

# **DELHI METRO RAIL CORPORATION**

**SELECTION OF DEVELOPER – OPERATOR  
FOR  
THEME PARK AT SHASTRI PARK, DELHI**

**TENDER APPLICATION FORM  
JULY 2011**

Request for Proposal Document for Property Development at Shastri Park Depot  
for Theme Park

Name and address of the applicant to whom issued:

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.....  
.....  
.....

Date of issue.....

Issued by.....

Cost of RFP document : Rs 10500/- (Rupees Ten thousand and Five Hundred only)  
inclusive of 5% DVAT which is non refundable.

## DISCLAIMER

This request for proposal (**RFP Document**) for “**property development at Shastri Park Depot for Theme Park**” contains brief information about the Project, Qualification Requirements and the Selection process for the successful applicant. The purpose of the RFP document is to provide applicants with information to assist the formulation of their bid application (the ‘**Application**”).

The information (‘Information’) contained in this RFP Document or subsequently provided to interested parties (the “applicant(s)), in writing by or on behalf of Delhi Metro Rail Corporation Ltd. (**DMRC**) is provided to Applicant(s) on the terms and conditions set out in the RFP Documents and any other terms and conditions subject to which such information is provided.

This RFP Document does not purport to contain all the information that each Applicant may require. This RFP Document has been prepared with a view to provide the relevant information about the Project available with DMRC and has not been prepared keeping in mind the investment objectives, financial situation and particular needs of each Applicant. DMRC advises each Applicant to conduct its own investigations and analysis and satisfy itself of the accuracy, reliability and completeness of the information in this RFP Document and to obtain independent advice from appropriate sources. DMRC, its employees and advisors make no representation or warranty and shall not be liable in any manner whatsoever to the accuracy; reliability or completeness of the information provided in this RFP Document and that the information provided hereunder is only to the best of the knowledge of DMRC.

Intimation of discrepancies in the RFP Document, if any, may be given, by the Applicants, to the office of the DMRC immediately by the Applicants. If DMRC receives no written communication, it shall be deemed that the Applicants are satisfied with the information provided in the RFP document. In particular, DMRC shall not be responsible /liable for any latent or evident defect or character of the Project Land/ Project including but not limiting to the following:

1. Electricity availability and provisions
2. Site Drainage
3. Site approach
4. All statutory permissions from various authorities including approvals from town planning or other authorities as per the Central / State Government norms.
5. All applicable rent, rates, duties, cess and taxes, if any
6. All applicable statutory laws and provisions
7. Technical and financial feasibility of the project.

Any character or requirement of the Project Land, which may be deemed to be necessary by the Applicant should be independently established and verified by the Applicant.

This RFP Document is not an agreement and is not an offer or invitation by DMRC to any other party. The terms on which the Project is to be developed and the right of the successful Applicant shall be as set out in separate agreements executed between DMRC and the successful Applicant broadly in the format setout herein.

DMRC reserves the right to accept or reject any or all Applications without giving any reasons thereof. DMRC will not entertain or be liable for any claim for costs and expenses in relation to the preparation of the documents to be submitted in terms of this RFP Document.

## **1. DEFINITIONS**

For the purpose of this document, the terms listed below shall have the following meanings:

**AGREEMENT** means collectively, or any of them, the License agreement and any other instrument or agreement relating to the awarding of permission by DMRC to set up a Theme Park at Shastri Park.

**LICENSE AGREEMENT** means agreement(s) to be entered into by DMRC in connection with development management and operation of the Theme Park.

DMRC means Delhi Metro Rail Corporation, in charge of Delhi Metro Transit facility and all the associated parties including land for the same allocated to it by the Delhi Development Authority and any other related government agency.

**FINAL OFFER** means the final offer to be delivered by short listed registered investors-. as further described in section 5.

**CONTRACT AWARD PHASE** means the period leading to the signature of agreement as further described in section 3.1.

**GOI** means the Government of India.

**LICENSE** means the Private authorization relating to the setting up of a Theme Park at Shastri Park.

**PRE-SELECTION PHASE** means the pre-selection phase described in section 3 .1.

**PREFERRED BIDDER** means the short - listed registered investor selected at the end of the tender phase to enter into agreement for the Theme Park..

**PREQUALIFICATION PROPOSAL** means the proposal to be delivered by registered investors during the Pre - selection phase, as further described in Section.-3.1.

**PROJECT** means the Theme Park at Shastri Park.

**PSP** means the private sector participation scheme, aimed at transferring the management, operation financing and development of SPRF, to private investor /operators:

**RFP** means request for proposals in relation to the concession of SPRF.

**REGISTERED INVESTOR** means investors duly registered by the DMRC to participate in the selection process, after payment of the non - refundable registration fee and reception an Expression of Interest .

**TENDER PHASE** means the period leading to selection of the preferred bidder, as further described in section 3.1.

**SELECTION PROCESS** (or high level selection committee) means the authority in; charge of the supervision of the selection process;

**SELECTION PROCESS** means collectively or any of them, the Pre -Selection Phase, the tender Phase and the contract Award Phase.

## **2. BACKGROUND**

As part of its initiative to raise resources for funding the Metro Operations through non-fare box revenues, DMRC has decided to set up a Theme Park near Shastri Park Metro Station, through a private operator.

2.1 DMRC's objectives in this project are to:

- i) Effectively utilize approx. 15 ha of available land at the South-West of Shastri Park Metro station by setting up a 'Theme Park' on temporary basis.
- ii) Provide state of art, environment friendly recreational facilities for children and families with emphasis on social growth of vicinity.
- iii) Ensure that development, operations and maintenance of the park of the highest aesthetic and safety standards.
- iv) Generate both upfront and recurring revenues for DMRC from the Park as well indirectly from the commuters, this scheme will bring to the Metro system.

2.2 In view of the above DMRC intends to license out on temporary basis for a period of fifteen years to a strategic investor, a land pocket of about 15 ha adjacent to its Shastri Park MRTS station as shown in plan placed at Annexure-VI on as is where is basis for development and installation of recreational facilities as per prevailing regulations and for its subsequent management, operations and maintenance as a business enterprise. The licensee shall have controlling management authority for same, in accordance with the broad stipulated terms of agreement as indicated at Section 3. The license period may be further extended for subsequent terms of five years at a time, subject to and on revised terms to be negotiated between DMRC and the Licensee, and the acceptance of such extension by both the parties. However DMRC reserves the sole right not to renew / extend the license period beyond initial term of fifteen years (15 years).

2.3 The licensee must not make any claim for compensation damages or any other compensation, or any other consideration whatsoever on account of not being offered any such extension of license.

2.4 It is specially clarified that the site lies in Zone 'O' of MPD 2021. Activities permitted in the park must strictly comply with the conditions laid down in the Master Plan and the Zonal Development Plan, and the following resections must be very strictly observed:

2.4.1 No construction of a permanent nature.

2.4.2 No exhibition / banquet hall, Drive-in-Cinema.

2.4.3 No other activity not permitted in MPD 2021 Zone 'O'.

2.4.4 However advertisements will be permitted within the Park area

2.5 The purpose of this tender is to select, on an open and competitive basis the licensee/ Strategic investor or consortium of investors. As part of this PSP scheme, private investors must bid for concession of the entire facility including its development, operations, maintenance and management. They shall have the powers to sub-license the facilities / components of work, in accordance with conditions of award of the Licensee and regulations applicable for the enterprise.

### **3. SELECTION PROCESS**

The selection process shall be as below:

3.1 The developers interested in developing the temporary SPRF in response to the press notification are required to purchase tender application form (TAF).The bids of those not fulfilling the eligibility criteria announced in press notification will not be considered.

3.2 The TAF consists of two parts

3.2.1 Technical offer (as per instructions in 5.3)

- 3.2.2 Financial- Should have a turn over of Rupees Twenty Five crore (25 Cr) per annum as per audited financial statements in the past three (3) years i.e., 2008-2009, 2009-2010, 2010-11. However, if the accounts for 2010-11 are not audited then data for the year 2007-08 will be considered provided a certificate from the auditor is given stating that the audit is still in progress.
- 3.3 Financial bids who qualify in the Financial Evaluation shall be opened.
- 3.4 The highest financial bidder will be considered for entering into agreement with DMRC for developing the Theme Park as per terms of the agreement, subject to the rates offered and the terms & conditions of offer being found acceptable by competent authority of DMRC.
- 3.5 Conditional offers will be rejected outright and the EMD amount submitted along with the bid shall be forfeited in favour of DMRC.
- 3.6 All costs towards preparation of bid will be borne solely by the tenderer.

#### **4. GENERAL TERMS AND CONDITIONS OF THE CONCESSION AGREEMENT**

##### **4.1 Parties to the license agreement**

- (a) DMRC, Responsible for the integrity of the title land being a lessee of the land for 99 yrs.
- (b) The private Licensee, registered in India under the Companies Act 1956 (The Licensee).

##### **4.2 Purpose and Duration of the Licensee agreement**

Regarding the Theme Park Project, the purpose of the agreement is to grant to the company the exclusive right to finance, develop, commission/install, operate, manage and maintain the Theme Park Facility for a period of fifteen years (15) years under the terms of reference as described in the agreement, provided that all identified obligations are fulfilled. After completion of the license term the same may be extended for a period of five (5) years at a time, subject to mutual agreement by the

parties and on such revised terms and conditions as negotiated between the two parties for such extension of the License period. DMRC reserves the right not to offer such an extension, The License agrees unequivocally not to seek any claim compensation, damages or any other consideration on this account.

#### **4.3 Rights of the Company**

The Company shall have complete management freedom, within the specified Agreement terms and shall also be responsible for and free to:

- (a) Negotiate terms & conditions of all necessary contracts with suppliers and commercial services providers, including electricity, communications, etc.
- (b) Establishing salary policy for its employees complying with all statutory and legal requirements in this regard; and
- (c) Establishing tariff policy.

#### **4.4 Technical Obligations of the Company**

In accordance with sound professional practice and strict compliance with regulations and safety standards applicable in India, as well as instructions issued by the Statutory and supervisory Authority, the Company undertake to:

- (a) Carry out the development, installation and commissioning works as per terms & conditions defined in this document.
- (b) Properly operate and maintain its infrastructures and equipment/s to ensure safety of operations and to comply fully with all prevailing statutory and GOI Regulations;
- (c) Follow all the safety norms including fire safety norms as indicated by the authorized representative of DMRC and Delhi Fire Service.
- (d) Follow all the safety norms as indicated by the concerned licensing authorities.

#### **4.5 Financial Obligations of the Company**

- (a) The Company shall pay to the DMRC upon the effective date of the

Agreement.

- (i) A fixed non refundable entry LICENSE FEE of Rupees Five Crores only (Rs. 5.0 Crores) plus service tax, if applicable payable upon execution of this Agreement.
- (ii) A Recurring ANNUAL FEE Rupees (to be quoted by Bidder) of Rs.....(Rupees.....) plus service tax, if applicable payable exactly after six months of handing over the site to Licensee and on same date of each subsequent calendar year till the validity of license period (Refer Annexure 4).
- (b) The Licensee will take possession of the site within one month of issue of notice by DMRC to take possession. Failure to take possession of the site after paying necessary license fee may be treated as a breach of contract and result in cancellation of contract.
- (c) If the land actually handed over by measurements is more or less than stipulated, the upfront i.e., non refundable entry License Fee as well as the annual license fees will be increased or decreased accordingly on pro rata basis.
- (d) The bidder shall provide and secure all the financing required to achieve the above mentioned development, installation, commissioning and operations programs.
- (e) The Licensee shall obtain a Bank guarantee for a value of Rs. 5.0 Cr (Five Crores) for general liabilities as per prevalent statutory requirements and current regulations, from time to time.
- (f) The Licensee shall deliver to DMRC a hand-back bond of an amount of Rupees thirty (30) Crores and a maturity of Fifteen (15) years to guarantee performance of the hand-back requirements under the Agreement.

#### **4.6 Obligations of the Licensee vis-à-vis Users**

The Licensee will have an obligation to provide and ensure that all users have an equal right to access and use of the facilities, and shall ensure that

the facility is operated and maintain safely in accordance with all applicable safety regulations.

#### **4.7 Other Obligations of the Licensee**

The Licensee shall maintain, at its own expense, facilities necessary for public service authorities to perform their duties (such as police, fire fighting, first aid / emergency medical assistance). The licensee will strictly abide by all prevailing municipal bye-laws.

#### **4.8 Tangible Assets license under the Agreement**

Land site, ON AS-IS-WHERE-IS basis for the Theme Park (refer drawing at Annexure-VI).

#### **4.9 Non-Tangible Assets Licensed under the Agreement**

License agreements or right to use land. No tenancy, title or lien or any other right whatsoever is created under this agreement.

4.10 The licensee shall submit to DMRC for approval a detailed phase wise plan for implementation of the Theme Park. The entire scheme should be commissioned within a period of one year from the date of handing over of the site.

4.11 Since the area is eco-sensitive construction of permanent structures is strictly prohibited. Only temporary structures for public utilities, recreation equipment or refreshment will be permitted. The licensee will evaluate the existing rules laid down by various statutory bodies/authorities and propose only such developments that are not objectionable and be satisfied of this before proceeding with development.

4.12 DMRC shall not be held responsible for any loss, penalty, damage, delay that may be incurred by the licensee on this account.

**4.13 Social Issues:**

The company shall be fully responsible for the staff and contract labour used and for ensuring that they follow all applicable lay out/ employment/ safety laws etc for such employment / deployment. All employees of the licensee shall be his alone. No right or claim to employment or any other right in DMRC shall be claimed by the employees of the licensee.

**4.14 EXIT:** The Licensee may after giving a minimum of three (3) months written notice terminate this agreement. However, the fixed non refundable entry license fees paid and recurring charges paid till that date shall not be refunded but will stand forfeited in favour of the Licensor (DMRC).

4.15 The licensee will be fully and wholly responsible to meet all liabilities, claims and damages arising out of accidents resulting in death or injuries to customers visiting the facility, public, Contractors, workers, employees of licensee etc. The Licensee is advised to take insurance coverage against these liabilities.

4.16 The power supply required by the licensee will be taken by the licensee directly from the Power Company / Discom by making the required payments and deposits.

4.17 Approach roads if required/needed by licensee for development will be made by the Licensee after taking all required statutory clearances and flowing all applicable rules and regulations/guidelines laid down by Govt bodies in this regard.

4.18 Water supply required by the Licensee for development, operation etc will be arranged by Licensee after obtaining approvals from concerned city/civic/local authorities as required and will also provide for treatment facilities at its cost.

4.19 The sewage disposal arrangements as required by municipal and local civic/

local authorities will be arranged by licensee satisfying all norms including pollution control norms as applicable.

- 4.20 The licensee will obtain all permits, approvals and clearances as required and applicable from local authorities /Govt., bodies for opening, installation, commissioning and operation of the facilities including the mechanical and electrical equipments/facilities and infrastructure. All facilities and equipments will strictly adhere to pollution control norms/ requirements as laid down by statutory bodies / Govt Organizations / Civic authorities. All facilities and equipments will also strictly adhere to safety norms and requirements as applicable in the industry and also as laid down by statutory bodies / Govt Organisations / Civic Authorities.
- 4.21 The Licensee will strictly adhere to all prevalent rules and regulations of the Fire Department. In this connection any clearance/NOC/Approval that may be required from Delhi Fire Service (DFS) will be obtained by the Licensee at his own cost and initiative.
- 4.22 The licensee will strictly adhere to all the safety norms as may be indicated by the licensor. And also before start of the commissioning and operations submit for approval the safety plans proposed to be followed by the licensee to the authorized representative of the Licensor (DMRC).
- 4.23 The Licensee will also adhere to all guidelines as issued by the Central Water Commission, including restoration of the land to its original levels.
- 4.24 The licensee will ensure that there are no permanent structures created on the site, and all the structures will be of temporary nature only.
- 4.25 The licensee will have to make arrangements for disposal of solid waste, which will be got removed from the site on a daily basis to ensure perfect cleanliness.

**4.26 The Licensee shall comply with all applicable statues, ordinances, rules and regulations of central, state governments, municipal bodes, and all applicable rules and also regulations of the Delhi Fire department. The licensee shall also comply with all rules and regulations under the Metro Act and also to instructions/ Notices issued from time to time from the office of General Manager (O&M) DMRC. Non-compliance with rules / regulations / notices and laws may be treated as breach of contract and may lead to cancellation of contract.**

4.27 The Licensee shall pay all taxes including property tax on pro rata basis and duties to statutory authorities. The licensee will also pay service tax as applicable from time to time.

**4.28 Insurance and Waiver of Liability:**

The Licensee will bear the cost, throughout the terms of the Licensee, for a comprehensive general liability insurance covering injury to or death of any person(s) occurring in the said site / facility, premises, including death or injury cause by the sole negligence of the Licensee or the Licensee's failure to perform its obligations under the agreement. Upon DMRC's request, the Licensee shall submit to DMRC, suitable evidence that the foregoing policy or policies are in effect. In the event of the default i.e, avoiding the insurance cover, the licensee agrees and undertakes to indemnify and hold licensor harmless against any and all liabilities. Losses, damages, claims, expenses suffered by the licensor as a result of such default by the licensee.

4.29 The licensee shall ensure that all persons employed behave in orderly and disciplined manner and that the said employees are prohibited from carrying on any unfair activities demonstrations inside and in the vicinity of the site.

#### **4.30 Default by Licensee**

DMRC may prematurely terminate the agreement for causes such as non-payment of fees in time and / or non-compliance with safety and emergency measures. Complete liability for any claims / damages on this account to DMRC direct or indirect, shall be fully paid for by the Licensee and they shall be fully held liable for the same.

#### **4.31 Hand Back Date**

On the hand back date the company shall transfer the Theme Park land and all facilities and equipments thereon to DMRC with all its rights and interest in the same without any payment for any assets on the premises.

#### **4.32 Applicable law**

The agreement shall be governed by the Indian Laws.

#### **4.33 Dispute Resolution**

##### **Government Law**

This Agreement shall be governed and construed in accordance with the Applicable Laws of India.

#### **4.34 Amicable Resolution**

(i) Any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the 'Dispute') shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.

(ii) Either party may require such Dispute to be referred to the Managing Director, DMRC and the Managing Director of the Licensee for the time being (in case of consortium the Managing Director of the Leading Member), for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not

amicably settled within 15 (fifteen days) of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with Article 4.35 below.

## **4.35 Arbitration**

### **4.35.1 Procedure**

- (i) Subject to the provisions of clause 12.1 any dispute, which is not resolved amicably, shall be referred to a panel of three (3) arbitrators in terms of the Arbitration and Conciliation Act, 1996. For this purpose, DMRC will make out a panel of five (5) possible arbitrators. Each party shall nominate an arbitrator out of this panel submitted by Licensing Authority and these two arbitrators will appoint the third arbitrator in writing and also inform the concerned parties about such appointment and call upon the other party to appoint its arbitrator. If within 30 days of receipt of such intimation the other party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration & Conciliation Act, 1996. The arbitrator shall give item-wise and reasoned award. Where three (3) arbitrators have been appointed, the award of the majority will prevail.
- (ii) There will be no objection if the arbitrator appointed is an official of Licensing Authority of the rank of Deputy and above.
- (iii) The arbitration proceedings shall be governed by the Indian Arbitration and conciliation Act, 1996, as amended from time to time and place of Arbitration shall be New Delhi.
- (iv) The award of the tribunal shall be binding on all the parties.
- (v) The cost of the arbitration shall be borne by the respective parties. The cost shall inter-alia include the fees of the arbitrator (s) as per the rates fixed by arbitrator from time to time.

- (vi) This arbitration clause of any proceedings initiated or pending in the arbitration shall be without prejudice to both parties right to take recourse under other applicable laws and regulations.

#### **4.35.2 Place of Arbitration**

The place of the Arbitration shall be New Delhi.

#### **4.35.3 English Language**

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

#### **4.35.4 Enforcement of Award**

The Parties agree that the decision or award, which shall be a speaking order, resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Conciliation Act, 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.

#### **4.35.5 Performance during Arbitration.**

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

4.35.6 The court at Delhi / New Delhi shall have the exclusive jurisdiction to try all disputed / matters between the parties arising out of or relating to this agreement.

#### **4.36 Indemnity**

The licensee hereby undertakes to indemnify and hold Licensing Authority

harmless against all costs damages, liabilities, expenses arising out of any third party claims relating to non- completion of project; quality of the project and the construction and for any of the activities after Theme Park has been commissioned.

4.36.1 The licensee hereby undertakes to indemnify Licensing Authority against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out or in consequences of the execution and completion of works and remedying defects therein, or in respect of death or injury to any visitor or third party during the entire Concession Period within the Theme Park premises for whatever so reason and against all claims, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

4.36.2 The Licensee hereby undertakes that Licensing Authority shall not be liable for or in respect of any damages or compensation payable to any workman or other persons in the employment of the Licensee or any of his contractors / sub contractors. The Licensee shall indemnify and keep indemnified Licensing Authority against all such damages and compensation; all claims proceedings damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

#### **4.37 Force Majure**

##### **4.37.1 Force Majure Event**

Any of the following events resulting in material adverse effect shall constitute a Force Majure Event:

- i. Lighting, earthquake, landslides, tempest, cyclone, hurricane, whirlwind, storm, flood, and other unusual or extreme adverse weather or environmental conditions (including without limitation, any such conditions at sea affecting the delivery of equipment to the Project) or other events or natural disaster or rare severity;
- ii. Meteorites or objects falling from aircraft or other aerial devices, the occurrence of pressure waves caused by aircraft or other aerial devices

- traveling at high speeds;
- iii. Fire or explosion, chemical or radioactive contamination or ionizing radiation; not attributed to the concessionaire,
  - iv. Epidemic or plague;
  - v. Strikes, lock-outs or other industrial action or labour disputed excluding those by the Concessionaire or its Employees or Agents, or the Contractors of the Concessionaire or their Employees / Agents.
  - vi. Act of war (whether declared or undeclared), threat of war, invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, revolution strife, sabotage, terrorism or threat of such acts or other similar events of a political or social nature.
  - vii. Expropriation, confiscation, nationalization or requisition of the Project by GOI or Licensing Authority except as provided under this Agreement.
  - viii. Any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction. Operation or maintenance of the Project including the determination, levy, demand, collection, retention and appropriation of financials;
  - ix. Any other similar things beyond the control of the party.

#### **4.37.2 Notice of Force Majeure Event**

As soon as practicable and in any case within three (3) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Party which is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event (“the Affected Party”) shall notify the other party of the same, setting out, inter alia, the following in reasonable detail:

- (i) The nature and extent of the Force Majeure Event:
- (ii) The estimated Force Majeure Period.

- (iii) The nature of and the extent to which, performance, of any of its obligations under this Agreement is affected by the Force Majeure Event;
- (iv) The measures which the Affected Party has taken to proposes to take to alleviate / mitigate the impact of the Force Majeure and to resume performance of such of its obligations affected thereby; and
- (v) Any other relevant information concerning the Force Majeure event, or / or the rights and obligations of the Parties under this Agreement.

#### **4.37.3 Performance of Obligations**

The Affected Party shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (i) Due notice of the Force Majeure Event has been given to the other part as required by the preceding Article 4.37.2.
- (ii) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event.
- (iii) There shall be no Termination of this Agreement except as provided in Article 4.37. Where the Licensee is the Affected Party, the various deadlines set forth in this agreement and the Licensee Period shall be extended by the period for which such Force Majeure Event shall subsist.
- (iv) Where the Licensee is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement.

- (v) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance.
- (vi) The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement, and
- (vii) Any insurance proceeds received by the Licensee shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with this Agreement, and
- (viii) Any insurance proceeds received by the concessionaire shall be entirely applied to repay, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by Licensing Authority.

#### **4.37.4 Termination Due to a Force Majeure Event**

If a force Majeure Event subsists for a continuous period of 365 (three hundred sixty five) days, either party may in its sole discretion terminate this agreement with immediate effect by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever.

#### **5. Selection Procedure**

The selection process shall be as below:-

The issuance of the TAF is formal invitation to interested developers to submit a bid to take part in the PSP scheme of the DMRC.

- 5.1 DMRC reserves the right to cancel or amend the selection process, in part or whole, at any time without providing justification and, in the event that the process is cancelled to call for new proposals on whatever basis to deems appropriate. The applicant agrees not to seek any claim, compensation or any other consideration on this account.
- 5.2 The developers interested in development of the Theme Park in response to the press notification are required to purchase Tender Application Form (TAF). The bids of those not fulfilling the eligibility criteria announced in the press notification will not be considered. The developers are therefore required to satisfy themselves on their eligibility.
- 5.3 The TAF consists of two parts:-
- a) Technical – prospective developer shall submit a proposal based on directions and restrictions imposed by local authorities, DMRC etc. This will have to be presented to a Technical committee appointed by DMRC. Only those bids will be considered further who in the opinion of the Technical committee are found to be acceptable.
  
  - b) Financial – should have a turn over of rupees Twenty Five Crore (Rs.25 Cr) per annum in the past three (3) years i.e., 2008-2009, 2009-2010, 2010-11. (To be added, as added in clause 3.2.2)
- 5.4 The financial bids of developers who are not technically qualified will be returned unopened to the respective bidders.
- 5.5 No information will be sent to candidates who are not qualified in technical evaluation.
- 5.6 The financial bids of bidders who qualify in technical evaluation will be opened in their presence.

5.7 The highest financial bidder will be considered for entering into agreement with DMRC for developing the Theme Park as per terms of this tender, subject to the rate offered and terms & conditions of the offer being found acceptable.

## **6.0 General Information**

### **6.1 Access to Information**

In addition to the information provided in the enclosed project brief, qualified tenderers before the agreed deadline mentioned in paragraphs 3.2 to 3.9 may request DMRC for the following:-

(a) Conduct site visits

(b) Meetings with DMRC management / officials]

6.2 It is understood that the pre-qualified tenderer / investors shall thoroughly examine and be familiar with all documents of the RFP. Any addendum issued prior to receipt of proposals, and any other documents referred to therein.

6.3 The submission of proposal shall constitute a presumption that the Pre-qualified tenderer / investors has thoroughly examined and is familiar with all relevant documents and to receive or examine any relevant documents and the Project site. Failure of a registered investor to visit the project site and to receive or examine any relevant document shall in no way relieve him of any obligation with respect to his offer or to any arrangement entered into.

6.4 DMRC acknowledges that the pre qualified tenderer / investor must have a complete understanding of design, installations, commissioning, operations and standards applicable in the relevant industries in India prior to submitting a proposal.

6.5 Meetings with DMRC's Management and advisers.

6.5.1 Pre Qualified tenderer / investors interested in meeting the DMRC management representative must submit a written request to DMRC as soon as possible. The request shall include the names of the participants, the issues and documents to be discussed and the proposed date of the meeting.

## **6.6 Official Queries**

6.6.1 As indicated above, pre- qualified tenderer / investors may seek clarification of the TAF documents.

6.6.2 If during the course of the briefings and site visits, a pre qualified tenderer / investor discovers a fact or condition which appears to conflict (in fact or in spirit), with the TAF or the prospective contract or with any other data furnished to him/her/them such pre qualified tenderer / investor may request to DMRC in writing, additional information and clarification prior to submitting an offer.

6.6.3 The procedures regarding queries shall be as follows: notwithstanding the access to staff, as mentioned above, only written queries will be part of the clarification and addendum process. Response to queries with respect to the content of the TAF or the license agreement, if a response is warranted, will be provided to all Pre qualified tenderer/ investors and shall become part of the TAF information package.

## **6.7 Submission**

6.7.1 Proposals shall be received at the headquarters of DMRC not later than 1530 hrs on the day of submission i.e, 18.08.11 by the following recipient.

Chief Engineer (Property Development),  
Delhi Metro Rail Corporation Ltd.,  
2<sup>nd</sup> Floor, Metro Bhawan,  
13, Fire Brigade Lane,  
Barakhamba Road,  
New Delhi - 110 001

## **Clarification**

DMRC may ask for written clarification (by fax), on any aspect of the proposal, before finalizing the List of qualified tenderer/ investors. Tenders will also be expected to reply by fax, followed by post confirmation copy within five (5) working days from the date of receipt of incoming fax.

### **7.0 SUBMISSION OF PROPOSAL**

The bids Will be submitted in two sealed packets:

7.0.1 Forwarding letter with EMD for a sum of Rupees Twenty Five lakhs only (Rs 25 lakhs) vide demand draft drawn on any scheduled bank in favour of " DMRC Ltd".

7.0.2 Technical Bid for Theme Park in a cover scribed "Technical Bid for Theme Park" and shall contain the following :

- Original RFP Document duly signed (on each page) by an authorised representative as a token of acceptance of all terms and conditions

7.0.3 Financial Bid for a Theme Park cover scribed "Financial bid for Theme Park" (as per Annexure 4)

The above three items will be placed in larger cover and sealed and super scribed "BID FOR THEME PARK" the submission should be made to:-

Chief Engineer (Property Development)  
Delhi Metro Rail Corporation Ltd,  
2<sup>nd</sup> floor, Metro Bhawan, 13, Fire Bridgage Lane,  
Barakhamba Road,  
New Delhi – 1

### **7.1 Technical Bid**

The technical bid shall contain the following information:

- Letter of Application and Interest (As per Annexure 1)
- General Information of the Bidder (As per Annexure 2)
- Information regarding the qualified investor / tender (or consortium) including

memorandum of articles of association of company / companies. Audited annual reports and balance sheet statement for three consecutive financial years i.e., during 2007-2008, 2008-2009, 2009-2010 as per Annexure 3.

- Affidavit (As per Annexure 5)
- Presentation of the role of each participant as “Operator” or “Financial Investor”). The participants / members should have entered into Memorandum of understanding (MoU) amongst themselves to undertake the execution of the development & operation of Theme Park. A copy of MOU as per the format in Annexure 7 to be enclosed with this TAF.
- The qualified investors must submit a proposal for the entire facility. Proposal shall be signed by duly authorised person. A copy of Power of Attorney shall be attached (As per Annexure 8).
- Letter signed by an authorized Director confirming, the participation of the firm to the TAF and its role with the consortium.
- Relevant experience in the industry as operator / owner / developer of Theme Park.
- Relevant experience in the region i.e., in India or abroad.
- Technical report indicating the broad approach for development of Park.
- Proposed development, construction safety procedures and O&M Strategy.
- Proposed key staff to be involved in the Project.
- Comments on proposed deal structure and transaction.

7.1.1 Proposals for alternative solutions to any identified problems. (It may be noted that these suggestions shall be notional in nature and the tenderer shall not be subject to changes proposed under this. Any deviation intender conditions can cause the tender to be invalid.

In acceptance of all terms & conditions in this tender all pages of this document is to be signed by authorized signatory.

## **7.2 Financial Bid**

The Bidder shall seal the Financial Proposal (as per Annexure 4) in a separate third envelope (Envelope No. 3), duly marked as “FINANCIAL BID ”.

## **8.0 Final Selection**

8.1 DMRC will select a preferred bidder, taking into consideration the value of payments to be made to DMRC as quoted in financial bid.

8.2 Decision of DMRC shall be binding and final on the bidder.

## **9.0 Signature of contractual documents, execution**

9.1 Upon selection of the preferred bidder, the preferred bidder will be required to sign and execute the Agreement with DMRC within one of receipt of letter of acceptance.

9.2 Payment of the initial fee will take place at the time of signature of the licensee Agreement. Licensee is then expected to immediately start its activities.

9.3 If the bidder fails to sign that Agreement as per the terms of the agreement the EMD, will stand forfeited in favour of DMRC.

## **10.0 Important Dates**

1.	Pre bid meeting	04.08.11 at 11:00hrs
2.	Last date of receipt of TAF	18.08.11 Upto 15:30 hrs
3.	Date of opening of financial Bids	Will be intimated to qualified Bidders only

**Annexure 1**  
**Letter Of Application**

(To be submitted and signed by the Bidder's authorised signatory)

The Chief Engineer,  
Property Development Department,  
DMRC, 2nd floor, Metro Bhawan,  
Fire Brigade Lane, Barakhamba Road,  
New Delhi 110001.

**Sub: RFP for Theme Park at Shastri Park, Delhi**

Sir,

1. Being duly authorized to represent and act for and on behalf of.....(herein the Bidder), and having studied and fully understood all the information provided in the bid document, the undersigned hereby apply as a bidder **RFP for Theme Park at Shastri Park, Delhi**

**on License basis**, according to the terms & conditions of the offer made by DMRC.

2. Our Technical & Financial Bid as per the requisite formats along with the supporting documents, duly filled and **signed on each page** are enclosed in separate sealed envelopes as specified.

3. The Earnest Money Deposit is enclosed in the Envelope 1 marked "Earnest Money Deposit".

4. DMRC and its authorized representatives are hereby authorized to conduct any inquiries / investigation to verify the statements, documents and information submitted in connection with the application and to seek clarification from our banker regarding any financial and technical aspects. This letter of application will also serve as authorization to any individual or authorized representative of any institution referred to the supporting information, to provide such information deemed necessary and requested by your selves to verify statements and information provided in the application or with regard to the resources, experience and competence of the Bidder.

5. DMRC and its authorized representatives may contact the following persons for any further information :

Name of the person (s): .....

Address: .....

Phone: ..... Fax: .....

6. This application is made with full understanding that:

(a) Bids will be subject to verification of all information submitted at the time of tendering.

(b) DMRC reserves the right to reject or accept any bid, cancel the bidding process, and / or reject all bids.

(c) DMRC shall not be liable for any of the above actions and shall be under no obligation to inform the Bidder of the same.

7. We, the undersigned declare the statements made, and the information provided in the duly completed application forms enclosed, are complete, true and correct in every detail.

8. We hereby confirm that we have read, understood and accepted all the detailed terms and conditions of this RFP and Project related Information as required for the tender. We have also visited the space to be Licensed for the assessment and have made our own due diligence and assessment regarding the project.

9. We agree to keep our offer valid for one hundred eighty (180) days from the date of submission of Proposal thereof and not to make any modifications in its terms and conditions, which are not acceptable to the DMRC. Should this Proposal be accepted, we hereby agree to abide by and fulfill all the terms, conditions and provisions of the aforesaid documents.

10. This application is made with the full understanding that the validity of bids submitted by us will be subject to verification of all information, terms and conditions submitted at the time of bidding and its final acceptance by DMRC. We agree that, without prejudice to any other right or remedy, DMRC shall be at liberty to forfeit the said EMD absolutely.

Authorised signatory Date:

Name and seal of Bidder Place:

Encl:

1. The EMD/s of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) in the form of Demand Draft/Pay Order bearing No. \_\_\_\_\_ drawn upon \_\_\_\_\_ (bank) dated \_\_\_\_\_.

2. Power Of Attorney For Signing Of Application Board resolution authorising the signatory (Suggested Format at Annexure 8)

3. Memorandum of Agreement (MOA) in case of a Consortium as per Annexure 7.

4. Relevant Submissions as per the given Formats

## Annexure 2

### General Information of the Bidder

1. (a) Name:

(b) Country of incorporation:

(c) Address of the corporate headquarters and its branch office(s), if any, in India:

2. Details of individual(s) who will serve as the point of contact / communication for DMRC within the Company:

(a) Name :

(b) Designation :

(c) Company :

(d) Address :

(e) Telephone Number :

(f) Fax Number :

(g) E-Mail Address :

3. In case of Consortium:

a. The information above (1 & 2) should be provided for all the members of the consortium.

b. Information regarding role of each member should be provided:

Sl. No.	Name of Member	Proportion of Equity to be held in the Consortium	Role*
1			
2			
3			

\* Specify whether Lead Member / Ordinary Member

Signed

(Name of the Authorised Signatory)

For and on behalf of

(Name of the Bidder)

Designation

Place:

Date:

### Annexure 3

#### Summary of Financial Details

(In case of Consortium, each member to provide this separately)

(Rs. Crores)

Particulars			
Accounting year	2009-10	2008-09	2007-08
Annual Turnover			

Note:

- 1) Attach certified copies of Annual Audited Balance Sheets and IT Returns Certificate for the preceding 3 (Three) years.
- 2) Attach Certificate duly signed by the Statutory Auditors depicting year wise turnover
- 3) The above data must be submitted for all Relevant Consortium members, duly certified by Statutory Auditor.

Signed

(Name of the Authorised Signatory)

For and on behalf of

(Name of the Bidder)

Designation

Place:

Signature of CA/ Statutory Auditors

(with seal & registration no.)

Date:

## Annexure 4

### Format For Financial Proposal- Theme Park

(To be submitted and signed by the Bidder's authorised signatory and **if Bidder is bidding for more than one package, he/she/they has to submit this format separately with the quoted recurring payment.**)

The Chief Engineer,  
Property Development Department,  
DMRC, 2<sup>nd</sup> floor, Metro Bhawan,  
Fire Brigade Lane, Barakhamba Road,  
New Delhi 110001.

Sub: "RFP for Property Development Shastri Park MRTS Station Plot"

Sir,

We hereby submit our Financial Offer for the captioned project. If the project is awarded to us, we agree to make the following payments to DMRC as per the terms given in the Request for Proposal (RFP) Document.

1. Fixed Upfront Fee<sup>1</sup> (Non-refundable, non-negotiable) of **Rs. ....(in figures) (Rupees \_\_\_\_\_(in words)** before signing of the License Agreement. **i.e. within 30 days from the date of issue of L.O.A.**
2. Annual Recurring Payment<sup>2</sup> of **Rs. ....(in figures) (Rupees \_\_\_\_\_(in words)** for a Licensee Period of 15 yrs.
3. The recurring payments in items 2 above shall be escalated at the rate of **5 %** every year on compounding basis from the due date of first Recurring Payment .
4. The arithmetical errors will be rectified on the following basis. If there is a discrepancy between words and figures, the amount in words will prevail. If **I/we** do not accept the correction of errors, this tender will be rejected & Earnest Money will be forfeited.
5. Service tax as applicable from time to time will also be paid by us/me.

This offer is being made by us/me after taking into consideration all the terms and conditions stated in the RFP document, and after careful assessment of the spaces, all risks and contingencies and all other conditions that may affect the financial proposal.

We agree to keep our offer valid for 180 days from the due date of submission of this Proposal.

Authorised signatory

Date :

Name and seal of Bidder

Place :

---

<sup>1</sup> Insert from Clause 4.5 (a)(i)

<sup>2</sup> This is the Bid Variable for the Bid

## Annexure 5

### Affidavit

(To be given separately by each consortium member of the Bidder on Stamp Paper of Rs. 10)

I,, ..... S/o .....,resident of ....., the .....(insert designation) of the .....(insert name of the single bidder/consortium member if a consortium), do solemnly affirm and state as follows :

1. I say that I am the authorised signatory of .....(insert name of company /consortium member) (hereinafter referred to as "Bidder/Consortium Member") and I am duly authorised by the Board of Directors of the Bidder/Consortium Member to swear and depose this Affidavit on behalf of the bidder/consortium member.
2. I say that I have submitted information with respect to our eligibility for Delhi Metro Rail Corporation's (hereinafter referred to as "DMRC") Theme Park at Shastri Park, Delhi (hereinafter referred to as "Project") Request For Proposal ('RFP') Document and I further state that all the said information submitted by us is accurate, true and correct and is based on our records available with us.
3. I say that, we hereby also authorise and request any bank, authority, person or firm to furnish any information, which may be requested by DMRC to verify our credentials/information provided by us under this tender and as may be deemed necessary by DMRC.
4. I say that if any point of time including the License period, in case DMRC requests any further/additional information regarding our financial and/or technical capabilities, or any other relevant information, we shall promptly and immediately make available such information accurately and correctly to the satisfaction of DMRC.
5. I say that, we fully acknowledge and understand that furnishing of any false or misleading information by us in our RFP shall entitle us to be disqualified from the tendering process for the said project. The costs and risks for such disqualification shall be entirely borne by us.
6. I state that all the terms and conditions of the Request for Proposal (RFP) Document have been duly complied with.

DEPONENT

#### VERIFICATION :-

I, the above named deponent, do verify that the contents of paragraphs 1 to 6 of this affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed.

Verified at ....., on this ..... day of.....,2010.

DEPONENT

**ANNEXURE 6**

**PLANS**

**ATTACHED SEPERATELY**

**ANNEXURE 7**

**CONSORTIUM AGREEMENT/MEMORANDUM OF AGREEMENT**

This Consortium Agreement/Memorandum of Agreement is executed at New Delhi on this \_\_\_\_ day of \_\_\_\_, 2011.

**BETWEEN**

M/s \_\_\_\_\_, a Company incorporated under the Companies Act, 1956 and having its Registered Office at \_\_\_\_\_ acting through its Managing Director, \_\_\_\_\_ duly authorized by a resolution of the Board of Directors dated \_\_\_\_ (hereinafter referred to as the 'LEAD MEMBER' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the **ONE PART** ;

**AND**

M/s. \_\_\_\_\_, a Company incorporated under the Companies Act, 1956 and having its Registered Office at \_\_\_\_\_ and Office at \_\_\_\_\_, acting through its Joint President, \_\_\_\_\_, duly authorized by a resolution of the Board of Directors dated \_\_\_\_\_ (hereinafter referred to as the ('Participant member') which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the **OTHER PART**;

Whereas Delhi Metro Rail Corporation Limited (hereinafter referred to as 'DMRC') has invited tenders for the "**Theme Park at Shastri Park MRTS Station**" on License basis, in terms of the tender documents issued for the said purpose and the eligibility conditions required that the Bidders bidding for the same should meet the conditions stipulated by DMRC for participating in the bid by the Consortium for handling the project for which the tender has been floated by DMRC.

AND WHEREAS in terms of the bid documents both the parties jointly satisfy the eligibility criteria laid down for a bidder for participating in the bid process by forming a Consortium between themselves.

AND WHEREAS both the parties hereto have discussed and agreed to form a Consortium for participating in the aforesaid bid and have decided to reduce the agreed terms to writing.

NOW THIS CONSORTIUM AGREEMENT/Memorandum of Agreement hereby WITNESSES:

1. That in the premises contained herein the Lead Member and the Participant Member having decided to pool their technical know-how, working experiences and financial resources, have formed themselves into a Consortium to participate in the tender process for "**Theme Park at Shastri Park MRTS Station**" in terms of the tender invited by Delhi Metro Rail Corporation Ltd., (DMRC).
2. That both the members of the Consortium have represented and assured each other that they shall abide by and be bound by the terms and conditions stipulated by DMRC for awarding the tender to the Consortium so that the Consortium may take up the aforesaid

**“Theme Park at Shastri Park MRTS Station”** in case the Consortium turns out to be the successful bidder in the bid being invited by DMRC for the said purpose.

3. That both the members of the Consortium have satisfied themselves that by pooling their technical know-how and technical and financial resources, the Consortium fulfills the pre-qualification/eligibility criteria stipulated for a bidder, to participate in the bid for the said tender process for **“Theme Park at Shastri Park MRTS Station “**
4. That the Consortium have agreed to nominate any one of \_\_\_\_\_ , \_\_\_\_\_ and \_\_\_\_\_ as the common representative who shall be authorized to represent the Consortium for all intents and purposes for dealing with the Government and for submitting the bid as well as doing all other acts and things necessary for submission of bid documents such as Tender Application Form etc., Mandatory Information, Financial Bid, etc., and such other documents as may be necessary for this purpose.
5. That the share holding of the members of the Consortium for this specified purpose shall be as follows:-
  - a) The Lead Member shall have \_\_\_\_\_per cent (\_\_\_%) of share holding with reference to the Consortium for this specified project.
  - b) The Participant Member shall have \_\_\_\_\_ (\_\_\_ %) of share holding with reference to the Consortium for this specified project.
6. That in order to fulfill the requirement of the tender process and also keep an altogether separate legal entity of the Consortium, the Members of the Consortium undertake to provide their own nominees as share holders to the extent of their respective share holding for the purpose of formation of a Special Purpose Company (SPC) through which the Consortium proposes to undertake the **Theme Park at Shastri Park MRTS Station** of DMRC.
7. That if any change in the membership of the Consortium be required to be made by the members of the Consortium, the same shall be done with the consent of DMRC subject to the conditions as may be stipulated by them in this regard.
8. That in case to meet the requirements of bid documents or any other stipulations of DMRC, it becomes necessary to execute and record any other documents amongst the members of the Consortium, they undertake to do the needful and to participate in the same for the purpose of the said project.
9. That it is clarified by and between the members of the Consortium that execution to this Consortium Agreement/Memorandum of Agreement by the members of the Consortium does not constitute any type of partnership for the purposes of provisions of the Indian Partnership Act and that the members of the Consortium shall otherwise be free to carry on their independent business or commercial activities for their own respective benefits under their own respective names and styles. This Consortium Agreement is limited in its operation to the specified project.
10. That the Members of the Consortium undertake to specify their respective roles and responsibilities for the purposes of implementation of this Consortium Agreement and the said project if awarded to the Consortium in the Memorandum & Articles of Association of the

proposed Special Purpose Company to be got incorporated by the Consortium Members to meet the requirements and stipulations of DMRC.

IN FAITH AND TESTIMONY WHEREOF, THE PARTIES HERETO HAVE SIGNED THESE PRESENTS ON THE DATE, MONTHS AND YEAR FIRST ABOVE WRITTEN.

1. Managing Director

(-----)

For (Name of company)

2. Managing Director

(-----)

For (Name of company)

WITNESSES: 1.-----

2.-----

Enclosure:

- Board resolution of each of the consortium members authorising execution of the consortiums agreement and appointing the authorised signatory for such purpose.

**ANNEXURE 8**

**FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF APPLICATION**

Know all men by these presents, we ..... (name and address of the registered office) do hereby constitute, appoint and authorise Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of .....as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our bid for the project envisaging construction of the Project in the country of India, including signing and submission of all documents and providing information/responses to DMRC, representing us in all matters before DMRC, and generally dealing with DMRC in all matters in connection with our bid for the said project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall always be deemed to have been done by us.

For.....

Accepted

.....(Signature)

(Name, Title and address) of the Attorney

Note:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.