

VADODARA SMART CITY DEVELOPMENT LTD



APPOINTMENT OF INDEPENDENT ENGINEER FOR DEVELOPMENT OF SMART CITY CENTRAL TRANSPORT HUB ON DESIGN, BUILT, FINANCE OPERATE AND TRANSFER (DBFOT)-PPP BASIS (Phase-1) AT VADODARA

Request For Proposal Document

Draft Agreement with

Terms of Reference (TOR)

**Vadodara Smart City Development Ltd
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Khanderao Market Building, Rajmahal Road
CIN: U93090GJ2017PLC096591
VADODARA – 390209**

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Annexure 3 : Copy of the Draft Concession Agreement

**Annexure 4 : Technical and Financial proposal of the Independent Engineer
(including additional Information, Undertakings etc.)**

Schedule-I :

1. Services

1.1 The Services

1. The Independent Engineer shall perform the services under this Agreement in the accordance with the Terms of Reference as attached hereto and as per the terms and conditions of the Concession Agreement.
2. The Independent Engineer will also be required to take into consideration all the suggestions made by the client during each stage of the project. The Independent Engineer will be required to address all such suggestions/queries to the client for the client to perform its role as per the Concession Agreement.
3. The Independent Engineer hereby agrees to adhere to the terms of Concession Agreement, so far they relate to functions of the Independent Engineer. A copy of Concession Agreement is attached to this document.
4. The Independent Engineer shall undertake inspections of the project site, at such time as it deems appropriate, to determine the progress in construction of the Bus Terminal facilities and the extent of the compliance with technical standards stipulated for construction of facilities and notify the Client and Concessionaire of any deviation there from within seven days of such inspection.
5. Certificates
The Independent Engineer shall decide upon, issue and sign all certificates required various stages in this Concession till the end of the construction period, including the Construction Completion Certificate or Provisional Certificate, in accordance with the provisions of Concession Agreement.
6. Cost of Construction
The Independent Engineer undertakes to determine the Cost incurred by the Concessionaire on the construction of the Bus Terminal facilities and commercial facilities on grant of the Construction Completion Certificate. The Independent Engineer may also be required by the parties to determine the Cost at any other stage of the project.
7. Compliance Date: The Compliance Date would be the date as defined in the Concession Agreement.
8. Words and expression used in this Agreement, unless defined here, shall have the same meaning as assigned to them in the Concession Agreement.
9. In the event of any conflict between the clause/provisions of this Agreement and the Concession Agreement, the provision of the Concession Agreement would prevail.

1.2 Commencement Date

The Independent Engineer will commence the services as soon as possible but not later than 15 (fifteen) days after the date of signing of this Agreement.

1.3 Period of Services

- (1) The appointment of the Independent Engineer shall be up to the date of issue of Construction Completion Certificate for Whole Project (i.e. Bus Terminal Facilities and Commercial Facilities).
- (2) In case the construction of the Bus Terminal Facilities and Commercial Facilities is not completed within the scheduled period from the Compliance Date for reasons not attributable to the Independent Engineer, the Independent Engineer would continue to provide services till the issue of the construction completion Certificate for the Whole Project.

(3) If such additional period is less than three months, then the Independent Engineer would not be paid any extra amount for this period. If such additional period exceeds three months, the Independent Engineer would be eligible for additional monthly fees to mutually decided.

(4) For the avoidance of doubts, the period of Services would be as follows: From Commencement date to Compliance Date: 90 days
From Compliance Date to scheduled Construction Completion and commercial facility: 36 months

1.4 Additional Works

If in the opinion of the Client, it is necessary to carry out work outside the Terms of Reference for the purpose of the project in addition to the services, the Independent Engineer shall carry out such additional work and with the prior authorization of the Client. The fee for such additional work shall be mutually agreed between the Client and the Independent Engineer in writing, prior to commencing such additional work.

(1) Personnel

2.1 Personnel

- (1) The Independent Engineer shall designate and notify to the Parties at least 2 (two) persons employed in its firm/company to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of such designated persons; provided that the Independent Engineer may by notice in writing substitute any such designated persons by any of its employees.
- (2) The Independent Engineer shall employ appropriately qualified and experienced engineers and other professionals for discharging its responsibilities under this Agreement; provided such employees of the Independent Engineer shall have no right or claim against or create any obligation on the Parties in respect of their employment.
- (3) The Services shall be carried out by the personnel specified in RFP. The Independent Engineer may, with the prior approval of the Client, make minor adjustments in this to ensure the efficient performance of the Services.
- (4) Except, as the Client may otherwise agree, no changes shall be made in the Personnel. If for any reason beyond the reasonable control of the Independent Engineer it becomes necessary to replace any of the Personnel, the Independent Engineer shall forthwith provide a replacement, a person of equivalent or better qualifications and experience and which is found eligible and acceptable by the Client. The Independent Engineer shall ensure that such replacement of any of the Personnel is done with at least three months notice period to ensure smooth transition.
- (5) In the event that any person specified in the Agreement is found by the Client to be incompetent in discharging his assigned duties, the Client may request the Independent Engineer to forthwith provide as replacement a person with

qualification and experience acceptable to the client. The decision of the Client in this regard shall be final and binding on the Independent Engineer.

2.2 Team Leader

The Team Leader shall be responsible for reviewing the entire project preparation and implementation activities of the Concessionaire. He shall the design prepared by the Concessionaire, ensure execution of the works on site as per the specifications and standards and continuously interact with the VSCDL and the Concessionaire. He shall undertake project site visit and guide, supervise, coordinate and monitor work of the other experts in his team as well as of the Concessionaire. The Team Leader and other key personnel shall remain present in monthly review meetings or other meetings as may be decided by the Client.

2.3 Site Engineers

The Independent Engineer shall ensure that at all times during the implementation of the project, the Site Engineer and the Assistant Site Engineer acceptable to the Client, shall remain present on the site on full time bases.

3. Undertakings of the Independent Engineer

3.1 General standards of performance by the Independent Engineer

- (1) The Independent Engineer shall carry out the Services with due diligence and efficiency, and shall exercise such skill in the performance of the Services as is consistent with recognized professional standards.
- (2) The Independent Engineer shall act at all times so as to protect the interest of the Client and will take all reasonable steps to keep all expenses to a minimum. Consistent with sound consultancy practices.

3.2 Performance Security

- (1) The Independent Engineer would provide a Performance Security of Rs. _____ in the form of irrevocable and unconditional Bank Guarantee in favour of the Client. The Performance Security shall be valid till the end of this Agreement.
- (2) In the event of breach of any obligation of the Independent Engineer mentioned under this Agreement/Terms of Reference/Concession Agreement, this Agreement will be terminated and the Performance Security will be fortified.

3.3 Records

- (1) The Independent Engineer shall keep accurate and systematic stage wise details quantity records and accounts in respect of the Services in such form and details as is customary in the profession and as shall be sufficient to establish accurately that the cost and expenditure incurred in the construction of the Bus Terminal Facilities and Commercial Facilities have been duly incurred as per the provisions of the Concession Agreement and shall be submitted time to time.
- (2) During the subsistence of this Agreement and two years from the date of completion of the study, (after reasonable advance notice is served on the Independent Engineer), from time to time and to make copies of there of and shall permit the Client or any person authorized by the Client from time to time, to audit such records and accounts during and after the services.

- (3) The Independent Engineer is required to keep all the records pertaining to surveys, tests, inspections & investigations, which needs to be carried out by the Concessionaire. The Independent Engineer is required to submit such details along with the report and certification of the surveys, tests, inspections and investigations.

3.4 Information

The Independent Engineer shall furnish such information relating to Services and the Project to the Client from time to time.

3.5 Confidentiality

- (1) Except with the prior written consent by the Client, the Independent Engineer and its personnel shall not at any time communicate to any third party or entity any confidential information disclosed to them for the purpose of the Services, nor shall the Independent Engineer or its personnel make public or inform any one, directly or indirectly, any such information received by them or any recommendation formulated in the course of or as a result of the Services. Confidential information for the purpose of this clause means all information that has been marked as confidential at the time of disclosure.
- (2) Client agrees with the Independent Engineer that all information including information relating to Independent Engineer's trade secrets, know how, technical data, research products, strategies, internal procedures, employees and business opportunities and other proprietary information of Independent Engineer as described specifically as "Confidential Information" belongs to the Independent Engineer and shall not disclose or divulge such confidential information to any third parties or make use or allow others to make use thereof.

These clauses 3.5 (1) and (2) shall survive the termination of this Agreement, however, the reports submitted by the Independent Engineer to the Client, become property of the Client and the Client is free to use any/all information in the reports.

3.6 Prohibition of Conflicting Activities

The Independent Engineer shall ensure that no member of the personnel assigned for the project shall engage, directly or indirectly, during the subsistence of this Agreement either in his name or in the name of his close relative or through the Independent Engineer, in any other business or professional activities which is likely to be conflict with the performance of his duties or assignment under this Agreement.

3.7 Independent Contractor

Nothing contained herein shall be construed as establishing or creating between the Client and the Independent Engineer the relationship of master and servant or principal and agent, it being understood that the position of the Independent Engineer and of anyone else performing the Services is that of an Independent Contractor.

3.8 Insurance

- (1) The Independent Engineer shall at its cost take out and maintain comprehensive and adequate professional liability insurance as well as adequate insurance against third party liability and loss of or damage to equipment purchased in whole or in part with funds provided by the Client. The Client shall not be responsible or liable for damages and compensation.

- (2) The Client undertakes no responsibility in respect of any life, health, accident, travel and other insurance which may be necessary or desirable for the personnel of its own or sub contractors and specialists associated with the Independent Engineer for the purpose of the Services, nor for any members of the family of any such persons.

4. Prices and Payment Terms

4.1 Professional Fee

The total professional fees for providing the Services of the Independent Engineer for DESIGN, BUILT, FINANCE, OPERATE AND TRANSFER (DBFOT) FOR DEVELOPMENT OF Smart city central Transport Hub on DBFOT-PPP Basis at Vadodara shall be excluding the GST. GST shall be paid by the developer to the Independent Engineer and computed at the prevailing rates as per the applicable law.

The prices quoted are lump sum, firm and inclusive of all taxes and duties, excluding the GST or any upcoming other form or taxes for the Terms of Reference as mentioned including all expenses for personnel services, visits, transport charges, cost of collecting required data etc. and all the necessary services, materials, stationary, computer services, typing, printing, photocopying, generating weekly / monthly reports etc. to fulfill the requirement of the scope. No escalation will be payable on any account.

4.2 Payment Terms

- (1) During the period between the Commencement Date and Compliance Date, the Independent Engineer would be paid 1% of the total Professional Fees at the end of each month provided that total fees paid before the Compliance Date does not exceed 12% of the total Professional Fees.
- (2) The balance professional fees would be paid in progress wise installments starting from the Compliance Date. Progress will be mutually decided by developer and independent engineer.
- (3) The Independent Engineer shall submit bills for payment to the developer with copy to client. Thereafter, if found satisfactory, the developer would make payment according to progress to the Independent Engineer within ten days of next month.
- (4) The bill submitted by independent engineer will be in multiplication of minimum five percentage.

5. Reports

All reports, recommendation and general correspondence from the Independent Engineer to the Client prepared by the Independent Engineer under this Agreement shall be in English language.

Three copies of each report should be submitted along with soft copies of the final report and presentations to the Client.

6. Liquidated Damages

In case the reports/certificates are not submitted within the requisite time period due to the reasons attributable to the Independent Engineer or the requisite personnel are not available/unable to provide the requisite services, the Independent Engineer will be liable to pay at the discretion of the Client, liquidated damages of 0.5% of the total professional fees per week, subject to a maximum of 5% of the total professional fees.

Fraction of a week will be considered as a full week for the purpose of liquidated damages calculations.

(1) Termination of Independent Engineer

- (1) The VSCDL may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer as provided hereinabove.
- (2) If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the VSCDL, supported with necessary documents, and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the VSCDL shall forthwith terminate the appointment of the Independent Engineer hereunder; provided the VSCDL has appointed the substitute Independent Engineer as provided hereinabove.
- (3) The replacement of the Independent Engineer shall be effected so as to maintain the continuity in supervision and monitoring of the City Bus Terminal Facility by the Independent Engineer.
- (4) The Client reserves the right to terminate the Agreement at any point if it is not satisfied with the Services of Independent Engineer or there is breach of any of the conditions of this Agreement by the Independent Engineer, provided a notice period of fifteen days, requiring it to be remedied by the Independent Engineer. In such event, the Independent Engineer shall not be entitled to receive any payments upon termination of the Agreement. In such case, upon termination, the Client may also forfeit the Performance Security.
- (5) In the event of termination of this Agreement, the work done till then by the Independent Engineer shall be taken over by the Client. Client reserves the right to appoint the new Independent Engineer and hand over to him all the documents to complete the assignment.
- (6) The parties reserve the right to terminate this Agreement in the event any voluntary insolvency petition/intellectual property petition is files by either party. Or if any proceedings are instituted against either party, property or assets under any bankruptcy, insolvency, receivership, debtors relief, winding up rehabilitation or similar statute or any effective resolution is passed for winding up of that party for any remedy under any such statute.

(2) Performance Obligations

Independent Engineer shall be responsible for the soundness of service rendered. In the event of any deficiency in these services, Independent Engineer shall promptly re-do/remedy the deficiency without any additional cost to the Client, and carry out such modifications and /or rectifications as may be required.

9. Liability

In no event shall either party be liable for any direct, indirect, incidental, special, consequential damages, including but not limited to loss of profit, revenue, data or use, by the other party. In no event however shall the total liability of the Independent Engineer under this Agreement exceed the amount of fees received by the Independent Engineer

from the Client. However this clause will not prevent the Client from levying liquidated damages as per clause 6.

10. Notices

Any notice or request required or permission to be given or made under this Agreement to either party shall be in writing. Such notice or request shall be deemed to have been duly given or made when it shall be delivered by hand, email, fax, post to the party to which it is permitted to be given or made at such party's head office or registered office or corporate office or branch office address.

11. Arbitration

In the event of any dispute or difference at any time arising between the parties relating to the construction, meaning or effect of his Agreement or any other clause or any content of the rights and liability of the parties or other matters specified herein or with reference to anything arising out of or incidental to this Agreement or otherwise in relation to the Terms of Reference whether during the continuance of this Agreement or thereafter, such disputes or differences shall be endeavored to be solved amicably by mutual negotiations. If however, such negotiations are infructuous, they shall be decided by arbitration wherein either party will appoint their nominee arbitrator and the appointed nominee would further appoint a third arbitrator who would be the presiding arbitrator. Such a reference shall be deemed to be a submission to arbitration under the provision of the Arbitration and Conciliation Act, 1986 and any modification or re-enactment thereof.

The venue of the arbitration shall be Vadodara, Gujarat only, subject to the above, the Civil Courts in Vadodara only shall have exclusive jurisdiction in this matter. The expense of the arbitrator shall be paid as may be determined by the arbitrator.

12. Force Majeure

- A. Force majeure such of the following factors which substantially affect the performance of the Agreement, such as:
 - (1) Natural phenomena, including but not limited to floods, draughts, earthquakes and epidemics.
 - (2) Acts of any govt., domestic or foreign, including but not limited to war, declared or undeclared quarantines, embargoes;
 - (3) Illegal strikes and legal lockouts in respect of client's / Independent Engineer's scope of work provided;
Either party shall within fifteen days from the occurrence of such a cause notify the other in writing of such cases.
- B. The Independent Engineer or the Client shall not be liable for delays in performing their obligations resulting from any force majeure cause as referred above.
- C. However, if such an event lasts for a period of 90 (ninety) days or more, then either party shall have option to terminate this Agreement forthwith without any liability after intimating the other party of the same. The Independent Engineer shall however be entitled to receive payments for all the services rendered by it under this Agreement prior to termination of the Agreement.

13. Custody of Drawings/Reports/Data

The Independent Engineer shall handover all the working papers, financial models with all linkages, drawings, maps, data and all related workings and outputs generated/received from Concessionaire to the Client as and when requested by the Client and on successful completion of the project.

All such working papers, financial models, drawings, maps, data all related working and outputs of the assignment are the sole property of the Client.

14. Indemnity

Independent Engineer shall indemnify the Client and every member, officers and employees of the client against all actions, proceedings, claims, demands, costs and expenses whatsoever arising out of any negligent act of omission or failure by Independent Engineer in the performance of Independent Engineer's obligations under this Agreement.

15. Discipline, Security and Safety

Personnel deployed by the Independent Engineer or their sub contractor at the project site either directly or indirectly shall adhere to the overall security and safety procedure that may be prescribed from time to time by the Client at site. The Client shall be at liberty to object the presence of any representative or employee of the Independent Engineer or its sub contractors at site. If in the opinion of the Client's management, such representative/ employee has misconducted himself or is incompetent or negligent and in such case Independent Engineer shall, without any exception, withdraw him from the site subject to and provide competent replacement.

16. General Clauses

16.1 Non Solicit

The parties agree not to solicit the employment of any of the employees of the order for the term of this Agreement and for a period of twelve months thereafter.

16.2 Entire Agreements and Amendments

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written, oral or implied understandings between them on that subject matter. This Agreement may be amended, modified or supplemented only by the Authorised representative of the parties in writing executed on both the parties hereto.

16.3 Non Exclusive Agreement

The Independent Engineer shall be free to do similar business either for itself or for any other party or offer similar services to any third party but without any way affecting the services agreed to be offered by it under this Agreement and subject to clause 3.6.

6.4 Relation

This Agreement is not intended to create a relationship such as partnership, joint venture, agency, or employment relationship. Neither party may act in a manner, which express or implies a relationship other than that if Independent party nor bind the other party.

16.5 Waiver

No forbearance, indulgence or relaxations by any party at any time to require performance of any provision of this agreement shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver by any party or any breach of any of this agreement shall not be construed as a waiver or an amendment of the provision it self, or a waiver of any right under or arising out of this agreement.

16.6 Severability

In the event that any provision or any portion of any provision of this agreement shall be held invalid, illegal or unenforceable under applicable law, the remainder of this agreement shall remain valid and enforceable in accordance with its terms.

16.7 Survival

The clauses of this agreement, which by their very nature ought to survive termination of this agreement, shall so survive.

SCHEDULE 2 : TERMS OF REFERENCE

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the "TOR") are, being specified pursuant to the Concession Agreement, which will be executed between developers and VSCDL for Development of Smart city central Transport hub (Phase-1) at Vadodara on Design, Build, Finance, Operate and Transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annexure to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project. Whereas the TOR details out the scope of the Independent Engineer, it is hereby clarified that the Concession Agreement shall govern the scope of the Independent Engineer. In the event of any deviation in the scope of the Independent Engineer in the TOR and the Concession Agreement, the scope of the Independent Engineer as per the Concession Agreement shall be considered.
- 1.3 The VSDCL shall appoint a consulting engineering firm/company of engineers having the requisite experience in similar projects through a competitive bidding process to be the independent consultant under this Agreement (the "Independent Engineer"). Such appointment shall be made no later than 90 (ninety) days from the date hereof and shall continue until the date of the Completion Certificate.
- 1.4 The Independent Engineer shall monitor the implementation of the City Bus Terminal Facility and commercial facility during the Construction Period and discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule J and elsewhere in this Agreement and submit periodic reports (at least once every month) in respect thereof to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfill their obligations hereunder.
- 1.5 The Independent Engineer shall have no authority to relieve the Concessionaire of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Independent Engineer (including absence of disapproval) shall not relieve the Concessionaire from its obligations and responsibilities hereunder.
- 1.6 The remuneration, cost and expenses of the Independent Engineer shall be borne by the Concessionaire as part of the cost of the City Bus Terminal Facility. An amount not exceeding 3 (three) percent of the Total Project Cost shall be set aside for disbursing payments to the Independent Engineer in accordance with the terms of its appointment

2. Detailed Scope of Work

2.1 Valuation of Existing Properties

The Concessionaire is required to dismantle and dispose off the existing properties at the project site. The Independent Engineer shall undertake a joint survey of the existing properties with the Technical Person of VSCDL to identify the properties that need to be dismantled and disposed off. The Independent Engineer shall determine and certify the salvage value of the existing properties including but not limited to all civil structures, workshop, machinery, furniture, debris, materials as directed etc. the Independent Engineer shall also estimate the cost of dismantling and disposed off these materials.

2.2 Transition and Restoration of existing VSCDL Facility

- a) Transition of VSCDL facility like shifting of existing temple and renovation of Damajirao building (Panchayat Bhavan) as per heritage nature of city. The Transition Plan submitted by the Concessionaire will be scrutinized by Independent Engineer & give opinion to VSCDL.

2.3 Design Stage

- (1) To review the Concessionaire's Master Plan, Drawings, design proposal and prepare a design review report within 7 (seven) days after receiving the drawing/ documents.

- (2) To review the Concessionaire's design with reference to the observations on the Master plan communicated by VSCDL.
- (3) To review, check, verify and further details of the project implementation schedule of Engineering, Design, Procurement, Construction and Facilities Management set up including final reconciliation up to hand over of the project. This would include following:
Communication System
 - Design and Drawing approval and Release logistics
 - Scope and Responsibility matrix
 - Works package structure
 - Detailed project program
- (4) The Independent Engineer shall review and approve the design of the project prepared by the Concessionaire, pursuant to which the Concessionaire shall proceed ahead with construction of the project.
 - Project/Design briefs and changes thereof
 - Site plan and architectural review
 - Civil structures – PHE (Water supply, drainage, sewer and effluent treatment etc.) and road (Geometry and structure) proof checking
 - Proof checking – Structural design and adequacy
 - M & F services – Design adequacy
- (5) Review, check and verify all field and site investigation including geo-technical investigation, hydrological investigation and the topographical survey.
 - Study of the Design and detailed engineering drawings
 - Site reconnaissance survey
 - TOR for these works based on design and site reconnaissance survey
 - Site survey drawings for adequacy in terms of nos. of bore holes, location and type of test including specifications
- (6) Review check and verify design and working drawings, specifications, analysis of rates and bills of quantities.
- (7) Review, check and verify the procurement procedures and send the report within 15 days to VSCDL.
- (8) The Independent Engineer shall review any modified Master Plan and Drawings or supporting Documents sent to it by the Concessionaire and furnish it comments within 7 (seven) days of receiving such Drawings or Documents.
- (9) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof
- (10) Upon reference by the VSCDL, the Independent Engineer shall review and comment on the Engineering Procurement and Construction Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Government.

2.4 Construction Stage

- (1) Review, check and verify project report prepared by the Concessionaire
 - Technical guide for construction management
 - Construction control manual and various quality tools including works control formats and check lists

- All project contracts/Agreements including Detailed Design and Engineering contract, EPC contract, O & M contract
 - Quality Assurance Plan and Quality Control provisions during the construction stage
 - Cost monitoring/control/value management criteria
 - Variations.
- (2) Supervision of various tests (as per the provision of Concession Agreement) and their certification
 - (3) Examine and approve any change on scope of work or variation as per contractual provision
 - (4) Scrutinize Good for Construction (GFC) drawings including variations thereof, supervise the setting out of the works
 - (5) Audit the safety of the project during construction and operation and maintenance stage
 - (6) Periodic review of the project works as per agreed project programme in terms of quality, completion stage and changes and corrective action thereof.
 - (7) Examining the works and accordingly issue provisional completion stage and final completion stage certificate
 - (8) Issue provisional certificate duly appended with a list of outstanding items established after joint inspection
 - (9) The Independent Engineer shall prepare the monthly progress report and send its comments there on to the VSCDL and to Concessionaire.
 - (10) The Independent Engineer shall inspect the Construction Works and the Project site and send the report of such Inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction; Including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the VSCDL and the Concessionaire with necessary opinion.
 - (11) For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner with cost and risk of Concessionaire, and shall monitor and review the results thereof.
 - (12) The sample size of the tests, to be specified by the Independent Engineer, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of material tests.
 - (13) All necessary testing of materials, equipments and any item to be carried out by developer and witness by an independent engineer in government approved laboratories as per IS Code and quality manual.
 - (14) The criteria for acceptance shall be determined by the Independent Engineer in accordance with the tests, shall be undertaken on a random sample basis and shall

be in addition to, and independent of, the test that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- (15) In the event that the Concessionaire carries out any remedial works for removal: or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity "With the Specifications and Standards as provisions.
- (16) In the event that the Concessionaire fails to achieve any of the Project Milestones. The Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, It shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the VSCDL and the Concessionaire forthwith.
- (17) If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is, being carried out in a manner that threatens the safety of the workers and the Users in the shall make a recommendation to the VSCDL forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (17) In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, 'require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the VSCDL forthwith, recommending whether or not such suspension may be revoked by the Government.
- (18) If suspension of Construction Works is for reasons not attributable "to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, 'to which the Concessionaire is reasonably entitled, and shall notify the VSCDL and the Concessionaire of the same.
- (19) The Independent Engineer shall carry out, or cause to be carried out; all the Tests specified and issue a Completion Certificate or Provisional Certificate, as the 'case' may be. For carrying out its functions and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of of the Concession Agreement.
- (20) The Independent Engineer shall aid and advise to the Concessionaire in preparing the Maintenance Manual.

2.5 Operation and Maintenance Stage (till the issue of Final Construction Completion Certificate)

- (1) Review, check and verification of
 - Commissioning of Equipment including inspection and testing
 - O & M costing & budget vis - a - vis O & M contract.

- Detailed O & M Manual prepared by the Concessionaire
- (2) Supervise O & M activities after issue of the provisional completion certificate
- (3) Supervise the Concessionaire's activities not confirming to performance standards as detailed in the O & M manual
- (4) In respect of the as build Drawings, Documents received from the Concessionaire for its review and comments during the Operation Period.
- (5) The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the VSCDL and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- (6) The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- (7) In respect of any defect of deficiency occur in respect of the Concession Agreement, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- (8) The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial work in accordance with the Agreement, and also determine the damages, if any, payable by the Concessionaire to the VSCDL for such delay.
- (9) In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the VSCDL and the Concessionaire within 15 (fifteen) days of receiving the proposal.

2.6 All through the tenure of Construction and Development Phase

- (1) Assist Concessioning authority in operational aspects of Concession Agreement, specially with regard to commercial, financial and legal aspects.
- (2) Change in Scope of Work, in terms of facilities to be provided from existing Concession Agreement
 - (3) Notice event of default by either party as per Concession Agreement
 - (4) To mediate and assist disputes between Concessionaire and the Authority
 - (5) Determine any extension in the project completion schedule to which the Concessionaire has requested and shall notify it to the Concessioning Authority accordingly
 - (6) Administration of Concession Agreement
 - (7) Assist in providing management information system to Concessioning Authority

2.7 Reporting Requirements in Construction Stage

The Independent Engineer will prepare and submit to the Concessioning Authority to copies of each of the following reports:

(1) Monthly Reports

The Independent Engineer will no later than tenth day of each month, prepare a brief progress report summarizing the work accomplished for the preceding month. The report will outline any problems encountered and give recommendation on how these problems may be overcome. Brief work progress summaries will be included for ongoing works, outlining problems encountered and recommending

solutions. The report should indicate among other things, actions required of govt. and parastatal agencies to permit unconstrained work implementation.

(2) Quarterly and Periodic Reports

The Independent Engineer will prepare a comprehensive report summarizing all activities under the services at the end of each quarter, and also at other times when considered warranted by the Authority because of delay of the construction works or because of occurrence of technical or contractual difficulties. Such reports shall summarise not only the activities of the Independent Engineer but also the progress of the contract and brief description of technical and contractual problems being encountered and other relevant information.

3. Termination to Concessionaire

3.1 At any time; not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, review the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 14.60 of the Concession Agreement and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

3.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire as per the Concession Agreement, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the VSCDL and the Concessionaire.

4. Determination of costs and time

4.1 The Independent Engineer shall determine the costs, and/or their reasonableness that are required to be determined by it under the Agreement.

4.2 The Independent Engineer shall determine the period, or any extension thereof that is required to be determined by it under the Agreement.

5. Assistance in Dispute resolution

5.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

5.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

6. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement. (Concession Agreement)

7. Miscellaneous

7.1 The Independent Engineer shall notify its programme of inspection to the VSCDL and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection

7.2 A copy of all communications, comments, and instructions related to Drawings and Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the VSCDL forthwith.

7.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by

the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the VSCDL along with its comments thereon.

- 7.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the VSCDL with opinion.

8. Performance clause

- a) Independent Engineers shall be expected to fully comply with all the provisions of the "Terms of Reference, and shall be fully responsible for supervising the Designs, Construction and maintenance and operation of the facility upto final completion certificate takes place in accordance with the provisions of the Concession Agreement and other schedules. Any failure of the Independent Engineer in notifying to the Authority and the Concessionaire on non-compliance of the provisions of the Concession Agreement and other schedules by the Concessionaire, non-adherence to the provision of ToR and non- adherence to the time schedule prescribed under ToR shall amount to non- performance.
- b) The Independent Engineer shall appoint its authorized representative, who shall issue on behalf of the Independent Engineer, the Provisional Completion Certification and Completion Certificate along with the Team Leader and shall carry out any such task as may be decided by the Authority. The IE shall take prior approval of the Authority before issuing Provisional Completion Certification and final Completion Certificate. The proposal submitted shall also include the name of the authorized representative along with the authorization letter and power of attorney.

9. Period of Services

- 1) The appointment of the Independent Engineer shall be up to the date of issue of Construction Completion Certificate for The whole project.
- 2) In case the construction of the Bus Terminal Facilities and commercial facilities is not completed within the scheduled period from the Compliance Date for reasons not attributable to the Independent Engineer, the Independent Engineer would continue to provide services till the issue of the construction completion Certificate for the whole project.
- 3) If such additional period is less than 3 (three) months, then the Independent Engineer would not be paid any extra amount for this period. If such additional period exceeds 3 (three) months, the Independent Engineer would be eligible for additional monthly fees according to his quoted rate on pro rata basis .
- 4) For the avoidance of doubts, the period of Services would be as follows:
From Commencement date to Compliance Date: 90 days
From Compliance Date to scheduled Construction Completion with commercial facilities: 36 month

10. Duties

The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

Annexure 2: Proposed Team and Manning Schedule for the Project

(Also provide details of team composition and task assigned in appropriate format)