

## **Request for Proposal**

### **Draft Operation Agreement**

# **Operations & Maintenance of Bus Queue Shelters in Patna, Bihar**

September, 2014

Address:

#303, 3rd Floor, Maurya Tower,  
Maurya Lok Complex, Budh Marg, Patna-800001

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**OPERATION AGREEMENT**

THIS AGREEMENT is made on \_\_\_\_ day of \_\_\_\_\_ 2014

BETWEEN

**M/s Bihar Urban Infrastructure Development Corporation Limited**, a company incorporated

under Indian Companies Act, 1956 and having its registered office at #303, 3<sup>rd</sup>

Floor, Maurya

Tower, Maurya Lok Complex, Budh Marg, Patna - 800001 (herein after referred to as the “**Authority**” or “**BUIDCO**”) which expression shall, unless repugnant to the context include

it’s

successors and assigns) of the **First Part**;

**AND**

\_\_\_\_\_, having its registered office at \_\_\_\_\_ (herein after

referred to

as the “**Operator**” which expression shall, unless repugnant to the context include its successors

and assigns) of the **Second Part**.

The Company and the Operator to this Agreement are hereinafter individually referred to as “**Party**” and collectively as “**Parties**”.

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**WHEREAS**

A. **M/s. Bihar Urban Infrastructure Development Corporation Limited** (the “**Authority**” or “**BUIDCO**”) established in 2009 by government of Bihar, is the nodal agency responsible for promotion and execution of infrastructure projects in urban areas of Bihar. BUIDCO envisages promoting sustainable urban growth all across major cities of Bihar.

B. In order to cope with the growing requirement of city transport and development of City Bus

service system in Patna Town, need was felt for the “City Bus Stop Queue Shelters”. The Urban Development and Housing Department has planned to develop Bus Queue Shelters (BQS) at 104 locations in Patna through BUIDCO.

C. Pursuant to the above, a transparent and competitive bidding process was undertaken and a Request for Proposal dated \_\_\_\_\_ inviting bids for Operations and Maintenance of Bus Queue Shelters in Patna, Bihar was issued and proposals were received for the same.

D. M/s \_\_\_\_\_ has been selected

as Preferred Bidder by the Authority to operate and maintain the bus queue shelters at the locations set out in **Schedule A** of this Agreement on the terms and conditions as prescribed in the Request for Proposal / Letter of Intent and this Agreement.

E. The Preferred Bidder hereby acknowledges and confirms that it has undertaken a due diligence audit of all aspects of the operations, including technical and financial viability, legal due diligence, demand, revenues and expenditure and on the basis of its independent satisfaction agrees to implement the Project at its cost and expense.

F. As per the requirements of the Request for Proposal document, the Preferred Bidder /“Operator” hereby accepts the authorization and agrees to implement the Project at its cost and expense, in accordance with the terms and conditions of this Agreement.

**DEFINITIONS**

In this Agreement, unless the context otherwise requires:

“**Abandon**” or “**Abandonment**” means the cessation of bus operations under the Project, other

than as a result of an event of Force Majeure, for a continuous period of 3 (three) or more days.

“**Agreement**” means this Agreement including the recitals, annexures, schedules and attachments hereto and as may be amended, supplemented or modified in accordance with the

provisions hereof.

“**Applicable Laws**” means any statute, ordinance, notification, rule, regulation, judgment, order,

decree, bye-law, approval, directive, guideline, policy, requirement or other Government

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restriction or any similar form of decision of, or determination by, or any interpretation or having the force of law in the Republic of India and the State of Bihar, by any Competent Authority or instrumentality thereof, whether in effect as of the date of this Agreement or thereafter.

“**Authorisation Period**” means the period as mentioned in Article I of this Agreement.

“**Authorisation**” means the rights granted by the Company to the Operator under Article I, subject to the terms and conditions of this Agreement.

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

(a) enactment of any new Central/State Laws or Directives;

(b) the repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Central/State Laws or Directive;

(c) the change in interpretation or application of any Applicable Law;

(d) the imposition of a requirement for a Clearance(s) not required on the date of this Agreement;

(e) after the date of grant of any Clearance(s), a change in the terms and conditions attaching to such Clearance(s) or the attachment of any new terms and conditions to a Clearance(s); or (f) any Clearance(s) previously granted ceasing to remain in full force and effect, though there

is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application in respect thereof having been duly made in good time.

“**Clearance**” means any consent, license, approval, permit, exemption or other authorization of

whatsoever nature which is required to be granted by any Competent Authority, and/or any registration or filing of application with a Competent Authority from time to time, to undertake,

implement and operate or in connection with the Project.

“**Competent Authority**” means Government of India (GoI), Government of Bihar (GoB) or any

Government department, commission, board, body, bureau, agency, authority, instrumentality,

court or other judicial or administrative body, central, state, or local having jurisdiction over the

Project, the Operator, the Project Assets, and the Works or the performance of all or any of the

services, obligations or covenants of Operator under or pursuant to this Agreement or any portion thereof.

“**Compliance Date**” is defined under Article 2.3 (e).

“**Conditions Precedent**” means the conditions set out in Article II.

“**Cure Period**” means the period as specified in Article X, as long as the same is not in

contradiction with any other rules framed by a Competent Authority.

**“Directive”** means any policy, present or future, requirement, instruction, direction, order, regulation or rule of any Competent Authority which is legally binding or which should customarily be observed by a reasonable and prudent owner, designer, contractor, operator or

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user involved in Project or any modifications, extension or replacement thereof as applicable from time to time.

**“Event of Default”** means the Operator’s Event of Default or the Authority’s Event of Default,

as the context may require.

**“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st

March of the next calendar year.

**“Force Majeure”** has the meaning as specified in Article VIII.

**“GoB”** means the Government of the State of Bihar, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the GoB

of the State of Bihar and its administrators, successors and permitted assigns.

**“GoI”** means the Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of

India.

**“Material Adverse Effect”** means circumstances, which:

(a) renders any right vested in a Party by the terms of this Agreement ineffective or renders the

exercise thereof commercially unviable or

(b) adversely affects the ability of any Party to observe and perform in a timely manner its obligations under this Agreement

(c) adversely affects the legality, validity, binding nature or enforceability of this Agreement.

**“Material Breach”** means a breach of the obligations or terms and conditions of this Agreement

by a Party, which has a Material Adverse Effect.

**“Performance Security”** means the bank guarantee or demand draft to be provided by the Operator in terms of Article V.

**“Party”** means any of the Parties to this Agreement.

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

**“Preferred Bidder”** means the Person that has been successful in the bidding process for the Project

**“Project”** means to operate, and maintain Bus Queue Shelters in Patna, Bihar as per this Agreement, including performance of other identified & permitted activities connected therewith

along with bearing of expenses thereof, and the levy, collection, appropriation of charges from

the advertisements at the Bus Queue Shelters as per this Agreement.

**“Prudent Industry Practices”** means (in the absence of any express provision in the Technical

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Specifications or Performance Standards) the methods and standards, on any particular issue of operation and maintenance of the passenger bus services (i) of any Competent Authority, and (ii) as would be followed by a prudent and experienced operator, in a project of similar nature as per the generally accepted standards of quality and performance.

#### **INTERPRETATIONS**

- (a) The headings in this Agreement are for convenience only and shall not be deemed to be part of this Agreement or be taken into consideration in the interpretation or construction hereof.
- (b) Words denoting the singular only also include the plural and vice versa where the context requires and words denoting the masculine shall be construed as including the feminine where the context so requires.
- (c) References to any enactment (including any subordinate legislation) are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing the same.
- (d) The Recitals shall be taken into account in the interpretation of this Agreement.
- (e) The Schedules and Appendices attached to this Agreement form an integral part of the terms and conditions of this Agreement.
- (f) The terms of this Operation Agreement shall prevail over any other Agreement / document in the event of any inconsistency in the terms thereof.
- (g) Unless otherwise stated any reference to “include” shall mean “include without limitation” and any reference to “including” shall mean “including without limitation”.
- (h) Nothing in this agreement shall be interpreted in the manner that is in contravention with the provisions of The Motor Vehicles Act, 1988 (hence forth referred to as the Act) as well as the rules framed there under

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**ARTICLE I - AUTHORIZATION****1.1 Grant of Authorization**

The Company hereby grants to the Operator and the Operator hereby accepts, in accordance with

the terms and conditions of this Agreement, the right to:

(a) Operate, and maintain Bus Queue Shelters in Patna, Bihar at the locations specified in **Schedule A**; and

(b) Collect Advertising charges for display of advertisements at the Bus Queue Shelters.

**1.2 Authorisation Period**

(a) The Authorisation Period shall normally commence from the Compliance Date and shall be

for a period of seven (7) years from such date or up to the date of earlier termination.

(b) The Authorisation Period may be extended based on mutual agreement at such terms and conditions as may be mutually agreed.

(c) Authorisation Period could be extended due to Force Majeure.

(d) No extensions of Authorisation Period shall be allowed due to increase in operating costs, cost of labour, material or other input costs of the Operator.

(e) For any extension, the Authority shall consult Operator in an endeavour to reach an agreement.



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**ARTICLE II - CONDITIONS PRECEDENT**

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent relating to the other Party (the “Conditions Precedent”)

**2.1 Conditions Precedent to be satisfied by Operator at its own cost:**

(a) To obtain all clearances, at its cost and expense, required for display of advertisements, including completion of registration, and payments to Competent Authority as per the provisions of Applicable Laws. The operator shall have to also bear all other Costs/imposts be it Tax, Fee or Cess that all already payable or may become payable at a later date.

(b) The Operator shall have provided to the Company in full Performance Security as set forth in Article V of this Agreement.

(c) Operator shall have provided the Company certified true copies of the Operator’s constitutional documents and board resolutions authorising the execution, delivery and performance by the Operator of this Agreement.

**2.2****Conditions Precedent to be satisfied by the Authority at its own cost:**

(a) To construct or get constructed bus queue shelters at the locations specified in Schedule A.

**2.3 Satisfaction of Conditions Precedent**

(a) Each Party hereto shall use all reasonable endeavours to procure the satisfaction in full of its respective Conditions Precedent set out above within 30 days of this Agreement at its respective cost and expense.

(b) Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance with Conditions Precedent (“the **Certificate of Compliance**”).

(c) A Party may at any time at its sole discretion waive fully or partially any of the Conditions Precedent of the other Party.

(d) A waiver of any Condition Precedent by a Party shall not be construed as a waiver by that Party of any requirements set forth in that Condition Precedent.

(e) The later of the date of issue of Certificate of Compliance to the Company or the Operator shall be the **Compliance Date**, whereupon the obligations of the Parties under this Agreement shall commence

**2.4 Non-fulfilment of Conditions Precedent**

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(a) In the event that any of the conditions precedent relating to a Party has not been fulfilled within 30 days of the signing of this Agreement and the other Party has not waived them fully or partially, the other Party may, notwithstanding anything to the contrary in this Agreement, terminate this Agreement with immediate effect.

(b) In the event the Company has terminated this Agreement under Article 2.4 (a) due to non-fulfilment of the Operator's Conditions Precedent, the Company shall not be liable in any manner whatsoever to the Operator or its agents and employees and the Operator shall be liable for forfeiture of its Performance Security.

(c) In the event this Agreement is terminated by the Operator under Article 2.4 (a) due to non-fulfilment of the Company's Conditions Precedent and the Operator is not in any Material Breach of this Agreement, the Company shall refund to the Operator the Performance Security and Security Deposit.

(d) Instead of terminating this Agreement as provided in Article 2.4 (a) above, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement within the provisions of the Act and the rules framed there under.

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**ARTICLE III - CHARGES**

**3.1 Advertisement Charges**

(a) The Operator may collect Charges from the advertisers for the use of its bus queue shelters for display of advertisements.

(b) No advertisements should be displayed outside the space specified for display of advertisements at the Bus Queue Shelters.

(c) Penalty would be applicable if the displayed advertisements contravene the standards laid out in this Agreement.

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**ARTICLE IV - OBLIGATIONS AND UNDERTAKINGS****4.1. Obligations of the Operator:****(a) During the Authorisation Period the Operator shall at its cost:**

(i)

Operate and maintain the bus queue shelters as per the terms and conditions of this agreement subject to Minimum Performance Standards specified in Schedule B.

(ii)

Submit MIS containing details of operational performance, revenue and expenditure details, and incidents, etc. as per the format and frequency specified in Schedule C.

(iii) Incur expenditure on electricity, spare parts, repairs, maintenance, and salary of staff and payment to other contractors / parties, etc. and any other expenditure for operation and maintenance of bus queue shelters.

(iv) The power supply connections would have to be taken by the Operator in its own name, and the Operator will be responsible for all payments related to the same including electricity bill payments. The Operator will have to ensure that no payments are due on account of electricity charges to any party during the subsistence of this Agreement.

(v)

To provide and display the Bus Information on specified location on the bus queue shelter in a specified nature & format as may be approved by the Authority.

(vi) To maintain any installations for the purpose of Intelligent Traffic System being done on the Bus Queue Shelters by any Competent Authority.

**(b)****Other Obligations of the Operator:**

(i)

The Operator shall pay a Premium of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) annually as per the financial quote to the Authority in consideration of Authorisation as per the terms and conditions specified in this Agreement. The Premium shall be subject to annual escalation of 5%. The Premium shall be paid in advance within 15 days of the Compliance Date for the first year and within 15 days of the anniversary of the Compliance Date for the subsequent year. If the Premium is not paid within the period specified above, penal interest at the rate of 18% will be applicable on the outstanding Premium amount on the Operator for the duration the payment remains outstanding. Operator's failure to make the payments within three months of the Compliance Date shall be an "**Operator Event of Default**".

(ii)

The Operator would be responsible for general maintenance and cleanliness of installations added as part of ITS project. However replacement/repair of the installation would be done by BUIDCo or its appointed agencies.

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(iii) The Operator shall ensure insurance cover of Project assets including any installations for Intelligent Traffic System (ITS) on the Bus Queue Shelters as per Prudent Industry Practices during the Authorisation Period and provide proof of the same to the Company.

(iv) The Operator shall indemnify the Company against any claims arising out of improper/ illegal operations and/ or due to improper/ illegal/ negligent behaviour of its employees.

(v)

All the personnel's employed by the Operator or its contractors directly or indirectly in connection with or related to any activity connected with the operation or maintenance of the bus queue shelters shall be the sole responsibility of the Operator. The Operator shall be responsible to ensure the due and proper compliance of all the applicable labour and industrial laws with respect to the activities and persons employed by him directly or indirectly for the operation/or maintenance of the bus queue shelters including payment of their wages/ compensation or other employment benefits and in no way they shall in any manner be construed to be in the employment of the Authority.

#### **4.2 Obligations of the Authority**

(a) Authority shall, in due course of time, undertake all reasonable efforts required for setting up of a system of real-time tracking of bus movements, and flashing of bus information at the bus stops.

(b) Conduct regular as well as surprise checks to ensure compliance with Performance Standards by the Operator.

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**ARTICLE V - PERFORMANCE SECURITY****PERFORMANCE SECURITY****5.1 Performance Security**

The Operator shall provide to the Authority, Performance Security in the form of an unconditional bank guarantee or demand draft, for an amount equivalent to Rs.

\_\_\_\_\_ (Rupees \_\_\_\_\_ only).

In case bank guarantee is provided as Performance Security for the first year of Authorization, the Operator shall thereafter renew the bank guarantee for the succeeding years of Authorisation till the end of the Authorisation Period.

Provided further that the bank guarantee for the last year of Authorisation shall remain valid till a period of three months beyond the end of the Authorisation Period

**5.2 Renewal of Bank Guarantee for Performance Security**

The Operator shall, not less than 30 days before the expiry of the bank guarantee for any year of Authorisation, provide the Authority a substitute bank guarantee, which commences on the expiration of the existing bank guarantee. If the Operator fails to provide a substitute bank guarantee by the date required in this Article, the Authority shall be entitled to invoke the existing bank guarantee and retain and appropriate it. The Operator's failure to provide bank guarantee as aforesaid shall be an **Operator Event of Default**.

**5.3 Return of Bank Guarantee for Performance Security**

Subject to Article 5.2, the bank guarantee shall be returned to the Operator at the end of one month after expiry of the same.

**5.4 Forfeiture of Performance Security**

In the event of the Operator's Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or under Applicable Law, be entitled to invoke, retain and appropriate the Performance Security.

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**ARTICLE VI - MONITORING AND INSPECTION****6.1 Monitoring:**

The Authority, either by itself or through its appointed agency(ies), shall have the right to monitor and review the performance of Operator. This review shall inter alia include the following:

(i)

Compliance with the Minimum Performance Standards specified in Schedule B.

(ii)

Daily level of cleanliness of the bus queue shelters

(iii) Regular maintenance of bus queue shelters

(iv) Regular repair of bus queue shelters

(v)

Behaviour of staff

(vi) Review and action on matter related to complaints

**6.2 Performance Standards and Penalties:**

The performance standards specified in **Schedule – B** shall be adhered to by the Operator except

for in circumstances that are beyond the reasonable control of Operator, the final decision of which shall be made by the Authority. In case of foreseeable events, e.g. holidays, bandhs, political events, traffic diversions, road construction work, etc. which may prevent the Operator

from meeting the Performance Standards, Operator shall apply to the Authority with relevant details and reasons to seek relief from meeting the Performance Standards for the specified period for the specific Bus Queue Shelters. After Authority's approval, the Operator shall be excused from meeting the Performance Standards for the specific Bus Queue Shelters for a period which Authority deems fit. In the event of Operator not meeting the performance standard, the indicated penalties shall be payable to the Authority besides any penalties levied and any action that may be taken by any Competent Authority under applicable laws from time to time.

Consistent failure to meet the performance standards having a Material Adverse Effect shall constitute an "**Operator Event of Default**".

The penalties imposed on the Operator in pursuance of the provisions of this clause shall be payable by the Operator to the Authority within a period of 30 days of the issue of the notice by

the Authority or such period as may be prescribed in the notice in this behalf or at the sole option

and discretion of the Authority, the same may be adjusted from the Performance Security of the

Operator. The Operator will be required to replenish the Performance Security by way of providing additional/new demand draft/bank guarantee within a period of one month of deduction from the Performance Security. Operator's failure to replenish the Performance Security as specified above shall be an "**Operator Event of Default**".

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## **ARTICLE VII - REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and Warranties of Parties**

Each party hereto represents and warrants that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (d) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (e) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (f) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

### **7.2 Additional Representations and Warranties of the Operator**

In addition, the Operator represents and warrants to the Authority that:

- (a) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Operator's Memorandum and Articles of Association, Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (c) 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 Competent Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement;



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(d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which in the aggregate have or may have Material Adverse Effect;

(e) No representation or warranty by the Operator contained herein or in any other document furnished by it to the Company or to any Competent Authority in relation to Clearances or otherwise 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;

(f) Each Consortium Member/the Preferred Bidder was and is duly organised and existing under the laws and has full power and authority to consent to and has consented to the Operator entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed under sub-clauses (a) to (f), comes to the knowledge of the Operator, during the Authorization Period, the outcome of which may result in the breach of or constitute a default of the Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement, the Operator shall immediately intimate the same to the Company;

(g) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to

any person by way of commission or otherwise for securing and/or execution of this Agreement or for influencing or attempting to influence any officer or employee of the Company.

### **7.3 Disclaimer**

(a) Without prejudice to any express provision contained in this Agreement, 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 Project, the legal framework and the technical and financial aspects of the Project, Scope of Work, the Specifications and Standards, all the information and documents provided by the Company, its consultants or any Competent Authority, the market and demand conditions, the potential of passenger traffic for the proposed bus service, traffic growth trends and forecasts and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Operator's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Operator in the course of performance of its obligations hereunder.

(b) The Operator further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Company, any Competent Authority and their consultants shall not be liable for the same in any manner whatsoever to the Operator or Persons claiming through or under the Operator.

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(c) The Operator accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Company to the Operator or its consultants or any Competent Authority and that it shall accept and act thereon at its own cost and risk.

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**ARTICLE VIII - EVENTS OF DEFAULT AND FORCE MAJEURE****8.1 Operator's Event of Default:**

(a) Each of the following events or circumstances, to the extent not caused by a default of the Company or Force Majeure, shall be considered for the purposes of this Agreement as Events of Default of the Operator ("**Operator's Event of Default**") which, if not remedied within the time period permitted, if any, shall provide the Company, with the right to terminate this Agreement in accordance with Article X hereof:

- i. In case of any breach of the provisions of The Motor Vehicles Act, 1988 and the rules framed thereunder as well as the conditions of the Permit;
- ii. Material Breach of its obligations under the Agreement, including without limitation the operation and maintenance of the passenger buses in terms hereof, which materially adversely affects the Company or the Project and such breach is not remedied suo moto or within 10 days of receipt of written notice from the Company, specifying such breach and requiring the Operator to remedy the same;
- iii. Such events as have been specified in Article 5.4, Article 6.2 and elsewhere as Operator's Events of Default under the provisions of this Agreement;
- iv. a breach of any express representation or warranty by the Operator which has a Material Adverse Effect and such breach is not remedied within 30 days of receipt of written notice from the Company specifying such breach and requiring the Operator to remedy the same;
- v. any actions or omissions attributable to Operator, including causing delay on the part of the Company to discharge any of its obligations, that has a Material Adverse Effect on the implementation or operation of the Project;
- vi. repudiation of this Agreement or Abandonment of the Project by the Operator;
- vii. failure to make payment of authorization fee including any interest thereon to Company for a period of more than three months from the date on which such payment or interest had become due and payable.

(b) Upon the happening of any of the above events the Company's obligations under this Agreement shall be suspended and the Company shall have no liability hereunder during any of the foregoing remedial periods while the relevant event remains unremedied.

**8.2 Authority's Event of Default:**

(a) Each of the following events or circumstances, to the extent not caused by a default of the Operator or Force Majeure, shall be considered for the purposes of this Agreement as events of default of the Authority (the "**Authority's Event of Default**") which, if not remedied within the time period permitted shall provide the Operator with the right to terminate this Agreement in accordance with Article X hereof

- i) Material Breach by the Authority of its obligations under this Agreement which is not

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remedied within 30 days of receipt of written notice from the Operator specifying such breach and requiring the Authority to remedy the same;

ii) any change in the policies of the Authority which has a Material Adverse Effect on the Operator's ability to comply with this Agreement;

iii) Repudiation of this Agreement by the Authority otherwise than in accordance with this Agreement.

(b) The Operator obligations under this Agreement shall be suspended and the Operator shall have no liability hereunder during any of the foregoing remedial periods while the relevant event remains is not remedied.

### **8.3 Force Majeure (Force Majeure Events):**

A Force Majeure event means any event or circumstance or a combination of events and circumstances, or consequences thereof which effect or prevent the Party claiming Force Majeure from performing its obligation in whole or in part, under this Agreement and which event or circumstance (a) is beyond the reasonable control and not arising out of the fault of the affected Party, (b) affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill, care and (c) has a Material Adverse Effect. Such events shall mean and include:

#### **(A) Non Political Events**

(a)

Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the Project.

(b)

Radioactive contamination, ionizing radiation.

(c)

Epidemic, famine.

(d)

An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion.

(e)

Industry wide or state wide or India wide strikes or industrial action or disturbances, Bandhs, etc. which has a Material Adverse Effect and which are not on account of acts of the Operator, its subcontractors or persons claiming through or under it; or

(f)

Any judgment or order of any court of competent jurisdiction or statutory authority in India made against any of the Parties in any proceedings (which are non-collusive and duly prosecuted by the Party) for reasons other than failure of the Party or of any Person claiming through or under it to comply with any

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Applicable Law or terms of Clearances or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement

(g)

Any event or circumstances of a nature analogous to any of the foregoing.

**(B)**

**Political Events**

(a)

A Change in Law to which the provisions of Article 12.2 cannot be applied;

(b)

Expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or rights of the Operator relating thereto; provided the same has not resulted from an act or default of the Operator or any Person claiming through or under it.

(c)

Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Clearance required by the Operator to perform his obligations as per this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's (i) inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits; or (ii) breach or failure in complying with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Clearances, any judgement or order or Directive of any Competent Authority or of any contract to which the Operator is bound.

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**ARTICLE IX - FINANCIAL AND PROJECT REPORTING BY OPERATOR**

**9.1. Information Sharing**

The Operator agrees to provide to the Authority any such information available with the Operator, which may be required by the Authority for effective monitoring of the performance of the Project.

**9.2. MIS Reporting**

The Operator should provide the required information to the Authority as per the MIS format and frequency specified in Schedule C.

**9.3. Quarterly Review**

A Quarterly meeting should be held, within a month from the end of the quarter, between senior personnel from Operator and the Authority to review the performance of the Operator during the previous quarter. Operational issues impeding the project if any should be discussed in the review meeting and both Operator and the Authority should ensure, on a best effort basis that the issues are resolved on priority.

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**ARTICLE X - TERMINATION****10.1 Termination Procedure**

- (a) Upon the expiration of the respective remedial period set forth in Article VIII, the Company or the Operator, as the case may be, may issue a Notice of Intention to Terminate. Such notice shall specify in reasonable detail the Operator's Event of Default or the Company's Events of Default, as the case may be, giving rise to the Notice of Intention to Terminate.
- (b) Following the issuance of a Notice of Intention to Terminate, the Parties shall consult for a period of 30 days or such longer period as the Parties may agree to in writing (Cure Period), as to what steps shall be taken in order to prevent the termination of this Agreement and/or to cure the relevant Event of Default.
- (c) Upon the expiration of the Cure Period under this Article and unless the Parties shall have agreed otherwise, or unless the underlying causes giving rise to the Notice of Intention to Terminate has been cured, the Party that gave the Notice of Intention to Terminate may terminate this Agreement by delivering a Notice of Termination to the other Party whereupon this Agreement shall immediately terminate, subject to the rights of the Parties set forth in this Agreement.

**10.2 Terminal Payment to Operator for the Company Event of Default**

In the event the Operator terminates this Agreement for the Company's Event of Default, the Company shall:

- (a) Return to the Operator the Performance Security, after adjusting any outstanding dues.  
(b) Return to the Operator the Security Deposit, after adjusting any outstanding dues.

**10.3 Terminal Payment to the Company for an Operator Event of Default**

Upon the termination of this Agreement due to Operator's Event of Default, the Company shall be forthwith entitled to without any further notice to the Operator, to take such action(s) as it shall deem fit against the Operator including the following:

- (a) Forfeiture of Performance Security by the Company.  
(b) No compensation of any nature whatsoever shall be payable by the Company to the Operator.

**10.4 Termination Following Force Majeure**

- (a) In the event Force Majeure continuously impedes or prevents a Party's performance for longer than 30 days from the date of commencement of such Force Majeure event, notwithstanding the suspension of the obligations of the Parties, they shall decide by mutual consent through consultation either the terms upon which to continue the

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performance of this Agreement or to terminate this Agreement. If the Parties are unable to agree on such terms or to terminate the Agreement by mutual consent within 120 days from the date of the commencement of such Force Majeure event, either Party may issue a Notice of Intention to Terminate.

(b) If, following Force Majeure due to non-political events as defined in Article 8.3, Party elects to terminate this Agreement, the Company shall return to the Operator the Performance Security and Security Deposit after adjusting any outstanding dues from the Operator, but the Company shall not be liable to pay any compensation to the Operator.

(c) If, following Force Majeure due to political events as defined in Article 8.3, Party elects to terminate this Agreement, the Company shall:

- 

Return to the Operator the Performance Security, after adjusting any outstanding dues.

- 

Return to the Operator the Security Deposit, after adjusting any outstanding dues.



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**ARTICLE XI - LIABILITY AND INDEMNIFICATION****11.1 Liability of Operator**

Notwithstanding anything to the contrary contained in this Agreement:

(a) In addition to the Operator's liability and obligations and the Company's remedies provided

elsewhere in this Agreement, the Operator shall be solely responsible for any loss of or damage to the Project buses; damage to property of persons; death or injury to persons; any other liabilities of the operator; and any liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Company during the Authorisation Period:

(i)

resulting from any act, event, omission, negligence or default of the Operator or any other Person claiming through or under it.

(ii)

in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Operator or any other Person claiming through or under it, or non-performance of any term, condition, covenant or obligation to be performed by the Operator under this Agreement.

(b) The Operator shall be fully and solely liable for all works, contracts, dealings and activities in relation to the financing, procurement, operation, running and maintenance of buses under the Project.

**11.2 Indemnification**

Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Operator agrees to indemnify and hold harmless the Company and its shareholders, managers, officers, directors, employees, advisors and consultants promptly upon

demand at any time and from time to time, from and against any and all losses, claims, damages,

liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "**Losses**") to which such

indemnified persons may become subject, insofar as such Losses directly arise out of, in any way

relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Operator or (ii) the failure by Operator to fulfil any agreement, covenant or condition

contained in this Agreement, including without limitation the breach of any terms and conditions

of this Agreement by any employee or agent of the Operator or Person claiming through or under

the Concessionaire or (iii) any claim or proceeding by any third party against the Company arising out of any act, deed or omission by the Operator. For the avoidance of doubt, indemnification of Losses pursuant to this Article shall be made in an amount or amounts sufficient to restore each of the indemnified parties to the financial position it would have been in

had the Losses not occurred.

**11.3 Survival**

(a) The provisions of this Article XI shall survive the expiry or prior termination of this Agreement

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**ARTICLE XII - OTHER CONDITIONS****12.1 Confidentiality**

Each Party hereto agrees that it shall not divulge any trade, commercial or technical secrets or confidential matters relating to the other Party or Project to a Third Party save and except necessary for implementing the Project or as required under Law. The Operator shall be bound by the provisions of this Article XII ever after Authorisation Period.

The provision of this Article shall not apply to:

- (i) Any information in the public domain otherwise than by breach of this Agreement
- (ii) Information in the possession of the receiving Party thereof before divulgence as aforesaid and which was not obtained under any obligation of confidentiality; and
- (iii) Information obtained from a Third Party that is free to divulge the same and which is not obtained under any obligation of confidentiality.

**12.2 Changes in Law:**

In the event, a Change in Law results in a Material Adverse Effect, either Party may by notice in writing to the other Party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Parties shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure.

**12.3****Dispute Resolution Procedure****12.3.1 Amicable Settlement**

In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, the Company and the Operator shall appoint one representative each, who is not involved in the day-to-day operations relating to the Project to meet promptly in an effort to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives. Each Party shall bear all the expenses of its representative. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the consultative process.

**12.3.2 Arbitration****(a) Arbitrators**

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In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/or settlement by the representatives, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration proceeding shall be decided by a sole arbitrator and parties agree that for the purpose of this Agreement Principal Secretary Transport, Government of Bihar shall act as a sole arbitrator. In the event, if any of the parties to the arbitral proceeding is not satisfied by the award given by the sole arbitrator, the concerned party may prefer an appeal against the award to the Chief Secretary, Government of Bihar who shall act as the appellate authority. The decision of the appellate authority shall be final and binding on all the parties.

**(b) Place of Arbitration**

The place of arbitration shall be Patna but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

**(c) English Language**

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

**(d) Procedure**

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

**(e) Enforcement of Award**

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

**(f) Fees and Expenses**

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

**12.3.3 Performance during Dispute Resolution**

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Pending the submission of a dispute, controversy or claim for arbitration and thereafter until the final decision of the arbitration, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such decision.

**12.4. Survival**

The dispute resolution provisions contained in this Article XII shall survive the termination of this Agreement.

**12.5. Amendments**

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**12.6. No Waiver; Remedies**

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by Applicable Law.

**12.7. Severance of Terms**

If any provisions of this Agreement are declared to be invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, un-enforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement, which shall continue in full force and effect.

**12.8. Language**

All notices, certificates, correspondence or other communications under or in connection with this Agreement, any Project Agreement or the Project shall be in English. In the event of any dispute, the Project Agreement in English will prevail.

**12.9. Notices**

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail (followed by signed copy) or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

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**Operator {name and address}**

**Company {name and address}**

or such other address, telex number, or facsimile number as may be notified by that Party to any other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

**12.10. Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of India and the courts of Bihar shall have exclusive jurisdiction on all the matters arising out of this agreement.

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**IN WITNESS WHEREOF** this Agreement has been executed by the duly authorised representatives of the Parties hereto on the day and year first above written.

For and on behalf of the Company

[NAME]

[DESIGNATION]

For and on behalf of operator

[NAME]

[DESIGNATION]

The Company Witnesses :

1.

2.

The Operator's Witnesses.

1.

2.

# Schedules



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**SCHEDULE A – TENTATIVE LOCATION OF BUS QUEUE SHELTERS****No. Location Name****No. Location Name**

1

Gandhi Maidan

53 A N College

2

Patna Junction

54 New Patliputra Colony

3

Mithapur

55 Patliputra Golamber

4

B. D. Evening College

56 IIT Patna

5

Sanjay Gandhi Stadium

57 Telephone Exchange

6

Chitkohra

58 Shiv Mandir

7

Anisabad

59 Bakri Bazar

8

Nai Masjid

60 Mithapur Bus Stand

9

Gandhi Maidan

61 Lohia Nagar

10 Kala Mandir

62 Ashok Nagar

11 Patna Junction

63 Ram Krishna Nagar

12 GPO

64 Vijay Nagar

13 R Block

65 Hanuman Nagar

14 Satmurti

66 Transport Nagar

15 Secretariat

67 Pahari

16 Nagar Nigam

68 Jakriyapur  
17 Vikas Bhawan  
69 Jakripur Ext.  
18 Lokayukta Office  
70 Agam Kuan  
19 Public Service Commission Office  
71 Apollo Hospital  
20 Green Park  
72 Kumrahar Park  
21 Golf Club  
73 Kumrahar  
22 IT College  
74 Chitragupta nagar  
23 Hai Medical Institute  
75 Bahadurpur  
24 Maurya Path  
76 Patna College of Commerce  
25 Raja Bazar  
77 Rajendra Nagar Terminal  
26 Ashiana Nagar (Phase I)  
78 Patrakar Nagar  
27 Rajbanshi Nagar  
79 Kankarbagh  
28 Rajiv Nagar  
80 Chiraiyatand Flyover  
29 Jai Prakash Nagar  
81 Exhibition Road  
30 Xavier Training Institute  
82 B N College  
31 Kurji Mod  
83 Civil Court  
32 FCI Godown  
84 Gandhi Maidan  
33 Digha  
85 Patna Junction  
34 Patliputra Colony  
86 Mithapur  
35 LCT Ghat  
87 Anisabad  
36 Rajapur  
88 Patna Junction

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- 37 Bans Ghat
- 89 Secretariat
- 38 Golghar
- 90 Public Service Commission Office
- 39 Muradpur
- 91 Hai Medical Institute
- 40 Patna Medical College
- 92 FCI Godown
- 41 Patna University
- 93 LCT Ghat
- 42 NIT Patna
- 94 Muradpur
- 43 Patna Law College
- 95 Patna University
- 44 Mandai
- 96 Tripolia Hospital
- 45 Tripolia Hospital
- 97 Shiv Mandir
- 46 Bhuveshnari Bhawan
- 98 Mithapur Bus Stand
- 47 Gai Ghat
- 99 Vijay Nagar
- 48 Jal Parishad Office
- 100 Jakriyapur
- 49 Income Tax Circle
- 101 Kumrahrar Park
- 50 High Court
- 102 Patna College of Commerce
- 51 Mount Carmel
- 103 Chiraiyatand Flyover
- 52 Lakshmi Complex
- 104 Sanjay Gandhi Stadium

Note:

1. The list of locations is indicative and might change at the discretion of Authority.
2. The total number of BQS installation can increase or decrease at the discretion of Authority, and payments of Premium will have to be made on pro-rata basis depending on the total number of BQS handed over to the Operator.
3. The number of BQS to be installed would be taken to be 208 for reference and any calculation if needed.

**SCHEDULE B - MINIMUM MAINTENANCE REQUIREMENTS**

- € The Operator would be responsible for general maintenance and cleanliness of installations added as part of ITS project. However replacement/repair of the installation would be done by BUIDCo or its appointed agencies.
- € All Bus Queue Shelters, seats and the surrounding areas are to be kept cleaned at all times. The litter bins should not be overflowing at any time and disposal of garbage to be arranged to as required.
- € The advertisement panels to be kept clean from dust, stains etc. at all times. It is to be ensured that posters etc. are not posted on any of the panels and on structural part of BQS.
- € No leakage from roof to be permitted.
- € Proper drainage is maintained and no accumulation of water, liquid etc. is allowed at any time.
- € The lighting arrangement at the BQS is functional at all times. Electrical safety is to be ensured for users.
- € All structural members, seating arrangements and advertisement panels are to be inspected and maintained in good condition as per the maintenance manual.
- € Broken floor tiles are to be replaced within 3 days of such event. For this purpose it is advised that the Concessionaire maintains a minimum inventory of similar tiles at his store.
- € The flower plants and shrubs are to be maintained and watered regularly and the wastes to be disposed-off.
- € The advertisements on panels to be changed during off peak periods – preferably during night hours.

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**SCHEDULE C - MIS FORMAT**

Form 1

Advertisement Display Report

Form 2

Complaint Report

**Form 1 - Advertisement Display Report**

**No**

**Location**

**Advertisement Size**

**Backlit**

**(Yes/No)**

**Advertising**

**Agency**

**Advertisement**

**for**

**1**

**2**

**3**

**4**

**Form 2 - Complaint Report**

For use in situations where a member of the public files a complaint

**No**

**Date**

**Complaint Details**

**Follow Up**

**Action**

**Remarks**

**Closure**

**Comments**

**1**

**2**

**3**

**4**