

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

DRAFT CONCESSION AGREEMENT  
FOR  
CONSTRUCTION AND MAINTENANCE OF BUS  
SHELTERS

IN

RAJIV GANDHI SALAI (IT CORRIDOR)

(From SRP Tools junction to Siruseri in 17 km road)

ON

**BOT BASIS**

54 Nos. of Bus Shelters

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## CONCESSION AGREEMENT

**THIS CONCESSION AGREEMENT** is entered into at .....on this the .....day of ....., **2012**

BETWEEN

**THE Managing Director, ITEL**, Sindur Panthion Plaza, 2<sup>nd</sup> Floor, 346-Pantheon Road, Egmore, Chennai-600008 in his/her executive capacity (hereinafter referred to as "ITEL or the "Concessioning Authority", which expression shall include its successors and assigns ) of the first part;

AND

M/s. \_\_\_\_\_ a company incorporated under the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as the "**Concessionaire**", which expression shall include its permitted successors and assigns).of the second part

AND

M/s. \_\_\_\_\_ a Company incorporated under ....., having its registered Office at \_\_\_\_\_ (hereinafter referred to as \_\_\_\_\_ which expression shall include its permitted successors and assigns).of the third part.

AND

M/s. \_\_\_\_\_ a company incorporated under ..... having its registered Office at \_\_\_\_\_ (hereinafter referred to as \_\_\_\_\_ which expression shall include its permitted successors and assigns).of the fourth part.

**PREAMBLE****WHEREAS**

- A. ITEL has conceived and is keen to implement a project envisaging Construction & Maintenance of 54 Nos. of Modern Bus Shelters along Rajiv Gandhi Salai (IT Corridor) from SRP Tools Junction to Siruseri in 17 Km Road under BOT Basis in Chennai, Tamil Nadu. (more particularly described in Schedule 'A' and hereinafter referred to as "**the Project**") with private sector participation on Build, Operate and Transfer (BOT) basis. This Bid Document comprises Construction, Operation and Maintenance of **54 Nos.** of Bus Shelters in Rajiv Gandhi Salai (IT Corridor) as designated by IT Expressway Ltd.,
- B. ITEL has invited tenders from eligible persons/ firms/ companies/ consortiums for implementing the Project;
- C. In response to the aforesaid invitation for tenders, ITEL has received bids from \_\_\_\_\_ bidders including the Concessionaire for implementing the Project;
- D. ITEL, after evaluating the aforesaid bids, accepted the bid submitted by the Concessionaire and issued the Letter of Award (LOA) No: \_\_\_\_\_ dated \_\_\_\_\_ to the Concessionaire;
- E. In accordance with the requirements of the said tender/bid submitted by the Concessionaire, ITEL has agreed to grant to the Concessionaire the Concession (as hereinafter defined) for the Concession Period, to finance, construct, operate and maintain the Project, pay an agreed concession fee to ITEL during the Concession Period, and at the end of the Concession Period transfer the Bus Shelters to ITEL, on the terms, conditions and covenants hereinafter set forth in this Agreement.
- F. The Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in terms of this Agreement.
- G. M/S \_\_\_\_\_ are the promoters / shareholders of the Concessionaire company and have joined as parties to this Agreement as confirming parties for the due performance by the Concessionaire of its obligations under this Agreement.

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



## ARTICLE - 1

### DEFINITIONS AND INTERPRETATION

#### Definitions:-

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

**"Accounting Year"** means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

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

**"Applicable Laws"** means all laws, promulgated or brought into force and effect and all Rules and Regulations made and all Notifications and Guidelines issued there under by the Government of India, Government of Tamil Nadu and ITEL, including all judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

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

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

**"Bid Variable"** means **the concession fee payable by the Concessionaire to ITEL as provided in Article 11.**

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

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

**"ITEL"** means IT Expressway Ltd, Limited and their Representatives.

**"COD"** means the commercial operations date of the Project which shall be the date on which the Engineer-in-Charge has issued the Completion Certificate or the Provisional Certificate upon completion of construction of all the Bus Shelters, fully completed in all respects, as envisaged under

the Project and which shall, subject to the provisions of this Agreement, be not later than **Nine ( 9 ) Months** from Commencement Date.

**"Commencement Date"** means the date on which the physical possession of the Project Site is delivered by ITEL to the Concessionaire, which shall not be later than 21 days from the date of issue of the Letter of Award

**"Completion Certificate"** means the certificate issued by the Engineer-in-Charge pursuant to Clause 9.3 (d).

**"Concession"** shall have the meaning ascribed thereto in Clause 2.1.

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

**"Concessioneing Authority"** means M/s. IT Expressway Ltd (ITEL) and shall include its successors and assigns

**"Concessionaire"** means M/s. \_\_\_\_\_ and shall include its successors and permitted assigns expressly approved by ITEL.

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

**"Contractor"** means any person with whom the Concessionaire has entered into/ may enter into all or any of the Project Agreements.

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

**"Debt Due"** means the aggregate of the following sums expressed in rupees, outstanding and payable to the Lenders under the Financing Documents:

- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of ITEL; and
- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i) above up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.

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

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

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

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

**"Engineer-in-charge"** means the General Manager ( Projects) of ITEL of the respective area or any other Engineer Authorized by ITEL.

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

**"Equity"** means the sum expressed in Rupees representing the equity share capital of the Concessionaire for meeting equity component of the Total Project Cost.

**"Financing Documents"** means the documents executed by the Concessionaire in respect of financial assistance (including refinancing) for the Project to be provided by the Lenders by way of loans, advances, subscription to debentures and other debt instruments and guarantees, risk participation, take-out financing or any other form of credit enhancement and shall include loan agreements, guarantee agreements, subscription agreements, notes and any documents providing security for such financial assistance, and includes amendments or modifications made thereto.

**"Financial Close"** means the date on which the Financing Documents providing for funding by the Lenders have become effective and the Concessionaire has immediate access to such funding under the Financing Documents.

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

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

**"Government Agency"** means the Government of India, the Government of Tamil Nadu, TNRDC/ITEL , or any State government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

**"Implementation Period"** means the period beginning from the Commencement Date and ending on the COD. The Implementation Period shall be the estimated construction period plus a reasonable time (upto 2 months) required by the Concessionaire for all preconstruction activities such as investigation/study, designing, obtaining necessary approvals and arrangement of finance.

**"Indirect Political Event"** shall have the meaning ascribed thereto in Clause 15.3.

**"Lenders"** means the financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, and their successors and assigns, who provide financial assistance to the Concessionaire under any of the Financing Documents.

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

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

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

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

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

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

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

**"O&M Contract"** means the Operation and Maintenance Contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the Project/Project Facility.

**"O&M Contractor"** means the person or entity with whom the Concessionaire has entered into an O&M Contract for discharging O&M functions for and on behalf of the Concessionaire.

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

**"Operations Period"** means the period commencing from COD and ending at the expiry of the Concession Period.

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

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

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

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

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

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

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

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

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

**"Project Facility"** means collectively the facilities on the Project Site to be constructed, built, installed, erected or provided by the Concessionaire for use of the users by implementing the Project and more specifically set out in Schedule ‘B’.

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

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

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

**“ITEL Engineer”** means the General Manager or the Engineer designated by ITEL to undertake, perform and carry out such functions, duties, responsibilities, services and activities as set forth in Schedule ‘E’ hereto and elsewhere in this Agreement.

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

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

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

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

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

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

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

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

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

### **Principles of Interpretation**

- a. The Article numbers, clause numbers, headings and marginal headings in this Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Agreement.
  - b. Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any organizations having legal capacity to sue and be sued in their names.
  - c. Words importing the singular also include the plural and vice-versa where the context requires.
  - d. Words importing one gender also include other gender.
  - e. In case of ambiguities or discrepancies in this Agreement, the following shall apply;
    - (i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
    - (ii) between the Clauses and the Schedules, the Clauses shall prevail;
    - (iii) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
    - (iv) between the dimensions scaled from the drawings and their specific written dimensions, the latter shall prevail;
    - (v) Between any value written in numerals and that in words, the latter shall prevail.
- Any word not specifically defined herein shall have the same meaning as is given in the standard Oxford Dictionary, with reference to the context in which it is used.

### **Priority of Documents**

The documents referred to in this Agreement and forming part thereof are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Concessing Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows: -

- i) This Concession Agreement
- ii) The Schedules to this Agreement
- iii) The "Letter of Award"
- iv) The Bids submitted by the Concessionaire
- v) The written clarifications issued to the bidders
- vi) Written addenda to the RFP

## **ARTICLE - 2**

### **CONCESSION AND PROJECT SITE**

#### **2.1 Grant of Concession**

- a) Subject to and in accordance with the terms and conditions set forth in this Agreement, ITEL hereby grants and authorizes the Concessionaire to investigate, study, finance, construct, operate and maintain the Project Facility and to exercise and/or enjoy the rights to collect revenue from commercial utilization of space allocated as set forth in this Agreement (viz. advertisements), collectively known as "the Concession".

- b) The title of interest, ownership and rights with regard to Bus Shelters constructed by the Concessionaire for ITEL along with fixtures/ fittings provided therein and the land allotted by the ITEL shall vest with the ITEL except that these will be operated and maintained by the Concessionaire as agreed in this Agreement

## **2.2 Concession Period**

The Concession hereby granted is for a period of **Nine (9) years** (including construction period of 9 months) commencing from the Commencement Date during which the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof.

## **2.3 Acceptance of the Concession**

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

## **2.4 Project Site**

- (a) ITEL hereby undertakes to handover to the Concessionaire physical possession of the Project Site (**54 Nos.** of Bus Shelters in Rajiv Gandhi Salai (IT Corridor) from SRP Tools junction to Siruseri in 17 km road) free from Encumbrance within 15 days from the date of issue of the Letter of Award / Work Order together with the necessary rights of way/way leaves for the purpose of implementing the Project in accordance with this Agreement.
- (b) ITEL confirms that upon the Project Site being handed over pursuant to the preceding sub-Clause (a) the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to implement the Project and to provide the Project Facility subject to and in accordance with the provisions of this Agreement.

## **2.5 Use of the Project Site**

The Concessionaire shall not without prior written consent or approval of ITEL use the Project Site for any purpose other than for the purposes of the Project/ the Project Facility and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by ITEL.

## **2.6 Information about the Project Site**

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

## **2.7 Peaceful Possession**

ITEL warrants that:

- (a) the Project Site having been acquired through the due process of law belongs to and is vested in ITEL, and that ITEL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement;

- (b) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to whomsoever the Project Site or any part thereof had been acquired from and that the same shall be the sole responsibility of ITEL; and
- (c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the Concessionaire is obstructed by any Person / Company claiming any right, title or interest in or over the Project Site or any part thereof ITEL shall, if called upon by the Concessionaire, defend the Concessionaire against such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

## **2.8 Rights over the Project Site**

- (a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement.

The Concessionaire shall allow access to, and use of the Project Site/ Project Facility for the authorities/agencies laying telecommunication lines, electric lines or such other public purposes as ITEL may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 30 days at a stretch at any location and that ITEL undertakes to ensure that the Project Facility is restored at the cost and expenses of ITEL as per the Specifications and Standards. Where such access or use causes any loss of revenue to the Concessionaire, ITEL shall compensate the Concessionaire for such loss by increasing the Concession Period suitably.

- (b) 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 provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project/ Project Facility.

## **ARTICLE - 3**

### **PERFORMANCE SECURITY**

#### **3.1 Performance Security**

- (a) The Concessionaire shall, for due and punctual performance of its obligations during the Implementation Period, deliver to ITEL, simultaneously with the execution of this Agreement, an irrevocable Bank Guarantee from an Indian Nationalised/ Scheduled Bank in the prescribed format pledged in favor of “**M/s. IT Expressway Ltd,**” for a sum equivalent to 5% of the respective finalized Annual Concession Fee due to ITEL valid for a period of **12 months** or **3 Months** beyond the completion of the Construction period, IN Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only) IN Rs..... (Indian Rupees ..... only) as the "Performance Security for Construction". This shall be returned on successful completion of the construction of all Bus Shelters.
- (b) The Concessionaire shall for due and punctual performance of obligations during the Operation & Maintenance Period deliver to ITEL, at the end of first quarter of construction period, an irrevocable Bank Guarantee from an Indian Nationalised/ Scheduled Bank in the prescribed format pledged in favor of “**M/s. IT Expressway Ltd,**” for an equivalent sum of twenty five percent (25%) of the respective finalized Annual Concession Fee due to ITEL, IN Rs. \_\_\_\_\_ (Indian Rupees \_\_\_\_\_ only) as



the “Performance Security for Operation and Maintenance” during the entire Concession Period.

### **3.2 Fresh Performance Security**

In the event of the encashment of the Performance Security by ITEL pursuant to Encashment Notice issued in accordance with the provisions of Article 16 the Concessionaire shall within 30 (thirty) days of the Encashment Notice furnish to ITEL fresh Performance Security failing which ITEL shall be entitled to terminate this Agreement in accordance with the provisions of Article 16. The provisions set forth in Clause 3.1 above shall apply mutatis mutandis to such fresh Performance Security.

## **ARTICLE - 4**

### **REVENUE**

#### **4.1 Collection and Appropriation of Revenue from Advertisement**

- i) Subject to the provisions of this Agreement, the Concessionaire shall, during Operations Period be entitled to demand and collect revenue from advertisements at the Project Site as specified and permitted by ITEL in this Agreement.
- ii) The Concessionaire shall not collect any revenue until it has received Completion Certificate or the Provisional Certificate from the Engineer-in-Charge.
- iii) In case any advertisement space remains unutilized, no adjustment in the Bid Variable will be allowed under any circumstances.

#### **4.2 Collection and Appropriation of Revenue from Advertisement at identified locations**

- 1) Subject to the provisions of this Agreement, the Concessionaire shall during Operations Period be entitled to collect revenue from advertisements as specified in this Agreement

## **ARTICLE - 5**

### **OBLIGATIONS AND UNDERTAKINGS**

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

#### **5.1 General Obligations of the Concessionaire**

The Concessionaire shall at its own cost and expense:

- (i) Prepare inventory of the old existing structure, if any, dismantle the same safely and return the serviceable material to IT Expressway Ltd, Ltd.
- (ii) Investigate, study, construct, operate and maintain the Project Assets/Project Facility in accordance with the provisions of this Agreement, Good Industry Practice and Applicable Laws.
- (iii) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (iv) Ensure that services of water supply, sewerage, drainage, electricity, telephone etc. in the vicinity, encountered during the period of construction/ operation/ maintenance of the Bus Shelters are not damaged. In case these are required to be shifted, the same shall be done by the ITEL at their cost.
- (v) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (vi) ensure and procure that each Project Agreement contains provisions that would entitle ITEL or a nominee of ITEL to step into such Agreement at ITEL 's discretion, in place and substitution of the Concessionaire in the event of Termination pursuant to the provisions of this Agreement;

- (vii) provide all assistance to the Engineer-in-Charge/ ITEL Engineer as they may reasonably require for the performance of their duties and services under this Agreement;
- (viii) provide to the Engineer-in-Charge/ ITEL Engineer, reports on a regular basis during the Implementation Period and the Operations Period in accordance with the provisions of this Agreement; The Concessionaire shall adhere to the provisions of Applicable Laws, by-laws and rules in connection with display of advertisements on Bus Shelters. The Concessionaire shall also pay/ ensure payment to ITEL of advertisement tax, if any, in respect of the advertisements displayed on the Bus Shelters in accordance with the provisions of Applicable Laws and the by-laws and rules there under.
- (ix) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (x) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (xi) develop, implement and administer a surveillance and safety program for the Project/Project Facility and the users thereof and the Contractors' personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (xii) not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (xiii) be responsible for safety, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards;
- (xiv) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (xv) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (xvi) Ensure that Project Site and facilities created are not defaced by any kind of writings/ posters

## **5.2 Obligations of the Concessionaire during Implementation Period**

- (a) The Concessionaire shall, before commencement of construction of the Project;
  - (i) submit to the Engineer with due regard to Project Completion Schedule and Scheduled Project Completion Date, its construction time schedule;
  - (ii) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project and to liaison with the Engineer and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - (iii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Completion Schedule and to achieve Project Completion under and in accordance with this Agreement;
- (b) The Concessionaire shall, at all times, afford access to the Project Site, to the authorised representatives of ITEL, Engineer and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection, to inspect the Project and to investigate any matter within their

authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

- (c) The Concessionaire shall apply for and obtain all necessary clearances and/ or approvals for the construction of Bus Shelters.

The Concessionaire shall bear all costs and charges for special or temporary sites required by it in connection with access to the Project Site. The Concessionaire shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement .

- (d) In case of loss due to theft or damage to the assets created in the BusShelters, the Concessionaire shall be responsible for making good the same immediately at its own cost and shall continue to keep the Bus Shelters operational and available for public use, at all times, within the Concession Period.

### **5.3 Obligations of Promoter Companies**

M/s. \_\_\_\_\_, the parties of the third part and fourth part respectively to this Agreement hereby agree and undertake that during the entire Concession Period they shall remain responsible to ITEL for the due performance by the Concessionaire of all its obligations under this Agreement and for any failure on the part of the Concessionaire ITEL shall have the right to take such action against M/S \_\_\_\_\_ as it may deem appropriate.

### **5.4 Obligations of ITEL**

ITEL shall:

- (i) hand over the physical possession of the Project Site to the Concessionaire within 15 days from the date of this Agreement, free from any Encumbrance;
- (ii) Grant or where appropriate provide necessary support as far as possible to the Concessionaire in securing Applicable Permits, permissions and approvals required for implementation and operation of the project. Would the use of the projects sites for advertisement purposes be impossible, in particular in the event these Permits would not be delivered, the parties agree to adjust the provisions of the Agreement so as to maintain the economic balance of the contract. However, the concessionaire shall be liable to pay such fee or deposits to the concerned authorities as may be necessary. The concessionaire shall at its own cost obtain necessary electricity connection in ITEL's name
- (iii) If during the term of this Agreement, the use of the BS for advertising purposes is made impossible or loses its value by reason of matters outside the control of M/s. \_\_\_\_\_ (including, without prejudice to the generality of the foregoing, lack of visibility or lack of lighting or if new legal or tax regulations change the commercial or financial climate of the business of M/S \_\_\_\_\_, then M/S \_\_\_\_\_ shall have the rights to require the amendment of the provisions of the Agreement to the extent that they restore the initial economical balance of the contract.

## **ARTICLE - 6**

### **ENGINEER-IN-CHARGE**

#### **6.1 Appointment of Engineer-in-Charge**

The General Manager - Projects, IT Expressway Ltd, is nominated as the Engineer-in-Charge to undertake, perform and carry-out the duties, responsibilities, services and activities set forth in Schedule 'D'.

- (a) The Engineer-in-Charge shall submit to the ITEL reports at least once every month or more frequently as the situation may warrant, on the progress of implementation of the Project. Such reports of the Engineer-in-Charge shall include but not be limited to the matters and things set forth in said Schedule 'D'.
- (b) Deleted.
- (c) If either party disputes any advice, instruction or decision of the Engineer-in-Charge, the same shall be resolved in accordance with the Dispute Resolution Procedure set forth in Article 19.

## **6.2 Deleted**

### **ARTICLE -7**

#### **DELETED**

### **ARTICLE - 8**

#### **DRAWINGS**

## **8.1 Preparation of Drawings.**

The Concessionaire shall prepare at its own cost, charges and expenses, shop and working/construction drawings for Bus Shelters in accordance with the applicable Specifications and Standards. Any modification suggested shall be approved by the ITEL and shall be at the Concessionaire's own cost and at no additional cost to the ITEL.

## **8.2 Review and Approval of Drawings.**

- (a) The Concessionaire shall promptly and in such sequence as is consistent with the Project Completion Schedule, submit a copy each of all drawings to the Engineer-in-Charge.
- (b) While forwarding the Drawings to the Engineer-in-Charge pursuant to sub-clause (a) above, the Concessionaire shall represent that it has determined and verified that the design and engineering including field construction criteria related thereto are in conformity with the Specifications and Standards.
- (c) Within 7 (seven) days of the receipt of the Drawings, the Engineer-in-Charge shall review the Drawings and convey its comments/ observations, if any, thereon to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards. It is expressly agreed that notwithstanding any review or failure to review by the Engineer-in-Charge or any comments/observations of the Engineer-in-Charge, ITEL shall not be liable for the adequacy of the Drawings and that the Concessionaire shall solely be responsible therefor and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.
- (d) If the comments/observations of the Engineer-in-Charge indicate that the Drawings are not in conformity with the Specifications and Standards, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to the Engineer-in-Charge for further review. The Engineer-in-Charge shall give its observations and comments, if any, within 5 (five) days of the receipt of such revised Drawings. Provided, however, that any observations or comments of the Engineer-in-Charge or failure of the Engineer-in-Charge to give any observations or comments on such revised Drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.
- (e) If the Engineer-in-Charge does not object to the Drawings submitted to it by the Concessionaire within a period stipulated in the above sub-clauses (c) or (d) as applicable, the Concessionaire shall be entitled to proceed with the Project accordingly.

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

**ARTICLE - 9**  
**PROJECT IMPLEMENTATION AND OPERATIONS**

**9.1 Monitoring and Supervision during Implementation**

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

During the Implementation Period, the Concessionaire shall furnish to ITEL monthly reports on actual progress of the Construction Works and furnish any other relevant information as may reasonably be required by ITEL.

- (c) For the purposes of determining that the Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice and for quality assurance, the Concessionaire shall carry out such Tests at such time and frequency and in such manner as may be required by the Engineer-in-Charge or as may be necessary in accordance with Good Industry Practice. The Concessionaire shall with due diligence carry out all such Tests in accordance with the instructions and under the supervision of the Engineer-in-Charge. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such Test results. The Engineer-in-Charge shall furnish the results of such Tests to ITEL within seven days thereof and also promptly report to the ITEL the remedial measures taken by the Concessionaire to cure the defects/deficiencies if any indicated in the Test results.

If the Engineer-in-Charge reasonably determines that the rate of progress of the construction of the Project is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date, it shall so notify the Concessionaire and the ITEL. Thereupon, the Concessionaire shall within seven (7) days thereof notify the ITEL and the Engineer-in-Charge about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

**9.2 Project Completion**

- (a) The Project shall be deemed to be complete only when the Completion Certificate is issued by the Engineer-in-Charge in accordance with the provisions of Clause 9.3(d) (the "Project Completion").
- (b) The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than Nine (9) **Months** from the Commencement Date ("The Scheduled Project Completion Date"). The schedule submitted by the Concessionaire along with Technical submission is to be adhered to.
- (c) **Liquidated Damages (LD) :-** If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than Force Majeure or reasons

attributable to ITEL, the Concessionaire shall be liable to pay **liquidated damages** for delay beyond the Scheduled Project Completion Date, an amount of **IN Rs. 5000/-** (Indian Rupees Five Thousand Only) per Bus Shelter per Week or part thereof for delay of every week or part thereof, provided that such liquidated damages do not exceed an aggregate of 5% of the agreed annual Concession fee to be paid by the Concessioner to ITEL. Provided further that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay in achieving Project Completion.

- (d) If the entire works are not completed **Nine (9) Months** from the date of issue of Letter of Award /Work Order, ITEL shall, subject to the provisions of this Agreement relating to excuse from performance of the Concessionaire's obligations hereunder, be entitled to Terminate this Agreement in accordance with the provisions of Clause 16.2.

### 9.3 Tests

- (a) At least 15 (fifteen) days prior to the likely completion of each phase of the Project, the Concessionaire shall notify the Engineer-in-Charge and the ITEL the same and shall give notice to them of its intent to conduct Tests. The Concessionaire shall give the Engineer-in-Charge and the ITEL at least 10 (ten) days prior notice of the actual date on which it intends to commence the Tests and at least 7 (seven) days prior notice of the commencement date of any subsequent Tests.
- (b) All Tests shall be conducted in accordance with the Applicable Laws and Applicable Permits. The Engineer-in-Charge shall have the right to suspend or postpone any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Specifications and Standards. The Engineer-in-Charge may designate a representative with suitable qualifications and experience to witness and observe the Tests.
- (c) The Engineer-in-Charge shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the ITEL copies of all Test data including detailed Test results.
- (d) Upon the Engineer-in-Charge determining the Tests to be successful, it shall forthwith issue to the Concessionaire a certificate (the "Completion Certificate").
- (e) The Engineer-in-Charge may at the request of the Concessionaire issue a provisional certificate of completion ("Provisional Certificate") if the Tests are successful and all parts of Project can be legally, safely and reliably opened for commercial operation though certain works or things forming part thereof are not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Engineer-in-Charge and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within 30 (Thirty) days of the date of issue of such Provisional Certificate. Upon completion of all Punch List items to the satisfaction of the Engineer-in-Charge, it shall issue the Completion Certificate to the Concessionaire with a copy marked to ITEL. In the event of the Concessionaire's failure to complete the Punch List items within the said period of 30 (Thirty) days, ITEL may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to ITEL on demand the entire costs incurred by ITEL in completing the Punch List items.
- (f) If the Engineer-in-Charge certifies that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the

Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.

The Concessionaire shall bear all the expenses relating to Tests under this Agreement.

#### **9.4 Operation and Maintenance**

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

- (i) undertaking daily cleanliness of the Project Facility.
- (ii) ensuring the safety and security of the Project Facility.
- (iii) undertaking routine maintenance including prompt repairs of pot-holes, cracks, concrete joints, lighting and signage;
- (iv) undertaking maintenance works in accordance with Maintenance Manual and the Maintenance Programme;
- (v) preventing any encroachments or any unauthorized usage of the Project Facility

#### **9.5 Maintenance Manual**

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

#### **9.6 Maintenance Programme**

- (a) Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire shall provide to ITEL, its proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Schedule 'H' necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:
  - (i) intervals and procedures for the carrying out of inspection of all elements of the Project;
  - (ii) criteria to be adopted for deciding maintenance needs;
  - (iii) preventive maintenance schedule;
  - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and
  - (v) intervals for major maintenance and the scope thereof.
- (b) Maintenance shall include replacement of equipment, consumables, horticultural maintenance and repairs to equipment, pavements, structures and other civil works, which are part of the Project/Project Facility.
- (c) The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter and debris. The Concessionaire shall clean and empty the litterbins into suitable garbage bags and will be collected and removed by the Concerned Agency.

The Concessionaire shall be responsible for the maintenance of the drainages within the individual Bus Shelters in accordance with Good Industry Practice.

## 9.7 Emergency De-commissioning

- (a) If ITEL, in public interest, is of the opinion that there exists an Emergency or any other situation, which warrants decommissioning and closure of whole or any part of the Project/Project Facility (BS), ITEL shall notify to the concessionaire to de-commission and close the whole, or the relevant part of the Project for so long as such Emergency and the consequences thereof warrant. The ITEL may issue such directions as it may deem appropriate to the Concessionaire for dealing with such Emergency and the Concessionaire shall abide by the same.
- (b) The Concessionaire shall re-commission the Project/Project Facility or the affected part thereof on receiving the instructions from ITEL in this regard. In such a case the cost of relocation of the Bus Shelters shall be borne by the concessionaire up to a maximum of 3% (10%) of number of Bus Shelters installed by the Concessionaire. If the relocation of bus shelters exceeds 3% (10%) then the cost of relocation of the bus shelters shall be borne by the ITEL at the prevailing Schedule of rates at that time.
- (c) In case the decommissioning or closure is of permanent nature then ITEL will allocate alternative sites if available. In case alternative locations are not made available ITEL shall pay the depreciated cost of the Bus Shelters to the Concessionaire. The minimum Concession Fee shall also be adjusted proportionately.

## 9.8 Rectification of Defects

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

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

## 9.9 Monitoring and Supervision during Operations

- (a) The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and shall submit reports of such inspection ("Maintenance Reports") to the ITEL



- (b) The ITEL Engineer shall undertake periodic (at least once every calendar month but once every week during monsoon) inspection of the Project jointly with the Concessionaire to determine the condition of the Project including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and make out a report of such inspection (the "O&M Inspection Report") and forward it to the Concessionaire with a copy thereof to the ITEL. The O&M Inspection Report shall set forth defects and deficiencies, if any, and may also require the Concessionaire to undertake such tests as may be specified by the ITEL Engineer for the purpose of determining that the Project is at all times in conformity with the Specifications and Standards. The Concessionaire shall within 15 (Fifteen) days of the receipt of the O&M Inspection Report from the ITEL Engineer remedy the defects and deficiencies and undertake such tests, if any, set forth therein, without any delay and furnish compliance thereto and/or results thereof to the ITEL Engineer along with a report (O&M Inspection Compliance Report) with a copy to the ITEL specifying in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. Where the remedying of such defects or deficiencies and/or undertaking such tests is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight and finally the O&M Inspection Compliance Report.

## **ARTICLE - 10** **FINANCING ARRANGEMENT**

### **10.1 Financing Arrangement**

- (a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to finance the Project and to meet its obligations under this Agreement in a timely manner.
- (b) In the event of the Concessionaire employing the funds borrowed from the Lenders to finance the Project, the provisions relating to Lenders including those relating to Financial Close shall apply.
- (c) The Concessionaire shall within 7 days of achieving Financial Close submit to ITEL one set of Financing Documents evidencing Financial Close.

### **10.2 Amendments to Financing Documents**

For the avoidance of doubt the Parties agree that no amendment made to the Financing Documents without express consent of ITEL shall have the effect of enlarging in any manner, the obligation of ITEL in respect of Termination Payment under this Agreement.

## **ARTICLE- 11** **CONCESSION FEE**

### **The Concession Fee**

- (i) The Concessionaire shall pay to ITEL a Concession Fee of IN Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only) Per annum . The Concession Fee shall be paid Annually till the end of the Concession Period and shall be increased **five percent compounded (5%)** annual increase of Concession Fee for the **9 years** .

Advertisement is the identified and permitted source of revenue from the Bus Shelters.

During the First year of Concession Period, the quoted and accepted Annual Concession Fee shall be proportionately charged during **first year** of Concession Period as listed below and shall be payable within ten (10) days of the beginning of the respective Quarters:

1st Quarter	25 % of the quoted and accepted Annual Concession Fee
2nd Quarter	25% of the quoted and accepted Annual Concession Fee
3rd Quarter	25% of the quoted and accepted Annual Concession Fee
4th Quarter	25% of the quoted and accepted Annual Concession Fee

The aforementioned payment schedule is applicable only for the First year of Concession Period. Payment of the Concession Fee for the subsequent years shall be made in accordance with the mode specified in the Concession Agreement.

In case the Concessionaire (M/s \_\_\_\_\_) fails to pay the Concession Fee in accordance with the terms and conditions above, M/S \_\_\_\_\_ the flagship company of M/S \_\_\_\_\_ shall pay the Concession Fee to ITEL. For this purpose, M/S \_\_\_\_\_ shall execute an unconditional and irrevocable guarantee in favour of ITEL in such form and manner as may be required by ITEL.

- (ii) The Concessionaire shall pay all duties and taxes in consequence of its obligations under this Concession Agreement, including customs duties, and the Concession Fee shall not be adjusted for such costs.
- (iii) The Concession Fee due shall be paid not later than the **10<sup>th</sup> day** of the first month of the YEAR for which it is due. Failure to pay the Concession Fee in time will attract an interest of Twelve Percent (12%) per annum on the entire amount of unpaid Concession Fee payable during the YEAR.
- (iii) Any payments by ITEL to the Concessionaire shall be made only through the mechanism of adjustment of the Concession Fee. Any reference to such payments shall indicate the mechanism of such adjustment to the Concession Fee. No actual payments shall be made by the ITEL, other than in case of payments after the Termination Date.

## ARTICLE- 12 INSURANCES

### **12.1 Insurance during the Implementation Period**

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

- (a) Builders' all risk insurance;
- (b) Workmen's compensation insurance;

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

### **12.2 Insurance during the Operations Period**

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

- (a) loss, damage or destruction of the Project Facility, at replacement value;
- (b) the Concessionaire's general liability arising out of the Concession;
- (c) liability to third parties; and
- (d) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).

### **12.3 Insurance Companies**

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

### **12.4 Evidence of Insurance Cover**

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

### **12.5 Application of Insurance Proceeds**

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

### **12.6 Validity of the Insurance Cover**

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

**ARTICLE - 13**  
**CHANGE OF SCOPE**

**Change of Scope**

ITEL may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/deletion to the works and services on or about the Project which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope"), the Concessionaire shall carry out such additions/deletions on such terms and conditions as mutually agreed upon.

**ARTICLE - 14**  
**Deleted**

**14.1 Deleted**

**ARTICLE - 15**  
**FORCE MAJEURE**

**15.1 Force Majeure Event**

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

**15.2 Non - Political Event**

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

- (i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
- (ii) radioactive contamination or ionizing radiation;
- (iii) General strikes or boycotts (other than those involving the Concessionaire, its Contractors or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 15.3;
- (iv) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on

account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by ITEL;

(vi) Any event or circumstances of nature analogous to any of the foregoing.

### **15.3 Indirect Political Event**

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

- (i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage which prevents collection of revenue by the Concessionaire for a period exceeding a continuous period of 7 (seven ) days in an Accounting Year;
- (ii) Industry wide or state wide or India wide strikes or industrial action which prevent collection of revenue by the Concessionaire for a period exceeding a continuous period of 15 (fifteen) days in an Accounting Year; or
- (iii) Any public agitation which prevents collection of revenue by the Concessionaire for a period exceeding a continuous period of 15 (fifteen ) days in an Accounting Year.

### **15.4 Political Event**

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

- (i) Change in Law, only when provisions of Article 17 cannot be applied;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (iii) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contactor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consent or permit.

### **15.5 Effect of Force Majeure Event**

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

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

### **15.6 Allocation of costs during subsistence of Force Majeure**

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

- (a) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- (b) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Concessionaire to the extent of the Insurance Cover, and to the extent the Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by ITEL to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim;
- (c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and certified by the statutory Auditors of the Concessionaire subject to approval of ITEL shall be reimbursed by ITEL to the Concessionaire within 90 days from the date of receipt of Concessionaire's claim; and
- (d) ITEL may at its option reimburse the Force Majeure Costs to the Concessionaire in cash (through adjustment in the concession fee) or compensate the Concessionaire for such costs by appropriate extension of the Concession Period, which extension shall also be given effect within the period of 90 days specified in preceding sub-clauses (b) or (c) as the case may be.

For avoidance of doubt, Force Majeure Costs shall not include loss of revenues or any debt repayment obligations but shall include interest payments on such debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

### **15.7 Dispute Resolution**

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

### **15.8 Liability for other losses, damages etc**

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

### **15.9 Duty to Report**

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

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

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 15 with evidence in support thereof;
  - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - (iii) the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause and such other information as the other Party may reasonably request the Affected Party to provide.

### **15.10 Excuse from performance of obligations**

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence: and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

## **ARTICLE - 16** **EVENTS OF DEFAULT AND TERMINATION**

### **16.1 Event of Default**

Event of Default means the Concessionaire Event of Default.

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

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

- (1) The Concessionaire fails to commence the Construction Works within 30 days from the Commencement Date.
- (2) The Concessionaire fails to achieve COD within Nine (9) months from the Commencement Date.
- (3) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading.

- (4) The Concessionaire creates any Encumbrance on the Project Site/ Project Facility in favour of any Person save and except as otherwise expressly permitted under Clause 22.1.
  - (5) The aggregate shareholding of the members of the Concessionaire falls below the minimum prescribed under Clause 20.1 (xi).
  - (6) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the Concessionaire except where such transfer in the reasonable opinion of ITEL does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform its material obligations under the Project Agreements.
  - (7) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
  - (8) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:
    - (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
    - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a creditworthiness at least as good as that of the Concessionaire as at the Commencement Date; and
    - (iii) each of the Project Agreements remains in full force and effect.
  - (9) 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.
  - (10) The Concessionaire suspends or abandons the operations of the Project without the prior consent of ITEL, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) on account of a breach by ITEL of its obligations under this Agreement.
  - (11) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days.
- 13) The Concessionaire has neglected or failed to regularly and properly maintain the Bus Shelters in clean and hygienic conditions and to keep the Bus Shelters in a state of good repair at its own cost.



- (14) The Concessionaire has delayed any payment that has fallen due under this Agreement and if such delay exceeds 90(ninety) days.
- (16) The Concessionaire is otherwise in Material Breach of this Agreement and wishes to surrender. The surrender will be accepted for complete package of the Bus Shelters only and not partly.
- (17) The Concessionaire enters into with his Agent/Client, a transaction which in the opinion of ITEL is not an 'arms length transaction' as defined in Clause 11.1 (i) herein.
- (18) Any breach of terms and conditions of this agreement.

## **16.2 Termination due to Event of Default**

### **Termination for Concessionaire Event of Default**

- (1) Without prejudice to any other right or remedy which ITEL may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, ITEL shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, ITEL shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach/default is not cured within a period of 60 (sixty) days from the date of the Preliminary Notice (Cure Period) ITEL shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further, that
  - (a) if the default is not cured within 30 (thirty) days of the Preliminary Notice, ITEL shall be entitled to encash the Performance Security with a notice to the Concessionaire (Encashment Notice),
  - (b) if the default is not cured within 30 (thirty) days of the Encashment Notice and a fresh Performance Security is not furnished within the same period in accordance with Clause 3.2, ITEL shall subject to the provisions of the Substitution Agreement be entitled to issue the Termination Notice.
- (2) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement :
  - (i) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
  - (ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
  - (iii) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by ITEL or any Government Agency hereunder the applicable Cure Period shall be extended by the period taken by ITEL or the Government Agency to accord the required approval.

## **16.3 Rights of ITEL on Termination**

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

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

- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Assets/dealing with the Project or any part thereof;
- (iii) step in and succeed upon, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as ITEL may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements. Provided any sums claimed by such counter party as being due and owing for the works and services performed or accruing on account of any act, omission or event prior to such date of election, shall and shall always constitute debt between the Concessionaire and such counter party and ITEL shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provision of this Clause 16.3.
- (iv) Concessionaire shall not be entitled for any interest on any security/advance/earnest money etc.

## **ARTICLE - 17** **CHANGE IN LAW**

### **17.1 Change in Law**

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

## **ARTICLE - 18** **HANDOVER AND DEFECT LIABILITY PERIOD**

### **18.1 Handing Over of the Project Assets**

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over encumbrance free and peaceful possession of the Project Assets including Project Site/Facility at no cost to ITEL.

### **18.2 Joint Inspection and Removal of Deficiency**

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

### **18.3 Recovery of Balance Concession Fee**

The share of ITEL due in the cumulated revenue receivable of the concessionaire at the end on Concession Period as reflected in the last audited project account shall be recovered by ITEL from the performance security and the amount of project bank balance under lien of ITEL. The balance remaining un recovered amount, if any shall be paid by the concessionaire to ITEL along with the Concession Fee payable for the last quarter.

The share of ITEL due shall be calculated at the rate applicable as on the date of respective outstanding invoice.

## **ARTICLE - 19** **DISPUTE RESOLUTION**

### **19.1 Amicable Resolution**

- (a) Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including non-completion of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably by the ITEL and failing such resolution of the same, in accordance with the procedure set forth in sub-clause (b) below.
- (b) Either Party may require the Dispute to be referred to ITEL for amicable settlement. Upon such reference, both the Parties and the ITEL 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 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 19.2 below.

### **19.2 Arbitration**

#### **a) Arbitrators**

Any Dispute which is not resolved amicably as provided in Clause 19.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of three arbitrators chosen from a panel of five arbitrators on the list of arbitrators available with ITEL. One arbitrator is to be chosen by each Party and the third to be appointed by the two arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

#### **b) Place of Arbitration**

The place of arbitration shall be **Chennai, Tamil Nadu**.

#### **c) Language**

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

#### **d) Procedure**

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

#### **e) Enforcement of Award**

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

**f) Fees and Expenses**

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

**g) Performance during Arbitration**

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

**ARTICLE - 20**  
**REPRESENTATIONS, WARRANTIES AND DISCLAIMER**

**20.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to ITEL that:

- (i) it is duly organized, validly existing and in good standing under the laws of India;
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project;
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Concessionaire which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (x) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (xi) the aggregate equity shareholding of the Sponsors in the issued and paid up equity share capital of the Concessionaire shall not be less than (a) 51% (fifty one per cent) until expiry of 3 (three) years following COD, and (b) 26% (twenty six per cent) during the remaining Operations Period;

- (xii) each member of Consortium was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested ITEL to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xiii) Upon Termination of this Agreement, under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Assets shall pass to and vest in ITEL on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or ITEL;
- (xiv) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ITEL or to any Government Concessionaire in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xv) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into of this Agreement or for influencing or attempting to influence any officer or employee of ITEL in connection therewith.

## **20.2 Disclaimer**

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the traffic volumes, specifications and Standards, Project Site and all the information provided by ITEL, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that ITEL shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **20.3 Representations and Warranties of ITEL**

ITEL represents and warrants to the Concessionaire that:

- (i) ITEL has full power and authority to grant the Concession;
- (ii) ITEL has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

## **ARTICLE - 21** **MISCELLANEOUS**

### **21.1 Assignment and Charges**

- (a) Subject to sub-clauses (b) and (c) herein below, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of ITEL, which consent ITEL shall be entitled to decline without assigning any reason whatsoever.
- (b) Subject to sub-clause (c) herein below, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which Concessionaire is a party except with prior consent in writing of ITEL, which consent ITEL shall be entitled to decline without assigning any reason whatsoever.

- (c) The restraint set forth in sub-clauses (a) and (b) above shall not apply to liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project

## 21.2 Liability And Indemnity

### General Indemnity

- (i) The Concessionaire shall indemnify, defend and hold ITEL harmless against any and all proceedings, actions and, third party claims arising out of a breach by the Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to ITEL Event of Default).
- (ii) ITEL will indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of ITEL and/or arising out of a breach by ITEL, its officers, servants and agents of any obligations of ITEL under this Agreement except to the extent that any such claim has arisen due to Concessionaire Event of Default.
- (a) Without limiting the generality of this Clause 22.2 the Concessionaire shall fully indemnify, save harmless and defend ITEL including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) failure in payments of taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (b) Without limiting the generality of the provisions of this Article Clause 2.2, the Concessionaire shall fully indemnify, save harmless and defend the ITEL from and against any and all damages which the ITEL may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for ITEL a license, at no cost to ITEL, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.
- (c) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 22.2 (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.
- (d) Defence of Claims

- (i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and its reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Clause 22.2, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding and the liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- (ii) If the Indemnifying Party has exercised its rights under Clause 22.2 (d) above, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- (iii) If the Indemnifying Party exercises its rights under Clause 22.2 (d) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:
- (1) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - (2) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
  - (3) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or
  - (4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either
    - (a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
    - (b) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement,

provided that if sub-clauses (2), (3) or (4) of Clause 21.2 (e) (iii) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### 21.3 Governing Law and Jurisdiction

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

### 21.4 Waiver

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

### 21.5 Survival

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

### 21.6 Amendments

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

### 21.7 Notices

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

If to ITEL:       **The Managing Director,**  
 IT Expressway Ltd.,  
 Sindur Panthion Plaza,  
 2<sup>nd</sup> Floor,346-Pantheon Road,  
 Egmore,Chennai-600008  
 &  
**The General Manager-Projects**  
 ITEL Project  
 ITEL.



If to the Concessionaire:

**The Managing Director,**  
----- Limited  
-----  
-----  
Fax No. -----

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

**21.8 Severability**

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

**21.9 No Partnership**

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

**21.10 Language**

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

**21.11 Exclusion of Implied Warranties etc.**

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

**21.12 Counterparts**

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

**ARTICLE -22**

**SCHEDULES**

**22.1 SCHEDULE A - PROJECT SITES**

**List of Bus Shelters**

**Note:** The sites are subject to relocation if required in consultation with the IT Expressway Ltd, or other concerned government authority.

## **22.2 SCHEDULE B - PROJECT FACILITY**

(The facilities to be constructed, built, installed, erected, or provided by the Concessionaire in the Project Sites shall be set out here, with brief description/ specifications after finalization).

Any other facility shall require ITEL' approval before implementation.

Please refer to RFP also.

## **22.3 SCHEDULE C - PROJECT COMPLETION SCHEDULE**

(The Project Completion Schedule as agreed to with the Concessionaire would need to be set out here).

S. No.	Project Milestone	Date for Completion

The Project Completion Schedule submitted by the Concessionaire with the RFP is attached herewith.

**Please refer to the Project Schedule submitted in the RFP.**

## **22.4 SCHEDULE D - ENGINEER-IN-CHARGE'S SERVICES (Implementation Period)**

### **TERMS OF REFERENCE**

#### **1. OBJECTIVES**

The Engineer-in-Charge shall be required to :

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

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

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

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

- (i) Review the Project Report prepared by the Concessionaire.
- (ii) Review the Implementation Schedule submitted by the Concessionaire.

- (iii) Proof checking of designs, calculations and working drawings prepared by the Concessionaire for the construction of various components of the Project Facility in accordance with provisions of the Concession Agreement.
- (iv) Review the adequacy of the geo-technical studies, sub-soil investigations, hydrological investigations and the topographical survey, if any, carried out by the Concessionaire.
- (v) Review the environmental management plan for the Project during Implementation Period and Operations Period.
- (vi) Review the proposed quality assurance and quality control procedures during the Implementation Period and Operations Period.
- (vii) Review the safety measures proposed during Implementation Period and Operations Period

## 2.2 **Implementation Period**

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

## 2.3 **General**

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

## 3. **INTERACTION WITH THE MD/ITEL**

The Engineer-in-Charge shall interact with the MD/ITEL on a regular basis.

## 4. **REPORTING REQUIREMENTS**

The Engineer-in-Charge shall prepare and submit to the MD/ITEL three copies and to the Concessionaire two copies each of the following reports.

### Implementation Period

## Monthly Progress Report

- (a) Various other reports as provided in the Concession Agreement such as Completion Report.

### 5. **PERIOD OF SERVICES**

The period of services shall be the Implementation Period.

## **22.5 SCHEDULE E - ITEL ENGINEER'S SERVICES (Operations Period)**

### **TERMS OF REFERENCE**

#### **1. OBJECTIVES**

The ITEL Engineer shall be required to:

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

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

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

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

- (i) Review and ensure compliance with Maintenance Programme, Minimum Maintenance Requirements and the Maintenance Manual.
- (ii) Supervise actions undertaken by ITEL's contractor(s) to carry out maintenance obligations of the Concessionaire at the risk and cost of the Concessionaire in the event of his failure to carry out the same.
- (iii) Undertake audit of the traffic using the Project at least once a month.
- (iv) Review and inspect the Project at least once a month during the Operations Period and submit an Inspection Report thereafter to ITEL.
- (v) Mediate and assist in resolving disputes between ITEL and Concessionaire.

#### **3. REPORTING REQUIREMENTS**

The Engineer-in-Charge shall prepare and submit to the MD/ITEL three copies and to the Concessionaire two copies each of the following reports.

## Monthly and Quarterly Inspection Reports

- Monthly reports on audit of advertisement displayed

### 4. PERIOD OF SERVICES

The period of services shall be the Operations Period.

### 22.6 SCHEDULE F – DRAWINGS

Approved Drawings of the Bus Shelters of the specified configurations shall be set out here upon finalization

### 22.7 SCHEDULE G - SPECIFICATIONS AND STANDARDS

1. The Bus shelters shall be constructed as per the drawings provided by ITEL.
2. All the structural members of the Bus shelters shall be of seamless stainless steel tube conforming ASTM 304 grade. A Conceptual indicative drawing is enclosed in the annexure
3. The covering of the roof shall be made of polycarbonate sheet, not less than 10 mm thick, colour to be approved by ITEL (preferably transparent) from the Engineer-in-Charge. The fixing of roof shall be performed in a manner so as to make the roof leak-proof and shall withstand wind-loading under all conditions and as per standard specifications as applicable.
4. Coloured shade prefab cement concrete tiles shall be provided in the flooring over the base of lean cement concrete in the area not less than 50 sq. m. (colour to be approved by the Engineer-in-charge).
5. The minimum clear roof height between the flooring and the ceiling shall be 3.60 metres.
6. The dimension of Bus Shelters for Three Pole shelters shall be and 10 m x 2 m. Prospective bidder can physically inspect the model Bus Shelter erected by the IT Expressway Ltd, at various locations in Rajiv Gandhi Salai (IT Corridor) from SRP Tools junction to Siruseri for reference purposes.
7. The total area for advertisement in each Bus Shelter is restricted to 180 Sq.Ft.(Back Panel of size (21' 0" length) x (5' 0" height) and Top Panel of size(25' 0" length) x (3' 0" height) only.
8. Bus route numbers, public awareness slogans and postal index No. shall be displayed at top side of the Bus Shelter.
9. Advertisement(s) shall be mounted only on the Back Panel and Top Panel (Facing the road) in accordance with the area specified above.
10. Advertisement(s) will not be allowed on angular or side panels.
11. Stand alone panels will not be allowed.
12. Space shall also be reserved for provision of a clock and route map at the location within each Bus Shelter as directed by the Engineer-in-charge of ITEL.
13. Hand-rails of Stainless Steel ASTM 304 grade shall be provided in the Bus Shelters parallel to the kerb. Height of installation, arrangement of rails, spacing and related requirements shall be as directed by the Engineer-in-charge of ITEL.
14. Suitable seating arrangement shall be provided for a minimum of ten (10) persons in each bus shelter.
15. All the necessary electrical fittings/fixers shall be used of standard specifications and the work shall be got done through approved licensed electrician/wireman with a certificate to this effect. The fixtures should be waterproof.

16. In case sub standard/ defective material is used the same shall be replaced by the Concessionaire at its own cost. In case of any dispute in this regard decision of Chief Engineer (C), ITEL shall be final.
- 15 In no case the specifications below those mentioned in the drawing attached with the tender documents/adopted in construction of sample Bus Shelters shall be allowed. However, richer specifications may be adopted.
- 16 Structural members of the Bus Shelters should not be of size lesser than the approved sample Bus Shelter. However, richer specifications can be adopted ensuring the structural stability with the prior approval of the Engineer-in-Charge.
- 17 The Concessionaire shall ensure that each Bus Shelter structure displays a sign saying “built and maintained by M/s \_\_\_\_\_ for ITEL” along with the ITEL logo and well lit prominently on the walls of the structure. The height of these letters shall be at least 15-cm.
- 18 The Concessionaire shall not display or exhibit any picture/poster/statue or other articles in any part of the premises that are repugnant to the general standards of morality. The Concessionaire expressly agrees that the decision of the ITEL in this regard shall be conclusive and binding on the Concessionaire.
- 19 The side of the Rear panel facing the traffic is reserved for the concessionaire and is available for displaying advertisements whereas the back side is reserved for ITEL. On the backside of the panel, the lay out plan of Chennai shall be displayed showing main roads. It should be earmarked with the various bus routes in different colours passing from there. Also the location of Bus Shelter should be indicated there showing “you are here”. Details of bus routes available at the particular bus stop i.e. it’s starting point, destination and intermediate main stoppages, distinguishing the name of the particular bus stop in different colour shall be written.  
  
Along with this some important telephone numbers like Ambulance, nearby Hospital, near by Police Station, Chennai Traffic Police and other help line numbers should be written, well illuminated.
- 20 The Concessionaire shall obtain a completion certificate in case of each Bus Shelter from the Engineer-in-Charge.
21. Front Facade – At the centre the name of the particular Bus Shelter, on the right side bus routes numbers available at that stop along with ITEL logo in prominent size should be earmarked. Back Face.
22. The bidder shall submit a programme supported with BAR Chart for construction of Bus Shelters in a phased manner so as to cause least inconvenience to the public. Most of the construction work shall be carried out during night hours/restricted hours (leaving peak traffic time) keeping in view the safety of pedestrians/traffic (not more than 1/6<sup>th</sup> of the total nos. of BS at any point/road shall be allowed to be taken up for construction work simultaneously). The bidder should give their complete programme for different stages of execution i/c, planning, designing, fabrication, and erection etc. complete.
- 23 The back rest pipe of benches shall be preferably coated with tough plastic to bear with variation in the high/low temperature.
- 24 The Concessionaire should get the value of the serviceable materials received from dismantling deposited in ITEL. Where as unserviceable material has to be disposed off the site to dumping ground.

- 25 Entire colour scheme and samples of the materials shall be got approved prior to use in the construction of Bus Shelters.
- 26 The execution of civil works, maintenance and watch and ward should be got done preferably through ISO certified companies.
- 27 In case of any dispute regarding specifications, the relevant IS code shall be bound to be adopted.
- 28 At the locations where the BS have to be shifted backwards after providing bus bays, no claim for any type shall be entertained.

## 22.8 SCHEDULE H - MINIMUM MAINTENANCE REQUIREMENTS

All BS, seats and the surrounding areas are to be kept cleaned at all times. The litter bins should not be overflowing at any time. The concessionaire shall empty the litter bins and disposal of garbage shall be arranged by the concerned Authority.

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

Please refer to Maintenance programme submitted with the RFP.



**22.9 SCHEDULE- I - PARTICULARS OF FINANCIAL ASSISTANCE.**

<b>Name and Address of the Lender</b>	<b>Nature and Amount of Financing Assistance</b>

**22.10 SCHEDULE J - MEMORANDUM OF UNDERSTANDING**

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

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

SIGNED SEALED AND DELIVERED

By The General Manager (Projects)/ITEL, IT Expressway Ltd,:

(Signature)

(Name)

The Common Seal of IT Expressway Ltd,

hereunto affixed in the presence of

SIGNED, SEALED AND DELIVERED

For and on behalf of M/s. \_\_\_\_\_ by the hand of :

(Signature)

(Name)

(Designation)

pursuant to the resolutions passed by its Board of Directors

in this behalf on the .....

SIGNED, SEALED AND DELIVERED

For and on behalf of M/s. \_\_\_\_\_,

by the hand of :

(Signature)

(Name)

(Designation)

pursuant to the resolutions passed by its Board of Directors  
in this behalf on the .....

**SIGNED, SEALED AND DELIVERED**

For and on behalf of M/s. \_\_\_\_\_

by the hand of :

(Signature)

(Name)

(Designation)

pursuant to the resolutions passed by its Board of Directors  
in this behalf on the .....

In the presence of.

1)

2)

