law”** shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

**“Applicable Permits”** shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

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

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

**“Assured Number of Bus Shelter sites”** shall mean the assured number of sites.

**“Authorization”** means any approval, consent, exemption, filling, license, authorization, permit, registration or waiver, and any renewal or variation of any of them howsoever described, necessary to fulfill obligations of the Concessionaire under this Agreement.

**“Authorized Representative”** means, in respect of a Party, any person designated (whether by same or as the holder of a specified position or office) as such by such Party by notice in writing given to the other Party including, in the case of a person designated by name, a specimen signature of that person certified by the Party issuing the notice;

**“Book Value”** means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP.

**“Change in Law”** shall have the meaning ascribed thereto in Clause 7.6.

**“COD” or “Commercial Operations Date”** shall mean the date on which the Project Engineer/ Officer Authorised by CEO, ASCL, Agra has issued the Provisional Completion Certificate or the Completion Certificate for the structures, in accordance with the provisions of this Agreement.

**“Completion Certificate”** shall mean the certificate issued by Project Engineer certifying, that:

- i. The Concessionaire has constructed the BQS Facility in accordance with the Construction Requirements; and
- ii. The Concessionaire has obtained all approvals necessary for commercial operations of the Project Facility.

**“Concession”** shall have the meaning ascribed thereto in relevant Clause this Agreement.

**“Concession Period”** shall have the meaning ascribed thereto in Clauses of this CA.

**“Concessionaire’s Equipment”** means all machinery, equipment, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Project.

**“Consortium”<sup>1</sup>** shall mean the consortium consisting of (i) and (ii) formed/acting pursuant to the Memorandum of Understanding dated entered into by them, for the purpose of submitting their proposal for undertaking the Project through M/s \_\_\_\_\_, a special purpose company formed and incorporated by them in India.

**“Construction Documents”** means all approved plans, manuals, drawings (including as built drawings), calculations, computer software (programs), samples, patterns and models prepared and used for construction of Project Facility.

**“Construction Period”** shall mean the duration of construction of Project Facilities commencing from the Appointed Date to the date of issue of Completion Certificate.

**“Construction Works”** shall mean all works and things required to be undertaken by the Concessionaire in accordance with the Construction Requirements.

**“Contractor”** shall mean any Person with whom the Concessionaire has entered into/may enter into any of the Project Agreements.

**“Cure Period”** shall have the meaning ascribed thereto in Clause 8.2(a)(iii) of this Agreement.

**“Drawings”** shall mean all of the drawings including working drawings for the Project Facility, designs, calculations and documents pertaining to the Project in accordance with the Construction and O&M Requirements and shall also include the Drawings as approved.

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

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<sup>1</sup> In case the successful bidder is a Consortium

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

**“Environmental Laws”** means all Laws pertaining to the protection of natural resources, the environment, the health and safety of the public, according to Environment (Protection) Act, 1986, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974 and any other central, state or local law, regulation, rule, ordinance or order from government:

- i. the existence, cleanup and/or remedy of contamination on real property;
- ii. the emission or discharge of hazardous substances into the environment;
- iii. the control of hazardous substances; or
- iv. the use, generation, transport, treatment, storage, disposal, removal or recovery of hazardous substances, including building materials;

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

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

**“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 7.

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

**“Government Agency”** shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site 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.

**“Lenders”** shall mean financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the cost of construction of the Project Facility or any part thereof.

**“Materials”** means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Concessionaire, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations

under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

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

**“O&M Requirements”** shall mean the requirements as to operation and maintenance of the Project Facilities.

**“Operations Period”** shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.

**“Parties”** shall mean the parties to this Agreement and

**“Party”** shall mean either of them, as the context may admit or require.

**“Performance Security”** shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with relevant Clause.

**“Person”** shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

**“Plant”** means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any) which are to be supplied by the Concessionaire as specified in the Agreement.

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

**“Project”** shall mean design, financing, construction, operation and maintenance of Project at Project Site/ BQS in accordance with the provisions of this Agreement.

**“Project Agreements”** shall mean collectively this Agreement, O&M Contract, and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

**“Project Assets”** shall mean the Project Structure/ fixtures/ equipments used during the Concession Period for the Project.

**“Project Equipments”** shall mean all the equipments related to BQS including litter bins, containers or any other required for proper/ attractive/ useful shelter for the Project in accordance with provisions of this Agreement

**“Project Engineer/ designated officer”** shall mean a reputed ASCL official/ officials

**“Royalty Fee/Concession Fee”** shall mean the amounts payable by the Concessionaire to ASCL in accordance with agreement and as quoted by the Bidder in its Financial Proposal.

**“Royalty Fee Rate”** shall mean the amount payable by the Concessionaire to ASCL per BQS wise.

**“Rupees” or “Rs.”** refers to the lawful currency of the Republic of India.

**“SPCD” or “Scheduled Project Completion Date”** shall mean the date 6 months from the Appointed Date.

**“SBI PLR”** shall mean prime lending rate of State Bank of India.

**“Tax”** shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law.

**“Temporary Works”** means all temporary works of every kind (other than Concessionaire’s Equipment) required for the execution and completion of the Works and the remedying of any defects.

**“Termination”** shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

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

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

**“Tests”** shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and if not expressly specified in either of the said requirements, as instructed by the Project Engineer, in accordance with this Agreement.

### **Interpretation**

In this Agreement, unless the context otherwise requires,

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation;
- f. any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).



**DCA FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF SMART BUS-Q-SHELTERS  
AT VARIOUS LOCATIONS IN AGRA ON BUILT, OPERATE AND TRANSFER (BOT) BASIS WITH  
ADVERTISING RIGHTS UNDER PPP MODE**

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- i. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- j. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- k. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or by Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or Project Engineer in this behalf and not otherwise;
- l. references to “Construction” includes investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto
- m. the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”)

## **ARTICLE 2 - CONCESSION**

### **2.1 GRANT OF CONCESSION**

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessioning Authority hereby grants and authorizes the Concessionaire to design, engineer, procure, finance and construct the Smart Bus-Q-shelter Facility, to operate and maintain the Project Facility and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement, (the “Concession”).

### **2.2 CONCESSION PERIOD**

The Concession hereby granted is for a period of 15 (Fifteen) years from the Appointed Date inclusive of the Construction Period. (hereinafter referred to as the “Concession Period”) Provided, in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

### **2.3 ACCEPTANCE OF CONCESSION**

In consideration of ASCL agreeing to permit the Concessionaire to receive User Charges, and any other amounts, and the rights, privileges and benefits conferred upon by the Concessioning Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/dischage all of its obligations in accordance with the provisions hereof.

## **ARTICLE 3 - PROJECT SITE**

### **3.1 HANDOVER OF PROJECT SITE**

- a. ASCL shall, within of 15 (fifteen) days from the Appointed Date, handover to the Concessionaire, vacant and peaceful physical possession of the Project Sites for bus shelters for the purpose of the Construction, operation & maintenance of Smart Bus shelters
- b. Upon the Project Site being handed over pursuant to the preceding Clause (a), the Concessionaire shall, subject to the provisions of Article 4, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

### **3.2 RIGHTS, TITLE AND USE OF THE PROJECT SITE**

- a. The Concessionaire shall have the right to the use of Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- b. The Project Sites including the Project Facility developed thereon belongs to ASCL and shall continue to be the property of ASCL.
- c. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- d. The Concessionaire shall not without the prior written approval of ASCL use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- e. The Concessionaire shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as ASCL may specify. Provided that such access or use shall not result in a Material Adverse Effect and that ASCL shall, in the event of any physical damage to the Project Site/ Bus shelter Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses. Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.
- f. The Concessionaire shall be at liberty to:
  - i. demolish the existing structures within the Project Site subject to adherence to Project Requirements, Applicable Laws and Applicable Permits, and
  - ii. use, sell or dispose in accordance with Applicable Laws and Applicable Permits, the material obtained as a result of demolition under clause(i) above.

### **3.3 PEACEFUL POSSESSION**

ASCL, as Concessions Authority, hereby warrants that:

- a. The Project Site together with the necessary right of way:
  - i. has been acquired through the due process of law
  - ii. belongs to and is vested in ASCL and that ASCL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any

compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.

- 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 or part thereof until expiry of the Concession Period/ completion of Handback Requirements. In the event, the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, ASCL shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

### **3.4 APPLICABLE PERMITS**

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

## **ARTICLE 4 - CONCESSIONAIRE'S OBLIGATIONS**

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

### **4.1 PERFORMANCE SECURITY**

- a. The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to ASCL, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to ASCL, ("Performance Security") for a sum of Rs. 5,00,000/- (Rupees five Lakhs only). Till such time the Concessionaire provides to Concessions Authority the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Security, if in the form of a bank guarantee shall be valid for an initial period of 36 (thirty six) months and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 36 (thirty six) months. It is clarified that the Concessionaire shall be liable to restore the Performance Security to the full amount in case of part encashment of the same by the Concessions Authority. This shall be done within 30 (thirty) Days of any such part encashment. Failure of the Concessionaire to provide a valid Performance Security and/or restore and maintain the Performance Security in accordance with this clause shall entitle the Concessions Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Bid Security.
- b. The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to ASCL's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

### **4.2 FINANCING ARRANGEMENT**

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

### **4.3 DRAWINGS**

#### **a. Preparation of Drawings**

- i. The Concessionaire may, subject to the Construction Requirements, adopt with or without modifications the Drawings made available by ASCL or adopt its own Drawings. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- ii. If the Concessionaire proposes any modifications to the Drawings made available by ASCL or submits alternate Drawings or Drawings in respect of any item for which no Drawings are made available by ASCL, the same shall be subject to review by the Project Engineer as hereinafter provided in Clause (b) below.

#### **b. Review of Drawings**

- i. The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Project Engineer and ASCL.

- ii. By forwarding the Drawings to the Project Engineer and ASCL pursuant to the preceding sub-clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.
- iii. Within 15 days of receipt of the Drawings, the Project Engineer shall review the same taking into account, inter alia, comments of ASCL, if any, thereon, and convey its comments/ observations to the Concessionaire on the conformity of Drawings with Construction Requirements. If the comments/ observations of the Project Engineer indicate that the Drawings are not in conformity with the Construction Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Project Engineer for further review. The Project Engineer shall give its observations and comments, if any, within 15 days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- iv. The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from ASCL.
- v. The Concessionaire shall in consultation with the Project Engineer/ Authorised officer finalise an Implementation Schedule for the Project in accordance with the Construction Requirements.
- vi. Within 30 days of issue of the Completion Certificate or Provisional Completion Certificate, as the case may be, the Concessionaire shall furnish to ASCL three copies of "as built" Drawings of the Construction Works which have been completed as on COD, in a manner as set out in Construction Requirements.

#### **4.4 PROJECT IMPLEMENTATION**

- a. Unless otherwise permitted by ASCL, no Construction Works shall begin until the Project Engineer approves it.
- b. The Concessionaire shall within 10 (ten) days from the Appointed Date submit to the ASCL/ Project Engineer the Implementation Plan for execution of the Construction Works and shall adhere to the same.
- c. The Concessionaire shall submit such documents and reports as are reasonably required by the ASCL/ Project Engineer for issue of the Completion Certificate.
- d. The Concessionaire shall get the Drawings approved by competent authority and as per Applicable Laws.
- e. The Concessionaire shall make his own arrangements for adequate and timely supply of electricity, water and other utilities required for execution of the Construction Works and ASCL shall be in no way responsible for the same.
- f. During Construction Period, the Concessionaire shall be responsible for keeping unauthorized persons off Project Site, and authorized persons shall be limited to the employees of the Concessionaire, employees of his subcontractor and persons authorized by ASCL or Project Engineer.
- g. The Concessionaire shall adhere to Construction Requirements; achieve COD on or before the SPCD. Provided that, on the written request by the Concessionaire for extension of time, ASCL may consider such a request. However, such extension shall in no case exceed six

months from SPCD. In the event Concessionaire is not able to achieve COD within such extended period, it shall be deemed a Concessionaire Event of Default under Clause 8.1(a).

- h. The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- i. The Concessionaire shall, before commencement of Construction Works; have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Project Engineer/ ASCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - i. provide and maintain a reasonably furnished site office accommodation for the Project Engineer, at the Project Site.
- j. For the purposes of determining that Construction Works are being undertaken in accordance with the Construction/ Fabrication Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the ASCL/ Project Engineer and such Tests shall be carried out under the supervision of the Project Engineer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- k. If the Tests are successful and the BQS Facility can be safely and reliably opened for operation, the ASCL/ Project Engineer shall issue the Completion Certificate within 7 days of the completion of such Tests.

Provided that, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests the Project Engineer determines that the Project Facility can be safely and reliably opened for operations, the Project Engineer may issue Provisional Completion Certificate to the Concessionaire. The Provisional Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Project Engineer and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Project Engineer, but not exceeding 60 days from the date of issue of the Provisional Completion Certificate. Upon satisfactory completion of all Punch List items, the Project Engineer, shall promptly and in any case within 7 days thereof, issue the Completion Certificate.

- l. If the Concessionaire fails to complete the Punch List items within the said period of 60 days, ASCL 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. In such an event, the Concessionaire shall reimburse to ASCL, one and half times of the cost incurred by ASCL in completing the Punch List items, (as certified by the Project Engineer), within 7 days from the date of receipt of a claim in respect thereof from ASCL. The Project Engineer may issue Project Facility Completion Certificate only upon such reimbursement being made by the Concessionaire to ASCL.
- m. The ASCL/ Project Engineer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction/ Fabrication Requirements.
- n. The Construction/ Fabrication Works shall be deemed to be complete and ready for commercial operations only when the Provisional Completion Certificate or the Completion Certificate is issued by the Project Engineer in accordance with the provisions hereof.

Provided if COD is delayed beyond 90 days of the SPCD, ASCL shall, subject to the provisions of Article 8, be entitled to terminate this Agreement and to appropriate the Performance Security.

#### **4.5 OPERATION AND MAINTENANCE**

- a. The Concessionaire shall operate and maintain the BQS Facility in accordance with the O&M Requirements.
- b. The Concessionaire may undertake operations and maintenance of the Project Facility by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- c. The Concessionaire shall, during the Operations Period :
  - i. shall have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project Facility, to deal with the Project Engineer/ ASCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. shall, for the purposes of determining that the BS/ Project Facility is being maintained in accordance with the O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the ASCL/ Project Engineer and such Tests shall be carried out under the supervision of the Project Engineer. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- d. In the event the Concessionaire has failed to operate and maintain the Project Facility in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Project Engineer/ASCL (“Notice to Remedy”), ASCL may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by ASCL on account of such repair and maintenance within fifteen (15) days of receipt of ASCL’s claim therefor.
- e. The Concessionaire shall be deemed to be in material breach of O&M Requirements, if ASCL, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,
  - i. the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
  - ii. there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof is not safe for operations;

For avoidance of doubt, persistent breach shall mean:

- I. any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the ASCL;
- II. recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the ASCL requiring the Concessionaire to remedy a breach, and
- III. repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.



Upon occurrence of Material Breach of O&M Requirements, ASCL shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

- f. No demolition/ removal of structure shall be allowed during the last five (5) years of the Concession Period, unless specifically approved by ASCL.

## **4.6 INSURANCE**

### **a. Construction Period**

The Concessionaire shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period all insurances in respect of the Project Facility in accordance with the Good Industry Practice.

### **b. Operations Period**

The Concessionaire shall at its cost and expense, purchase and maintain by reinstatement or otherwise, for the Operations Period, insurance against :

- i. loss, damage or destruction of the Project Facility, at replacement value;
- ii. the Concessionaire's general liability arising out of the Concession;
- iii. liability to third parties;
- iv. any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

### **c. Evidence of Insurance**

The Concessionaire shall maintain a register of entry in order of premium paid towards the Project Facility and proof of payments made shall be submitted to ASCL whenever requested for.

### **d. Validity of Insurance**

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to ASCL in writing. If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, ASCL may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by ASCL thereof shall be reimbursed by the Concessionaire to ASCL together with interest thereon at 5% (five) percent over SBI PLR from the date the respective sums were incurred by ASCL, within 7 (seven) days from the receipt of claim in respect thereof made by ASCL.

**e. Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facility or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Concessionaire. The Concessionaire shall carry out such repair, renovation, restoration or reinstatement to the extent possible in such manner that the Project Facility after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

**f. Un-insurable Risks**

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

## **4.7 ENVIRONMENTAL COMPLIANCE**

The Concessionaire shall, ensure that all aspects of the Project Facility during the Concession Period and processes employed in the construction, operation and maintenance conform to the laws pertaining to environment, health and safety aspects. Rules, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances from the competent authority or any other similarly empowered Government Agency and for this purpose shall carry out the necessary studies and implement appropriate management plans in respect of the Project Facility.

## **4.8 PROJECT VEHICLES / EQUIPMENTS**

- 4.8.1 Concessionaire shall procure the Equipments in accordance with the specification. The Concessionaire shall operate and maintain all the BQS structure and Project Equipments in accordance with the O&M Plan and Good Industry Practice throughout the Concession Period.
- 4.8.2 The ASCL/Project Engineer shall certify that all the facilities and Equipments purchased by the Concessionaire are as per the specifications provided in this Agreement.

- 4.8.3 In case the ASCL/ Project Engineer certifies that any BQS or Project Equipments procured are not as per the specifications provided in this Agreement the same shall be intimated to ASCL within 15 days from the date of issue of Certificate.
- 4.8.4 In case the BQS Project or Project Equipments are not meeting the specifications as per this Agreement, ASCL shall send a notice to the Concessionaire to replace those Project Vehicles or Project Equipments.
- 4.8.5 In case the Concessionaire does not replace those facilities or Project Equipments, ASCL may at its sole discretion replace the Project facilities or Project Equipments not meeting the specifications as per this Agreement and the Concessionaire shall reimburse to ASCL the cost incurred by ASCL to replace the Project facilities or Project Equipments.
- 4.8.6 **Procurement Committee**
- 4.8.6.1 A Procurement Committee shall be formed to monitor the procurement of Project Assets. The Procurement Committee shall include The Chief Executive Officer, ASCL and Finance Officer and Executive Engineer as its members.

#### **4.9 THE CONCESSIONAIRE SHALL:**

- a. Collect revenue for Advertisement with Municipal Limit with Good Industry Practices
- b. Collect revenue for any extra facility.
- c. The Concessionaire shall not be allowed to collect and or receive fees/ charges from outside the Agra Municipal Limits without the prior permission from ASCL.
- d. Operate and maintain all Project Assets, Project Structure and Project facilities as per O&M Plan and Good Industry Practices
- e. Employ human resources for forming its obligations under this agreement
- f. Encourage proper use of BQS through awareness campaigns and training programmes or other such activities as deemed fit. The cost for such activities shall be borne by the Concessionaire;

#### **4.10 TRAINING**

- 4.10.1 In the event of Termination or expiry of the Agreement, the Concessionaire shall make best efforts to provide or cause to be provided such training to the employees of ASCL as may be required for ASCL to continue to operate and maintain the Project Facilities after the Termination / expiry.

## **4.11 MANAGEMENT INFORMATION SYSTEM**

4.11.1 The Concessionaire shall establish a Management Information System (MIS) and install appropriate software to maintain records of the Project operations.

## **4.12 SHAREHOLDING<sup>2</sup>**

4.12.1 The Concessionaire shall ensure that Ms\_\_\_\_\_<sup>3</sup> holds not less than 26% of the paid up share capital of the Special Purpose Vehicle for the first five (5) years of the Concession Period.

## **4.13 INDEMNITY BY CONCESSIONAIRE**

The Concessionaire shall indemnify and hold harmless ASCL, the Project Engineer and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the Construction Works and any activity incidental thereto.

## **4.14 GENERAL OBLIGATIONS**

The Concessionaire shall at its own cost and expense:

- a. investigate, study, design, construct, operate and maintain the BS/ Project Facility in accordance with the provisions hereof;
- b. obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- c. comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;
- d. ensure and procure that each Project Agreement contains provisions that would entitle ASCL or a nominee of ASCL to step into the same at ASCL's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement ;
- e. 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 ;
- f. appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- g. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies ASCL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall ASCL be treated as employer in this regard;
- h. make its own arrangements for construction materials and observe and fulfil other requirements under the Applicable Law and Applicable Permits;
- i. be responsible for all the health, security, environment and safety aspects of the BS/ Project Site/Project Facility, as the case may be, at all times during the Concession Period;

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<sup>2</sup> Only where the Concessionaire forms a Special Purpose Vehicle for the implementation of the Project

<sup>3</sup> Name of the Lead Member (in case of Consortium) or the selected Bidder (in case the selected Bidder is a single entity)

- j. ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- k. upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of ASCL for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- l. pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period.
- m. make its own arrangements for the engagement of the employees and labour engaged for execution of the Construction Work.
- n. keep on the Project Office two complete sets of this Agreement, Construction Documents, approvals given by the ASCL/ Project Engineer and any other communication given or issued under provisions hereof for inspection, verification and use by the ASCL/ Project Engineer or any authority authorized by law to inspect the same or any of them.
- o. provide and maintain all necessary accommodation and welfare facilities for its staff and labour. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Construction Works.
- p. take precautions to ensure the health and safety of its staff and labour.
- q. employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works. The Project Engineer may require the Concessionaire to remove any person employed on the Project Site or Construction Works, who in the opinion of the Project Engineer:
  - i. persists in any misconduct,
  - ii. is incompetent or negligent in the performance of his duties,
  - iii. fails to conform with any provisions of the Agreement, or
  - iv. persists in any conduct which is prejudicial to safety, health, or the protection of the environment. The Concessionaire shall in such cases appoint suitable replacement/s.
- r. take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour and to preserve peace and protection of persons and property in the neighbourhood of the Construction Works against such conduct.

#### **4.15 NO BREACH OF OBLIGATIONS**

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

- a. Force Majeure Event, subject to Clause 7.3;
- b. ASCL Event of Default;
- c. Compliance with the instructions of the Project Engineer/ ASCL or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

#### **4.16 ACCESS AND ASSURED AVAILABILITY OF THE PROJECT FACILITIES**

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of BS/ Project Facilities to ASCL / Person nominated by ASCL.

#### **4.17 EXPENSES TOWARDS STATUTORY DEPOSITS AND CHARGES**

The Concessionaire shall pay/ reimburse to ASCL, service charges towards connection of utilities to the Project Facility in the Project Site, other taxes such as property tax, water tax and sewerage charges for the Project Site.

#### **4.18 ERECTION OF SIGN BOARD**

- a. The concessionaire shall always during the Concession Period erect and maintain signboard -  
“This property belongs to the ASCL, Government of Uttar Pradesh and has been handed over to (name of the Concessionaire) for build, operate and transfer from (Insert the in Appointed Date) to (Insert the Expiry Date)”.
- b. The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

### **ARTICLE 5 - ASCL'S OBLIGATIONS**

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

## **5.1 SPECIFIC OBLIGATIONS**

- a. ASCL shall handover the possession of the Project Site to the Concessionaire in accordance with the Agreement;
- b. Prior to handover of the Project Site to the Concessionaire, ASCL shall help in removing all encroachments from the Project Site;
- c. ASCL shall provide reasonable administrative support to the concessionaire per the provisions of the Agreement.
- d. ASCL shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from ASCL under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- e. Provided where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/ utilities is required, the same shall be provided by ASCL, within 15 days from receipt of request from the Concessionaire to make available such authorization.

## **5.2 GENERAL OBLIGATIONS**

ASCL shall:

- a. upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- b. assist the Concessionaire in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/ Project Facility and implementing this Agreement in accordance with the provisions hereof;
- c. observe and comply with all its obligations set forth in this Agreement.

## **5.3 MONITORING AND ASSESSMENT**

- a. ASCL, in consultation with Government of Uttar Pradesh, shall set up a program monitoring mechanism including an Expert Committee comprising of domain experts from government, ASCL, public to periodically monitor the project deliverables.
- b. The expert committee would be chaired by a representative, not below the rank of Mayor, from the ASCL, Government of Uttar Pradesh
- c. The other members of the expert committee would be as under:
  - i. Representative of ASCL not below the rank of Up Nagar Adhikari
  - ii. Executive Engineer
- d. The expert committee shall submit its report to the government regarding the achievement of projects deliverables - low, moderate, satisfactory, excellent etc with specific recommendation(s) on continuance/discontinuance/restructuring of the project. The findings of the expert committee would be considered to be final and binding.
- e. If the project deliverables are found to be moderate or low, the expert committee would direct ASCL to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs within sixty (60) days.

- f. The expert committee shall evaluate project deliverables on a three month basis based on visit to the facility, review of auditor's reports, reports provided by concessionaire, information received from general public including project stakeholders etc.
- g. The Expert Committee shall monitor the performance of the Concessionaire based on the service level benchmarks indicated in the guidelines issued by Ministry of Urban Development, Government of India or any amendments from time to time. ASCL shall facilitate the expert committee in information gathering, conducting facility visit, meetings, interviews etc.

## **ARTICLE 6 - ROYALTY FEES/CONCESSION FEES**

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement.



## **6.1 PAYMENT TO ASCL**

- 6.1.1 All payments to ASCL shall be made by way of demand draft in favour of The Chief Executive Officer, Agra Smart City Limited payable at Agra.
- 6.1.2 The first of such instalment shall be payable by us on 121<sup>st</sup> day from the date of signing of the Concession Agreement between the Concessionaire and ASCL.
- 6.1.3 The Concession fee quoted by the Concessionaire shall be escalated by 5% per year on cumulative basis and such escalated amount shall be payable for subsequent years.
- 6.1.4 The Concessionaire shall have to pay the total concession fee for the respective year by seventh day of the commencement of the year.
- 6.1.5 The Concession Fee shall be paid for the Concession Period of 15 Years.

## **6.2 ADVERTISEMENT / HOARDING CHARGES**

- 6.2.1 The Concessionaire shall have the right to permit/ allow and charge for advertisement/ hoarding in the BQS/ Project Facility as per Applicable Laws, provided no such activity shall affect the safe and smooth flow of traffic operations.

## **6.3 CHANGE OF SCOPE**

ASCL may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/ deletion to the works and services in the Project Facility which are beyond the scope of the Project as contemplated by this Agreement (“Change of Scope”).

Any increase in Agra Municipal Limits as notified by Government of Uttar Pradesh after signing of this Agreement shall be considered as Change of Scope.

### **6.3.1 Procedure for Change of Scope**

- a. ASCL shall whenever it desires provision of addition/ deletion of items of work and services referred to in Clause 6.3 above, issue to the Concessionaire a notice of change of scope (the “Change of Scope Notice”).
- b. Upon receipt of such Change of Scope Notice, the Concessionaire shall within 15 days provide to ASCL and the Project Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following :
- i. the impact, if any, which the Change of Scope is likely to have on the SPCD if the work is required to be carried out before COD, and
  - ii. the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by ASCL to its contractors, including the premium on such rates), the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications.

Provided, however, that the cost of providing such information shall be reimbursed to the Concessionaire by ASCL to the extent such costs are certified to be reasonable by the Project Engineer.

- c. If ASCL desires, after receipt of information set forth in sub-clause (b) to proceed with the Change of Scope, it shall convey the desired option (with or without modification) to the Concessionaire by issuing a Change of Scope Order within 30 days from the date of recommendation made by Project Engineer and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, ASCL shall issue a written confirmation of the Change of Scope and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, ASCL may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.
- 6.3.2 A Change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by ASCL.  
Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following ASCL's confirmation pursuant to Clause 6.3.1(c). Pending resolution of such dispute, ASCL shall pay to the Concessionaire, if the Change of Scope Order involves increase in bill of quantities an amount equal to the costs that are certified by the Project Engineer.
- 6.3.3 All claims by the Concessionaire pursuant to this Clause 6.3 shall be supported by such documentation as is reasonably sufficient for ASCL/ Project Engineer to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

## ARTICLE 7 - FORCE MAJEURE AND CHANGE IN LAW

### 7.1 FORCE MAJEURE EVENT

Any of the following events which is beyond the control of the Party claiming to be affected thereby (“Affected Party”) and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

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

### 7.2 OBLIGATIONS OF THE PARTIES

- a. As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Project Engineer and the other Party of the same setting out, inter alia, the following in reasonable detail:
  - i. the nature and extent of the Force Majeure Event;

- ii. the estimated duration of the Force Majeure Event;
  - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- b. As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 7.2 (a), the Parties along with the Project Engineer, and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
- i. assess the impact of the underlying Force Majeure Event,
  - ii. to determine the likely duration of Force Majeure Event and,
  - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- c. The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

### **7.3 PERFORMANCE OF OBLIGATIONS**

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

- a. due notice of the Force Majeure Event has been given as required by the preceding Clause 7.2;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility , in accordance with the Good Industry practice and its relative obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- f. any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

## **7.4 TERMINATION DUE TO FORCE MAJEURE EVENT**

### **a. Termination**

- i. If a Force Majeure Event, is an event described under Clauses 7.1(a) to 7.1(e) and 7.1(i), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in 7.1 (f), 7.1 (g) or 7.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement. Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 7.1 (f), 7.1 (g) or 7.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement. Provided further, ASCL may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 7.1(f), 7.1(g) or 7.1(h).

### **b. Termination Notice**

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 7.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

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

### **c. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- i. the Termination Payment, if any, payable by ASCL in accordance with the following clause is paid to the Concessionaire on the Termination Date and
- ii. the Project Facility are handed back to ASCL by the Concessionaire on the Termination Date free from all Encumbrance.

### **d. Termination Payment**

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by ASCL in accordance with the following:

- i. If Termination is due to a Force Majeure Event, described under Clauses 7.1(a) to 7.1(e), no Termination Payment shall be made by ASCL to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- ii. If Termination is due to the occurrence of any event described under Clauses 7.1(f) or 7.1(g) or 7.1(h), ASCL shall not pay any amount to the Concessionaire.

Provided that the Concessionaire shall pay any amount due to and recoverable by ASCL from the Concessionaire as on the Termination Date.

- iii. If Termination is due to the occurrence of any event described under Clause 7.1(i), ASCL shall not pay any amount to the Concessionaire. Provided that the Concessionaire shall pay any amount due to and recoverable by ASCL from the Concessionaire as on the Termination Date.

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

Save and except as expressly provided in this Article, 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.

## **7.6 CHANGE IN LAW**

- a. Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
  - i. the enactment of any new Indian law;
  - ii. the repeal, modification or re-enactment of any existing Indian law;
  - iii. a change in the interpretation or application of any Indian law by a court of record.  
Provided that Change in Law shall not include:
    - I. coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
    - II. any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
    - III. any change in the rates of the Central Taxes.
- b. Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur additional costs, ASCL shall subsequently reimburse to the Concessionaire 100% (hundred percent) of such Additional Costs, provided such additional cost is not less than INR 5,00,000 (Rupees Five Lakhs).
- c. Upon occurrence of a Change in Law, the Concessionaire may, notify ASCL of the following:
  - i. the nature and the impact of Change in Law on the Project
  - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
  - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.

## ARTICLE 8 - EVENTS OF DEFAULT AND TERMINATION

### 8.1 EVENTS OF DEFAULT

Event of Default shall mean either Concessionaire Event of Default or ASCL Event of Default or both as the context may admit or require.

#### a. Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Clause 4.15:

- i. The Concessionaire has failed to adhere to the Construction Requirements and such failure, in the reasonable estimation of the Project Engineer, is likely to delay achievement of COD beyond 90 days of the SPCD;
- ii. The Concessionaire has failed to achieve COD within 90 days of the SPCD for any reason whatsoever;
- iii. At any time during the Concession Period, the Concessionaire fails to adhere to the Construction Requirements or O&M Requirements and has failed to remedy the same within 60 days;
- iv. The Concessionaire has failed to make the Royalty Payment due to ASCL and more than 30 days have elapsed since such payment became due;
- v. The Concessionaire has failed to make any payments due to ASCL and more than 120 days have elapsed since such payment became due;
- vi. The Concessionaire has collected user charges in excess of the rates agreed between the Concessionaire and ASCL.
- vii. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days ;
- viii. Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- ix. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- x. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of ASCL, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- xi. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xii. The Concessionaire has abandoned the Project/BQS Facility ;
- xiii. The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xiv. The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days

- xv. The Concessionaire has failed to perform/ discharge its obligations under Clause 4.14 of this Agreement for a continuous period of 24 hours.
- xvi. The Consortium formed for the purpose of the Project is changed by the Concessionaire without the consent of ASCL.

**b. ASCL Event of Default**

Any of the following events shall constitute an event of default by ASCL ("ASCL Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- i. ASCL has failed to provide land at the Site to the Concessionaire as per the provisions of Clause 3;
- ii. ASCL is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice thereof issued by the Concessionaire;
- iii. ASCL having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire
- iv. ASCL has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- v. Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/this Agreement becomes inoperable or takeover by any government agency of the Project/Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- vi. Any representation made or warranties given by the ASCL under this Agreement has been found to be false or misleading.

**8.2 TERMINATION DUE TO EVENT OF DEFAULT**

**a. Termination for Concessionaire Event of Default**

- i. Without prejudice to any other right or remedy which ASCL may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, ASCL shall subject to the provisions of the Lender's Step-in Rights as per Clause 8.5, be entitled to terminate this Agreement in the manner as set out under Clause 8.2(a)(ii) and Clause 8.2(a)(iii). Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Clause 8.1(a)(xi), ASCL may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 8.2(c).
- ii. If ASCL decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to ASCL in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, ASCL shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- iii. If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to



remedy/ cure the underlying Event of Default within such further period allowed, ASCL shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

**b. Termination for ASCL Event of Default**

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of ASCL Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to ASCL. Within 30 days of receipt of Preliminary Notice, ASCL shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "ASCL Proposal to Rectify"). In case of non submission of ASCL Proposal to Rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If ASCL Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, ASCL shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however ASCL fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

**c. Termination Notice**

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

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and,
- iv. any other relevant information.

**d. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- ii. the termination payment, if any, payable by ASCL in accordance with the following Clause (f) is paid to the Concessionaire on the Termination Date and
- iii. the Project Facility is handed back to ASCL by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to ASCL.

**e. Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

**f. Termination Payments on account of ASCL Event of Default**

Upon Termination of this Agreement on account of ASCL Event of Default, the Concessionaire shall be entitled to withdraw the Performance Security, if subsisting, and receive from ASCL, termination payment as per following:

- i. If the Termination is prior to achievement of COD then the Termination Payment from ASCL shall be equal to the amount, as estimated by the Project Engineer, which has already been spent by the Concessionaire for construction/Upgradation of Project Facilities and has not been paid for by ASCL as per the Project Milestone based disbursement schedule.
- ii. If the Termination is after achievement of COD then the Termination Payment from ASCL shall be equal to Royal Fee Rate/Concession Fee payable by the Concessionaire to ASCL for next 3 (three) months.

**g. Termination Payments on account of Concessionaire Event of Default**

Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall not be entitled to receive any Termination Payment from ASCL. Upon Termination of this Agreement on account of Concessionaire Event of Default, ASCL shall be entitled to forfeit the Performance Security.

### **8.3 RIGHTS OF ASCL ON TERMINATION**

- a. Upon Termination of this Agreement for any reason whatsoever, ASCL shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
  - i. enter upon and take possession and control of the Project Site / Project Facility forthwith;
  - ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Site /Project Facility;
- b. Notwithstanding anything contained in this Agreement, ASCL shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to ASCL shall be free from any such obligation.

### **8.4 ACCRUED RIGHTS OF PARTIES**

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the

Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## **8.5 LENDERS' STEP-IN RIGHTS**

- a. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that :
  - i. upon the Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents), or
  - ii. upon a Termination Notice being issued by ASCL, the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to ASCL the substitution of the Concessionaire by another suitable company ("Proposed Concessionaire"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Concessionaire and the terms and conditions of the substitution.
- b. Upon receipt of the Lender's proposal pursuant to the preceding sub clause (a), ASCL shall, at its discretion, have the right to accept substitution of the Concessionaire on such terms and conditions as it may deem fit. Provided that any such substitution shall :
  - i. be on terms and conditions of the Concession which are not less favourable to ASCL than those prevailing at the time of substitution, and
  - ii. be for the remaining period of Concession only.
- c. In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Concessionaire shall be deemed to have been transferred to and vested in the Proposed Concessionaire and ASCL and the Proposed Concessionaire shall take such steps and enter into such documents as may be necessary to give effect to the substitution.
- d. Upon the substitution of the Concessionaire becoming effective as aforesaid, the Concessionaire shall hand back to ASCL or upon instruction of ASCL to the Proposed Concessionaire and for the purpose of giving effect to this provision, ASCL shall have all such rights as are provided in Clause 8.3.

## **ARTICLE 9 - HANDBACK REQUIREMENTS**

### **9.1 OWNERSHIP**

Without prejudice and subject to the Concession, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Concessionaire, shall at all times remain that of ASCL.

### **9.2 OBLIGATIONS OF PARTIES**

- a. **Concessionaire's Obligations**

- i. The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the Project Site and Project Facility to ASCL free of cost and in good operable condition.
- ii. At least 12 months before the expected expiry of the Concession Period a joint inspection of the Project Site and Project Facility shall be undertaken by ASCL, Concessionaire and Project Engineer. ASCL and Project Engineer shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs (“Project Facility Handback Requirements”), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least 3 months prior to the expected expiry of the Concession Period and ensure that the Project Facility continues to meet such requirements until the same are handed back to ASCL.
- iii. ASCL/ Project Engineer shall, within 15 days of the joint inspection undertaken under preceding clause prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to ASCL along with the Project Facility.
- iv. The Concessionaire hereby acknowledges ASCL’s rights specified in Clause 8.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- v. At least 24 months prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to handback of the Project Facility, submit to ASCL a bank guarantee (“Handback Guarantee”), from a bank acceptable to ASCL. The Handback Guarantee shall be kept valid for a period of 30 months.

**b. ASCL’s Obligations**

ASCL shall, subject to ASCL’s right to deduct amounts towards :

- i. carrying out works/jobs listed under Clause 9.2(a)(ii), which have not been carried out by the Concessionaire,
- ii. purchase of items, which have not been handed back to ASCL along with the Project Facility in terms of Clause 9.2(a)(iii), and
- iii. any outstanding dues, which may have accrued in respect of the Project Facility during the Concession Period, duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the expiry of the Concession Period.

## **ARTICLE 10**

## **DISPUTE RESOLUTION**

### **10.1 AMICABLE RESOLUTION**

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- b. Either Party may require such Dispute to be referred to the Chief Executive Officer, ASCL and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two 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 settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.2 below.

### **10.2 ARBITRATION**

#### a. Procedure

Subject to the provisions of Clause 10.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

#### b. Place of Arbitration

The place of arbitration shall ordinarily be Agra but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

#### c. English Language

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

#### d. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

#### e. Performance during Arbitration

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

## ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

### 11.1 REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE

The Concessionaire represents and warrants to ASCL that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. there are no actions, suits, proceedings or investigations pending or to the 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 ASCL of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. subject to receipt by the Concessionaire from ASCL of any 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 Site/Project Facility shall pass to and vest in ASCL on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or ASCL;
- k. no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ASCL or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l. no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- m. 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 Project Site, and the information provided by ASCL, and has determined to its satisfaction the nature and extent

of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that ASCL shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **11.2 REPRESENTATIONS AND WARRANTIES OF ASCL**

ASCL represents and warrants to the Concessionaire that:

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

## **11.3 OBLIGATION TO NOTIFY CHANGE**

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

## **ARTICLE 12 - MISCELLANEOUS**

### **12.1 ASSIGNMENT AND CHARGES**

- a. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of ASCL.
- b. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/Project Facility, except with prior consent in writing of ASCL, which consent ASCL shall be entitled to decline without assigning any reason whatsoever.
- c. Restraint set forth in sub-articles (a) and (b) above shall not apply to:
  - i. liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
  - ii. Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
  - iii. assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

### **12.2 INTEREST AND RIGHT OF SET OFF**

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided the stipulation regarding interest for delayed payments contained in this Clause shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

#### **12.2.1 Governing Law and Jurisdiction**

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

#### **12.2.2 Waiver**

- a. Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
  - i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - ii. shall not be effective unless it is in writing and executed by a duly 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/breach of any terms, conditions or provisions of this Agreement.



### **12.3 SURVIVAL**

Termination of this Agreement:

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

### **12.4 AMENDMENTS**

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

### **12.5 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 ASCL: The Chief Executive Officer, ASCL Nagar Nigam, Agra – 282002, Uttar Pradesh Fax No :

If to the Concessionaire: The Chief Executive Officer, -----(*insert complete address with phone and fax details*) Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

(i) in the case of any communication made by letter, when delivered by hand, by 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.

### **12.6 SEVERABILITY**

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

### **12.7 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.

## **12.8 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.

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

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

## **12.10 COUNTERPARTS**

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement. IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN. SIGNED SEALED AND DELIVERED

For and on behalf of ASCL by:

(Signature)

(Name)

(Designation)

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

In the presence of:

- 1.
- 2.