

Notice Inviting E Tender

**FOR SELECTION OF AN OPERATOR FOR AIR CONDITIONED
FOOD COURT (GROUND FLOOR AND FIRST FLOOR) ON
OPERATE, MANAGE AND TRANSFER (OMT) BASIS AT DILLI
HAAT JANAK PURI, OPPOSITE VIRENDER NAGAR, LAL SAI
MARG, NEW DELHI 110058**

December 2019

**Issued by
Delhi Tourism & Transportation Development Corporation Limited,
(A Government Undertaking)
18 A DDA SCO Complex, Defence Colony,
New Delhi-110024.
Tel: 011-25612181**

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- I. This Section I of the **TENDER** documents comprises of the Disclaimer set forth herein below, the contents as listed below, and will additionally include any Addenda issued by DTTDC.

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- II. The draft agreement provided in Section II of the Bid Documents shall be deemed to be part of this **TENDER**.

DISCLAIMER

The information, contained in this E TENDER document (the “**TENDER**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of DTTDC or any of their employees or advisors, is provided to Bidder(s) subject to the terms and conditions set out in this **TENDER** and such other terms and conditions.

This TENDER is not an agreement and is neither an offer nor an invitation by DTTDC to the prospective Bidders or any other person. The purpose of this **TENDER** is to provide interested parties with information that may be useful to them in making their technical and financial offers pursuant to this **TENDER** (the "Bid" or “Proposal”). This **TENDER** contains information, which are based on various assumptions and assessments arrived at by DTTDC in relation to the Project. Such assumptions, assessments and statements do not claim to contain all the information that the Bidder may require for making their offer. This **TENDER** may not be appropriate for all persons, and it is not possible for DTTDC or its employees to consider the investment objectives, financial situation and particular needs of each party who reads or uses this **TENDER**. The assumptions, assessments, statements and information contained in this **TENDER**, may not be complete, accurate or adequate. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this **TENDER** and obtains independent advice from appropriate sources.

Information provided in this **TENDER** to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. DTTDC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

DTTDC and its employees make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this **TENDER** or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the **TENDER** and any assessment, assumption, statement or information contained therein or deemed to form part of this **TENDER** or arising in any way in this Bid Stage.

DTTDC also accepts no liability of any nature whether arising from negligence or otherwise caused to the Bidder while placing reliance upon the statements contained in this **TENDER**.

DTTDC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this **TENDER**.

The issue of this **TENDER** does not imply that DTTDC is bound to select a Bidder or to appoint the Successful Bidder or Operator, as the case may be, for the Project and the DTTDC reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

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

SECTION I – INFORMATION TO BIDDERS

**INFORMATION AND INSTRUCTIONS TO BIDDERS FOR E-TENDERING
(Application for inviting open bids)**

Delhi Tourism and Transportation Development Corporation invite **BIDS** through e-procurement solution from eligible bidders for the following work:

Name & Location of work	Bid Security	Period during which Bid Security and other documents shall be submitted	Bid Due Date	Time & date of Opening of Bid
Selection of Operator for Air-Conditioned Food Court on OMT Basis in Dilli Haat Janakpuri	Rs. 3,50,000/-	11.12.2019 to 02.01.2020	02.01.2020 at 3.00 PM	02.01.2020 at 3.30 PM

Date of release of TENDER Document through E-procurement solution: 11th December, 2019

1. The intending bidder must read the terms and conditions mentioned in the **TENDER** carefully. He should only submit his bid if he considers himself eligible and he is in possession of all the required documents.
2. Information and instructions for bidders posted on website shall form part of bid document.
3. The terms and conditions stipulated in the Tender and other necessary documents required in the **TENDER** can be seen and downloaded from website <https://govtprocurement.delhi.gov.in>. However, the bid can only be submitted after uploading the mandatory scanned documents mentioned in the Sr. No. 10 below. The Bid Security is acceptable in the form of Demand Draft only.
4. Bidders not already registered on the website mentioned above must get themselves registered beforehand. For registration on e-procurement website, bidders may contact e-procurement help desk at 6th Floor, C-Wing, Vikas Bhavan – II, (Near Metcalfe House), Civil Lines, Delhi – 110054. Phone: 011 – 23813523 (Monday to Friday, 9.30 AM to 06.00 PM). If needed they can be imparted training on online bidding process as per details available on the website.
5. The bidder must have valid class-III digital signature to submit the bid. Such digital signature must be issued in the name of bidder or its authorized signatory.
6. On opening date, the Bidder can login and see the bid opening process.
7. Bidder can upload documents in the form of JPG format and PDF format.
8. The bidder should quote his offer in the column meant for quoting rate in figures.
9. **List of Documents to be scanned and uploaded within the period of tender submission:**
 - (i) Bid Security in favour of Delhi Tourism and Transportation Development Corporation Ltd. in form of Demand Draft issued by nationalized/scheduled bank payable at New Delhi (Demand Draft issued by a cooperative bank will NOT BE ACCEPTED under any circumstances);

- (ii) Power of Attorney for signing of Bid in the prescribed format (Appendix – III);
- (iii) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – IV);
- (iv) Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-VI;
- (v) Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (vi) Certified copies of Bidder's duly audited balance sheet and profit and loss account for the preceding Three years; and
- (vii) A copy of the Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (iii) hereinabove.
- (viii) Letter comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents
- (ix) PAN Card & Income Tax Return for last three (3) years
- (x) Goods and Services Tax Registration Number Certificate
- (xi) Other applicable certificates with respect to operation of Eligible Projects
- (xii) Proof of operation of eligible projects being claimed by the bidder.
- (xiii) Certificate of net worth and turnover certified by Chartered Accountant.

Note – Certificates issued by Chartered Accountant must have the Unique Document Identification Number (UDIN).

All the documents mentioned above shall be scanned and uploaded, and the original Physical copy of the same shall be sent, in a sealed envelope as mentioned in clause 2.13 of **TENDER** documents, to the office of The General Manager, Delhi Tourism and Transportation Development Corporation Ltd., 18-A, DDA – SCO Shopping Complex, Defence Colony, New Delhi - 110024 so as to reach before the Bid Due Date.

Only those online tender documents, whose Bid Security placed in the envelope are found in order, shall be opened.

The Bid Security shall be deposited in the form of Demand Draft in favour of DTTDC Ltd. The General Manager, DTTDC reserves the right to reject any or all the tenders without assigning any reason.

Further details can be seen at <https://govtprocurement.delhi.gov.in>

**The General Manager
DTTDC LTD.**

GUIDELINES / PROCEDURE TO BE FOLLOWED IN INTRODUCTION OF 'E'- TENDERING SOLUTION

1. **Submission of Bids:** The bidders who are desirous of participating in 'e' tendering shall submit their Bids in the standard format prescribed in the Tender documents, displayed at <https://govtprocurement.delhi.gov.in>. The bidder should upload the scanned copies of all the relevant certificates, documents etc. on <https://govtprocurement.delhi.gov.in> in support of their price bids. The bidder shall sign on all the statements, documents, certificates uploaded by him, owning responsibility for their correctness / authenticity.
2. Submission of the entire bid document/supporting documents in ORIGINAL physical copy before bid due date is mandatory along with electronic copies/scanned copies. Bids submitted electronically but not physically will be summarily rejected. Similarly, bids submitted physically but not electronically will also be summarily rejected. In case of any ambiguity in information provided in electronic copy and Physical copy of Technical Proposal, Physical copy shall prevail. In case of ambiguity in information provided in electronic copy and Physical copy of Financial Proposal, DTTDC will have full discretion to take a decision which includes rejection of bid. DTTDC can also seek clarification from the bidders in connection with the documents submitted by them, if required, during the course of tendering process.
3. **Payment of Bid Security:** The Bid Security shall be submitted in the form of Demand Draft issued by a nationalized/scheduled bank issued in favour of **DTTDC Ltd. Payable at New Delhi**. Demand Draft issued by a cooperative bank is NOT ACCEPTABLE.
4. **Financial Proposal Opening:** The Financial Proposal will be opened online by DTTDC at the specified date & time and the result will be displayed on <https://govtprocurement.delhi.gov.in> which can be seen by all the bidders who participated in the tender.
5. **Processing of Tenders:** DTTDC will evaluate and process the tenders as done in the conventional tenders and will communicate the decision to the bidder.
6. **Payment of Performance Guarantee:** The successful bidder shall submit irrevocable performance guarantee of 10% (Ten percent) of the sum of total Annual Concession Fee for first three years in addition to other deposits mentioned elsewhere in the Tender for his proper performance of the contract. This guarantee shall be in the form of Demand Draft or Fixed Deposit or Bank Guarantee of any nationalized/scheduled bank as per the format specified in Schedule B of this Tender. Instruments issued by cooperative bank are NOT ACCEPTABLE.
7. **Participation of Bidders at the time of opening of bids:** Bidders have two options to participate in tendering process at the time of opening of Bids:
 - (i) Bidders can come at the place of opening of bids (electronically) as done in the conventional tender process.
 - (ii) Bidders can see the process online.
9. **Signing of agreement:** After the declaration of successful bidder and award of work, an agreement shall be signed as done in conventional Tenders.

INSTRUCTIONS TO BIDDERS FOR SUBMISSION OF BIDS

1. The bidders should read all the instructions, terms & conditions, contract clauses, nomenclature of items, specifications etc. contained in the **Tender** document very carefully, before quoting the rates.
2. The prospective bidder shall fill up the uploaded financial proposal in the prescribed format stating his offer. Financial Quotes submitted in any other format will be liable for rejection of whole bid without assigning any reason.
4. The **TENDER** document consisting of terms and conditions, various formats needed to be uploaded and other necessary documents can be seen on website <https://govtprocurement.delhi.gov.in>. Bidders are advised to visit the project site, read all the **TENDER** conditions carefully and obtain all necessary information regarding the work before quoting their rates.
5. After submission of the bid the bidder can re-submit revised bid any number of times prior to the bid closure date and time as notified.
6. While submitting the revised bid, Bidder can revise the financial quote any number of times prior to the bid closure date and time as notified.
7. The Bidder shall quote his rates keeping in mind the specifications, terms & conditions and special conditions.
8. In the event of the bid being submitted by a firm, it must be signed by a person holding a power of attorney authorizing him to do so. Such power of attorney should be produced with the bid.
9. The bidder shall submit the Financial Proposal inclusive of all Taxes.

DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION

1. INTRODUCTION

1.1. BACKGROUND

1.1.1. Delhi Tourism and Transportation Development Corporation (“**DTTDC**”) came into existence on 12th December, 1975 under the aegis of Government of NCT of Delhi with an object of developing tourism and carrying out other tourism related activities within the ambit of its Memorandum of Association. Ever since its inception DTTDC has undertaken multifarious activities like setting up and operation of Garden of Five Senses, Dilli Haats, Coffee Homes, Canteens, providing of Outdoor Catering Services, Memorials, production of Tourist Literature, Dissemination of Tourism Information, operation of Tourism/Travel Counters, providing of Tours & Transport Services, Adventure Sports activities, development of Lakes and Camping Sites, construction of Bridges, Fly-over, Underpasses and such other infrastructural projects, retail trading of liquor, organizing of Regular Fairs & Festivals, registration of Paying Guest Accommodation etc. DTTDC had also provided its services for the transport arrangements during the Asian Games 1982 and has coordinated in organizing the Cultural programs during the Commonwealth Games. In the past it has also organized mega international events like, Russian Festival, French Festival, setting up of a temporary Dilli Haat at London. The annual turnover of DTTDC is around Rs.1200 Crores.

DTTDC intends to appoint an operator for the Air-Conditioned Food Court on Ground and First floor in Dilli Haat, Janakpuri through Public Private Partnership (PPP) on Operate, Manage and Transfer (OMT) basis (the “**Project**”). Air conditioned Food Court on ground floor comprises of 14 food stalls, kitchen, court yard with a common dining area and first floor comprises of 15 Food Stalls, Kitchens and Court Yard with a common Dining Area for a period of 07 years (maximum up to 31.12.2026).

- 1.1.2. The Successful Bidder, who is either a Company incorporated under the Companies Act, 1956 or undertakes to incorporate itself as such prior to execution of the Agreement (the “**Operator**”), shall be responsible for operation, management and transfer of the Project under and in accordance with the provisions of the agreement (the “**Agreement**”) to be entered into between the Successful Bidder and DTTDC in the form provided by DTTDC as part of the Bidding Documents pursuant hereto.
- 1.1.3. The scope of work will broadly include: (a) furnishing the Food Court with requisite furniture, fixtures, kitchen equipment; (b) obtain various licenses etc. at its own cost; (c) operate, maintain, market, manage and transfer of food court during the Agreement Period as specified in Article 3.1.1 of the draft Agreement.
- 1.1.4. The draft Agreement sets forth the detailed terms and conditions for grant of the Concession to the Operator, including the scope of Operator’s services and obligations (the “**Concession**”).
- 1.1.5. The statements and explanations contained in this **TENDER** are intended to provide understanding to the Bidders about the subject matter of this **TENDER** and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Operator set forth in the draft Agreement or DTTDC’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this **TENDER** or the terms thereof or modify the **TENDER** and draft agreement prior to Bid Due Date. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this **TENDER** are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by DTTDC.

1.1.6. DTTDC shall receive Bids pursuant to the **TENDER** in accordance with the terms set forth in the **TENDER** and other documents provided by the Successful Bidder to DTTDC pursuant to **TENDER**(collectively the "**Bidding Documents**"),as modified, altered, amended and clarified from time to time by DTTDC by posting/ uploading the same on its website, and all Bids shall be prepared and submitted in accordance with such terms.

1.2. BRIEF DESCRIPTION OF BIDDING PROCESS

1.2.1. DTTDC has adopted single stage two-step process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall submit their Technical Proposal and Financial Proposal against this **TENDER** in a single stage, both electronically as well as physically. The first step of the process involves examining of "**Envelope 1**" containing Bid Security and Tender Fee. Secondly, "**Envelope 2**" of only those bidders will be opened whose "**Envelope 1**" is found to be satisfactory. Contents of "**Envelope 2**" will be evaluated on the basis of requirements of **TENDER**. At the end of the second step, DTTDC shall shortlist pre-qualified Bidders. In the second step of the process, Financial Proposal ("**Envelope 3**") of only these shortlisted pre-qualified Bidders shall be opened and evaluated for identification of the Successful Bidder.

GOI has issued guidelines from time to time (see Appendix-V of **TENDER**) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines and their further revision from time to time, shall apply mutatis mutandis to this Bidding Process. DTTDC shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

1.2.2. The Bid shall be valid for a period of not less than **120 days** from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").

1.2.3. The Bidding Documents include the draft Agreement for the Project. Any addition in the aforesaid documents and any addenda issued subsequent to this **TENDER** Document, but before the Bid Due Date, or modified **TENDER** documents will be deemed to form part of the Bidding Documents.

1.2.4. A Bidder is required to deposit, along with its Bid, a **Bid Security equivalent to Rs. 3.5 Lakh (Rupees Three Lakhs Fifty Thousand only)** which will be refundable not later than 60 days from the Bid Due Date or from the date of execution of Agreement with Successful Bidder, whichever is later, except in the case of the highest (successful) Bidder. The Bidders will provide Bid Security in the form of a demand draft in favour of DTTDC. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5. In normal circumstances, the Highest Bidder shall be the Successful Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 3.8 of the **TENDER**, be invited to match the Bid submitted by the highest Bidder in case such highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the BID of the highest Bidder, DTTDC may, in its discretion, invite fresh BIDS from all Bidders or annul the Bidding Process, as the case may be.

- 1.2.6. Bidders are invited to examine the Project in greater detail, and to carry out, at their own cost, such studies as may be required for submitting their respective BIDs for award of the Concession including implementation of the Project.
- 1.2.7. Bids are invited for the Project on the basis of the highest over the minimum reserve price of Rs.70,00,000/- (Rupees Seventy Lakhs only) (the "**Concession Fee**") Per Annum. The Agreement Period is pre-determined, as indicated in the draft Agreement. The Concession Fee quoted shall constitute the criteria for evaluation of BIDS. Subject to this **TENDER**, the Project will be awarded to the Bidder quoting the Annual Concession Fee over the Minimum Reserve Price of 70,00,000/- (Rupees Seventy Lakhs only) Per Annum. The Concession Fee will be increased at the rate of 18% (Eighteen percent), after every three years over the previous Concession Fee. It is clarified that the Concession Fees need to be paid on monthly basis.
- 1.2.8. The Operator will be entitled to levy and charge an appropriate User Charges from users of the Project, as prescribed in the **TENDER** document.
- 1.2.9. Further, other details of the process and the terms thereof are stipulated in this **TENDER**.
- 1.2.10. Any queries or request for additional information concerning this **TENDER** shall be submitted in writing to the General Manager, DTTDC. The envelopes/ communication shall clearly bear the following identification/ title:
"Queries/ Request for Additional Information: TENDER for Operation, Management and Transfer of Air Conditioned Food Court in Dilli Haat, Janakpuri".

1.3. SCHEDULE OF BIDDING PROCESS

DTTDC shall endeavor to adhere to the following schedule:

Event Description	Date
Date of Publishing of Tender	11.12.2019
Last date of receiving pre-bid queries	19.12.2019 by 06.00 PM
Pre-Bid meeting	19.12.2019 at 11.30 AM
Bid due date	02.01.2020 at 3.00 PM
Opening of Technical Proposals	02.01.2020 at 3.30 PM
Opening of Financial Proposals	To be intimated
Validity of Bids	120 days of Bid Due Date
Submission of Performance Security	Within 3 weeks from the date of receipt of Notice of Award (NOA)
Signing of Agreement	<u>Within 45 working days of date of NOA</u>

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Eligibility of Bidders

2.1.1 Bids are invited from single or group of entities; for determining the eligibility of Bidders for their pre-qualification hereunder, the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), joining together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) A Bidder may be a natural person, private entity, partnership firm, company, Limited Liability Partnership (LLP) or society or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium will be eligible for consideration subject to the conditions set out in Clause 2.1.2 below.
- (c) Where the Bidder is a Consortium, it shall have to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Agreement and implement the Project. In case of a single entity, he may choose to form an SPV.

2.1.2 Where the Bidder is a single entity or a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act 1956 (the “**SPV**”), to execute the Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) .
- (b) the Proposal should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six percent) of the paid up and subscribed equity of the SPV during the entire Agreement Period. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-IV, signed by all the other members of the Consortium;
- (d) All other members of the Consortium shall legally and beneficially hold not less than 26% (Twenty Six Percent) of the paid up & subscribed equity share capital of the Operator till a period of 2 (two) years from the Commercial Operations Date.
- (e) the Proposal should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (f) a single Bidder cannot at the same time be member of a Consortium applying for qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for qualification;
- (g) members of the Consortium shall enter into a Joint Bidding Agreement, substantially in the form specified at Appendix-VI (the “**Jt. Bidding Agreement**”), for the purpose of submitting a Bid. The Jt. Bidding Agreement, to be submitted along with the Proposal, shall, inter alia:
 - i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this **TENDER**, which would enter into the Agreement and subsequently perform all the obligations of the Operator in terms of the Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - ii. clearly outline the proposed roles and responsibilities, if any, of each member;
 - iii. commit the minimum equity stake to be held by each member; commit that the lead

- member shall subscribe for 26% (Twenty Six Percent) or more of the paid up and subscribed equity of the SPV for the entire duration of Concession Agreement.
- iv. commit that each of the other members, whose experience will be evaluated for the purposes of this **TENDER**, shall subscribe for 26% (Twenty Six Percent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the Commercial Operations Date, hold equity share capital not less than 26% (Twenty Six Percent) of the subscribed and paid up equity share capital of the SPV;
 - v. members of the Consortium undertake that they shall collectively hold at least 78% (Seventy Eight Percent) of the subscribed and paid up equity of the SPV at all times till the end of second anniversary of the Commercial Operation Date, in case a single entity choose to form SPV, then such single entity shall hold at least 51% (Fifty One Percent) of the subscribed and paid up equity of the SPV at all times till the end of second anniversary of the Commercial Operations Date; and
 - vi. include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project in accordance with the Agreement and the statement to this effect shall also be included in the Jt. Bidding Agreement and the Agreement; and
- (h) Except as provided under this **TENDER** and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of DTTDC.

2.1.3 **Technical Qualification:** To be eligible for pre-qualification and short-listing, the Bidders shall have to satisfy the following conditions of eligibility:

- 1) **Technical Capacity :**For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder in the past three (3) completed financial years preceding the Bid Due Date should have:
 - (a) Minimum average Annual Turnover of **Rs.2.00 Crore (Rupees Two Crore only)** from **Eligible Activities**, i.e., business of catering, hotels, restaurants, banqueting holiday centers and other short stay accommodations, cafés, takeaways, mobile food stands, pubs, bars, canteens, clubs lodging, event planning and management, theme parks. This sector also covers a wide range of organizations offering food services, management of meetings and events, entertainment and recreation;
 - (b) **Turnover from any other activity shall not be considered for the purpose of calculating Average Annual Turnover.**
 - (c) **Turn over must be certified by a Chartered Accountant.**
- 2) **Financial Capacity:** The Bidder shall have the following (the “**Financial Capacity**”)
 - (a) Minimum Net worth of **Rs.70.00 lakhs (Rupees Seventy Lakhs)** at the close of Preceding completed financial year. Net worth **must be** certified by the chartered accountant.

Note – Certificates issued by Chartered Accountant must have the Unique Document Identification Number (UDIN).

2.1.4 In case of consortium, Aggregate Turnover (Technical Capacity) & Aggregate Net worth (Financial Capacity) will be considered for all the consortium members who commit to hold at least 26% (Twenty Six Percent) or more of the paid up and subscribed equity of the SPV as per the

Joint Bidding Agreement. In computing the Technical Capacity and Financial Capacity of the Bidders, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this Tender, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (Fifty Percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.1.5 The Bidders shall enclose with its letter comprising the bid, as per the format at Appendix-I, complete with its Annexure, the following:

- a. Certificate(s) from its Statutory Auditors stating the Eligible Projects and the annual turnover from the Eligible Projects during the past 3(three) completed financial years (for FY 2016-17, FY 2017-18, FY 2018-19) in respect of the projects specified in clause above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a Certificate from its Statutory Auditor or the Client. For the purpose of this **TENDER**, Turnover shall mean the income received from goods and services in respect of activities specified in Clause 2.1.3 during the accounting period. Other income, including but not limited to interest income, income from sale of assets, shall not be included in the definition of Annual Turnover.

2.2 GENERAL TERMS OF BIDDING

- 2.2.1 A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.2.2 Notwithstanding anything to the contrary contained in the **TENDER**, the detailed terms specified in the draft Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.
- 2.2.3 The Financial Proposal should be furnished in the format at Appendix – II, clearly indicating the bid amount in both figures and words signed by the Bidder’s authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be considered.
- 2.2.4 The Financial Proposal shall be the Concession Fee(exclusive of GST or any other tax as applicable thereon, which shall be paid extra by the Operator)to be quoted by the Bidder. Concession Fee shall be payable by the Operator to DTTDC, as per the terms and conditions of the **TENDER** and the provisions of the Agreement.

The Operator shall pay GST and / or any other tax as applicable over and above to DTTDC. All duties and taxes in consequence of its obligations under this Agreement, including customs and excise duties, property tax, advertisement tax, any cess, levy, duty, tax or charge etc., shall be borne directly by the Operator.

The Bidder shall deposit a Bid Security of Rs. 3.5 Lakh (Rupees Three Lakhs Fifty Thousand only) in accordance with the provisions of this **TENDER**. The Bidder has to provide the Bid Security as a Demand Draft.

- 2.2.5 The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not later than 60 days from the Bid Due Date or from the Date of signing of agreement with the Successful Bidder, whichever is later, except in the case of the highest Bidder.
- 2.2.6 The Bidder should submit a Power of Attorney as per the format at Appendix – III, authorizing the signatory of the Bid to commit the Bidder.
- 2.2.7 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix – IV.
- 2.2.8 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.2.9 The Proposal and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.2.10 The Bidding Documents including the **TENDER** and all attached documents are and shall remain the property of the DTTDC and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are informed to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. DTTDC will not return any Bid or any information provided along therewith.
- 2.2.11 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, DTTDC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the DTTDC for, inter alia, the time, cost and effort of the DTTDC, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to DTTDC hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:
- (i) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder(s) (or any of its constituents) is less than 5% of its paid up and subscribed capital; or
 - (ii) a constituent of such Bidder is also a constituent of another Bidder; or
 - (iii) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
 - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - (v) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other’s information

- about, or to influence the Bid of either or each of the other Bidder; or
 (vi) such Bidder has participated as a consultant to DTTDC in the preparation of any documents, design or technical specifications of the Project.

2.2.12 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of DTTDC in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the Notice of Award (NoA) or (ii) execution of the Agreement. In the event any such adviser is engaged by the Successful Bidder or Operator, as the case may be, after issue of the NoA or execution of the Agreement, then notwithstanding anything to the contrary contained herein or in the NoA or the Agreement and without prejudice to any other right or remedy of DTTDC, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which DTTDC may have there under or otherwise, the NoA or the Agreement, as the case may be, shall be liable to be terminated without DTTDC being liable in any manner whatsoever to the Successful Bidder or Operator for the same.

2.2.13 The **TENDER** is not transferable.

2.2.14 Any award of Concession pursuant to the **TENDER** shall be subject to the terms of Bidding Documents.

2.2.15 A bidder shall not be eligible for bidding hereunder if the Bidder or its Associate has been, during a period of 2 (two) months preceding the Bid Due Date, either by itself or as member of a consortium:

- (i) pre-qualified and short-listed by DTTDC for the Bid Stage comprising **TENDER** in related to 8 (eight) or more projects of DTTDC; or
- (ii) declared by DTTDC as the Successful bidder for undertaking 4 (four) or more projects of DTTDC

Provided that in the event the bidder, its Member or Associate, as the case may be, shall have, within one week of receiving a notice of pre-qualification and short-listing for the Bid Stage of any such project, withdrawn from bid process thereof and notified DTTDC of the same, the project so notified shall be excluded from the preview of this clause 2.2.15.

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

2.2.17 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

2.2.18 While Qualification is open to persons from any country, the following provisions shall apply:

- (a) Whereon the date of the Bid, not less than 15% (Fifteen Percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident

outside India; or

- (b) If at any subsequent stage after the date of the Bid, there is an acquisition of not less than 15% (Fifteen Percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of DTTDC from national security and public interest perspective. The decision of DTTDC in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, DTTDC shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform DTTDC of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3

2.3 CHANGE IN COMPOSITION OF THE CONSORTIUM

- 2.3.1 Change in the composition of a Consortium will not be permitted by DTTDC during the Bidding process. Also, no change in composition of Consortium will be allowed till the end of second year from the date of Commercial Operations Date.

2.4 CHANGE IN OWNERSHIP OF THE CONSORTIUM

- 2.4.1 By submitting the Bid, the Bidder acknowledges and undertakes that the **Lead Member shall continue to hold minimum 51% of the equity and each of the other Member shall continue to hold at least 26% of the equity of the Concession are until the second anniversary** from the Commercial Operations Date is achieved under and in accordance with the provisions of the Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach of the Agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium.

- 2.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that there shall be no change in consortium members until the second anniversary from the Commercial Operations Date. In the event such change occurs, the Agreement shall be liable to be terminated without DTTDC being liable in any manner whatsoever to the Operator. In such an event, notwithstanding anything to the contrary contained in the Agreement, DTTDC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to DTTDC for, inter alia, time, cost and effort of DTTDC, without prejudice to any other right or remedy that may be available to DTTDC hereunder or otherwise.

2.5 COST OF BIDDING

- 2.5.1 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids

and their participation in the Bidding Process. DTTDC shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.6 SITE VISIT AND VERIFICATION OF INFORMATION

2.6.1 Bidders are advised to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

2.6.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from DTTDC;
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of DTTDC relating to any of the matters referred to in Clause 2.6.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the DTTDC, or a ground for termination of the Agreement; and
- (f) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.3 The DTTDC shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to **TENDER**, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by DTTDC.

2.7 RIGHT TO ACCEPT AND TO REJECT ANY OR ALL BIDS

2.7.1 Notwithstanding anything contained in the **TENDER**, the DTTDC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation whatsoever for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.7.2 DTTDC reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by DTTDC, the supplemental information sought by DTTDC for evaluation of the Bid.

Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification/rejection occurs after the Bids have been opened and the highest Bidder gets disqualified / rejected, then DTTDC reserves the right to:

- (i) invite the remaining Bidders to submit Bids in accordance with this **TENDER**; or
- (ii) take any such measure as may be deemed fit in the sole discretion of DTTDC, including annulment of the Bidding Process.

- 2.7.3 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by DTTDC, that one or more of the pre-qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Operator either by issue of the Notice of Award (NoA) or entering into of the Agreement, and if the Bidder has already been issued the NoA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this **TENDER**, be liable to be terminated, by a communication in writing by DTTDC to the Bidder, without DTTDC being liable in any manner whatsoever to the Bidder or Operator, as the case may be. In such an event, DTTDC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as compensation and damages payable to the DTTDC for, inter alia, time, cost and effort of DTTDC, without prejudice to any other right or remedy that may be available to DTTDC.
- 2.7.4 DTTDC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the **TENDER** or the Bidding Documents. Failure of DTTDC to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the DTTDC there under.

III. DOCUMENTS

2.8 CONTENTS OF THE TENDER

- 2.8.1 This **TENDER** comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

Invitation for Bids	
Section 1	Introduction
Section 2	Instructions to Bidders
Section 3	Evaluation of Bids
Section 4	Fraud and Corrupt Practices
Section 5	Pre-Bid Conference
Section 6	Miscellaneous

Appendices

- I. Letter comprising the Bid
- II. Financial Proposal
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Guidelines of the Department of Disinvestment
- VI. Joint Bidding Agreement for Consortium

- 2.8.2 The draft Agreement to be provided by the DTTDC as part of the Bid Documents shall be deemed to be part of this **TENDER**.

2.9 CLARIFICATIONS

- 2.9.1 Bidders requiring any clarification on the **TENDER** may notify DTTDC in writing in accordance

with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. DTTDC shall Endeavour to respond to the queries within the period specified therein, but not later than 7 (seven) days prior to the Bid Due Date. The responses, without identifying the source of queries, will be uploaded on the website <http://www.delhitourism.gov.in> and <https://govtprocurement.delhi.gov.in>

- 2.9.2 DTTDC shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, DTTDC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this clause shall be taken or read as compelling or requiring DTTDC to respond to any question or to provide any clarification.
- 2.9.3 DTTDC may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by DTTDC shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by DTTDC or its employees or representatives shall not in any way or manner be binding on DTTDC.

2.10 AMENDMENT MODIFICATION OF TENDER

- 2.10.1 At any time prior to the deadline for submission of Bids, the DTTDC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the **TENDER** by the issuance of Addenda.
- 2.10.2 Any Addendum/Modification thus issued will be uploaded in the website www.delhitourism.gov.in OR <http://govtprocurement.delhi.gov.in>
- 2.10.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, DTTDC may, at its own discretion, extend the Bid Due Date.

C PREPARATION AND SUBMISSION OF BIDS

2.11 LANGUAGE

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Proposal may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail

2.12 FORMAT AND SIGNING OF BID

- 2.12.1 The Bidder shall provide all the information sought under this **TENDER**. DTTDC will evaluate only those Bids that are received in the required formats and complete in all respect.
- 2.12.2 The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall be serially page numbered and shall be hard bound.

2.13 SEALING AND MARKING OF BIDS

- 2.13.1 The documents of Technical Proposal shall be placed in separate envelope and marked as prescribed hereunder -

“Envelope 1: Bid Security”

- a) Bid Security of Rs.3.5 lacs in the form of Demand Draft issued by a Nationalized/Scheduled bank in favour of DTTDC payable at New Delhi. Demand Draft issued by Cooperative banks will not be accepted.

“Envelope 2: Technical Proposal”

- a) Power of Attorney for signing of Bid in the prescribed format (Appendix – III);
 b) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – IV);
 c) Certified copy of the Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-VI;
 d) Certified copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
 e) Certified copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding Three years; and
 f) A copy of the Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (c) hereinabove.
 g) Letter comprising the Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents
 h) PAN Card & Income Tax Return for last three (3) years
 i) Goods and Services Tax Registration Number Certificate
 j) Other applicable certificates with respect to operation of Eligible Projects
 k) Proof of operation of eligible projects being claimed by the bidder.
 l) Certificate of net worth and turnover certified by Chartered Accountant.

Note – Certificates issued by Chartered Accountant must have the Unique Document Identification Number (UDIN).

2.13.2 The Bidder shall submit the Financial Proposal (the “**BID**”) in the format specified at Appendix-II, and seal it in an envelope and mark the envelope as “**Envelope 3: Financial Proposal**”.

2.13.3 All the envelopes specified above(Clause 2.13.1 and 2.13.2) shall be placed in an outer envelope (as “**Envelope - 4**”), which shall be sealed. Each of the three envelopes shall clearly bear the following identification:

“Bid for Operation, Management and Transfer of Air Conditioned Food Court in Dilli Haat, Janakpuri”

And shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.13.4 Each of the envelopes shall be addressed to:

General Manager, Delhi Tourism & Transportation Development Corporation 18-A, DDA, SCO, Shopping Complex, Defence Colony, New Delhi - 110024	Email – gm@delhitourism.gov.in TEL - +91 11 24624354 / 24698431 FAX - +91 11 24697352
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If the envelopes are not sealed and marked as instructed above, DTTDC assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.13.5 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.14 BID DUE DATE

2.14.1 Bids should be submitted before 1500 hours IST on the Bid Due Date at the address provided herein in the manner and form as detailed in this Tender. A receipt thereof should be obtained from the person in charge of the Receipt-Dispatch section of DTTDC. Alternatively, the Physical Copy set of the Bid Documents/Tender documents shall be put in a Tender Box, which will be placed at the reception of DTTDC Head Office at 18 A DDA SCO Complex, Defence Colony, New Delhi 110024

2.14.2 DTTDC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum only in its website <http://www.delhitourism.gov.in> and <https://govtprocurement.delhi.gov.in>

2.15 LATE BIDS

2.15.1 Bids received by DTTDC after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 CONTENTS OF THE BID

2.16.1 The BID shall be furnished in the format at Appendix – II and shall consist of Annual Concession Fee to be quoted by the Bidder. The Bidder shall specify the Annual Concession Fee (in Indian Rupees) offered by him, to undertake the Project in accordance with this **TENDER** and the provisions of the Agreement.

2.16.2 The Project will be awarded to the Bidder quoting the highest Concession Fee over the minimum reserve price of Rs.70,00,000 (Rupees Seventy Lakhs only) as specified in Clause 1.2.7.

2.16.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this **TENDER**.

2.16.4 The proposed Agreement shall be deemed to be part of the Bid.

2.17 MODIFICATIONS/ SUBSTITUTION/ WITHDRAWAL OF BIDS

2.17.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by DTTDC prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.17.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered, with the envelopes being additionally marked “**MODIFICATION**”, “**SUBSTITUTION**” or “**WITHDRAWAL**”, as appropriate.

2.17.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by DTTDC, shall be disregarded.

2.18 REJECTION OF BIDS

2.18.1 The DTTDC reserves the right to accept or reject all or any of the Bids without assigning

any reason whatsoever. It is not obligatory on the part of DTTDC to accept any Bid or to give any reasons for their decision.

2.18.2 The DTTDC reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.19 VALIDITY OF BIDS

2.19.1 The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and DTTDC.

2.20 CONFIDENTIALITY

2.20.1 All of the information relating to the examination, clarification, evaluation and recommendation for the Bidders is confidential and shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising DTTDC in relation to, or matters arising out of, or concerning the Bidding Process. DTTDC will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. DTTDC may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or DTTDC.

2.21 CORRESPONDENCE WITH THE BIDDER

2.21.1 The DTTDC shall not entertain any correspondence from any Bidder in relation to acceptance or rejection of any Bid.

C BID SECURITY

2.22 BID SECURITY

2.22.1 The Bidder shall furnish as part of its Bid, a Bid Security of Rs. 3.5 lacs in the form of a Demand Draft issued by any Scheduled / Nationalized Bank in India in favour of DTTDC payable at New Delhi. Bid Security issued by Cooperative Banks will not be accepted in any case.

2.22.2 DTTDC shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.22.3 Any Bid not accompanied by the Bid Security shall be rejected by DTTDC as non-responsive.

2.22.4 As provided in Clauses 1.2.4 and 1.2.5 above, the Bid Security of unsuccessful Bidders will be returned by DTTDC, without any interest, as promptly as possible on acceptance of the Bid of the Successful Bidder or when the Bidding process is cancelled by DTTDC. Where Bid Security has been paid through demand draft, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the DTTDC give the name and address of the person in whose favour the said Demand Draft shall be drawn by DTTDC for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.22.5 The Successful Bidder's Bid Security will be returned, without any interest, on signing the Agreement and furnishing the Performance Security in accordance with the provisions thereof.

- 2.22.6 The Bidder, by submitting its Bid pursuant to this **TENDER**, shall be deemed to have acknowledged and confirmed that DTTDC shall be entitled to forfeit and appropriate the Bid Security as compensation / damages to the DTTDC in any of the events specified herein below.
- 2.22.7 The Bid Security shall be forfeited and appropriated by DTTDC as compensation and damages payable to DTTDC for, inter alia, time, cost and effort of DTTDC without prejudice to any other right or remedy that may be available to DTTDC hereunder or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid;
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this **TENDER**;
 - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this **TENDER** and as extended by the Bidder from time to time;
 - d) In the case of Successful Bidder, if it fails within the specified time limit -
 - i) to sign the Agreement and/or
 - ii) to furnish the Performance Security within the a period of 3 weeks from the date of receipt of Notice of Award

3. **EVALUATION OF BIDS**

3.1 **OPENING AND EVALUATION OF BIDS**

- 3.1.1 DTTDC shall open **“Envelope 1”** first which shall contain Bid Security as described in Clause 2.13.1. Only after ensuring the contents of this envelope are in place, shall DTTDC go to next step of bid opening for a bidder. Bids submitted with **“Envelope 1”** not containing Bid Security shall be summarily rejected.
- 3.1.2 The DTTDC shall open the Technical Proposals at 3.30 pm on the Bid Due Date, at the office of DTTDC and in the presence of the Bidders who choose to attend.
- 3.1.3 DTTDC shall open Financial Proposals (**“Envelope 3”**) of only those Bidders who meet the eligibility criteria and found to be responsive as specified in this **TENDER** at such date and time as intimated by DTTDC.
- 3.1.4 DTTDC will subsequently examine and evaluate the Bids in accordance with the provisions set out in this **TENDER**.
- 3.1.5 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, DTTDC may, in its sole discretion, exclude the relevant project from computation of the Eligible Score of the Bidder.
- 3.1.6 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by DTTDC as incorrect or erroneous, DTTDC shall reject such claim and exclude the same from computation of the Eligible Score, and may also, while computing the aggregate Experience Score of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, DTTDC reserves the right to reject the Bid in accordance with the provisions of Clauses 2.7.2 and 2.7.3.
- 3.1.7 To facilitate evaluation of Bids, DTTDC may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 EVALUATION OF TECHNICAL PROPOSAL

3.2.1 The Bidder's competence and capability shall be evaluated on the basis of by the following parameters:

- a) Technical Capacity; and
- b) Financial Capacity

3.3 TECHNICAL CAPACITY FOR PURPOSES OF EVALUATION

3.3.1 Following eligible projects will considered for purpose of evaluating Technical Capacity:

Eligible Projects shall mean business of catering, hotels, restaurants, Banquets, holiday centers and other short stay accommodations, cafés, takeaways, mobile food stands, pubs, bars, canteens, clubs lodging, event planning and management, theme parks. This sector also covers a wide range of Organizations offering, food services, meeting and events, entertainment and recreation, and visitor information.

3.3.2 DTTDC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by DTTDC in respect of such Bid.

3.3.3 Double counting for a particular project shall not be permitted in any form.

3.3.4 The entity claiming experience should have held, in the company owing the Eligible Project, a minimum of 26% (twenty six percent) equity during the entire year for which Eligible Experience is being claimed

3.3.5 The entity claiming experience shall, during the last 3 (three) financial years preceding the Bid Due Date, have generated turnover from the eligible project.

3.3.6 Turnover from each of the eligible projects will be aggregated to evaluate the Technical Criteria.

3.4 TESTS OF RESPONSIVENESS

3.4.1 Prior to evaluation of Bids, DTTDC shall determine whether each Bid is responsive to the requirements of the **TENDER**. A Bid shall be considered responsive only if:

- (a) Technical Proposal is received as specified in Clause 2.13.1
- (b) Financial Proposal is received as per the format at Appendix – II;
- (c) it is received by the Bid Due Date including any extension thereof pursuant to Clause 1.3;
- (d) it is signed, sealed, hard bound and marked as stipulated in Clauses 2.12 and 2.13;
- (e) it is accompanied by the Bid Security as specified in Clause 2.22 (Bid Security);
- (f) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.2.6 and 2.2.7, as the case may be;
- (g) it contains all the information (complete in all respects) as requested in this **TENDER** and/or Bidding Documents (in formats same as those specified);
- (h) it does not contain any condition or qualification; and
- (i) it is not non-responsive in terms hereof.

3.5 DETAILS OF EXPERIENCE

3.5.1 The Bidders should furnish the details of Eligible Experience for the last 3 (three) completed financial years immediately preceding the Bid Due Date.

3.5.2 The Bidders must provide the necessary information relating to Technical Capacity as per format

at Annex-II of Appendix-I.

- 3.5.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-I.

3.6 FINANCIAL INFORMATION FOR PURPOSES OF EVALUATION

- 3.6.1 The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, i.e. 2016-17, 2017-18, 2018-19
- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide Audited Annual Reports for 5 (five) years preceding the year for which Audited Annual Report is not being provided.
- 3.6.3 The Bidder must establish the average minimum Turnover specified in Clause 2.1.3 (a) and provide details as per format at Annex-II of Appendix-I
- 3.6.4 Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
- 3.6.5 the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (Twenty Six Percent) equity during the entire year for which Eligible Experience is being claimed

3.7 SHORT LISTING OF BIDDERS

- 3.7.1 In the first step of evaluation, Technical Proposals of Bidders adjudged responsive in terms of Clause 3.4 shall be considered for Technical evaluation as per Clause 2.1 and 3.3 of this **TENDER**. The Bidders qualifying as per the conditions shall be shortlisted as pre-qualified Bidders and shall be considered for the next step of evaluation.
- 3.7.2 The credentials of eligible Bidders shall be measured in terms of their Turnover. The sum total of the Turnover for all Eligible Projects shall be the '**Aggregate Turnover**' of a particular Bidder. In case of a Consortium, the Aggregate Turnover of each of its Members shall be summed up for arriving at the combined Aggregate Turnover of the Consortium.
- 3.7.3 In second step of evaluation, Financial Proposals of only those Bidders who have passed the first step shall be opened in presence of the nominees of the Bidders, who choose to attend the same.

3.8

3.8. SELECTION OF BIDDER

- 3.8.1 The Bidder quoting the highest Annual Concession Fee offered to DTTDC shall be declared as the Successful Bidder (the "**Successful Bidder**")
- 3.8.2 In the event that two or more Bidders quote the same amount of Concession Fee (the "**Tie Bidders**"), DTTDC shall identify the Successful Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.8.3 In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the DTTDC may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the BID of the

aforesaid highest Bidder (the “**second round of bidding**”). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Successful Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose BID was higher as compared to other Bidder(s) in the first round of bidding shall be the Successful Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Successful Bidder.

- 3.8.4 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.8.3, DTTDC may, in its discretion, invite fresh BIDs (the “**third round of bidding**”) from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh BIDs, they shall be eligible for submission of fresh BIDs provided, however, that in such third round of bidding only such BIDs shall be eligible for consideration which are higher than the BID of the second highest Bidder in the first round of bidding.
- 3.8.5 After selection, a Notice of Award (the “**NoA**”) shall be issued, in duplicate, by DTTDC to the Successful Bidder and the Successful Bidder shall, within 14 (fourteen) days of the receipt of the NoA, sign and return the duplicate copy of the NoA in acknowledgement thereof. In the event the duplicate copy of the NoA duly signed by the Successful Bidder is not received by the stipulated date, the DTTDC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by DTTDC on account of failure of the Successful Bidder to acknowledge the NOA, and the next eligible Bidder may be considered.
- 3.8.6 After acknowledgement of the NoA as aforesaid by the Successful Bidder, it shall execute the Agreement within the period prescribed in Clause 1.3. The Successful Bidder shall not be entitled to seek any deviation in the Agreement. Prior to signing of Agreement, the Successful Bidder / Operator must satisfy the following conditions:
- (i) Successful Bidder / Operator has submitted the Performance Security to DTTDC;
 - (ii) Formation of SPV as per the provisions of **TENDER** and Agreement; and
 - (iii) Successful Bidder / Operator have submitted the Concession Fee as per Clause 4.1.2 of Agreement to DTTDC.
- DTTDC shall not execute the Agreement until the above mentioned conditions are satisfied.

3.9 CONTACTS DURING BID EVALUATION

- 3.9.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time DTTDC makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting, by any means, DTTDC and/or their employees/ representatives on matters related to the Bids under consideration.

4. FRAUD AND CORRUPT PRACTICES

- 4.1.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the NoA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the NoA or the Agreement, DTTDC shall reject a Bid, withdraw the NoA, or terminate the Agreement, as the case may be, without being liable in any manner

whatsoever to the Bidder or Operator, as the case may be, if it determines that the Bidder or Operator, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, DTTDC shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to DTTDC towards, inter alia, time, cost and effort of DTTDC, without prejudice to any other right or remedy that may be available to DTTDC hereunder or otherwise.

- 4.1.2. Without prejudice to the rights of the DTTDC under Clause 4.1.1 hereinabove and the rights and remedies which the DTTDC may have under the NoA or the Agreement, if a Bidder or Operator, as the case may be, is found by DTTDC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the NOA or the execution of the Agreement, such Bidder or Operator shall not be eligible to participate in any tender or **TENDER** issued by DTTDC during a period of 2 (two) years from the date such Bidder or Operator, as the case may be, is found by DTTDC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.1.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“Corrupt Practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the DTTDC who is or has been associated in any manner, directly or indirectly with the Bidding Process or the NoA or has dealt with matters concerning the Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of DTTDC, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the NoA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the NOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of DTTDC in relation to any matter concerning the Project;
 - (b) **“Fraudulent Practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
 - (c) **“Coercive Practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
 - (d) **“Undesirable Practice”** means (i) establishing contact with any person connected with or employed or engaged by DTTDC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
 - (e) **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE BID CONFERENCE

- 5.1.1. Pre-Bid conference of the Bidders shall be convened on **19.12.2019 at 11.30 AM in DTTDC Conference Room, Delhi Tourism & Transportation Development Corporation, 18-A, DDA, SCO, Shopping Complex, Defence Colony, New Delhi - 110024**. A maximum of two representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.1.2. During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of DTTDC. DTTDC shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the applicable laws or other laws of India for the time being in the force and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2 The DTTDC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to DTTDC by, on behalf of, and/or in relation to any Bidder; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases DTTDC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 In case of any conflict or contradiction between one or more clauses of the Tender document, agreement and any addenda or corrigendum or any other document forming part of this document/ tender / agreement, the interpretation of MD&CEO, DTTDC shall prevail.

LETTER COMPRISING THE BID

Dated:

To,

General Manager,

Delhi Tourism & Transportation Development Corporation Ltd.,

18-A, DDA, SCO, Shopping Complex,

Defence Colony, New Delhi - 110024

Sub: Proposal for Project –Selection of Operator for Air Conditioned Food Court on Operate, Manage and Transfer basis in Dilli Haat, Janakpuri

Dear Sir,

With reference to the **TENDER** document dated....., I/we, having examined the **TENDER** document and understood its contents, hereby submit my/our Proposal for the aforesaid project. The Proposal is unconditional and unqualified.

2. I/ We acknowledge that DTTDC will be relying on the information provided in the Proposal and the documents accompanying such Proposal of the Bidders, and we certify that all information provided in the Proposal and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the operation, maintenance, marketing and management of the aforesaid Project.
4. I/ We shall make available to DTTDC any additional information it may find necessary or require to supplement or authenticate the Proposal statement.
5. I/ We acknowledge the right of DTTDC to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we/any of the Consortium Members or our/their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the **TENDER** document, including any Addendum issued by DTTDC.
 - (b) I/We do not have any conflict of interest in accordance with Clauses 2.2.11 and 2.2.12 of the **TENDER** document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.1.3 of the **TENDER** document, in respect of any tender or E TENDER issued by or any agreement entered into with DTTDC or any other public sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the **TENDER** document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound

to accept any Proposal that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.7 of the **TENDER** document.

9. I/We believe that we/our Consortium/proposed Consortium satisfy (ies)the Technical Capacity and Financial Capacity criteria and meet all the requirements as specified in the **TENDER** document and are qualified to submit a Bid.
10. I/We declare that we/any Member of the Consortium, or our/its Associates are not a Member of a/any other Consortium applying for qualification.
11. I/We certify that in regard to matters other than security and integrity of the country, we/any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our Directors/ Managers/ employees.
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 (further amended/revised from time to time) which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the **TENDER** at Appendix-V thereof.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this **TENDER**; we shall intimate DTTDC of the same immediately.
16. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-I of the **TENDER** document, and duly signed, is enclosed. The Power of Attorney for signing of proposal and the Power of Attorney for Lead Member of consortium, as per format provided at Appendix III and IV respectively of the **TENDER**, are also enclosed.
17. I/ We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate as such prior to execution of the Agreement.
18. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by DTTDC in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
19. I/ We agree and undertake to abide by all the terms and conditions of the **TENDER** document.
20. I/We agree and undertake to be jointly and severally liable for all the obligations of the Operator under the Agreement till achievement of Commercial Operations Date in accordance with the Agreement.²

In witness thereof, I/we submit this proposal under and in accordance with the terms of the **TENDER** document.

Yours faithfully,

Date: (Signature, name and designation of the Authorized Signatory)

Place: Name and seal of the Bidder/ Lead Member

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

²Omit Point 20 if the Bidder is not a Consortium

ANNEX-I
DETAILS OF BIDDER

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s),if any, in India:
 - (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project]:

3. Details of individual(s) who will serve as the point of contact/communication for DTTDC:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorized Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:

5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members of the Consortium.
 - (b) A copy of the Jt.Bidding Agreement, as envisaged in Clause2.1.2(g) should be attached to the Proposal.
 - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role*	Percentage of equity in the Consortium
1.			
2.			
3.			
4.			

- * The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-IV.

6. The following information shall also be provided for each Bidder/Member of the Consortium:

Name of Bidder/ Member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it, from participating in any project (BOT or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Proposal.		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non- performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past is given below (Attach extra sheets, if necessary):

ANNEX-II

TECHNICAL CAPACITY OF THE BIDDER[@]

Name of the Bidder	Project Code**	Name of Eligible Project	Nature of Eligible Project	Experience (Equivalent Rs. Cr.) ^{\$\$}			
				Annual Turnover from Project and activities specified in Clause 2.1.3			
				FY 2018-19	FY 2017-18	FY 2016-17	Average Annual Turnover
Single Entity							
Consortium Member							

[@] Provided details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.4 and/ or by a project company eligible under Clause 3.3

[#] A Bidder should use separate rows to demonstrate own projects and projects of Consortium Members, clearly indicating in each row name of the entity whose experience is being claimed. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.1.4, shall be provided.

** Refer Annex – IV of this Appendix

ANNEX-III
FINANCIAL CAPACITY OF THE BIDDER
(In Rs. Crore^{\$\$})

Bidder Name	Net Worth
	Year 2019-20
Single entity ^{\$} Bidder	
Consortium Member 1	
Consortium Member 2	
Associate	
TOTAL	

Name & Address of Bidder's Bankers:

\$ A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

€The Bidder should provide details of its own Financial Capability or of an Associate specified in Clause 2.1.4.

\$\$ For conversion of other currencies into rupees, see note below Annex-II of Appendix-I.

Instructions:

1. The Bidder/its constituent Consortium Members shall attach copies of the Balance Sheets, financial statements and Annual Reports for 3 (three) financial years preceding the Bid Due Date. The financial statements shall:
 - (a) Reflect the financial situation of the Bidder or Consortium Members and its/their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a Statutory Auditor;
 - (c) be complete, including all Notes to the financial statements; and
 - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Annual Turnover shall mean the income received from goods and services in respect of activities specified in Clause 2.1.31), Clause 2.1.3.1 (a)during the accounting period. Other income, including but not limited to interest income, income from sale of assets, shall not be included in the definition of Annual Turnover.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.2(g) of the **TENDER** document.
5. The Bidder shall also provide the name and address of the Bankers to the Bidder.
6. The Bidder shall provide an Auditor's Certificate specifying the net worth.
7. The Bidder shall provide an Auditor's Certificate specifying the turnover of the Bidder from the activities specified in Clause 2.1.31) of **TENDER**.

ANNEX-IV

DETAILS OF ELIGIBLE PROJECTS

Project Code:

Member Code:

Item	Refer Instructions below	Particulars of the Project
Title of the project		
Category (Catering/ hotels/ restaurants/banquets/ holiday centers and other short stay accommodations/ cafés/ takeaways/ mobile food stands/ clubs lodging/ event planning and management/ theme parks/ entertainment and recreation		
Turnover from activities specified in Clause 2.1.31) FY 2018-19 FY 2017-18 FY 2016-17		
Entity for which the project is being operated		
Location		
Details of Eligible Project		
Date of commencement of contract		
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)		

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 3.3of the **TENDER**, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Proposal. Bidders should also refer to the instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each project.
4. In case the Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.

5. Certificate from the Bidder’s Statutory Auditor^{\$} must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have Statutory Auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

Certificate from the Statutory Auditor with UDIN regarding Eligible Projects^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that..... *(name of the Bidder/Member/Associate)* i.e. claimant is/ was an equity shareholder in.....*(title of the project company)* i.e. Project Company, who operates the project and holds/held Rs. cr. (Rupees crore) of equity (which constitutes.....% [€] of the total paid up and subscribed equity capital) of the project company from..... *(date)* to *(date)* [¥].

The project, namely,, located at is being operated and maintained by *(name of the Bidder/Member/Associate/Project Company)* since *(date)* till date.

We further certify that *(name of the Bidder/Member/Associate/Project Company)* had Annual Turnover, in respect of activities specified in Clause 2.1.3 (a) / 2.1.3.1 (a) of **TENDER**, from the project in past five financial years, as given below in an year-wise format:

- Year.....: Rs
- Year.....: Rs
- Year.....: Rs

Name of the audit firm:

Seal of the audit firm: (Signature, name and designation of the authorized signatory)

Date:

1. Bidders are required to produce Client Certificates, Invoices, Order Letter, Completion Certificates etc. to substantiate the experience demonstrated.
To Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company.
2. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.1.4, the Bidder should also provide a certificate in the format below:

Certificate from Statutory Auditor/ Company Secretary with UDIN regarding Associate^{\$}

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty percent) of the subscribed and paid up voting equity of *(i.e. Associate of the Bidder)* is held, directly or indirectly[£], by.....*(i.e. Bidder)*. By virtue of the aforesaid shareholding, the bidder exercises control over the Associate, who is an Associate in terms of Clause 2.1.4 of the **TENDER**.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder in the Associate}

Name of the audit firm:

Seal of the audit firm:(Signature, name and designation of Date: the authorized signatory).

§In the event that the Bidder/Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be closed and referred to.

£In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of“ control” is not broken.

ANNEX-V
STATEMENT OF LEGAL CAPACITY
(To be forwarded on the letterhead of the Bidder)

Ref. Date:

To,
General Manager,
Delhi Tourism & Transportation Development Corporation Ltd.,
18-A, DDA, SCO, Shopping Complex,
Defence Colony,
New Delhi - 110 024.

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the proposal) satisfy the terms and conditions laid out in the **TENDER** document.

We have agreed that (insert member's name) will act as the Lead Member of our consortium.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf* and has been duly authorized to submit the **TENDER**. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,
(Signature, name and designation of the authorized signatory)
For and on behalf of.....

**Please strike out whichever is not applicable.*

**APPENDIX – II
FINANCIAL PROPOSAL**

Dated: _____

To
General Manager,
Delhi Tourism & Transportation Development Corporation Ltd.,
18-A, DDA, SCO, Shopping Complex,
Defence Colony,
New Delhi - 110 024.

Sub: BID for Operation, Management and Transfer of Air Conditioned Food Court in Dilli Haat, Janakpuri

Dear Sir,

With reference to your **TENDER** document dated **11.12.2019**, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our BID for the aforesaid Project. The BID is unconditional and unqualified.

2. All information provided in the Bid and in the Appendices is true and correct.
3. We acknowledge that our Consortium/ proposed Consortium shall be short-listed on the basis of Technical Capacity and Financial Capacity of us and our Associates.
4. [I/We acknowledge and agree that there will be no change in control of an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of short listing and qualification under and in accordance of **TENDER**.
5. In the event of my/ our being declared as the Successful Bidder, I/We agree to enter into an Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the DTTDC or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.
7. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the **TENDER**, draft Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Bid.
8. I/We offer a Bid Security of **Rs.3.5 Lakhs/-(Rupees Three Lakhs Fifty Thousand only)** to DTTDC in accordance with the **TENDER** Document.
9. The Bid Security in the form of a Demand Draft is attached.
10. I/We agree and understand that the BID is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened.
11. ***I/We hereby submit our BID and offer an Annual Concession Fee in the form of Rs _____ (Rupees in words) of DTTDC for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.***
12. The Annual Concession Fee shall be increased, after every 3 years, at the rate of 18% (Eighteen percent), over the previous Annual Concession Fee.
13. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the **TENDER**.
14. I/We agree and undertake to abide by all the terms and conditions of the **TENDER** document.

15. Quoted ACF is exclusive of GST, Property Tax, Operation and Maintenance charges, levies, statutory dues etc. applicable at present or any time in future, during the period of agreement.

In witness thereof, I/we submit this BID under and in accordance with the terms of the **TENDER** document. Also, I/We certify that amount quoted on the bid submitted electronically to DTTDC is same as on this document.

Yours faithfully, Date:

(Signature of the Authorized signatory)

Place:

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder

Note: Paragraphs in square parenthesis may be omitted, if not applicable, or modified as necessary.

APPENDIX – III
POWER OF ATTORNEY FOR SIGNING OF BID

Know all men by these presents, We, _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Project – Operator for Air-conditioned Food Court in Dilli Haat, Janakpuri (hereinafter referred to as “the Project”) proposed or being developed by the Delhi Tourism & Transportation Development Corporation (the “DTTDC”) including but not limited to signing and submission of all proposals, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to DTTDC, representing us in all matters before DTTDC, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our bid, and generally dealing with DTTDC in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Agreement with DTTDC.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ____ DAY OF _____, 20**.

For_ _____

 (Signature)
 (Name, Title and Address)

Witnesses:

1.

2.

Accepted _____
 (Signature)
 (Name, Title and Address of the Attorney)

[Notarized]

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX – IV
POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

Whereas the Delhi Tourism and Transportation Development Corporation (the “DTTDC”) has invited bids from eligible parties for the Project – Operator for Air-conditioned Food Court in Dilli Haat, Janakpuri (hereinafter referred to as “the **Project**”).

Whereas, _____, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the E TENDER and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and DTTDC to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____ and M/s. _____, having our registered office at _____ [the respective names and addresses of the registered office](hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s. _____, having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project and subsistence of the Agreement, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all bids and other documents and writings, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with DTTDC, and/or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Agreement is entered into with DTTDC.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

AND hereby also ratify and confirm that if we are selected as the Successful Bidder, then the Lead Member of the Consortium shall sign the Agreement and all the Consortium members shall be jointly and severally liable towards the Project, throughout the Agreement Period.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 20**.

For _____ _
(Name & Title)
For _____ _
(Name & Title)

Witness:

- 1.
- 2.

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

APPENDIX – V
GUIDELINES OF THE DEPARTMENT OF DISINVESTMENT

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex
New Delhi.

Dated 13th July 2001

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge- sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sisters concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is

pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

APPENDIX VI
JOINT BIDDING AGREEMENT
(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the.....day of..... 20...

AMONGST

1. {.....Limited, accompany in corporate under the Companies Act, 1956} and having its registered office at..... (Herein after referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {.....Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (Hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {.....Limited, a company incorporated under the Companies Act, 1956} and having its registered office at (Hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, SECOND and THIRD PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

- (A) DELHI TOURISM AND TRANSPORTATION DEVELOPMENT CORPORATION, a _____ constituted by Government of National Capital Territory of Delhi under _____, represented by its General Manager and having its principal offices at _____ (hereinafter referred to as the “**DTTDC**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successor and assigns) has invited proposals (the “**Proposals**”) by its E Tender No. dated (The “**TENDER**”) for the selection of Operator for Air-conditioned Food Court in Dilli Haat, Janakpuri (hereinafter referred to as “the **Project**”).
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the **TENDER** document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the **TENDER** document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the **TENDER**.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act 1956 for entering into an Agreement with DTTDC and for performing all its obligations as the Operator in terms of the Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Effective Date under the Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical / Financial Member of the Consortium ;}
- (c) Party of the Third Part shall be {the Technical / Financial Member of the Consortium ;}

5. Joint and Several Liabilities

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the **TENDER** and the Agreement, throughout the Agreement Period.

6. Shareholding in the SPV

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
 First Party:
 Second Party:
 Third Party:
- 6.2 The Parties undertake that the Lead Member shall hold minimum of 26% (Twenty Six percent) of the subscribed and paid up equity share capital of the SPV at all times during the Concession Period & 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the Commercial Operations Date, be held by the Parties of the Second Part, and Third Part respectively whose Technical and Financial Capacities have been reckoned for the purposes of qualification of Bidders for the Project in terms of the **TENDER**.
- 6.3 The Parties undertake that they shall collectively hold at least 78% (Seventy Eight per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the Commercial Operations Date.
- 6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Commercial Operations Date of the Project is achieved under and in accordance with the Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre- qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified or upon return of the Bid Security by DTTDC to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of DTTDC.

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

For and on behalf of LEAD MEMBER
SIGNED, SEALED AND DELIVERED
by:

For and on behalf of SECOND PARTY
SIGNED, SEALED AND DELIVERED
by:

(Signature)

(Signature)

(Name)
(Designation)
(Address)

(Name)
(Designation)
(Address)

For and on behalf of THIRD PART
SIGNED, SEALED AND DELIVERED
by:

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

- 1.
- 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executants (s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

SECTION – II: DRAFT AGREEMENT

This AGREEMENT is entered into on this the [] day of [] (Month), 2015 at New Delhi AMONGST

1. Delhi Tourism and Transportation Development Corporation established under the Companies Act, 1956, having its registered office at _____, Delhi through Mr. _____ holding designation of _____ (hereinafter referred to as “**DTTDC**” or “**Authority**” which expression shall unless repugnant to the subject or the context include its successors) of One Part; AND
2. __, a company incorporated under the Companies Act, 1956 having its registered office at ____ through its Authorized signatory Mr. _____, resident of _____ (hereinafter referred to as the ‘**Operator**’ which expression shall unless repugnant to the subject or the context include its successors) of the Second Part.

WHEREAS:

- A. DTTDC intends to select an operator for Air-conditioned Food court (Ground and First Floor only) in Dilli Haat Janakpuri **ON ‘AS IS WHERE IS BASIS’** through private participation on Operate, Manage and Transfer (OMT) format (‘the Project’).
- B. DTTDC had invited bids for the selection of an Operator through the competitive route for the operation of the Project on OMT basis from bidders, including (the “**Successful Bidder**”) by issuing the **E TENDER (“TENDER”)** document dated 2019 containing inter-alia the minimum qualification for a bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.
- C. On evaluation of the submitted **BID**, DTTDC accepted the **BID** of the Successful Bidder and issued Notice of Award (“**NOA**”) dated _____ to the Successful Bidder specifying inter alia the obligation of the Successful Bidder to create a Special Purpose Vehicle for implementing the Project. Pursuant to the issuance of NOA vide letter no. _____ dated _____, the Successful Bidder has incorporated and constituted _____ as the Special Purpose Vehicle (SPV) created for the sole purpose of implementation of the Project, which is identified as the Operator.
- D. By its letter dated _____, the Operator has also joined in the said request of the Successful Bidder to the DTTDC to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Agreement pursuant to the NOA. The Operator has further represented to the effect that it has been promoted by the Successful Bidder for the purpose hereof.

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE SUFFICIENCY AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND THE AUTHORITY AND THE OPERATOR (HEREINAFTER REFERRED TO AS “**PARTIES**” AND INDIVIDUALLY AS “**PARTY**”) HEREBY AGREE AND THIS AGREEMENT WITNESSTH AS FOLLOWS:

DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

The words and expressions defined in this Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

“Agreement” means this agreement, the schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Agreement Date” means the **date of Signing of the agreement**;

“Agreement Period” shall be from the date of agreement till the agreement expires or terminates

“Concession Fee” shall have the meaning set forth in **Clause 4.1.1**;

“Allied Activities” shall be operation of food stall, fast food, ice cream parlor, snacks and other similar activities;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made there under, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Operator under Applicable Laws during the subsistence of this Agreement;

“Approvals” means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Delhi Tourism and Transportation Development Corporation, Government of National Capital Territory of Delhi and any other regulatory authority, as may be applicable.

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

“Bank Guarantee” means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favor of DTTDC and furnished by the Operator to DTTDC for guaranteeing the due performance of the obligations of the Operator under this Agreement. Here Bank means any Indian Nationalized Bank or any Indian Scheduled Commercial Bank

“Bid” means the documents/PROPOSAL in their entirety comprised in the bid submitted by the Successful Bidder in response to the TENDER in accordance with the provisions thereof;

“Bid Documents” means the TENDER and the Agreement including its schedules;

“Business Day” means a day on which banks are generally open for business in the city of Delhi in India;

“Clearance” means, as on the date of execution of this Agreement, any consents, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project;

“Competent Authority” means any agency, authority, department, ministry, public or statutory Person of the Government of National Capital Territory of Delhi or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Facility or the performance of all or any of the services or obligations of the Operator under or pursuant to this Concession;

“Conditions Precedent” shall have the meaning set forth in Clause 5.1;

“Commercial Operations Date” shall have the meaning set forth in Clause 11.3.

“Completion Certificate” means the certificate to be issued by DTTDC to the Operator upon the completion of the furnishing of requisite furniture, equipments, kitchen sets, cutlery etc. in the Project Facility to the satisfaction of DTTDC and as set forth in this Agreement.

“Completion Period” means the period from Agreement Date till the Commercial Operations Date as per provisions of Clause 11.2 & 11.3, after which commercial operations must start;

“Damages” shall have the meaning set forth in Sub-clause (t) of Clause 1.2;

“Developmental Standard(s)” means the minimum parameters and standards to be achieved by the Operator in the construction, development and operations of the Project in accordance with internationally sound engineering practices, National Building Code and Applicable Law and / or as determined by the relevant Governmental Authority;

“Dispute” shall have the meaning set forth in Clause 18.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 18;

“Dilli Haat Janakpuri” shall mean the premises within which Project Facility is located;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project and shall include ‘as built’ drawings of the Project;

“Encumbrances” means, in relation to the Project Facilities, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities, where applicable herein.

“Financial Commitment” means the legally binding undertaking of the Operator to mobilize the financial requirements of the project, for ensuring the completion of the project;

“Financial Year” shall mean the year commencing from the 1st April of any calendar year and ending on 31st March of the next calendar year.

“Force Majeure” or “Force Majeure Event” shall have the meaning set forth in as per Clause 14;

“Food Stall” shall mean a counter, stall or shop within Project Facility from which Operator shall render services to Users to generate revenue in the Project The Project Facility contains fourteen (14) food stalls with kitchen in the food court on Ground Floor and fifteen (15) food stalls with kitchen in the Food Court on 1st floor and 15 courtyards on ground floor, areas details as shown in the Schedule A; with common dining areas on both floors.

“Furnishing Plan” details of the Works to be carried out in the project facility and the activities proposed therein

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of Delhi or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

“Handover” shall be deemed to have been performed when DTTDC provides the Operator the Right of Way to the Project Facility and project asset, as demarcated under Schedule A, in accordance with the provisions of Clause 10.1;

“Handover Date” means the date of submission of Performance Security;

“Lenders” shall mean the banks, financial institutions, international credit agencies that extend or agree to extend a credit facility to the Operator in relation to the Project;

“License” shall have the meaning set forth in Clause 10.1.2;

“Operation Period” shall mean the period commencing from COD till the end of the Agreement Period or till termination, in case of premature termination;

“Operator’s Equipment” means all machinery, apparatus and other things required for the operationalisation, maintenance and management of the Facility and the remedying of any defects;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in **Clause 9.1**;

“Performance Standards” means the standards to which the construction, maintenance and operation of the Project must adhere, and which the Operator undertakes to meet;

“Project” shall mean Operate, Manage and Transfer the Project Facility, in accordance with the provisions of this Agreement till the end of the Agreement Period.

“Project Facility” shall be Air-conditioned Food Court (On as is where is basis) having fourteen (14) food stalls, serving area, kitchen etc and fifteen(15) food stalls, with serving area, kitchen at first floor, with common dining areas on both floors; court yards at ground floor at Dilli Haat Janakpuri, having built up, courtyards for food stalls and as detailed out in Schedule- A, and including all the amenities and facilities, any other civil structure / building including the movement areas, all external and internal services, drainage facilities, sign boards, HVAC works, electrical works for lighting of and telephone and communication equipment etc. that is constructed by DTTDC and has been described in Schedule A and in respect of which rights shall be granted by DTTDC to the Operator as per the terms and conditions set forth in this Agreement. Also if the Operator constructs any additional structure during the time of the Agreement Period, and for which due written approval has been taken from DTTDC, the same shall be considered a part of the Project Facility. It is clarified that **the roof top is having solar plant, HVAC etc. is not included in the project facility. However, the Operator can access the roof top for repairs and maintenance purpose.**

“Project Monitoring Board” or “PMB” shall have the meaning set forth in Clause 11.5

“Right of Way” means the right to enter into the Project Facility premises and develop, operate and maintain the Project in accordance with the provisions of this Agreement;

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

“SBI Base Rate” shall mean the base rate as fixed by State Bank of India on 1st April of the respective financial year in which such rate is considered for calculation purposes.

“Security Interest” means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Operator to, and expressly approved by DTTDC;

“Standards of Reasonable and Prudent Operator” means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated by the Bid Documents.

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 1956 / Companies Act, 2013 including any

statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 12.1;

“Taxation” or **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it;

“Third Party Agreements” means all Agreements entered into between the Operator and third Persons, including, but not limited to other Agreements with Operator and vendors of any goods or services to the Operator.

“Termination” means the expiry of the Agreement Period or termination of this Agreement;

“Termination Notice” means the communication issued in accordance with this Agreement by either Party to the other Party terminating this Agreement;

“User Fee” means all charges, costs for consumable items and any other fees, tariff, rentals and other amounts by whatever name called, payable to Operator by the users or any other Person, etc. pursuant to this Agreement, in lieu of sale of items, consumables etc. and for the purpose of rendering of services by the Operator and utilization of the Project Facility of the Project by such users, or other Persons, at any time and from time to time in relation to the Project;

“Works” means the furnishing of the food court (Ground Floor and First Floor) area with requisite furniture, fixtures, kitchen equipment, cutlery and any other requisite temporary or urgent works required under this Agreement;

1.2. INTERPRETATION

1.2.1. In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such

phrases;

- (f) references to “construction” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities that are to be completed on or before “Commercial Operations Date” as per the scope of work as defined under Article 2, and “construct” shall be construed accordingly;
 - (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
 - (h) any reference to day shall mean a reference to a calendar day;
 - (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (j) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
 - (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
 - (l) the words importing singular shall include plural and vice versa;
 - (m) references to any gender shall include the other and the neutral gender;
 - (n) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million(10,000,000);
 - (o) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
 - (p) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of DTTDC hereunder or pursuant hereto in any manner whatsoever;
 - (q) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
 - (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (t) the damages payable by either Party to the other Party, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).
 - (u) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires
 - (v) any reference to Operate/Operations shall mean Operate and Operations & Maintenance unless the context otherwise requires
- 1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Operator to DTTDC and/or the agency or person appointed by DTTDC shall be provided free of cost and in two copies, and if DTTDC and/or the person appointed by DTTDC is

required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

- 1.2.3. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

1.3. MEASUREMENTS AND ARITHMETIC CONVENTIONS

- 1.3.1. All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 PRIORITY OF AGREEMENTS AND ERRORS/DISCREPANCIES

- 1.4.1. This Agreement, and all other Agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:
- (a) This Agreement;
 - (b) TENDER Document
 - (c) all other agreements and documents forming part hereof;
i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) and (c) above and (b) shall prevail over all documents in (c) above.
- 1.4.2. In case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (e) Between any value written in numerals and that in words, the latter shall prevail.

2 SCOPE OF THE WORK OF PROJECT

2.1 SCOPE OF THE WORK OF PROJECT

- 2.1.1. The Operator shall operate, maintain, market and manage the Project Facility. The Project Facility shall be handed over to DTTDC, free of encumbrances & liability, at the end of the Agreement Period or upon the premature termination of this Agreement for any reason.
- 2.1.2. While undertaking works of the Project, the Operator shall adhere to standards and specifications set forth in Schedule C of this agreement, statutory requirements, and any other norms as applicable from time to time.

- 2.1.3. The Operator shall furnish, operate, manage and transfer the Project Facility throughout the Agreement Period in accordance with the applicable regulations of concerned authorities, as the case may be and the provisions of this Agreement and the Schedules hereof.
- 2.1.4. The Operator shall make Project Facility operational by operating them or by entering into Third Party Agreements with private entities for operations as per the Clause 3.4.
- 2.1.5. The Operator shall perform and fulfill all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.
- 2.1.6. The Operator shall be responsible for all the clearances as may be required for the operations of the project.
- 2.1.7. The operator shall get all the designs, furnishings, furniture, equipment etc. approved from DTTDC and it has to be in line with overall theme of the Dilli Haat Janakpuri.

3 CONCESSION

3.1 GRANT OF CONCESSION

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, DTTDC hereby grants to the Operator and the Operator hereby accepts the Concession for a period of 7 (Seven) years (up to 31.12.2016) (further extendable by 5 years subject to renew of agreement between DTTDC and DDA) commencing from the **Commercial Operations Date** , including the exclusive right, authority and authorization during the subsistence of this Agreement, including extension thereof, to plan, operate, allocate, market, maintain and manage the Project Facilities and enjoy its commercial benefits for the Agreement Period.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Operator, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
 - (a) To operate, maintain and regulate the use by Third Parties of the Project Facility;
 - (b) To have access to the Project Facility for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (c) To have access and liberty to plan, operate, manage and transfer the proposed Project Facility with the associated facilities and services during the Agreement Period in accordance with the provisions of this Agreement. Any construction or development made by the Operator on the specified area in respect of the Project Facility shall be deemed to be the property of DTTDC and Authority on its part, as part of this Agreement, provides to the Operator, an exclusive license to operate and maintain the Project Facility during the currency of this Agreement as per the terms and conditions contained herein.
 - (d) Exclusive right and authority, during the Agreement Period, to carry out the specified activities in relation to the Facility;

- (e) To determine the charges\Rates fixed for the beverages, consumables in the project site and/or any other license fee, tariff, cost of the Project Facility each year starting from the **Commercial Operations Date**.
- (f) To manage and operate all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Agreement;
- (g) To exercise such other rights as DTTDC may determine as being necessary or desirable for the purposes incidental and necessary for operating and managing the Project.

- 3.1.3. The Operator shall not be entitled to allow the use of the Project Facility/ies by any other person or for any purpose other than to operate and maintain the Project Facility as specified in Clause 11.4.
- 3.1.4. Operator without approval from DTTDC will not undertake any construction/improvement/Renovation in the Project Asset except for normal repairs & maintenance etc. on the project facility except for minor and regular repairs and maintenance,
- 3.1.5. Nothing contained herein, including the act of granting permission to operate the Project Facility at the designated location shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of the Operator or any other person claiming through or under the Operator. The Operator shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project Facility in any manner. The Operator acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.
- 3.1.6. It is hereby made clear that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Agreement Date and ending with the Termination.

3.2 SOLE PURPOSE OF THE OPERATOR

- 3.2.1. The Operator having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Operator shall not, except with the previous written consent of DTTDC, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

3.3 ACTIONS IN SUPPORT OF THE OPERATOR

- 3.3.1. DTTDC shall recognize and undertake not to, in any manner, violate or cause breach of the terms and conditions of this Agreement and the Schedules hereof.
- 3.3.2. DTTDC undertakes not to terminate or repudiate this Agreement prior to the expiry of the Agreement Period otherwise than in accordance with the provisions of this Agreement or in case of breach by the Operator of the terms of the Agreement and related Tender documents.
- 3.3.3. DTTDC shall provide assistance and recommendations to the Competent Authorities, including GoI, in support of the Operator's applications for Clearances / permissions that may be needed from time to time for the implementation of the Project; provided that the Operator has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

3.4 LICENSING THE USE OF THE PROJECT FACILITY OR ANY PART THEREOF

- 3.4.1. The Operator shall have the right to sub-license food stalls, in the Project Facility or part thereof, for allied activities provided however, that it shall be obligatory upon the Operator to provide copies of all such sub-license deeds entered into from time to time with Third Parties to DTTDC, with incorporated clauses, in all such sub-license deeds with such respective Third Parties, that (i) the period of the sub-license shall be for 11 (eleven) months or lesser and pursuant to its expiry, can be renewed, at the discretion of Operator; and (ii) in case of Termination of this Agreement (by efflux of time or premature), all the sub-license(s) shall be terminated and the Facility shall be transferred back to DTTDC.
- 3.4.2. At any point of time, not more than 6 (Six) Food Stalls shall be leased out to a single Third Party. In case of violation of this provision, all licenses provided to the Third Party shall be cancelled with immediate effect and the Third Party will be barred from entering into any future Third Party Agreements with the Operator.
- 3.4.3. The Operator shall ensure to get the format of sub-license deed approved by DTTDC and also, submit the signed sub-license deeds to DTTDC for information. The Operator may execute sub-license deeds effective from the Operations Date. The sub-licensee/s shall pay the license fees under the sub-license deeds directly to the Operator.

4 CONSIDERATION OF THE CONTRACT

4.1 CONCESSION FEE

- 4.1.1. The Operator shall pay to DTTDC an amount of Rs _____ (Rupees _____) as Concession Fee (the “**Concession Fee**”) in equal monthly installment. The Concession Fee shall be increased by 18% of the previous value, at the end of every three years from the **commercial date of operation**.
- 4.1.2. Concession Fee shall become payable from the Commercial Operation Date. Operator shall make monthly payments of Concession Fee to Authority at the beginning of every Month, not later than 7 (Seven) days after the commencement of that particular Month. The first installment of Concession Fee shall be paid at the time of signing of Agreement **or before the date of commercial operation, whichever is earlier**. It is clarified that, such first installment is deemed to be paid for the first Month starting from the date of Commercial Operation Date. All taxes, levies and charges as applicable and payable by DTTDC to GNCTD or GoI with respect to the collection of the Concession Fee shall have to be paid by the Operator along with and in addition to the payment of Concession Fee. For avoidance of doubt, it is clarified that DTTDC shall be entitled to receive Concession Fee as well as all applicable taxes from Operator, whether payable by DTTDC or Operator.
- 4.1.3. In case if the Operator requires additional area other than shown in **Schedule A** as part of Project Facility, Operator shall have the right to request DTTDC to provide the same. DTTDC shall have the option to approve or not approve such request. In case DTTDC decides to grant such additional area, Operator shall be liable to pay additional Concession Fee on prorata basis for the additional area along with the specified Concession Fee for the remaining duration of Agreement Period. **THE ADDITIONAL AREA, IF TAKEN, AT ANY POINT OF TIME DURING THE COURSE OF AGREEMENT PERIOD CAN BE SURRENDERED/RETURNED BACK BY THE OPERATOR AT ANY TIME DURING THE COURSE OF THE AGREEMENT WITH ATLEAST ONE MONTH PRIOR NOTICE IN WRITING. THE ADDITIONAL CONCESSION FEE WILL ACCORDINGLY BE REDUCED.**

4.2 OTHER PROVISIONS

- 4.2.1. Subject to and in accordance with the provisions of this Agreement, and on the basis of the Consideration hereby given by Operator, the Operator shall be entitled to operate the Project subject to:
- (a) performing and fulfilling all of the Operator's obligations under and in accordance with this Agreement;
 - (b) bearing and paying all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and
 - (c) at the end of the Agreement Period, the entire furnishings and installation put up by the Operator till that date in the Project Facility as part of the scope of work shall be handed over, without taking any consideration, to DTTDC.
- 4.2.2. In consideration of the mutual covenants and other good and valuable consideration expressed herein, the Operator hereby agrees to pay the Consideration and agrees to operate the Project as per the scope of work given in Clause 2 and minimum specifications mentioned in the schedules E and to perform/discharge all of its obligations in accordance with the provisions hereof.
- 4.2.3. The Consideration to be paid by Operator to DTTDC as per the provisions of this Agreement shall be paid along with additional payment of all taxes, levies and charges that would be required to be paid by DTTDC for the project.

5 **CONDITIONS PRECEDENT TO THE AGREEMENT**

5.1 **Conditions Precedent**

5.1.1 The respective rights and obligations of the Operator under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 5.1 (the "Conditions Precedent").

5.2 **CONDITIONS PRECEDENT OF DTTDC**

The Operator may, upon signing of the Agreement, by notice require the DTTDC to satisfy the Conditions Precedent set forth in this Clause 0 within a period of 30 (thirty) days from the Agreement Date, and the obligations of the DTTDC hereunder shall be deemed to have been performed when the DTTDC shall have provided to for the Operator the Right of Way to the Project Facility and project asset, as demarcated under Schedule A, in accordance with the provisions of Clause **Error! Reference source not found.**;

5.3 **CONDITIONS PRECEDENT OF OPERATOR**

5.3.1. The Conditions Precedent required to be satisfied by the Operator prior to the Agreement Date shall be deemed to have been fulfilled when the Operator shall have:

- (a) Delivered to DTTDC a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof.

5.4 OBLIGATIONS TO SATISFY CONDITION PRECEDENTS

5.4.1. DTTDC will sign the Agreement only after the fulfillment of Conditions Precedent of Operator.

5.5 Non-fulfillment of the Conditions Precedent

5.5.1. In the event of the agreement not coming into effect on account of DTTDC not fulfilling the Conditions Precedent then the Earnest Money Deposit, the Performance Security, as the case may be, and the Annual Concession Fee shall be returned to the Operator, without interest.

5.5.2. Notwithstanding anything contained in this clause, the Parties may mutually decide to extend the time period for the fulfillment of the Conditions Precedent

6 OBLIGATIONS OF THE OPERATOR

6.1 OBLIGATIONS OF THE OPERATOR

6.1.1. Subject to and on the terms and conditions of this Agreement, the Operator shall at its cost and expense procure finance for and undertake the Project scope of work as mentioned in Article 2 and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2. The Operator shall comply with all Applicable Laws in the performance of its obligations under this Agreement.

6.1.3. Without prejudice to Clauses 6.1.1 and 6.1.2 above, the Operator shall discharge its obligations as per the National Building Code, Development Control Rules, and the principles of good industry practice as a reasonable and prudent person, statutory requirements, laws of the land and any other norms, which are applicable from time to time.

6.1.4. The Operator shall get prior approval of DTTDC in case there is any change in the Project facilities defined hereof during the Agreement Period.

6.1.5. The Operator shall have to pay common area maintenance charges, if any levied by DTTDC at any point of time, to DTTDC at the rate notified by DTTDC from time to time. Such common area maintenance charges shall have to be paid on or before 7th day of every month by way of demand draft issued in favour of DTTDC payable at Delhi. In case of non-payment of common area maintenance charges, interest at the rate of 1.5% per month or part thereof will be paid by the Operator to DTTDC.

6.1.6. The Operator shall get approval from DTTDC prior to the finalization of the name of the Project. Unless the name negatively affects public sentiments, DTTDC shall not unreasonably withhold approval of the name proposed by the Operator.

6.1.7. Without prejudice to Clauses 6.1.1 and 6.1.2 above the Operator shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:

(a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with

such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;

- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into development and operations of the Project;
- (c) not to damage any other infrastructure or any other utility developed by DTTDC or any other utilities developed and maintained by any other authority or person and in case of any such damage to undertake the repair and also to pay for any losses that is incurred by DTTDC or any authority or any other person, as the case maybe.
- (d) not to make any changes in the structure, facade of the Project Facility while undertaking furnishings or up gradation Works. Operator shall have the option to make changes within four walls of the existing structures, while maintaining the aesthetics of Premises, after taking prior permission for any up gradation Works from DTTDC.
- (e) ensure and procure that the Operator shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;
- (f) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) not to create any rights or third party rights on the Site and also to ensure that Government of National Capital Territory of Delhi/DTTDC are not adversely affected in any way;
- (h) shall make payment towards DTTDC as per provisions of this Agreement;
- (i) provide all assistance to the Project Monitoring Board as it may require for the performance of its duties and services;
- (j) ensure that no goods are stored that are not permitted by law including those of hazardous, explosive, flammable or combustible in nature that may cause risk by fire, explosion or goods/material which on account of their weight or nature may cause damage to the premises. The Operator shall be liable or responsible for destruction or damage to the premises;
- (k) ensure minimum 10-14 food stalls are operational at all times, fully furnished and in proper condition.
- (l) give preference to the existing vendors in subletting the food stalls;
- (m) set up and take water connection from DJB, gas bank/IGL connection for cooking purposes and other permissions required for smooth operation. DTTDC will only give NOC for such connections wherever required. Any payment of this account shall have to be borne by the Operator and will not claim any reimbursement from DTTDC. Gas bank is the responsibility of the party and any clearance required from civic bodies, fire department etc. would be the responsibility of the Operator;
- (n) ensure only commercial gas cylinders/IGL PNG Connection are used for the operations at the Project Facility;

- (o) ensure only gas burners/electric gadgets are used in the kitchen for preparation of food items
- (p) Ensure that dishwashing shall not be in open area or in any other area which has been given for use under this agreement except in the kitchen/pantry area/prescribed area in the back yard of the food court.
- (q) ensure compliances of all rules and regulations/notifications issued from time to time by Ministry of Health, Municipal Corporation of Delhi and/or any appropriate authority in this regard
- (r) Ensure that no ambush marketing of any sort takes place in the Project Facility;
- (s) procure at its own costs, expenses and risk all services necessary for the furnishings and operations of the Project including without limitation electricity, water, materials and labor;
- (t) shall pay applicable property tax (on pro rata basis) paid by DTTDC for Dilli Haat Janakpuri throughout the Agreement Period;
- (u) ensure that all the furniture, fixtures, equipment etc, to be made part of the Project Facility shall be of highest standards and acceptable to DTTDC;
- (v) ensure that all the furniture, if provided by DTTDC, shall be maintained in a proper manner and after every year, if any furniture is found in depleted condition then the same shall be replaced by the Operator at his own cost. PMB, at any time, even before completion of a year, may instruct the Operator to replace / repair the furniture or any other moveable or immoveable assets;
- (w) shall bear the cost/ expenditure to be incurred on the commercial operation of the Facility during the entire Agreement Period;
- (x) shall have the right to locate electronic hoardings and advertisement boards, as per the applicable laws after prior approval from DTTDC, in the Project Facility and generate maximum revenue from it. The Operator will have to follow the color scheme and design for various hoardings/ display boards as approved by DTTDC.
- (y) provide a security and watch and ward service at the Facility to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (z) be responsible for all liabilities arising out of operation, maintenance & management of the Project. The Operator shall plan, organize and execute the Works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighboring facilities. DTTDC shall assist the Operator in all respects with reference to such works, but the assistance or denial thereof shall not release the Operator from its obligations;
- (aa) to ensure that no structural damages/ changes are caused to the existing Project building(s) and other permanent structures at the Project Facility as a result of Operator's activities, etc. However, the Operator shall be entitled to carry out necessary repairs to the existing structure in the licensed premises with prior written approval of DTTDC, at its own costs and expenditures without having any claim against DTTDC
- (bb) shall have the option to advertise the Project in newspapers or through any other mode of communication at own cost;

(aa) shall prepare and evolve, not later than 10 (Ten) days prior to the Scheduled Operations Date, a draft Operation and Maintenance Manual (“**O&M Manual**”) providing the detailed plan for regular and preventive maintenance of the Project. The Operator shall at its cost, provide within 10 (ten) days of its finalization, submit the draft of the O&M Manual to DTTDC for its review. The O&M Manual will become final only after it has received the final approval of DTTDC. Within a period of 15 (Fifteen) days from the date of receipt of the O&M Manual, DTTDC shall revert to the Operator with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of DTTDC. The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the Facility during the Operations Period, so that Project Facility is maintained at all times in a manner that it complies with the provisions of the Agreement in sound, durable and functional condition. The Operation and Maintenance Manual of the Facility shall also include service level specifications, performance standards for maintenance, service level indicators, their response/ repair time, frequency of monitoring and the key performance indicators; and

(ab) hand over the Project Facilities on the date of termination of Concession to DTTDC, in accordance with the provisions thereof.

6.1.8. The Operator shall, make or cause to make applications, at its cost and procure or cause to procure all necessary / mandatory clearances, permits, etc., which are required for commencing the construction and execution of the Project, so that all such conditional and/or unconditional clearances, permits, etc., are on full force and effect, throughout the Agreement Period and the Operator shall ensure that all such clearances, permits, etc. are prominently displayed at the Project facility at all time during the Agreement Period.

6.3 OBLIGATIONS RELATING TO OTHER AGREEMENTS

6.2.1. It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Operator from its obligations or liability hereunder.

6.2.2. The Operator may undertake operation of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Operator shall remain solely responsible to meet the scope of work as mentioned under Clause 2.1.

6.2.3. The Operator shall submit to DTTDC the drafts of all Third Party Agreements or any amendments or replacements thereto for its review and comments, and DTTDC shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (Fifteen) days of the receipt of such drafts. Within 7 (Seven) days of execution of any Third Party Agreement or amendment thereto, the Operator shall submit to DTTDC a true copy thereof, duly attested by a Director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of DTTDC to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by DTTDC. No review and / or observation of DTTDC and / or its failure to review and / or convey its observations on any document **shall not**

relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall DTTDC be liable for the same in any manner whatsoever.

6.4 OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP OF SPV

- 6.3.1. The Operator shall not undertake or permit any Change in Ownership, except with the prior written approval of DTTDC as per the provisions of this Clause 6. No change in the equity stake of the Consortium Members in the Operator (the SPV) shall be allowed till second anniversary of Commercial Operations Date. Moreover, the Lead Consortium Member shall continue to hold 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV during the entire Agreement Period.
- 6.3.2. Each Consortium Member shall hold a minimum stake of 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV. None of the Consortium Member shall be allowed to dilute its stake in the SPV till second anniversary of Commercial Operations Date.
- 6.3.3. Lead Consortium Member shall hold a minimum stake of 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV during the entire Agreement Period. In case of Single Entity Bidder, such Single Entity Bidder shall hold at least 51% (Fifty One per cent) of the subscribed and paid up equity of the SPV at all times till the end of second anniversary of the Commercial Operations Date. However, such Single Entity Bidder shall continue to hold at least 26% (Twenty Six per cent) of the subscribed and paid up equity of the SPV during the entire Agreement Period.

6.5

6.6 OBLIGATIONS RELATING TO ENVIRONMENTAL MEASURES

- 6.5.1. The Operator shall take all reasonable steps to protect the environment (both on and off the Project Facility) and to limit damage and nuisance to people and property.
- 6.5.2. The Operator shall be liable for and shall indemnify, protect, defend and hold harmless DTTDC, DTTDC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Operator to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable;

OBLIGATIONS RELATING TO CLEARANCE OF FACILITY

- 6.6.1. During the execution of the Works, the Operator shall keep the Project Facility free from all unnecessary obstruction, and shall store Operator's Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Operator's Equipment or surplus materials. The Operator shall clear away and remove from the Facility any wreckage or rubbish no longer required.
- 6.6.2. Within 15 (Fifteen) days of the issue of the Completion Certificate, the Operator shall clear away and remove, from the Project Facility, all surplus materials, rubbish and other debris and keep the Project Facility and surroundings in a clean and safe condition, to the satisfaction of DTTDC.

- 6.6.3. Within 30 (Thirty) days of the expiry of the Agreement Period, the Operator shall clear away and remove, from the Project Facility the Operator's Equipment, surplus material, wreckage, rubbish, etc. The Operator shall leave such areas in a clean and safe condition to the satisfaction of DTTDC. Provided that if the Operator fails to remove, at the end of the 30 day period, any remaining Operator's Equipment, surplus material, wreckage, rubbish, etc., DTTDC may sell or otherwise dispose of such items. DTTDC shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Operator, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due from the Operator are insufficient to meet DTTDC's costs, the outstanding balance shall be recoverable from the Operator by DTTDC.

6.7 SAFETY AND SECURITY

- 6.7.1. The Operator shall comply with all safety regulations applicable, access arrangements and operations on the Facility. The Operator shall be responsible in the operation of machinery and any other work, to take all precautions to ensure safety of the staff, laborers and public.
- 6.7.2. The Operator shall be responsible at its cost, for procurement, transport, receiving, unloading and safekeeping of all Materials, Operator's Equipment and other things required for the Works. Unless otherwise stated in this Agreement:
- i. The Operator shall be responsible for keeping unauthorized persons off the Facility and preventing encroachment on the Facility during Agreement Period.
 - ii. Authorized Persons shall be limited to the employees of the Operator and persons authorized by DTTDC.
- 6.7.3. In the event of an accident, the Operator shall, by most expeditious means, inform the concerned Civil and Police Authorities and also DTTDC. The Operator's responsibilities with regard to the Project shall in no way be diminished by informing the above officials and it shall take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Operator shall preserve the Project Facility of such accident intact, until completion of all legal formalities. The Operator shall then arrange for the expeditious removal of the wreckage or debris, and for cleaning the Project Facility. If any portion of the Project Facility suffers any damage, the Operator shall, with the consent of DTTDC, arrange for the repair and rectification thereof.
- 6.7.4. The Operator shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices).
- 6.7.5. Any communication to the news media made by the Operator shall provide only enough information to satisfy public concern, and the Operator shall make no admissions nor accept any liability in such communications.
- 6.7.6. The Operator shall indemnify, defend and hold harmless DTTDC, during the term of this Agreement, from and against all liabilities, damages, actions, proceedings, and claims of any nature whatsoever, as suffered by the Operator due to such accidents.

6.8. INSURANCE REQUIREMENT

The Operator shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- a) builder's all risk insurance;
- b) loss, damage or destruction of the Project Facilities at replacement value;
- c) comprehensive third party liability insurance including injury or death to the persons who may enter the Project Site;
- d) workmen's compensation insurance; and -EPF, PF, ESI and Statutory compliances
- e) any other insurance that may be necessary to protect the Operator, its employees and its assets and DTTDC, its employees and agents engaged in or connected to the Project and the Project Site including all Force Majeure Events that are insurable and not otherwise covered in items (a) to(d).

6.9. PROPERTY TAX

Operator shall bear proportionately (equivalent to the area under their possession) taxes, cess, property tax and or any other tax which is payable (if any) presently or in future to DTTDC, as determined by PMB.

7 OBLIGATIONS OF DTTDC

7.1 OBLIGATIONS OF DTTDC

- 7.1.1. DTTDC shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 7.1.2. DTTDC agrees to provide support to the Operator and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - (a) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance to the Operator in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
 - (b) upon written request from the Operator, assist the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water at rates and on terms no less favorable to the Operator than those generally available to commercial customers receiving substantially equivalent services;
 - (c) extend the assistance of its good offices on a reasonable effort basis to assist the Operator in the provision of electricity and water;
 - (d) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
 - (e) support, cooperate with and facilitate the Operator in the implementation of the Project.

8 REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Operator

The Operator represents and warrants to DTTDC that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) 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 its Memorandum and Articles of Association / Rules or any Applicable Laws or any covenant, contract, agreement, arrangement, 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;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its 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 this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects 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 a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) the existing Lead Consortium Member hold not less than 26% (Twenty Six per cent) of its subscribed and paid up Equity and together with the existing consortium members hold not less

than 78% as on the date of this Agreement and the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by DTTDC as part of the Bid and that no member of the Consortium shall hold less than 26% (twenty six per cent) of its subscribed and paid up Equity as per the provisions of Article 6.3;

- (l) no order has been made and no resolution has been passed for the winding up of the Operator or for a provisional liquidator to be appointed in respect of the Operator and no petition has been presented and no meeting has been convened for the purpose of winding up the Operator. No receiver has been appointed in respect of the Operator or all or any of its assets. The Operator is not insolvent or unable to pay its debts as they fall due;
- (m) no representation or warranty by it contained herein or in any other document furnished by it to DTTDC or to any Government Instrumentality 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;
- (n) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of DTTDC in connection therewith;
- (o) it shall **not novate the** Agreement and any rights and obligation arising there from to any party without any written approval from DTTDC;
- (p) The operator shall strictly adhere to and comply with all statutory compliances as arising out of an industrial law and or notifications circulars received by Government of India, State govt. and or any other subsequent arrangement made in the existing laws circulars, notifications from time to time till the completion of this agreement;
- (q) No representation shall be made by the operators to the employees/workers that they were the employees of DTTDC. All such employee working in the project facility / Cafeteria shall be of operator.

8.2. REPRESENTATIONS AND WARRANTIES OF DTTDC

DTTDC represents and warrants to the Operator that:

It has entered into an agreement with DDA on license for 8 (eight) acres of a land vide agreement dated May 2nd, 2008 for a period of 20 years that will be renewed every 5 years with effect from May 2nd, 2008 and the period of license will expire on 31st December, 2026.

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary action under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) 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 Instrumentality which may result in any material adverse effect on the Operator's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (h) it has good and valid right for up-gradation and operation of the Project, and has power and authority to give license of the rights to the Operator; and
- (i) upon the Operator completing the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the period of Concession, interfere with peaceful enjoyment of the Project Facility by the Operator, except in accordance with the provisions of this Agreement.

8.3 DISCLOSURE

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

9 PERFORMANCE SECURITY

9.1 PERFORMANCE SECURITY

The Operator shall submit to DTTDC a Performance Security equivalent to 10% of the sum of total Concession Fee for first three years, in the form of a Bank Guarantee/DD/FD favoring to Delhi Tourism and Transport Development Corporation, payable at New Delhi. The Bank Guarantee shall be prepared and submitted as per the format given in Schedule B of this Agreement.

The Performance Security equivalent to 10% of the sum total of Concession Fees for three years along with the periodical revision as per this agreement shall be maintained by the Operator during the entire period until the end of the Agreement Period. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Operator. Validity of the performance security will be more than 180 days from the date of expiry of agreement.

9.2 APPROPRIATION OF PERFORMANCE SECURITY

- 9.2.1. Upon occurrence of an Operator Default during the subsistence of the Performance Security, DTTDC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled

to invoke and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default. Upon such invocation and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which DTTDC shall be entitled to terminate this Agreement in accordance with Article 15.

- 9.2.2. In the event that the operation of the Project is not commenced by the Scheduled Commercial Operations Date, unless the delay is on account of reasons solely attributable to DTTDC or due to Force Majeure, DTTDC shall encash 5% of the Performance Security amount per month, for a maximum period of 6 (six) months after which DTTDC shall be entitled to terminate this Agreement. The Performance Security shall be replenished by the Operator as soon the Performance Security is encashed by DTTDC.

9.3 RELEASE OF PERFORMANCE SECURITY

100% (one hundred per cent) of the Performance Security in the form of bank guarantee shall be released to the Operator by 2 (two) month after end of Agreement Period or by 2 (two) month after date of Termination whichever is earlier. In any case, DTTDC shall be entitled to recover any amounts due or receivable from the Operator under this Agreement, before the Performance Security be duly discharged and released to the Operator.

10 ACCESS TO THE PROJECT FACILITY

10.1 ACCESS

- 10.1.1. DTTDC hereby grants to the Operator access to the Project Facility for carrying out any investigations and tests that the Operator may deem necessary during the Agreement Period, it being expressly agreed and understood that DTTDC shall have no liability whatsoever in respect of investigations and tests carried out or work undertaken by the Operator on or about the Project Facility pursuant hereto in the event of Termination or otherwise.
- 10.1.2. In consideration of the Concession Fee ,this Agreement and the covenants and warranties on the part of the Operator herein contained, DTTDC, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from the Agreement Date, leave and license rights in respect of all the existing structure (along with any buildings, constructions or immovable assets, if any, thereon) comprising the premises of Project Facility which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**") on an "as is where is" basis, to operate and maintain the said Licensed Premises (the "**License**"), together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, **hereditaments** or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Agreement Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.1.3. It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by DTTDC to terminate the rights, upon the Termination of this Agreement for any reason whatsoever.
- 10.1.4. It is expressly agreed that mining rights do not form part of the rights granted to the Operator

under this Agreement and the Operator hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.2 OTHERS

10.2.1. Shared Access

The Operator shall enjoy access to the Project Facility throughout the Agreement Period for carrying out its obligations under this Agreement. However, such access shall not be exclusive and shall be shared with DTTDC, which is in lawful possession of the Licensed Premises. The Operator shall be the sole authority for regulating access to the Project Facility. However, access to the Project Facility shall be available, at all times during the Agreement Period, to DTTDC or a person appointed by DTTDC for the purpose of inspection, viewing and exercising the rights of DTTDC as set forth in this Agreement. It is clarified that solar and HAVC plants and other electric gadgets are installed on the roof top and in different areas of the building and DTTDC shall have regular access to this.

10.2.2. Special/temporary right of way

The Operator shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Facility. The Operator shall obtain at its cost such facilities on or outside the Project Facility as may be required by it for the purposes of furnishing, furniture, fixtures and the performance of its obligations under this Agreement.

10.2.3. Display of DTTDC logo

Notwithstanding any statement to the contrary contained herein, DTTDC reserves the right to prominently display DTTDC logo in the Project Facility area as deemed appropriate by the Authority. The cost of installation, operation and maintenance of such logo/sign shall be borne by the Operator for the entire Agreement Period.

10.2.4. Parking

Users of Project Facility and the Operator shall be allowed to use the parking space available in Dilli Haat Janakpuri. The parking shall be on a chargeable basis and will be collected and enjoyed by DTTDC or any other contractor appointed for the task by DTTDC. Under no circumstances shall the Operator be allowed to charge and collect parking fees from the users of Project Facility. No vehicle of the vendors and visitors shall be parked on the backside of the food court within the premises. The entry of the vehicle to this area will only be for dropping and picking up of material and goods for the food court and Dilli Haat.

11 PROJECT IMPLEMENTATION

11.1 OBLIGATIONS PRIOR TO THE COMMENCEMENT OF ANY WORK

Prior to commencement of any work, the Operator shall:

- (a) submit the furnishing Plan including details of works to be undertaken by Operator within

Completion Period (the “**Furnishing Plan**”) to DTTDC for approval on the Agreement Date. Any delay in submission of Furnishing Plan, beyond the above mentioned period, shall entail a penalty of 0.1% of Performance Security per day. The Furnishing Plan shall include the details of activities proposed. If DTTDC objects to the activities proposed in the Food court, Operator shall be liable to change the activities proposed and suggest different activity, which shall again be subject to approval of DTTDC.

- (b) appoint its representative duly authorized to deal with DTTDC in respect of all matters under or arising out of or relating to this Agreement;
- (c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) Procure all such approvals/consents/permits as necessary as per applicable laws, including structural design approval from DTTDC

11.2 COMPLETION DATE

- 11.2.1. Only after the approval of Furnishing Plan from DTTDC, the Operator shall undertake furnishing and fixtures works in the Project. The end of 45 (Forty Five) days from the date of receipt of such approval by DTTDC shall be the end of Completion Period (the “**Scheduled Commercial Operations Date**”) for completion of furnishings and the Operator agrees and undertakes that the furnishing and fixtures of the Project Facility shall be completed on or before the Scheduled Commercial Operations Date.

11.3 COMPLETION CERTIFICATE

- 11.3.1. The Operator after completion of the requisite furnishings of the Project shall inform in writing to DTTDC that it has completed as per Furnishing Plan. DTTDC shall issue the Completion Certificate after satisfying itself that the work is complete as per the Furnishing Plan and is as per the requirements set forth in this Agreement. For this purpose, the Operator shall, at least (7) seven days before the Commercial Operations Date, give an Affidavit and certify that the work undertaken by it is complete and is according to safety norms as per the prevailing laws and requirements set forth in this Agreement. The date on which DTTDC issues the Completion Certificate shall be deemed as the Commercial Operations Date (the “**Commercial Operations Date**”). The Operator can start commercial operations of the Project any time after the Commercial Operations Date.

11.4 PROJECT OPERATION

- 11.4.1. Operator shall operate and maintain the Project Facility during the Agreement Period and adhere to Operation and Maintenance Requirements as mentioned in Schedule E. If DTTDC / PMB finds Operator failing to meet any Operation and Maintenance Requirements as stated in Schedule E, then DTTDC / PMB shall give a notice to Operator stating the fault (the “**Fault**”) and grant 5 (five) days to rectify the same. If DTTDC/ PMB find that the Fault has not been rectified within the time period specified, then DTTDC shall have the **right** to rectify the Fault and recover the expenses for the same from Operator. In such case, DTTDC shall have the right to encash Performance Security to the extent of expenses incurred in rectification of the fault.
- 11.4.2. Operator shall be required to apply for and obtain clearances as applicable for holding any event

in the Project Facility, including but not limited to permissions from local bodies, police, traffic, fire etc.

- 11.4.3. Repair and maintenance of any kind in the Project Facility shall be the responsibility of Operator. However, Operator shall be required to take prior approval of DTTDC before undertaking any major maintenance in the Project Facility, including but not limited to painting and whitewashing.
- 11.4.4. Operator shall at all times maintain the items ancillary to Project Facilities in operational state. Any repair, maintenance and replacement of such items will be the responsibility of Operator. Operator shall have to take prior approval of DTTDC before making any replacements of such items.
- 11.4.5. Operator shall keep the premises clean and shall ensure proper disposal of any garbage generated in the Project Facility.
- 11.4.6. Operator shall ensure that operation of Project Facility does not disturb operations of other activities in Dilli Haat Janakpuri.
- 11.4.7. Operator shall not damage the existing structures of Project Facility and of Dilli Haat Janakpuri. Operator shall have to take written approval from DTTDC before carrying out temporary or permanent construction activity in the Project Facility. It shall be the responsibility of Operator that the greenery of Dilli Haat Janakpuri is not destroyed due to any activities carried out in Project Facility.
- 11.4.8. The Operator recognizes and acknowledges the fact that the Project is intended to provide a public facility and the Operator shall have no right to prevent, impede or obstruct any bona fide Users from using the Project Facility, save for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Operator apprehends any detriment to the Facility, it shall seek instructions from DTTDC, whose decision in this regard shall be final.
- 11.4.9. The opening and closing hours of the Project Facility shall have to comply with the Delhi Shops and Establishment Act, 1954 and the opening and closing time of Dilli Haat Janakpuri. The Project Facility shall not be allowed to be open after all the operations in Dilli Haat Janakpuri have been closed for the day. For any relaxation prior approval of MD & CEO, DTDC is required.
- 11.4.10. Usage of sound system will be allowed after prior consent of DTTDC. Usage of sound system would not be permitted after 10.00 pm on any day and the applicable rules of the GNCTD with regards to the permissible sound level shall be applicable.
- 11.4.11. The activities as mentioned in Schedule D shall be strictly prohibited in the Project Facility.
- 11.4.12. Any visitor to the Project Facility shall be allowed to enter only after purchase of entry tickets to Dilli Haat Janakpuri or as may be decided between DTTDC and the operator during the period of agreement. If any issue or dispute arises with respect to charging of entry tickets from the visitors of food court in groups or in individual capacity, the same will be decided by the Project Managing Board (PMB) constituted under Clause 11.5.
- 11.4.13. The Operator or his/her sub-licensees will set up and create food stalls wherein different types of cuisines will be made available to the visitors. All the food stalls will have a proper display of menu**

and rate card etc. Proper seating arrangements with table and chair/sofas in the common dining area on each floor shall always be made available for the visitors

11.4.14. The Food Court will not be utilized as a Banquet Hall at any point of time, during the course of the agreement. It is clarified that under no circumstances exclusive banqueting on any day is permitted. However, a limited or partial space of the common dining area can be used for small parties and get to-gather, as and when required, but otherwise the whole common dining area shall be made available for the walk in visitors of Dilli Haat to enjoy the cuisines served in different food stalls.

11.4.15. The Operator is allowed to have a bar facility in the food court subject to necessary permission and Licenses from the Competent Government Agencies/Departments as per Rules. The Bar facility shall be set up in maximum four food stalls (not more than two stalls at each floor). The seating area for the bar facility must be adequately isolated as a “separate enclosure” with aesthetically designed barricading and/or view cutter etc.

11.5 PROJECT MONITORING BOARD (PMB)

11.5.1. Constitution

11.5.1.1. DTTDC shall ensure that a Project Monitoring Board, comprising General Manager, Financial Controller and In charge (Dilli Haat Janakpuri) from DTTDC and two persons nominated by the Operator is established one month prior to Scheduled Commercial Operation Date or Commercial Operation Date, whichever is earlier. The Operator shall be obligated to depute its authorized representative to such Board by the stipulated date.

11.5.1.2. General Manager of DTTDC shall be chairman of the PMB.

11.5.1.3. The PMB shall, to the extent possible, act by consensus, failing which it will act by majority vote. The PMB shall determine the procedure to be followed for its meetings and carrying out its functions.

11.5.2. Tenure

11.5.2.1. The tenure of PMB shall commence from the date of constitution thereof and shall continue until the end of the Agreement Period/this Agreement by efflux of time or prior termination.

11.5.3. Roles and Responsibilities

11.5.3.1. PMB will ensure smooth implementation of the Project by undertaking the following roles and responsibilities:

- i) Oversee and monitor the progress of the Project in accordance with the provisions of this Agreement and call for explanation in case of deviation, if any;
- ii) Shall prescribe additional standards as and when required and decided upon. In addition to this, the PMB shall ensure that the Operator is adhering to the minimum standards prescribed in the Agreement and the related Schedules;
- iii) Review the curing of defects and defaults in the operation and maintenance of the Project/Project Facility;

- iv) Use best endeavors to assist in resolving, without being liable in any manner, operational issues and disputes between the Operator and the users of the Project Facility;
- v) Review the safety and security of the operations and maintenance activities relating to the Project;
- vi) Take appropriate action in accordance with the provisions of this Agreement, in case of Faults, defects in operation, fraud investigated or grievances received against the Operator;
- vii) Monitor the redressal of complaints and grievances of users of the Project Facility; and
- viii) Appoint competent person / firm as Expert (the “**Expert**”), from time to time to investigate any defects in the Project Facility and to assist PMB in monitoring the operation and maintenance of the Project by the Operator.
- ix) To resolve any issue for smooth operation of the facility.

11.5.4. PMB shall meet at least once every quarter in a year or earlier as required.

11.5.5. Operator shall extend full co-operation to PMB in performing its functions.

11.5.6. Any failure on the part of the PMB in respect of its functioning shall not (1) amount to any consent or approval of the activities of the Operator; and (2) release or discharge the Operator of its obligation to carry out the maintenance of the Project Facility.

11.5.7. If at any time during performance of the Agreement, the Operator’s employees are found to be guilty of misbehavior/misconduct with any member of the public visiting Premises or DTTDC’s authorized representative, or to be incompetent or negligent in performing his/their duties or if in the opinion of DTTDC, it is undesirable for such persons to be employed by the Operator in the work at Premises, the Operator, if so directed by DTTDC or his authorized representative shall forthwith remove such persons(s) from the work of DTTDC immediately.

11.6 **ELECTRICITY AND WATER**

11.6.1. Arrangements of power supply at the Facility shall be given to the Operator. Operator shall install a sub-meter for monitoring electricity consumption in Project Facility.

11.6.2. Operator shall be required to pay to DTTDC cost for the units consumed in Project Facility, as measured by the sub-meter. The cost per unit of electricity shall be the applicable and prevalent rate per unit at which DTTDC makes payment for the electricity in Dilli Haat Janakpuri. Operator shall be required to pay for electricity at the end of every month. Operator shall ensure timely payment of electricity, water and other bills. In the event of default committed by the Operator in making payment of any such taxes, DTTDC will be entitled to impose a penal interest on the delayed payment as per Clause 21.3, besides right to terminate / revoke the Agreement.

11.6.3. Operator shall be provided three phase electricity connection/ required connection with _____
_Ampere current. The said meter shall always remain in the name of DTTDC. The operator shall be liable to pay the electricity consumption charges regularly for additional 3-phase electricity connection. Operator shall also be allowed to use on its own cost silent generators to meet any

additional requirement of electricity in the Project beyond what is provided by DTTDC.

11.6.4. Operator is required to make own arrangements of water for Project.

11.6.5. Operator shall have the option to procure water from DTTDC, to the extent supplied by DTTDC. Operator shall install a sub-meter for monitoring water consumption in Project Facility. For any water supplied by DTTDC, Operator shall be required to pay to DTTDC cost for the units consumed in Project Facility, as measured by the sub-meter, at the applicable and prevalent rate for water fixed by Delhi Jal Board. Operator shall be required to pay for water at the end of every billing cycle. In the event of default committed by the Operator in making payment of any such taxes DTTDC will be entitled to impose a penal interest on the delayed payment as per Clause 21.3, besides right to terminate / revoke the Agreement.

12 ACCOUNTS AND AUDIT

12.1 CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS

Any claim or document provided by the Operator to DTTDC in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business

Record Maintenance

- i. Retain and store on the premises for the Agreement Period all records relating to the Project, which shall be the property of DTTDC;
- ii. Provide support to DTTDC to meet all the data requirements of all Competent Authority/ies.

13

14 FORCE MAJEURE

14.1 FORCE MAJEURE

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of events, as defined in Clause 14.2, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event

- (i) is beyond the reasonable control of the Affected Party;
- (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- (iii) Has Material Adverse Effect on the Affected Party.

14.2 FORCE MAJEURE EVENTS

A Force Majeure Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Facility);
- (b) strikes or boycotts (other than those involving the Operator, contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting services to the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a contractor but only to the extent caused by another Force Majeure Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by DTTDC;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) 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;
- (g) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (h) compulsory acquisition in national interest or expropriation of any Project Facility or rights of the Operator or of the contractors;
- (i) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Operator or any of the contractors to perform their respective obligations under this Agreement and the Third Party Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; or
- (j) Termination of a license agreement executed between DTTDC and DDA before 31st December, 2026; or

- (k) any event or circumstances of a nature analogous to any of the foregoing;

14.3 DUTY TO REPORT FORCE MAJEURE EVENT

Upon occurrence of a Force Majeure Event, the Affected Party shall by notice within thirty six hours of the occurrence of the event report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event with evidence in support thereof;
- (b) 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;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim. The Affected Party shall not be entitled to any relief under the Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party 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 shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

14.4 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Neither Party 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 hereto.

14.5 TERMINATION NOTICE FOR FORCE MAJEURE EVENT

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (Fifteen) days' time to make a representation, and may after the expiry of such 15 (Fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

14.6 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT

In case of Termination for Force Majeure Event, the provisions of Clause 15.3 and 15.4 shall be applicable. However, the Performance Security shall be returned to Operator.

14.7 DISPUTE RESOLUTION

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Clause 18; provided 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 TERMINATION

15.1 TERMINATION FOR OPERATOR'S DEFAULT

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 15 (fifteen) days, the Operator shall be deemed to be in default of this Agreement (a "**Operator Default**"), unless the default has occurred solely as a result of any breach of this Agreement by DTTDC or due to Force Majeure event. The defaults referred to herein shall include:

- (a) the Performance Security has been partially or fully invoked and appropriated by DTTDC as per the Agreement and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Operator does not make payment to DTTDC and remains in default for a period of more than 60 (sixty) days from the due date of payment; Relaxation can be given by MD & CEO, DTTDC for further period up to 30 days.
- (c) the Operator does not complete the furnishing, fixtures before the Schedule Commercial Operations Date and continues to be in default for 30 (thirty) days;
- (d) the Operator commits any particular/ similar default for four times, in the Project Facility, at any time during the currency of the Agreement Period;
- (e) the Operator abandons or manifests intention to abandon the Project without prior written consent of DTTDC;
- (f) the Operator has failed to make any payment towards damages to any user or any utility within the period specified in this Agreement;
- (g) the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (h) Change in management control of the Operator company which according to DTTDC may have Material Adverse Effect towards the completion of the Project;
- (i) the Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets at any time before the Scheduled Commercial Operations Date;
- (j) the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of DTTDC, a Material Adverse Effect;

- (k) a resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by Court;
- (l) the Operator has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (m) the Operator commits a material default in complying with any other provision of this Agreement.;
- (n) the Operator **novates** and /or assigns the agreement to any third party without any prior approval from DTTDC;
- (o) The Agreement Period has ended.
- (p) Both the parties can terminate the agreement by giving a 90 days' Notice.

15.2 PROCEDURE TO ISSUE TERMINATION NOTICE

Without prejudice to any other rights or remedies which DTTDC may have under this Agreement, upon occurrence of an Operator Default, DTTDC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator; provided that before issuing the Termination Notice, DTTDC shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Operator to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

15.3 EFFECT OF TERMINATION

Upon Termination as per Clause 15.1, the Operator hereby acknowledges that no Termination Payment shall be due or payable by DTTDC. Operator acknowledges that within 10 (ten) days of termination, the Operator shall vacate the Project Facility. Operator acknowledges that once the agreement is terminated the Operator shall cease to have access to the Project Facility. No liability with respect to the assets shall devolve on DTTDC.

15.4 OTHER RIGHTS AND OBLIGATIONS OF DTTDC

Upon Termination for any reason whatsoever, DTTDC shall:

- (a) be deemed to have cancelled the Operator's access to the Project Facility and taken sole possession and control of the Project Facility and any furnishings, works made in the Project Facility till the date of termination;
- (b) take possession and control of all materials, stores and, implements on or about the Project;
- (c) be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Project Facility or any part of the Project; and
- (d) Invoke the Performance Security as part Damages, except when the Termination is due to Force Majeure Event.
- (e) In case termination is done by DTTDC not because of the default of the Operator, then in such condition DTTDC will pay for all the financial losses incurred by the Operator and the quantum of the financial losses will be decided by the Arbitrator as per Clause 18.3.
- (f) DTTDC shall have at all times right to reject any third party which has been proposed in relation to the novation of this agreement

16 DIVESTMENT OF RIGHTS AND INTEREST

16.1 DIVESTMENT REQUIREMENTS

Upon Termination, the Operator shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of all the Project Assets and the Project Facilities, free and clear of all Encumbrances, except as provided under Clause 3.4.1 of this Agreement;
- (c) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights and interest of the Operator in the Project Facilities absolutely unto the Authority or its nominee; and
- (d) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights and interest of the Operator in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

16.2 VESTING CERTIFICATE

The divestment of all rights and interest in the Project Facilities shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Operator of all of its rights and interest in the Project Facilities, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Facilities on the footing that all Divestment Requirements have been complied with by the Operator.

16.3 DIVESTMENT COSTS ETC.

- 16.3.1. The Operator shall bear and pay all costs incidental to divestment of all of the rights and interest of the Operator in the Project Facilities in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Operator in connection with such divestment shall be borne by the Authority.
- 16.3.2 In the event of any dispute relating to matters covered by and under this Article 16, the Dispute Resolution Procedure shall apply.

In the event that any of the Divestment Requirements set forth in Clause 16.1 are not fulfilled by the Operator within 15 (fifteen) days from the end of the Agreement Period, the Operator shall be required to pay to DTTDC, a penalty equivalent to the multiple of the “Penal Interest Rate” applicable on the date of Termination for each day of delay in the fulfillment of the Divestment Requirements beyond the 15 (fifteen) days specified herein.

For the purpose of this Agreement, Penal Interest Rate shall mean the rate of interest that is two times the rate of interest on the 10-year Government of India Security as on the date of Termination.

17 LIABILITY AND INDEMNITY

17.1 GENERAL INDEMNITY

The Operator will indemnify, defend, save and hold harmless DTTDC and its officers, employees, agents and consultants against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator of any of its obligations under this Agreement or any related Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of DTTDC indemnified persons.

17.2 LIABILITY OF DTTDC

DTTDC will indemnify, defend, save and hold harmless the Operator against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of:

- (a) defect in title and/or the rights of DTTDC in the Project Facility given on Concession to the Operator; and/or
- (b) breach by DTTDC of any of its obligations under this Agreement or any related Agreement, which materially and adversely affect the performance by the Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related Agreement and/or breach of its statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, employees or agents and the same shall be the liability of the Operator.

Provided that the liability of DTTDC, in any case or in any manner whatsoever, with respect to this Clause 17.2, shall be limited to the sum of Concession Fee received by DTTDC in six months before identification or occurrence of such event.

17.3 INDEMNITY BY THE OPERATOR

Without limiting the generality of Clause 17.1, the Operator shall fully indemnify, hold harmless and defend DTTDC from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Operator to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors.
- (d) Breach by the Operator of any of the obligations under this Agreement.

17.4 NO CONSEQUENTIAL CLAIMS

Notwithstanding anything to the contrary contained in this Clause 16, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

17.5 SURVIVAL ON TERMINATION

The provisions of this Article 17 shall survive Termination.

18 DISPUTE RESOLUTION

18.1 DISPUTE RESOLUTION

18.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 18.2.

18.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non- privileged records, information and data pertaining to any Dispute.

18.2 CONCILIATION

18.2.1. In the event of any Dispute between the Parties, either Party may call upon the MD & CEO of DTTDC to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 18.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 18.3.

18.3 ARBITRATION

18.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2, shall be decided by reference to Arbitral Tribunal appointed in accordance with Clause 18.3.2. Arbitration shall be held in accordance with the provisions of Arbitration and Conciliation Act, 1996 .The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

18.3.2. The Arbitral Tribunal shall consist of a panel of three arbitrators. Each Party shall appoint/nominate one arbitrator, and the third arbitrator shall be jointly appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators or failure to nominate an Arbitrator by any party, the appointment shall be made in accordance with the Arbitration and Conciliation Act,1996.

18.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Operator and DTTDC agree and undertake to carry out such Award without

delay.

18.3.4. The Operator and DTTDC agree that an Award may be enforced against the Operator and/or DTTDC, as the case may be, and their respective assets wherever situated.

18.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

19 ASSIGNMENT AND CHARGES

19.1 RESTRICTIONS ON ASSIGNMENT AND CHARGES

19.1.1. The Operator shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of DTTDC.

19.1.2. The Operator shall not assign in favour of any person any right or benefit that has not been provided to the Operator by the Authority.

19.1.3. The Operator shall neither create nor permit to subsist any Encumbrance in the Project Facility. It is further clarified that any assignment or license on the Project Facility and Project Facilities, given to the Operator, shall expire upon termination of this Agreement.

19.1.4. Restraint set forth in Sub-articles 19.1.1 and 19.1.3 above, shall not apply to:

- (a) Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Operator;
- (b) Pledges / hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project; or
- (c) Assignment of Operator's rights and benefits under this Agreement and other Project related agreements to or in favour of the Lenders, which shall include step in rights, as security for financial assistance provided by them.

Notwithstanding anything contained in Article 19 the rights of the Operator shall not be contrary or in derogation to the provisions relating to Divestment Requirements contained in Clause 16.1.

20 Disclaimer

20.1 DISCLAIMER

20.1.1. The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Tender Notice, Scope of the services to be provided, the Project Facility, Specifications and Standards set for providing quality of services, local conditions, possible demand and all information provided by DTTDC, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 8.2, DTTDC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against DTTDC in this regard.

20.1.2. The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or

relating to any of the matters set forth in Clause 20.1.1 above and hereby acknowledges and agrees that DTTDC shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under this Agreement.

21 Miscellaneous

21.1 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 Delhi shall have jurisdiction over matters arising out of or relating to this Agreement.

21.2 WAIVER OF IMMUNITY

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

21.3 DELAYED PAYMENTS

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay penalty for the period of delay calculated at a rate equal to SBI Base Rate + 2% (two per cent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

21.4 WAIVER

21.4.1. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) 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;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

21.4.2. 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 there under 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 of any variation or the relinquishment of any such right hereunder.

21.5 LIABILITY FOR INSPECTION OF DOCUMENTS

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or inspection by DTTDC of any document submitted by the Operator nor any observation or inspection of any document or operations conducted at the Project Facility hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) DTTDC shall not be liable to the Operator by reason of any review, comment, approval, observation or inspection referred to in Sub clause (a) above.

21.6 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 either Party not contained in a binding legal agreement executed by both Parties.

21.7 SURVIVAL

21.7.1. Termination shall:

- (a) not relieve the Operator or DTTDC, as the case may be, 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, 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.

21.7.2. All obligations surviving Termination shall only survive for a period of 5 (five) years following the date of such Termination.

21.8 ENTIRE AGREEMENT

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 such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

21.9 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

21.10 NO LEASE

This Agreement shall not be interpreted or construed to confer lease-hold rights on the Operator by DTTDC. It is therefore expressly clarified that this Agreement constitutes a legal license given by DTTDC to the Operator for the sole purpose of the fulfillment of the Operator's obligations as set forth in this Agreement.

21.11 NO PARTNERSHIP

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any Agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

21.12 THIRD PARTIES

This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement, unless expressly provided in this Agreement.

21.13 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon, and inure to the benefit of the Parties and their lawful successors, as per the provisions of this Agreement.

21.14 NOTICES

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending the same by prepaid registered mail addressed to the Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the purposes of this clause 21.14 and shall be deemed to be effective (in the case of registered mail) 10 calendar days after posting, (in the case of facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery.

If to DTTDC:

Address : Tel No. Fax No.

Attention :

If to the Operator:

Address :

Tel No. :

Fax :

Attention :

21.15 LANGUAGE

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

21.16 COUNTERPARTS

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

21.17 VALIDITY

This Agreement shall be valid for the entire Agreement Period

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED

THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE

SECTION – III: SCHEDULES TO THE AGREEMENT**SCHEDULE A****DETAILS OF THE PROJECT FACILITY**

Location: The project is located in the premises of Dilli Haat which is situated in Janakpuri, in West Delhi, at Virendra Nagar Lal Sai Marg, Janak Puri, New Delhi 110058



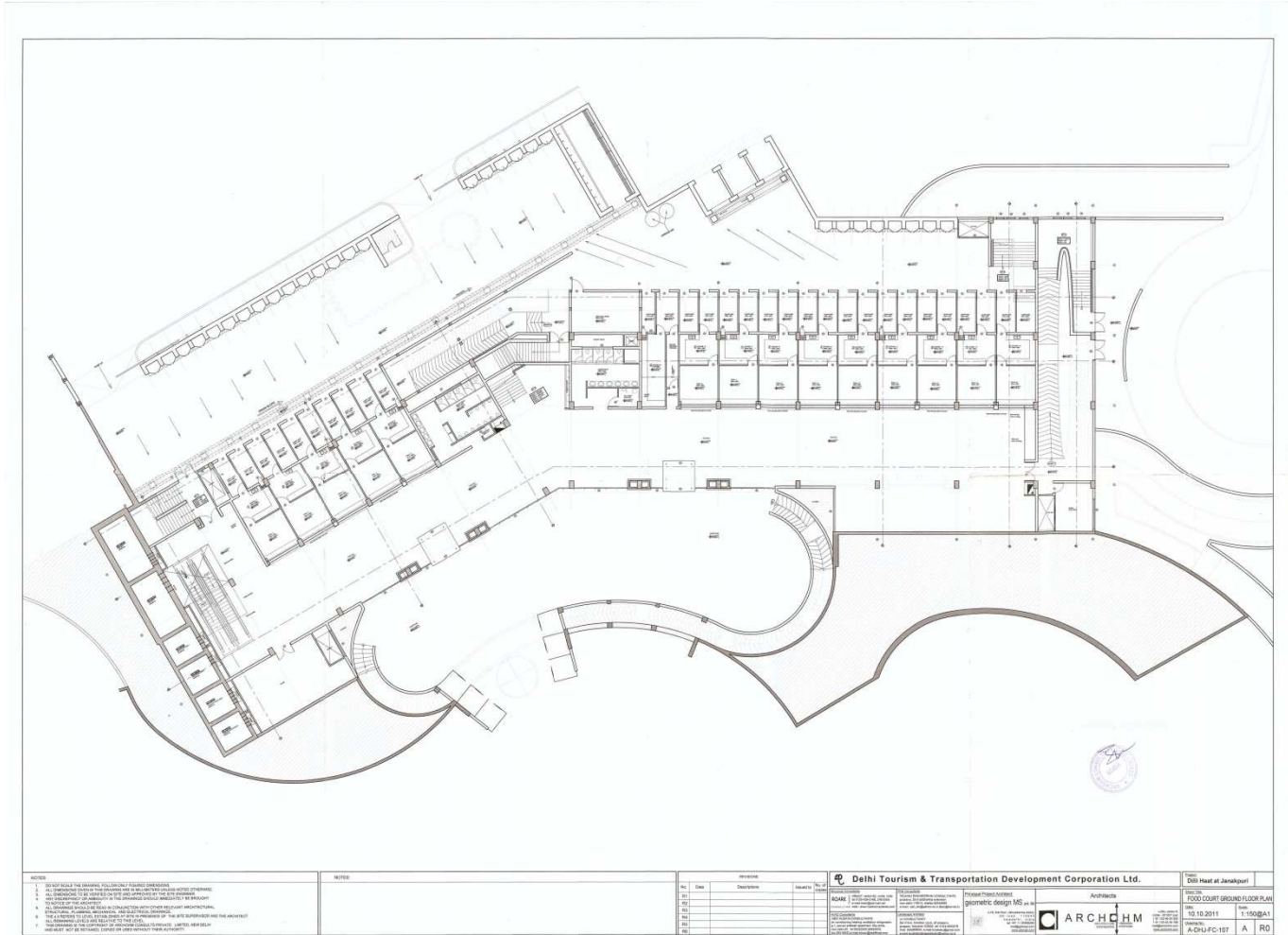


Figure 1 Food Court Ground Floor

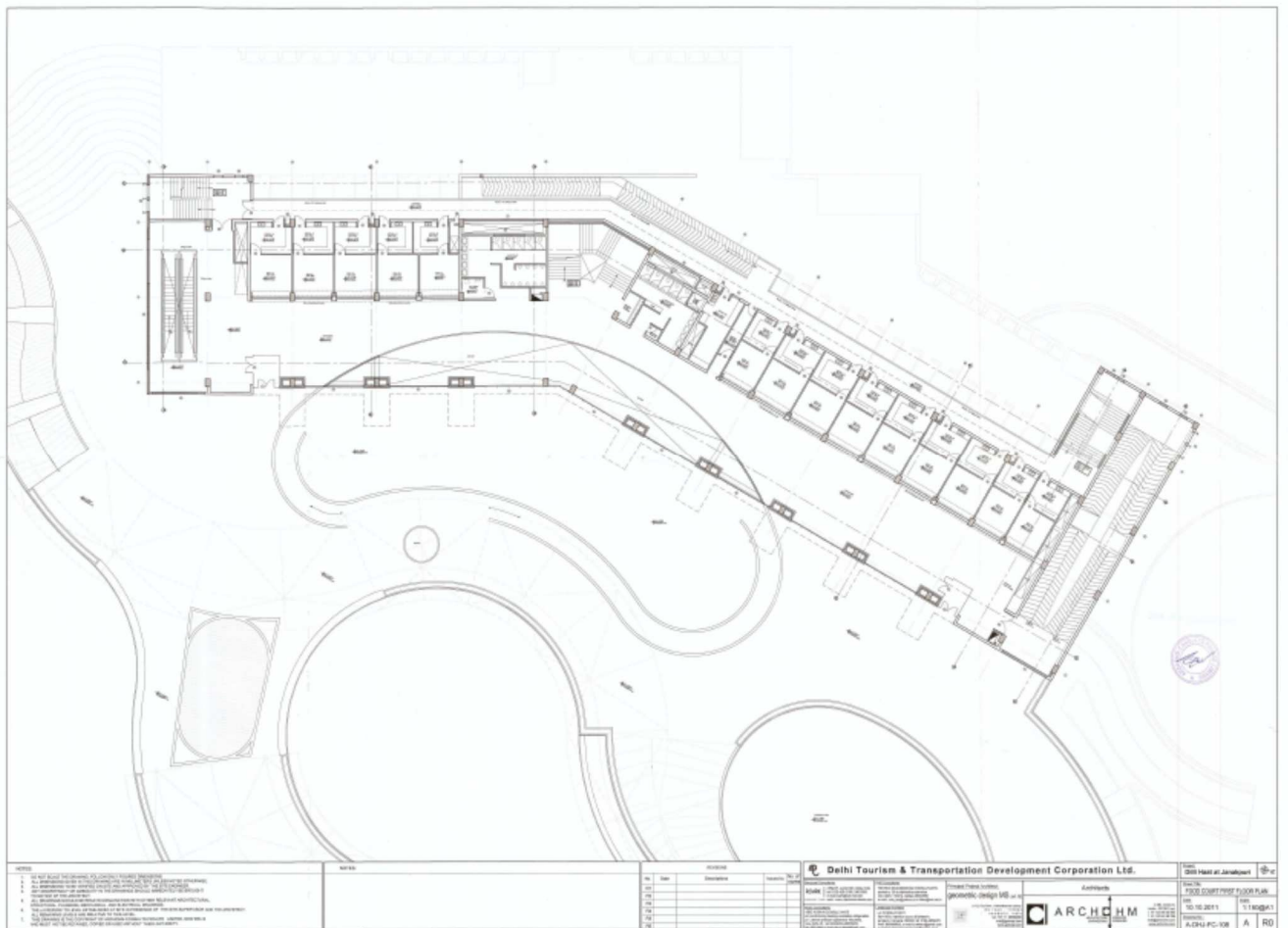


Figure 2 Food Court First Floor

The details of the project facility

- (A) 14 (Fourteen) Food Stalls with attached kitchens, court yards for each food stall, Common Dining Area and Separate One kitchen at Ground floor.**
- (B) 15 (Fifteen) Food stalls with attached kitchens & Common Dining Area at First floor and court yards for each food stall at ground floor.**
- (C) Back yard area**
- (D) The area details are attached.**

Note - In addition to above, the following areas will also be part of the premises and will be maintained by the Operator on its own cost.

- Back yard area consisting of washrooms, toilets, washing area, Dhalla/Dustbin/Khatta, stairs, ramp, Two Gates, Sewage System, internal and external Lighting etc.
- All stairs, ramps, backyard area, stores, space available in the food court building, outer and internal wall is a part of the food court premises (except, electricity rooms and other utility rooms).
- Commercial publicity on the outer walls of the food court not allowed without the permission of DTTDC.
- Maps of the Dilli Haat Janak Puri Project, food court building, ground floor and first floor, back yard, ramp etc with all details are attached.
- DTTDC will have the right to access these areas/ facility at any time for smooth operation of the project and/or premises.
- Toilet facility in both floors of food court will remain free for all during the agreement period.

Ground Floor, Food Court Appx. Area Details in Sqm.

S.No.	Stalls			Kitchen			Courtyard			Area
	L	B	Area	L	B	Area	L	B	Area	
1	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.675 x	4.000 =	6.700 Sqm	33.642
2	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.542
3	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.542
4	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.542
5	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.422
6	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.482
7	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.885 x	4.000 =	7.540 Sqm	34.422
8	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.422
9	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.422
10	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.422
11	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.422
12	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.482
13	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.885 x	4.000 =	7.540 Sqm	34.582
14	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.910 x	4.000 =	7.640 Sqm	16.548
15				2.400 x	6.895 =	16.548 Sqm				498.443
Total area = 214.025 Sqm			Total area = 179.718 Sqm			Total area = 104.700 Sqm				

Total Ground Coverage of Food Court =	1733.00 Sqm
F.F. Food court Area	1676.00 Sqm
Back Area i/c Toilet, Washing Area, Dustbin Area and Guard Room	1002.00 Sqm
Toilet & Washing Area	52.00 Sqm
Dustbin Area	32.00 Sqm
Guard Room	10.00 Sqm



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DTTDC Ltd.

First Floor Food Court Appx. Area Details in Sqm.

S.No.	Stall No.	Stalls			Kitchen			Courtyard			Total Areas
		L	B	Area	L	B	Areas	L	B	Areas	
1	16	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.42
2	17	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.42
3	18	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.870 x	4.000 =	7.480 Sqm	34.42
4	19	3.885 x	3.935 =	15.287 Sqm	3.320 x	3.000 =	9.960 Sqm	1.870 x	4.000 =	7.480 Sqm	32.73
5	20	3.715 x	3.935 =	14.619 Sqm	3.315 x	3.000 =	9.945 Sqm	1.700 x	4.000 =	6.800 Sqm	31.36
6	21	3.295 x	3.935 =	12.966 Sqm	3.295 x	3.000 =	9.885 Sqm	1.900 x	4.000 =	7.600 Sqm	30.45
7	22	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.885 x	4.000 =	7.540 Sqm	34.48
8	23	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.54
9	24	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.54
10	25	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.54
11	26	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.54
12	27	3.885 x	3.935 =	15.287 Sqm	3.885 x	3.000 =	11.655 Sqm	1.900 x	4.000 =	7.600 Sqm	34.54
13	28	3.425 x	3.935 =	13.477 Sqm	3.425 x	3.000 =	10.275 Sqm	1.885 x	4.000 =	7.540 Sqm	31.29
14	29	3.260 x	3.935 =	12.828 Sqm	3.260 x	3.000 =	9.780 Sqm	1.910 x	4.000 =	7.640 Sqm	30.25
15	30	2.500 x	4.380 =	10.950 Sqm	2.930 x	3.340 =	9.786 Sqm	1.910 x	4.000 =	7.640 Sqm	28.38
		Total area = 217.715			Total area = 164.526			Total area = 105.040			494.92

Total Ground Coverage of Food Court =

1733.83 Sqm

F.F. Food court Area

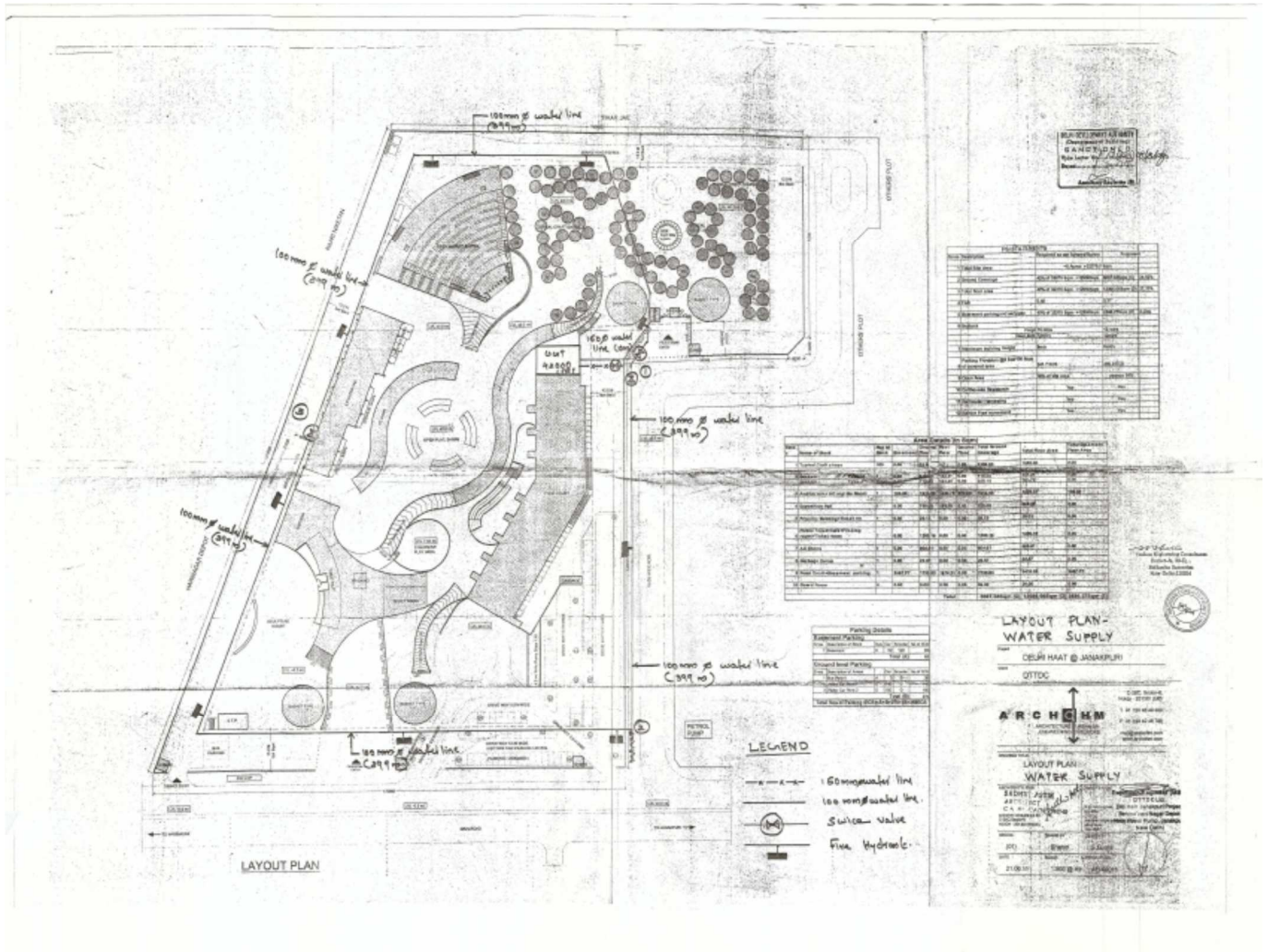
1676.23 Sqm

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DILLI HAAT JANAK PURI PROJECT MAP AND AREA DETAILS



SCHEDULE B**FORMAT FOR BANK GUARANTEE***(Performance Security)*

The General Manager,
Delhi Tourism & Transport Development Corporation New Delhi

WHEREAS:

- (A) **** (the “**Operator**”) and the General Manager, Delhi Tourism & Transport Development Corporation (the “**Authority**”) have entered into an Agreement dated _____ (the “**Agreement**”) whereby the Authority has agreed to the Operator undertaking Operation, Maintenance and Management of Food Court and Shops in Dilli Haat Janakpuri, Delhi through Public Private Partnership on Operation, Maintenance, Marketing, Management and Transfer (OMT) basis (hereinafter referred to as the “**Project**”), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Performance Security to the Authority for a sum of Rs _____ (Rupees _____) [the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Agreement Period (as defined in the Agreement).
- (C) We, ***** through our Branch at ***** (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator’s obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Chief Manager in the Delhi Tourism and Transportation Development Corporation, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Agreement Period under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect from the date of the Agreement till beyond 180 days from the end of the concession period or an earlier date if the Agreement is terminated as per any provision of the Agreement, and provided the Operator is not in breach of this Agreement. Further, the Operator will have to renew the performance security in accordance with every revision of Concession Fee as per the Agreement during the entire Agreement period. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the

Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)
(Name) (Designation) (Address)

SCHEDULE C

SPECIFICATION AND STANDARDS

Furnishings of Project Facility

The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry. The work will follow the latest standards, codes and recommendations of the Indian Bureau of Standards and/or other applicable standards, specifications, norms, codes etc. If any relevant/applicable code / standard / specification indicated are superseded by another code/ standard / specification, the later will be applicable. The operator will have to get all the details of furnishings, equipments, designs, furniture, interiors etc. be approved from DTTDC and shall be in sync with overall theme of Dilli Haat Janakpuri.

1. Fire Fighting Facilities:

1.	Operator shall provide the required firefighting equipment and facilities including fire exits, fire proof doors, etc. conforming to relevant standards and the applicable rules and regulations
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2. Facilities for Physically Challenged persons:

1.	Operator shall provide all the necessary facilities to the entry/exit, seating and movement of physically challenged persons including wheel chairs.
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3. Equipment

The equipment and component parts shall conform to the relevant standards by Bureau of Indian Standards wherever available.

SCHEDULE D
LIST OF PROHIBITED ACTIVITIES

The following activities shall be strictly prohibited in the Project Facility:

1. Gambling activities
2. Any activity that is unlawful / illegal or deemed unlawful under any Indian Act or legislation
3. Any activity which is not aligned to the concept Dilli Haat Janakpuri. The decision of the MD & CEO, DTDC shall be final in deciding such activity.

SCHEDULE E
OPERATION & MAINTENANCE REQUIREMENTS

The Operator shall, adhere to the following standards of operation and maintenance till the end of Agreement Period, on his own cost:

Cleanliness

- Operator shall ensure that the Project Facility areas are clean.
- Operator shall arrange for dustbins in Project Facility areas to minimize littering from Users of the Project Facility.
- There should be regular sweeping of the Project Facility areas multiple times in a day to ensure cleanliness.
- While cleaning the Project Facility, Operator shall make sure that the dump shall not be thrown in rest of the areas of Dilli Haat Janakpuri, except any area which is designated by DTTDC for such purpose.
- Operator shall follow adequate waste management and disposal methods for waste generated from Project Facility operations.
- Operator shall follow the following timetable for routine cleaning of the Project Facility:
 - o **Daily Tasks:** Clean lavatories, sweep and wash floors, dust, clean (open) drains, empty dustbins, scrub kitchen tables,
 - o **Weekly Tasks:** Clear cobwebs, clean doors and windows, kitchen walls,
 - o **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks,
 - o **Annual Tasks:** Whitewash, pest eradication, contract renewals, clean air-conditioning system.

Operational Requirements

- Operator shall ensure that operation of the Facility does not disturb rest of the activities in Dilli Haat Janakpuri.
- Information signage's and display boards shall be visible, legible and functional. These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of detection.
- Operator shall not damage, destruct or demolish any structure, area or asset, which is owned by DTTDC, inside or outside Project Facility areas without prior instructions and / or approval of DTTDC.
- **Electric Meter** – Operator shall check all meters once in a month time to ensure that they are functioning and are showing correct readings.
- **Standby Power Supply** – Operator shall have arrangement of standby power supply by approved Generators/ Inverter at his own cost and maintenance, which should be available 24 hours. The back side area of the food court (but within the boundary wall) can be utilized for this purpose by the operators

Maintenance requirements

- Security and safety
- Housekeeping and sanitation
- Repair, replacement and maintenance of civil, electrical, plumbing, sanitary, fire safety, drainage, sewage system, outer and inner walls, flooring, roof, backyard area etc.
- Any other work to be done which is available in the food court premises

Safety

Any fault in the electrical equipment & fittings like switches, receptacles, wiring, sanitary items etc. shall be identified, tested and repaired within 24 hours of detection to prevent accidents.

In case of any difference of opinion in any matter the decision of the MD & CEO, DTTDC will be final.