REQUEST FOR PROPOSAL (RFP) DOCUMENT

Property Development at Neelam Chowk Ajronda MRTS Station of Line-6 Ext. (Badarpur – Faridabad Corridor) CPD 09R

DELHI METRO RAIL CORPORATION LTD.
Metro Bhawan, Fire Brigade Lane,
Barakhamba Road, New Delhi –110 001
DISCLAIMER

This request for proposal (RFP Document) for “Property Development at Neelam Chowk Ajronda MRTS Station” contains brief information about the spaces, the Qualification Requirements and the Selection process for the successful Bidder. The purpose of the RFP document is to provide Bidders 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 “Bidder(s)”), in writing by or on behalf of Delhi Metro Rail Corporation Ltd. (DMRC) is provided to the Bidder(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 Bidder 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 Bidder. The DMRC advises each Bidder 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. The DMRC, its employees and advisors make no
representation or warranty and shall not be liable in any manner whatsoever as to the accuracy; reliability or completeness of the information provided in this RFP Document.

This RFP may not be appropriate for all persons, and it is not possible for DMRC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

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

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

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

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

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 Bidder, shall be as set out in separate agreements executed between DMRC and the successful Bidder in the format broadly set out herein. DMRC may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
DMRC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

DMRC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

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

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.

This single RFP document is applicable for all the packages being offered but each package will be considered as an independent tender and except the RFP document other formalities like the tender security submission, Quoting of Recurring payment etc has to be fulfilled/ considered as part of independent tender process.

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

The word “Bid” and “Tender” is used interchangeably in the document.
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SECTION 1

PROJECT BACKGROUND
1. PROJECT BACKGROUND

1.1. Introduction

1.1.1 Delhi Metro Rail Corporation (DMRC), a joint venture of the Government of India (GOI) and the Government of the National Capital Territory of Delhi (GNCTD) implementing the Delhi Metro Rail Projects, has been mandated by Ministry of Urban Development (MoUD) to undertake value capture from property development initiatives for sustainable revenue generation for the DMRC vide its Policy Circular No K-14011/8/2000-MRTS (Pt.) dt 30.3.2009.

1.1.2 Through this RFP Document, DMRC intends to select a “lessee” to take up on ‘Lease basis’, the spaces available for property development at Neelam Chowk Ajronda station complex of Delhi Mass Rapid Transit System (MRTS) (hereinafter referred to as “Project Site”). This Leasing has been envisaged to generate up-front and recurring revenues to DMRC to supplement its non fare-box collections in the operation phase. An information document covering the purpose of the lease, details of space available at station etc. may be downloaded from the website http://www.eprocure.gov.in/eprocure/app..

1.1.3 The Project Site is situated at the Line-6 Ext (Badarpur – Faridabad corridor) of Phase-III of Delhi MRTS Project. Ajronda is an elevated metro station. The station lies in proximity to Delhi – Agra highway (NH -2), and is accessible by road to all areas in sarai, Badarpur and Faridabad. DMRC has planned property development at Neelam Chowk Ajronda MRTS station along with operating facilities for commuters. The station will have retail and commercial space on various floors which is proposed to be leased out for specified purposes as detailed in this document. Being located in commercial sector of Ajronda, Faridabad, the Project Site has an excellent opportunity to become important commercial hub within this locality. With separate access being available for the commercial areas and parking space, prominent and spacious frontage, and a captive commuter base, these floor areas will present unique opportunities for retailers.

1.1.4 As proposed built up area for Property development is planned at the footprint of station building hence building plans approvals from local bodies are not required.
SECTION 2

NOTICE INVITING BID
SECTION 2: NOTICE INVITING BID

CONTRACT CPD-09R

2.0 Notice Inviting Tender

2.1 The PD Area at the Neelam Chowk Ajronda MRTS Station (Project Site) are proposed to be given on lease basis through this bidding process on “as is where is basis” as demarcated in the plans placed as Annexure - 6 of this document and are in form of built up areas for retail and commercial spaces, details of which are given below.

<table>
<thead>
<tr>
<th>PD Area</th>
<th>Built up Area in Sqm.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Floor</td>
<td>1987 Sqm</td>
</tr>
<tr>
<td>Concourse Level -1</td>
<td>679 Sqm</td>
</tr>
<tr>
<td>Concourse Level -2</td>
<td>510 Sqm</td>
</tr>
<tr>
<td>Total PD Area</td>
<td>3176 Sqm</td>
</tr>
<tr>
<td>Dedicated PD Parking Area</td>
<td>500 Sqm (Approx.)</td>
</tr>
</tbody>
</table>

(Hereinafter individually referred to as “Leased Space(s)” or “Leased Area”)

2.2 DMRC invites Bids from suitable participants who may be a sole proprietorship firm or a partnership firm or a body corporate incorporated and registered in India under the Companies Act, 1956 /2013, duly registered under the law applicable to such company, either individually or in Joint Venture/Consortium under an existing agreement (the “Bidders”, which expression shall, unless repugnant to the context, include the members of the Consortium) for selection of Lessee(s) to grant rights under the Lease Agreement for the commercial utilization of the Lease Space(s) for various purposes, except banned list of usages as detailed in Annexure-9.

2.3 Deemed Knowledge and Disclaimer:-

2.3.1 DMRC shall receive Bids pursuant to this RFP document, in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by DMRC. Bidders shall submit bids in accordance with such terms on or before the Proposal Due Date. The participating Bidders are expected to visit the Project Site to examine its precincts and the surroundings at the Bidder’s own expenses and ascertain on its own responsibility, information, technical data, traffic data, market study, etc. including actual condition of existing services.
2.3.2 The Bidder shall be deemed to have inspected the Project Site and be aware of the existing buildings, constructions, structures, installations etc., if any existing in the Leased Space(s) and shall not claim for any change on the Project Site after submitting its Bid. The Bidder hereby admits, agrees and acknowledges that DMRC has not made any representation to the Bidder or given any warranty of any nature whatsoever in respect of the Project Site including in respect of its usefulness, utility etc. or the fulfillment of criteria or conditions for obtaining Applicable Permits by the Bidder for implementing the Project.

2.3.3 The Bidder shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the development of the assets regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or unforeseen) including underground utilities and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or unforeseen and the Bidder shall not have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from DMRC in respect of the Project other than for those matters in respect of which express provision is made in the Lease Agreement.

2.4 **Salient features of Bidding Process:**

a) DMRC has adopted a two packet bidding process for declaration of a Selected Bidder for each schedule to grant rights under the Lease Agreement for the Leased Space.

b) The details of bidding process are provided in Section 3.

c) Schedule of bidding process for RFP:

<table>
<thead>
<tr>
<th>Start of sale of RFP Document to Bidders</th>
<th>From 16.12.2016 to 30.01.2017 (upto 1500 hrs.) on e-tendering website <a href="https://eprocure.gov.in/eprocure/app">https://eprocure.gov.in/eprocure/app</a></th>
</tr>
</thead>
</table>
| Cost of RFP Bid Document (Non-refundable) | INR 21,000/- (inclusive of 5% DVAT) Non-Refundable (Demand Draft /Banker’s cheque) in favour of “Delhi Metro Rail Corporation Ltd” payable at New Delhi.  
Cost of tender documents i.e, D.D./Banker’s cheque, in original, shall be accepted only upto 15:00 hours on 30.01.2017 in the office of Executive Director/Contracts at below mentioned address. |
| **Validity of Tender Security in case of BG** | 26.09.2017 |
| **Pre-Tender Meeting** | 03.01.2017 at 11.00 hrs |
| **Last date of receiving queries** | 04.01.2017upto1700hrs (Queries from bidders after due date shall not be acknowledged) |
| **DMRC’s response to queries by** | 12.01.2017 |
| **Tender submission Start Date and Time** | 16.01.2017 from 0900 hrs. |
| **Tender submission End Date & Time** | 30.01.2017 upto 1500 hrs. |
| **Tender opening Date & Time** | 31.01.2017 @ 1500 hrs. |
| **Authority and place for submission of RFP Bid Document cost and seeking clarifications** | **Executive Director/Contracts,**  
Delhi Metro Rail Corporation,  
5th floor, A-Wing, Metro Bhawan,  
Fire Brigade Lane, Barakhamba Road,  
New Delhi –110 001 |

**d) Schedule of Various Stages:** The Selected Bidder shall follow the following time lines:

<table>
<thead>
<tr>
<th><strong>Stage of Activity</strong></th>
<th><strong>Time Period</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment of Upfront Fee and Security Deposit to DMRC.</td>
<td>Within 30 days of issue of Letter of Acceptance</td>
</tr>
<tr>
<td>Signing of Lease Agreement</td>
<td>Within 7 days after payment of Upfront Fee and Security Deposit.</td>
</tr>
<tr>
<td>Payment of Advance Lease Fee for 1st Quarter to DMRC by Lessee.</td>
<td>Within 7 days after end of moratorium period i.e. <strong>one year after signing of the Lease Agreement.</strong> Delay in payment of advance lease fee shall attract interest @ 20% per annum on outstanding balance on due date</td>
</tr>
</tbody>
</table>
Instructions for Online Bid Submission:

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

More information useful for submitting online bids on the CPP Portal may be obtained at: https://eprocure.gov.in/eprocure/app.

REGISTRATION

1) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL: https://eprocure.gov.in/eprocure/app) by clicking on the link “Online bidder Enrolment” on the CPP Portal which is free of charge.

2) As part of the enrolment process, the bidders will be required to choose a unique username and assign a password for their accounts.

3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.

4) Upon enrolment, the bidders will be required to register their valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify / nCode / eMudhra etc.), with their profile.

5) Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC’s to others which may lead to misuse.

6) Bidder then logs in to the site through the secured log-in by entering their user ID / password and the password of the DSC / e-Token.

SEARCHING FOR TENDER DOCUMENTS:

a. There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keywords etc. to search for a tender published on the CPP Portal.

b. Once the bidders have selected the tenders they are interested in, they may download the required documents / tender schedules. These tenders can be moved to the respective ‘My
Tenders’ folder. This would enable the CPP Portal to intimate the bidders through SMS / e-mail in case there is any corrigendum issued to the tender document.

c. The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification / help from the Helpdesk.

**PREPARATION OF BIDS**

1) Bidder should take into account any corrigendum published on the tender document before submitting their bids.

2) Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. Please note the number of covers in which the bid documents have to be submitted, the number of documents - including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.

3) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document / schedule and generally, they can be in PDF / XLS / RAR / DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.

4) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the bidders. Bidders can use “My Space” or “Other Important Documents” area available to them to upload such documents. These documents may be directly submitted from the “My Space” area while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

**SUBMISSION OF BIDS**

a. Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.

b. The bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.

c. Bidder has to select the payment option as “offline” to pay the tender fee / EMD as applicable and enter details of the instrument.

d. Bidder should prepare the EMD as per the instructions specified in the tender document. The original should be posted/couriered/given in person to the concerned official, latest by the last date of bid submission or as specified in the tender documents. The details of the DD/any other
accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise the uploaded bid will be rejected.

e. Bidders are requested to note that they should necessarily submit their financial bids in the format provided and no other format is acceptable. If the price bid has been given as a standard BoQ format with the tender document, then the same is to be downloaded and to be filled by all the bidders. Bidders are required to download the BoQ file, open it and complete the white coloured (unprotected) cells with their respective financial quotes and other details (such as name of the bidder). No other cells should be changed. Once the details have been completed, the bidder should save it and submit it online, without changing the filename. If the BoQ file is found to be modified by the bidder, the bid will be rejected.

f. The server time (which is displayed on the bidders’ dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission.

b) All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.

a. The uploaded tender documents become readable only after the tender opening by the authorized bid openers.

b. Upon the successful and timely submission of bids (ie after Clicking “Freeze Bid Submission” in the portal), the portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.

c. The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

ASSISTANCE TO BIDDERS

1) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.

2) Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to the 24x7 CPP Portal Helpdesk.

3) For any Technical queries related to Operation of the Central Public Procurement Portal Contact
at:

Mobile Numbers: 91 7878007972, 91 7878007973, 91 7574889871, 91 7574889874, 91 8826246593

Tel: The 24 x 7 Toll Free Telephonic Help Desk Number 1800 3070 2232. Other Tel: 0120-4200462, 0120-4001002.

E-Mail: cppp-nic[at]nic[dot]in
SECTION 3

REGULATION OF BIDS

AND

LEASE AGREEMENT
3.1 GENERAL

3.1.1 DMRC invites online Bids from eligible Bidders in terms of eligibility criteria as specified in this document for granting lease to operate, manage and maintain the Leased Area.

3.1.2 The information submitted in the RFP document will form the basis for evaluating the Bidders. The Bidders may participate in the Bid process as per the instructions given in this RFP document.

3.1.3 From amongst the Bidders fulfilling the Eligibility Criteria, as laid down in this RFP document, the total space shall be offered to the Selected Bidder on the basis of the Lease Fee quoted by the Selected Bidder.

3.1.4 The intending Bidder must read the terms and conditions carefully.

3.1.5 Information and instructions for tenderers posted on website https://eprocure.gov.in/eprocure/app shall form part of tender documents.

3.1.6 The Request for Proposal Document (RFP Document) can be seen and downloaded from website https://eprocure.gov.in/eprocure/app. RFP document can only be obtained online after registration on the website https://eprocure.gov.in/eprocure/app. For further information in this regard bidders are advised to contact on 011-23417910.

3.1.7 RFP Document can only be submitted after uploading the mandatory scanned documents towards cost of Bid Documents such as Demand Draft or Pay Order or Banker’s Cheque from a branch in India of a scheduled foreign bank or from a scheduled commercial bank in India acceptable to DMRC and towards Tender Security such as Bank Guarantee or Demand Draft or Pay Order or Banker’s Cheque from a branch in India of a scheduled foreign bank or from a scheduled commercial bank in India acceptable to DMRC and other documents as stated under Clause 3.15 of RFP Document.

3.1.8 Those Bidders who are not registered on the website mentioned above shall be required to get registered beforehand. If needed they can be imparted training on ‘online tendering process’ as per details available on the website.

3.1.9 The authorized signatory of intending tenderer as per Power of Attorney (POA) must have valid class-III digital signature. The complete RFP Document shall only be uploaded using Class-III digital signature of the authorized signatory.

3.1.10 On opening date, the tenderer can login and see the tender opening process. After opening of tenders they will receive the competitor bid sheets.
3.1.11 Bidder can upload documents in the form of JPG format and PDF format.

3.1.12 Tenderer must ensure to quote rate in financial proposal.

3.1.13 Each Tenderer shall submit only one tender. If a Tenderer submits more than one Tender, all the tenders in which he has participated shall be considered invalid.

3.2 Downloaded RFP Documents:

3.2.1 The complete bid document can be downloaded from the website https://eprocure.gov.in/eprocure/app and a non-refundable fee Rs. 21,000/- (inclusive of 5% of DVAT) towards the cost of the Bid document shall be submitted upto the date and time specified in NIT in the office of Executive Director/Contracts, failing which the Bid shall be rejected out-rightly. In case a Bidder Bids for more than one package of lease space if available, separate document cost for each package has to be paid. No tampering, alteration or changing of the contents of the Bid documents is permissible. The DMRC shall not be responsible for any printing error while downloading the documents.

3.2.2 The Bidders are required to download the plans of the Leased Space(s) from the bid documents uploaded on the e-tendering portal https://eproure.gov.in/eprocure/app and place the same as Annexure-6. The Bidder hereby agrees voluntarily and unequivocally not to seek any claim, damages, compensation or any other consideration whatsoever on account of having to collect the Leased Space(s) plans from DMRC.

3.3 Queries in RFP and Amendments

3.3.1 Bidders may upload their queries, if any, to DMRC in https://eproure.gov.in/eprocure/app not later than the date specified under the bid schedule of Section-II of RFP. DMRC shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive bidding process, however, no queries received after prescribed date shall be entertained by the DMRC.

3.3.2 At any time prior to the Proposal Due Date, the DMRC may, for any reason whatsoever, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP through the issuance of an addendum. This shall be uploaded on e-tendering portal https://eprocure.gov.in/eprocure/app and shall be binding upon all the bidders.

3.3.3 In order to give the Bidders reasonable time to take an addendum into account, or for any other reason, the DMRC may, at its discretion, extend the Proposal Due Date.

3.3.4 The Response to queries/ addendums (if any) will be uploaded on e-tendering portal https://eprocure.gov.in/eprocure/app and the Bidders are advised to keep a regular check on the website for any such updates.
3.4 **PRE-BID MEETING**

3.4.1 DMRC shall conduct a pre-bid meeting on the date and location specified under the bid schedule of Section-II of RFP for the purpose of providing clarification and answering the queries of the prospective Bidders.

3.4.2 The tenderer is requested to submit any question in writing or by facsimile, to reach the DMRC not later than the last date of seeking clarification as mentioned in key details of NIT.

3.4.3 The text of the questions raised by all the tenderer and the responses given will be transmitted without delay to all purchasers of the Tender Documents. Any modification of the Tender Documents, which may become necessary as a result of the Pre-Tender meeting, shall be made by the DMRC exclusively through the issue of an Addendum pursuant to Clause 3.3 above.

3.4.3 Non-attendance at the Pre-Tender meeting will not be a cause for disqualification of a Tenderer.

3.5 **ELIGIBILITY CRITERIA**

The Bidder shall meet the following minimum Eligibility Criteria (the “Eligibility Criteria”):

3.5.1 A Bidder must be a sole proprietorship firm or a partnership firm or a body corporate incorporated and registered in India under the Companies Act, 1956 /2013, duly registered under the law applicable to such company, either individually or in Joint Venture or a Consortium under an existing agreement and further subject to compliance with applicable laws, policies and guidelines of the Government of India.

In case the Selected Bidder is a Consortium, such Consortium shall be required to incorporate a company under Companies Act, 2013 which shall be a special purpose company (“SPC”) within 30 days of issuance of the LOA and the SPC shall enter into Lease Agreement with DMRC for implementation of the Project. The members of Consortium shall be required to maintain 100% of the equity of the SPC throughout the subsistence of the Lease Agreement. In case company is not incorporated within 30 days of issuance of LOA, then the LOA will stand cancelled and the amount deposited by the selected bidders (i.e. tender security, Security Deposit, Upfront amount etc.) shall be forfeited.

3.5.2 A Bidder should have a minimum net worth of Rs. 1,93,00,000/- (Rupees One Crore Ninety Three Lakhs only) during last audited financial year.

In Case of JV- Net worth will be based on the percentage participation of each Member.
Example: Let Member-1 has percentage participation = M and Member-2 has =N. Let the Net worth of Member-1 is A and that of Member-2 is B, then the Net worth of JV will be
\[
\frac{AM+BN}{100}
\]

3.5.3 The minimum average annual turnover of a Bidder should be Rs 1,93,00,000/- (Rs One Crore Ninty Three Lacs only) for the preceding three financial years as per the audited balance sheets of the Bidders starting from the financial year, 2013-14.

The average annual turnover of JV will be based on percentage participation of each member.

Example: Let Member-1 has percentage participation = M and Member - 2 has =N. Let the average annual turnover of Member-1 is ‘A’ and that of Member-2 is ‘B’, then the average annual turnover of JV will be
\[
\frac{AM+BN}{100}
\]

Notes:
Financial data for latest last three audited financial years has to be submitted by the tenderer in Annexure-3 along with audited balance sheets. The financial data in the prescribed format shall be certified by Chartered Accountant with his stamp and signature in original. In case audited balance sheet of the last financial year is not made available by the bidder, he has to submit an affidavit certifying that ‘the balance sheet has actually not been audited so far’. In such a case the financial data of previous ’3’ audited financial years will be taken into consideration for evaluation. If audited annual report for 2015-16 is not yet ready then the bidders is required to submit reports for 2012-13, 2013-14, 2014-15 alongwith an affidavit certifying that balance sheet for 2015-16 has not been audited so far.

3.5.4 Eligibility for a Consortium

In case the Bidder is a Consortium, the Eligibility of individual members of the Consortium can be considered for meeting the prescribed criteria, provided that each of such Members holds at least 26% of the equity for consideration of Eligibility in the Consortium Further, the Lead Member of the Consortium must have a minimum of 51% of the Financial Eligibility specified in sub-para 3.5.2 and sub-para 3.5.3 above.

For the purpose of evaluation of the Consortium, each member’s contribution towards the turnover and net worth of the Consortium shall be considered in the same ratio of their equity participation in the Consortium. Financial eligibility of lead member and one member having at least 26% equity shall be considered for evaluation of eligibility.
3.5.5 Any Central / State government department or public sector undertaking must not have banned business with the tenderer (any member in case of JV) as on the date of tender submission. Also no work of the tenderer must have been rescinded by DMRC after award of contract during last 5 years due to non-performance of the tenderer. The tenderer should submit undertaking to this effect in Form of Tender.

3.5.6 A firm, who has purchased the tender document in their name, can submit the tender either as individual firm or in joint venture/Consortium.

3.5.7 NON SUBSTANTIAL MEMBER IN CASE OF JV/CONSORTIUM
   a. Lead partner must have a minimum of 51% participation in the JV/Consortium.
   b. Members having less than 26% participation will be termed as non-substantial partner and will not be considered for evaluation which means that their financial soundness and work experience shall not be considered for evaluation of JV/Consortium.
   c. In case of JV/Consortium, change in constitution or percentage participation shall not be permitted at any stage after their submission of application otherwise the applicant shall be treated as non-responsive.

3.6 BID BY A CONSORTIUM OF FIRMS

Bids submitted by the Consortium must comply with the following requirements:

3.6.1 The number of members shall not exceed three (3).

3.6.2 The members of Consortium should have entered into a Memorandum of Association (“MOA”) (as per Annexure 7) between themselves. One of the members of Consortium, holding at least 51% of the equity / ownership stake shall be authorized and nominated as the ‘Lead member’ (“Lead Member”) to act and represent all the members of the Consortium for bidding and implementation of the Project. A copy of this MOA shall be enclosed with the Bid.

3.6.3 Formation of SPC:
The Lead Member shall hold not less than 51% (fifty one per cent) of the equity of the SPC during the subsistence of the Lease Agreement and that each member of the Consortium whose financial capacity was evaluated for the purposes of award of the Project shall hold at least 26% (twenty six per cent) of such Equity during the subsistence of the Lease Agreement. Replacement of the Lead Member shall not be allowed at any time during the subsistence of the Lease Agreement.

3.6.4 A Bidder or a member of a Consortium can be a member in only one Consortium. If a Bidder / member participates in more than one Bid for the same site / space, all Bids of which it is a part shall be summarily rejected.
3.6.5 All members of the Consortium shall be jointly and severally liable for the execution of the Project during Lease Period in accordance with the terms of the Lease Agreement.

3.6.6 RFP submitted by a firm or Consortium must comply with the following requirements:

- The RFP shall include all the information required for each member of Consortium separately.
- The covering letter (Section 3) must be signed by the Lead Member only in the prescribed format.
- The members of Consortium must clearly spell out their respective roles in the Consortium in the prescribed format in Annexure 7 only.

3.6.7 If the Bidder is a Consortium, the Agreement shall be signed with the SPC incorporated by such Consortium, however, all members of the Consortium shall be liable jointly and severally, for the execution of the Project in accordance with the terms of the Agreement.

3.7 Change in Composition and Equity Participation of the Consortium

3.7.1 After receipt of the Bid, there shall be no change in composition of Consortium (either inclusion of a new member or exclusion of a member) or proposed shareholding structure as mentioned in the submitted Bid which affects the minimum shareholding requirement of members of the Consortium to decline below the required percentage as provided under Clause 3.6.3 hereinabove till the completion of the Lease Period.

3.7.2 Any change proposed in the equity shareholding pattern of the Consortium in the Special Purpose Company during the Lease Period, within the prescribed limits as mentioned in Clause 3.6.3, shall require prior written approval of DMRC. As and when the SPC is created and entrusted with the task of implementing the Project, the constitutional documents of the SPC and the Board Resolutions authorizing the execution, the delivery and the performance of such tasks will have to be submitted to DMRC.

3.8 Conflict of interest

A Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the bidding process. Any Bidder found to have such a Conflict of Interest shall be disqualified. In the event of disqualification, DMRC shall forfeit and appropriate the tender security as mutually agreed genuine pre-estimated compensation and damages payable to DMRC for, inter alia, the time, cost and effort of the DMRC, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy that may be available to the DMRC hereunder or otherwise. Without limiting the
generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the bidding process, if:

i) a constituent of Bidder is also a constituent of another Bidder; or

ii) Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

iii) Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

iv) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others’ information about, or to influence the Bid of either or each other; or

v) such Bidder or any Associate thereof has participated as a consultant to DMRC in the preparation of any documents design or technical specifications of the Project.

Notwithstanding anything stated herein a Conflict of Interest situation arising at the pre qualification stage will be considered to subsist only, as between such Bidders attracting Conflict of Interest provisions on account of shareholdings, who submit Bids under this document.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used shall include each Member of such Consortium. For purposes of this RFP, Associate means, in relation to the Bidder/ members of Consortium, a person who controls, is controlled by, or is under the common control with such Bidder/ member of Consortium (the "Associate"). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or contract.

3.9 LANGUAGE AND CURRENCY

3.9.1 The Bid and all the related correspondence and documents shall be written in English language only.
3.9.2 The currency for the purpose of the Bid shall be the Indian National Rupee (INR).

3.10 TENDER SECURITY

3.10.1 The Tenderer shall submit a Tender Security for **Rs 3,85,000/- (Rupees Three Lacs Eighty Five Thousand Only)** in any one of the following forms in the office of the Executive Director/Contracts before the deadline of tender submission as specified in NIT. Also the scanned copy of the same should be uploaded along with the bids.

(a) Irrevocable bank guarantee issued by a Scheduled Commercial bank based in India or from a branch in India of a scheduled foreign bank in the form given in Annexure-10 of Section V of tender document.

(b) Demand Draft / Pay Order / Bank Draft in favour of Delhi Metro Rail Corporation Ltd. payable at New Delhi from a Scheduled Commercial bank based in India,

(c) Fixed Deposit Receipt (FDR) of a Scheduled Commercial bank / Post office based in India duly pledged in favour of Delhi Metro Rail Corporation Ltd.

In case of joint venture/Consortium, Bank Guarantee or FDR for tender security shall be in the name of joint venture/Consortium and not in name of individual members. The Tender Security shall remain valid up to the date as specified in NIT under schedule of bidding process clause 2.4 (c).

The tender security shall be submitted in a sealed envelope clearly marked on top “Tender Security for Property Development at Neelam Chowk Ajronda MRTS Station of Line-6 Ext. (Badarpur – Faridabad Corridor)”.

3.10.2 Any Tender not having an acceptable Tender Security shall be rejected by the DMRC considering it as non-responsive and their Technical package shall not be opened and if opened then it will NOT be evaluated. No post bid clarification shall be sought on tender security.

3.10.3 The Tender Security of the successful Tenderer shall be returned upon the execution of the Contract and the receipt by the DMRC of the Security Deposit in accordance with Clause 3.11 below.

3.10.4 The Tender Security of tenderers who fail in technical evaluation shall be returned after opening of financial package. Tender security of the unsuccessful tenderers in financial opening shall be released after unconditional acceptance of the Letter of Acceptance (LOA) by the successful tenderer.

3.10.5 The Tender Security shall be forfeited:

a) if the Bidder withdraws its Bid during the interval between the Bid Due Date and the expiration of the Bid Validity Period;

b) if the Selected Bidder fails to make the payments (as per Clause 3.11.4 & 4.15) within the time specified in this RFP, or any extension thereof granted by DMRC;
c) if the successful Tenderer refuses or neglects to execute the Contract or fails to furnish the required Security Deposit within the time specified or extended by the DMRC.

d) if the Tenderer does not accept the arithmetic corrections to his Tender price, as per the relevant clause in RFP.

3.11 SECURITY DEPOSIT

3.11.1 The Lessee for the package shall submit an interest free Security Deposit to the DMRC for a sum equivalent to one year’s recurring Fee (i.e. Lease fee + maintenance fee if any + utility area fee if any) (as per Clause 4.15), for the said Leased Space(s) with a validity of three years. Further, Security Deposit shall also be submitted for lease fee of additional area including mezzanine area. This Security Deposit shall be submitted within 30 days of issue of the LOA. The Security Deposit shall be in the form of Bank Guarantee / Demand Draft / Pay Order in favour of “Delhi Metro Rail Corporation Ltd.”, drawn on any scheduled commercial bank and payable at New Delhi. The Bank Guarantee for Security Deposit shall be renewed after every three year for a sum equivalent to one year’s recurring Fee (i.e. Lease fee + maintenance fee if any + utility area fee if any) of applicable Lease Fee for that year with a validity of three years.

The Bank Guarantee must be issued on the Structured Financial Messaging System (SFMS) platform. A separate invoice of the BG will invariably be sent by the issuing bank to the Employer’s Bank through SFMS. The details of Employer’s (DMRC’s) Bank are as under:

ICICI BANK LTD.
9A, Phelps Building, Connaught Place, New Delhi-110001,
IFSC Code: ICIC0000007
The bank guarantee issued on the SFMS platform shall only be acceptable to DMRC.

3.11.2 The said Security Deposit will be kept valid on a rolling basis till the end of the Lease Period & final settlement of accounts which shall be kept valid for a period of 6 months beyond the lease period or final settlement whichever is earlier.

3.11.3 The Security Deposit would however be forfeited in case of any ‘Event of Default’ as described in the Draft Lease Agreement and/or in accordance with terms specified elsewhere in the Bid Document.

3.12 PROPOSAL PREPARATION COST

The Bidder shall be solely responsible for all the costs associated with the preparation of its Bid and its participation in the bidding process, including all types of due diligence that
may be required for the process. The DMRC shall not in any way be responsible or liable for such costs, regardless of the conduct or outcome of bidding.

3.13 VALIDITY OF OFFER

3.13.1 The Proposal shall remain valid for a period not less than one hundred eighty (180) days from the Bid Due Date (“Proposal Validity Period” or “Bid Validity Period”). DMRC reserves the right to reject any Bid that does not meet this requirement. DMRC may however request the Bidders to extend the validity of their Bids for a specified additional period.

3.13.2 A Bidder agreeing to the request will not be allowed to modify its Bid, but would be required to extend the validity of its tender security for the relevant period of extension.

3.13.3 The Bid Validity Period of the Selected Bidder shall stand extended till the date of execution of the Lease Agreement.

3.14 PREPARATION AND SUBMISSION OF PROPOSAL

The Bids should be submitted in the forms prescribed under this section, and the relevant Annexure in Section 5.

3.14.1 The completed Bids shall be accepted only up to the date and time as specified in under the bid schedule of Section-II of RFP. Bids have to be submitted online on the website http://eprocure.gov.in/eprocure/app.

DMRC, at its sole discretion, retains the right, but is not obligated to extend the Bid Due Date, by issuing an addendum to those Bidders who have purchased the Bid document from the office of the DMRC and by also placing the same on the website http://eprocure.gov.in/eprocure/app.

3.14.2 The Bidders shall furnish the information strictly as per the formats given in Section 5 of this document without any ambiguity. The DMRC shall not be held responsible if the failure of any Bidder to provide the information in the prescribed formats results in a lack of clarity in the interpretation and consequent disqualification of its Bid.

3.14.3 In case of a Consortium, wherever required, the Bid must contain such information individually for each member of the Consortium.

3.14.4 In case of a Consortium, the members shall submit a Memorandum of Agreement (MOA) conveying their intent to jointly Bid for the Project. The MOA shall also include the nomination of the Lead Member in the Consortium, and clearly outline the proposed shareholding and responsibilities of each member at each stage of the Project. The MOA
should also clearly indicate that all the Consortium Members shall be jointly & severally responsible for execution of the Project & subsequent operationalization of the Lease Agreement during entire Lease Period.

3.14.5 All Proposals/Bids shall be uploaded by the duly ‘Authorized Signatory’ of the Bidder. In case of a Consortium, the proposal shall be uploaded by the duly Authorized Signatory of the Lead Member. The Bidders shall submit a supporting **Power of Attorney (POA)** authorizing the Signatory of the Proposal, to commit the Bidder and agreeing to ratify all acts, deeds and things lawfully done by the said attorney and such POA shall be signed by all members of the Consortium and shall be legally binding on all of them.

3.14.6 The Proposal shall be uploaded with Class-III digital signature by the Authorized Signatory in unequivocal acceptance of all the terms and conditions of this Bid Document. All the alterations, omissions, additions, or any other amendments made to the Proposal shall mandatorily be initialed by the Authorized Signatory.

3.14.7 All the witnesses and sureties shall be persons of status and probity and their full names and addresses shall be stated below their signature. All signatures in the Bid Documents shall be dated.

3.14.8 Bidders are required to submit / upload only one set of the Bids, (including the Original RFP) which is signed on each page in acceptance of all the terms and conditions of the Bid Document.

3.14.9 Any firm, which submits or participates in more than one Bid for the said Project shall be disqualified and shall also cause the disqualification of all the Consortiums in which it is a Member.

### 3.15 SUBMISSION OF BIDS

3.15.1 The RFP Document cost and tender security shall be submitted to the office of the Executive Director/Contracts as specified in bid document.

3.15.2 The technical package/qualification documents shall be uploaded online on the website http://eprocure.gov.in/eprocure/app and shall contain the following:

- Letter of Application and Interest (As per Annexure 1)
- Scanned copy of RFP Document cost and tender security
- General Information of the Bidder (As per Annexure 2)
- Summary of Financial Capability (As per Annexure 3)
 Memorandum of Agreement (MOA) in case of a Consortium (As per Annexure 7) Attested (by Distt. Magistrate / Gazetted officer) copy of the Partnership Deed in case of a Partnership.
 Power of Attorney for Signing Of the Application (As per Annexure 8)
 Affidavit (As per Annexure 5)
 Scanned RFP Document duly signed (on each page) by an authorised representative as a token of acceptance of all the terms and conditions.
 Undertaking for not being banned (As per Annexure 11).
 A declaration (As per Annexure-12) stating that the tender document/addendums/clarifications, if any, placed upto the date of opening of bids on the e-tendering portal [https://eprocure.gov.in/eprocure/app] have been downloaded and considered in our tender submission and confirming their unconditional acceptance to all the terms and conditions.

3.15.3 The Financial Proposal (as per Annexure 4) shall be uploaded online on the website http://eprocure.gov.in/eprocure/app. The rates shall be quoted in the excel file provided in the bid documents. The Bidder shall download the excel file and after quoting their rates upload the same accordingly. **The rates shall not be offered/quoted elsewhere in the technical submission/ tender submission.**

3.15.4 Tender cost and EMD received after Proposal Due Date and time shall not be accepted and online tenders of such Bidders shall liable to be rejected summarily.

3.15.5 DMRC will not be responsible for delay, loss or non receipt of ‘Tender Security’ (EMD) and ‘Cost of Tender Document’ (Tender Cost) sent by post / courier.

**3.16 BIDDER’S RESPONSIBILITY**

3.16.1 It would be deemed that prior to the submission of the Bid; the Bidder has made a complete and careful examination of:

a) The requirements and other information set forth in this RFP document.

b) The various aspects of the Project including, but not limited to the following:

(i) PD area, existing facilities, encumbrances within the spaces and structures, the access to the roads and the utilities;

(ii) All other matters that might affect the Bidder’s performance under the terms of this RFP, including all risks, costs, liabilities and contingencies associated with the Project.
c) All the Bids shall be signed by the Bidder or the duly authorized signatory of the Bidder.
d) Bidder shall visit the Project Site at its own cost before submitting the Bid.

3.16.2 The DMRC shall not be liable for any mistake or error or neglect by the Bidder in respect of the above. The Bids that are not substantively responsive to the requirements of this RFP document shall be rejected as non responsive.

3.17 MODIFICATION AND WITHDRAWAL OF PROPOSALS

3.17.1 No Proposal shall be modified or withdrawn by the Bidder after the Bid Due Date.

3.17.2 Withdrawal of a Bid during the interval between Bid Due Date and the expiration of the Bid Validity Period would result in the automatic forfeiture of the tender security.

3.18 OPENING OF BIDS

3.18.1 The Technical Package of all tenderers who have submitted a valid tender security and cost of tender document shall be opened in the presence of representatives of tenderers who choose to attend on date & time as mentioned in tender document in the office of the Executive Director/contracts, DMRC, 5th floor, A-Wing, Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi –110001. Tenderers may visit DMRC e-procurement web-site to know latest Technical Opening information after completion of opening process. If such nominated date for opening of Tender is subsequently declared as a Public Holiday by the DMRC, the next official working day shall be deemed as the date of opening of Technical Package. The Tender of any tenderer who has not complied with one or more of the foregoing instructions may not be considered.

3.18.1(a) On opening of the Tender, DMRC will first check the tender cost and tender security through online mode by cross verifying with the hard copy submitted.

3.18.1(b) If the documents do not meet the requirements of the DMRC, a note will be recorded accordingly by the Tender Opening Authority.

3.18.1(c) The bidders name, details of the tender security and such other details as the DMRC or his authorized representative, at his discretion, may consider appropriate will be announced at the time of tender opening.

3.18.1(d) The digitally signed financial package which tenderer have uploaded online will be opened on a subsequent date after evaluation of technical packages. Financial packages of only those tenderers whose submissions are found substantially responsive and technically compliant to the tender conditions will be opened. The time of opening of financial package shall be informed through website only. Tenderers can visit to DMRC e-procurement website for further information.
3.18.2 The DMRC reserves the right to reject any Proposal and forfeit the tender security, if

a) It is not signed, sealed and marked as stipulated in Clause 3.16.

b) The information and documents have not been submitted as requested and in the formats specified in the RFP.

c) There are inconsistencies between the Proposal and the supporting documents.

d) It does not mention the validity period as set out in Clause 3.13.

e) It provides the information with material deviations, which may affect the scope or performance of the Project.

f) There are conditions proposed with the Technical and/or Financial Proposals.

3.18.3 A material deviation or reservation is one:

a) which affects in any substantial way, the scope, quality, or performance of the Project, or

b) which limits in any substantial way, inconsistent with the RFP document, the DMRC’s rights or the Bidder’s obligations, or

c) which would affect unfairly the competitive position of other Bidders’ presenting substantially responsive Bids.

d) No request for modification or withdrawal shall be entertained by the DMRC in respect of such Proposals.

3.19 RESPONSIVENESS OF BIDS

3.19.1 Before evaluation of Bids, DMRC will determine whether the Bid is responsiveness to the requirements of Bid Documents. A Bid/Proposal shall be considered ‘responsive’ only if:-

i) it is received by the deadline for submission of Bid/Proposal;

ii) It contains information complete in all respect as required in the Bid Documents(in the formats specified);

iii) it is signed, sealed and marked as stipulated;

iv) it is accompanied by receipt of Bid Document Fee;
v) it is accompanied by the acceptable tender security/Bid Security;

vi) it is accompanied by the relevant Power(s) of Attorney(ies) and Undertakings as specified in Bid Forms;

vii) The document is accompanied by the Checklist as prescribed.

3.19.2 If any of the above criteria is not fulfilled, in any manner whatsoever, the proposal shall be treated as non-responsive. The decision of DMRC on the responsiveness of the Bid shall be final and conclusive and binding on the Bidder and shall not be called into question by any Bidder on any ground whatsoever. Any Bid/Proposal which is non-responsive may be rejected.

3.19.3 To facilitate checking the responsiveness and evaluation of Bids, DMRC may at its sole discretion, without being under any obligation to do so, reserves the right to call for any clarification from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by DMRC for this purpose. If the Bidder does not provide the clarification sought within the prescribed time, its Bid shall be liable to be rejected. In case it is not rejected, DMRC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding.

3.19.4 No Bidder shall however have the right to (i) give any clarification unless asked for by DMRC, in any manner whatsoever, with the bidding process, or (ii) to intervene in, any manner whatsoever, in the bidding process.

3.20 EVALUATION OF BIDS

**Evaluation of Technical Proposals**

The Bids of the Bidders shall be evaluated in two stages. “Tender Security” and “Technical Qualification” will first be evaluated which will cover following items:

3.20.1 First of all it will be determined whether each tender is accompanied with the valid tender security i.e. the required amount and in an acceptable form as stated in Clause 3.10 above. Tenders not accompanied with the valid tender security shall be rejected and may not be evaluated further. Other aspects of technical evaluation will be done as per Clause 3.5, 3.6, 3.8, 3.13, 3.18 and 3.19 above.

3.20.2 Tenders not considered substantially responsive and not full-filling the requirements of the tender document as evaluated above shall be rejected by DMRC and shall not be allowed subsequently to be made responsive by correction or withdrawal of the nonconforming deviation or reservation.
3.20.3 If any tender is rejected, pursuant to paragraph 3.20.2 above, the Financial Package of such tenderer shall not be opened.

3.20.4 The decision of the DMRC as to which of the tenders are not substantially responsive shall be final.

3.20.5 In case of those Bidders who have not met the eligibility criteria then the Financial Bids of such tenderer shall not be opened.

**Evaluation of Financial Proposals**

3.20.6 All technically acceptable tenders will be eligible for opening of their financial proposals. The DMRC shall notify all technically qualified Tenderers to attend the opening of the financial proposal. The financial proposal will then be opened online in front of attending Tenderers.

The Bidders with the highest Bid may also be requested to make a presentation at their own cost, for clarifications, additional information on Bidder’s capability, concept plan and the business proposal in this regard to DMRC. DMRC may seek further clarifications and make suggestions in respect of the proposal which should not in any manner effect a change in the Lease Fee quoted by such Bidder or the manner of its payment and also should not constitute any material deviation affecting the relative position of any Bidder and also should not be inconsistent in any substantial way with the Bid Documents. The Bidder shall be obliged to incorporate these suggestions in his planning/proposals.

3.20.7 The arithmetical errors will be rectified on the following basis. If there is a discrepancy between words and figures, the percentage quoted in words will prevail. If the Bidder does not accept the correction of errors, its Bid shall be rejected & the tender security (EMD) shall be forfeited.

3.20.8 The Bidder found eligible and quoting the highest amount as Lease Fee in its Proposal shall normally be declared as the Selected Bidder for the Project.

3.20.9 In the event of two or more Bidders quoting same amount in financial proposal for the Project, DMRC may ask the tie Bidders to submit their revised Financial Proposals with the amounts quoted by them earlier as reserve price for such Financial Bid. In such case, the Bidder who amongst the tie Bidders, quotes the higher amount in the revised Financial Bid will normally be declared as the Selected Bidder for the Project.

3.20.10 However, the confirmation of the highest Bid shall be at the sole discretion of the DMRC who does not bind itself to confirm to the highest Bid and reserves the right to reject the Bid without assigning any reasons whatsoever.
3.20.11 Further, in the event of the highest Bidder withdrawing its offer or not being selected for any reason in the first instance for the Project, (the "First Round of Bidding"), DMRC without being under any obligations to do so, may, at its sole discretion, either invite the next higher Bidder to revalidate and/or extend its EMD, as necessary and also match the Bid of the aforesaid highest Bidder for the Project or annul the bidding process as deemed appropriate by DMRC in its sole discretion.

3.21 RIGHT TO REJECT BIDS

3.21.1 The DMRC reserves the right to reject any Bid if it is of the opinion that the Bidder lacks the expertise, experience and is not in possession of requisite infrastructure required for the purpose of the Project. The discretion of the competent authority of DMRC in this respect shall be final and binding on all the Bidders.

3.21.2 The DMRC reserves the right to reject any/all Bids including the highest Bid or withdraw the Bid at any stage without assigning any reasons whatsoever. Nothing contained herein shall confer a right upon a Bidder or any obligation upon the DMRC.

3.21.3 The Bidder hereby voluntarily and unequivocally agrees that DMRC shall not be under any obligation or be liable for any acceptance, rejection or annulment of any/all Bids and the Bidder shall not to seek any claims, damages, compensation or any other consideration whatsoever on this account, from DMRC.

3.22 MISREPRESENTATION/FRAUD/BREACH OF TERMS AND CONDITIONS

If it is discovered at any point of time that any Bidder has suppressed any facts or has given a false statement or has made any misrepresentation or has committed a fraud or has violated any of the terms of this Bid, the Bid shall be disqualified by DMRC. If the Bidder is a Consortium, then the entire Consortium and each Member shall be disqualified/rejected. In such an event, the Bidder shall not be entitled to any compensation whatsoever, or refund of any amount/s paid.

3.23 DISPUTES

3.23.1 All disputes between the successful Bidder and DMRC shall be settled as per the Dispute Resolution procedure elaborated in the draft Lease Agreement. During the bidding process, no dispute of any type would be entertained. Even in such cases where DMRC asks for additional information from any Bidder, the same cannot be adduced as a reason for citing any dispute.

3.23.2 The Courts at Delhi shall have the sole & exclusive jurisdiction to try all the cases arising out of this RFP document.
3.24 CONFIDENTIALITY

3.24.1 The information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. DMRC will treat all the information submitted as part of all the proposals in confidence and will insist that all that have access to such material treat it in confidence. DMRC will not divulge any such information unless it is ordered to do so by any Government Authority that has the power under law to require its disclosure or due to statutory compliances.

3.25 ACCEPTANCE OF THE OFFER

3.25.1 After the Bids are accepted by the Competent Authority of DMRC, the LOA shall be issued to the Selected Bidder.

3.26 EXECUTION OF LEASE AGREEMENT

3.26.1 The Selected Bidder shall be required to pay the Upfront Fee (Service Taxes extra) as per prescribed schedule and deposit the requisite Security Deposit to the DMRC within 30 days of issue of the LOA.

3.26.2 The Lease Agreement shall be executed within a period of 7 days from the payment of Upfront Fee & Security Deposit by the Selected Bidder to the DMRC which shall be the Commencement Date of the Project. Prior to signing of the Lease Agreement, the Selected Bidder shall submit the certified true copies of all resolutions adopted by its/their Board of Directors authorizing it/them for the execution, delivery and performance of this Agreement to the DMRC. Also, joint measurement of the area shall be made by DMRC and authorized representative of selected bidder before signing of the lease agreement. The actual area calculated will be incorporated in the agreement and recurring and upfront payment will be calculated accordingly.

3.26.3 The access to the Leased Space(s) shall be granted to the Selected Bidder only upon execution of the Lease Agreement.

3.26.4 The responsibility for registration of lease agreement shall vest with the selected bidder and the cost of stamp duty for execution of the Lease Agreement, the registration charges and any other related documentation charges and the incidental charges will be borne by the Selected Bidder.

3.26.5 In case of failure to sign the Lease Agreement within the stipulated time, the DMRC shall retain the right to cancel the LOA and forfeit the Bidder’s tender security (EMD) and any
other amount deposited till that time without being liable in any manner whatsoever to the Selected Bidder.

3.26.6 The failure to meet the abovementioned conditions, shall be construed as a breach of the Selected Bidder and DMRC shall be entitled to cancel the LOA without being liable in any manner whatsoever to the Selected Bidder and appropriate the tender security and any other amount deposited till that time as ‘Damages’.

3.27 UNSUCCESSFUL BIDDERS

The tender security received from the Bidders who are not selected shall be returned by DMRC within 30 (Thirty) days of the declaration of the Selected Bidder. The tender security/ bid security shall be returned without payment of any interest.
SECTION 4

GENERAL CONDITIONS OF LEASE AGREEMENT
4.1 **Leased Space**

4.1.1 After signing of LOA and execution of Lease Agreement, the Selected Bidder shall be granted access to operate, manage and maintain the Leased Space(s) at the subject Site as mentioned in Clause 2.1 of this RFP and as detailed in Annexure – 6 of this RFP document.

4.1.2 Areas indicated in Clause 2.1 above and Annexure 6 hereto, are approximate. Actual area shall be measured at the time of providing the Leased Space(s) and in case there is any variation, the Upfront Fee and the Lease Fee shall be adjusted on pro-rata basis.

4.1.3 Similarly, in case any additional area (the ‘**Additional Area**’) is available and deemed feasible by DMRC, the Additional Area may be allotted to the Lessee in the sole discretion of DMRC on the request made by the Lessee upon payment of additional Upfront Fee (at applicable rate at that time by increasing @20% every three year as done in the case of recurring payment) and the Annual Lease rate of Lease Fee which shall be calculated on pro-rata basis w. r. t. reference area in original Lease agreement at the prevalent rate of Lease Fee on the date of such request made by the Lessee. The Lease Period of such Additional Area shall however be co-terminus with the Lease Agreement.

4.1.4 Parking area shall be charged @ 20% of the lease fee. The utility area shall be charged @ 50% of the lease fee. The area under mezzanine floor constructed by the Lessee shall be chargeable equal to the lease fee.

4.1.5 The chargeable areas (i.e. the **Super built up area** for which Lease Fee shall be charged) mentioned in the table provided at Clause 2.1 are areas as marked / delineated on plans provided under Annexure-6 and also include a loading in respect of the utility area located outside the delineated plans of the packages. As evident from the delineated plans, these areas mentioned in above table, apart from carpet area also include the area of balconies, refuge areas, common areas like staircase, lift lobby, ducts area etc. (the “**Common Area**”). The Lessee shall have no exclusive rights for using the Common Area which shall only be used for the intended purposes. The Common Areas shall not be allowed to be encroached or used for any other purpose and any encroachment of the Common Area shall be construed as breach of the Lease Agreement inviting action as applicable for breach of the same.

4.2 **DMRC shall provide:**

4.2.1 A bare shell structure with plain /concrete floors and walls and without internal finishes, on “as is where is basis”.
4.2.2 Infrastructure provided by DMRC shall be as per terms and conditions indicated in Clause 4.12 herein below.

4.2.3 The Selected Bidder can use the parking facility available/provided at the Project Site.

4.2.4 Signage and Advertisements:

a) The Lessee shall have the right to display signage(s) of suitable size for displaying its generic name of each Space. The signage may be illuminated or non-illuminated at the Lessee’s option, however it shall need to confirm to all governmental laws, regulations or ordinance relevant thereto. The Lessee shall also need to obtain a written approval from DMRC before putting up any form of signage and DMRC reserves the right to refuse or to suggest an alternation to the same. The size, shape, location, etc. of signage are subject to architectural controls to be issued by DMRC. Signage should be used only for the business being run by the Lessee in the leased premises. In addition, the Lessee shall also be required standard materials as per standards prevalent in DMRC, for which he shall seek necessary approval from DMRC.

b) Space for 1 totem pole shall be provided by the DMRC without any additional lease fee at a suitable location. Totem pole will be provided on the Ground/Concourse floor admeasuring 15 feet by 4 feet. The totem pole shall be backlit. The installation cost, electricity consumption charges, taxes etc. (if any) shall be borne by the Lessee.

c) No advertisement in any format shall be permitted on the outer surface of the Leased Space. However, the lessee shall be allowed to use interior of the leased spaces for display of advertisement only about the business/commodity being run/sold by the Lessee in the Leased space(s). In addition, advertisement area up-to 8’ x 6’ shall also be provided for each PD floor at designated places in the circulating area of station on charges @ half of the Lease fees.

d) The Lessee shall need to obtain a written approval from DMRC by way of a notice before putting up any form of signage/advertisement within/outside their premises and DMRC reserves the right to refuse or to suggest an alternation to the same. The signage/advertisement shape and location etc are subject to architectural controls to be issued by DMRC.

e) Placement of signage/advertisement without the permission of DMRC or placement in non approved locations shall attract a penalty of Rs.5000/- per signage/advertisement on the first occasion and Rs.50,000/- per signage/advertisement on the second occasion. In case of persistence default, DMRC reserve the right to terminate the agreement with forfeiture of the (interest free) security deposit and advance lease fee paid in its favour.
DMRC shall not unreasonably interfere with the signage/ advertisement plan. If DMRC is not satisfied and raises any objections, the lessee shall be required to appropriately amend/ modify his scheme within a reasonable timeframe and seek DMRC approval once again.

4.3 Works to be executed by Lessee:

Lessee shall be required to execute all works as required for the commercial use in the Leased Space(s) without damaging any loads bearing / structural members and any services / utility etc. The works to be executed by Lessee shall include but shall not be limited to the following:

4.3.1 All internal finishing works including internal partitions, doors, flooring, plastering, painting, etc including refuse and breakout balcony.

4.3.2 Expansion joint treatment for all PD floors.

4.3.3 Toilets and pantry –

   a) All the finishing works of toilets in PD area including internal partition, plastering, dado work, flooring, internal fixtures, plumbing and connection with outlet provided both for water supply and drainage at each floor.

   b) Necessary arrangement for water purifier.

   c) Distribution of water including installation of meters, storage and purification after taking all the approvals.

Note: The above list is only indicative and Bidders are required to make their own assessment of the works needed as per their requirement.

4.4 Activities Permitted

4.4.1 Except for the activities banned by law or Govt. Regulations for usage of the Leased Space(s) and the activities banned vide Annexure 9 of this RFP, the Leased Space(s) can be used for the purpose of retail / organized commercial space (viz., Malls etc) / office space / Banks / educational institutes / hotel segment / restaurants etc. DMRC reserves the right to ensure that there is no violation of the same.

4.4.2 The Lessee shall ensure that the activities undertaken in Leased Space(s) neither interferes with metro activities nor causes any inconvenience to metro commuters. In case, the activities in Leased Space(s) are found to interfere / infringe with metro activities or commuter movement, DMRC reserves the right to advise Lessee not to undertake such
activity any further at any stage during lease period. The decision of DMRC in this regard shall be final and binding upon the Lessee and Lessee shall not claim any loss or damages in this regard.

4.5 **Period of ‘Lease’**

4.5.1 The access to the Leased Space(s) shall be granted to the Selected Bidder immediately from the date of execution of the Lease Agreement which shall be executed within a period of **7 days** from the payment of full Upfront Fee, if opted, & Security Deposit by the Selected Bidder to the DMRC (hereinafter referred to as “Commencement Date”).

4.5.2 The lease granted under the lease Agreement shall be valid for a period of **15 (Fifteen) years** from the Commencement Date or earlier if the lease Agreement is terminated by the DMRC at its sole discretion. The Selected Bidder shall be obliged to pay the Lease Fee and all other payments as per the terms of the RFP and Lease Agreement during and for the period of lease.

4.6 **Moratorium Period**

4.6.1 For carrying out the Fit-out Activities and finishing works etc. the Lessee would be permitted a Lease Fee free period up to **one year from** the date of signing of the Lease Agreement (hereinafter referred to as “Moratorium Period”).

4.7 **Right to Sub-Lease**

The Lessee shall be entitled to sub-lease the built up space to any person or entity (the “Sub-Lessee”), only after adding the necessary structures and utility services. Further sub-leasing by a Sub-Lessee is not permitted.

4.7.2 The sub-lease shall however be for the use of the Leased Space(s), during the subsistence of the Lease Period only with a clear stipulation that all such sub-leases granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessees, and further that such Sub-Lessee shall not have any claim or seek any compensation from DMRC for such termination.

4.7.3 The Lessee shall prepare a draft standard format of the sub-lease agreement, which will be required to be signed by the Sub-Lessee for use of the Leased Space(s). Prior written approval of DMRC shall be obtained by the Lessee in respect of such standard draft. DMRC may specify certain covenants to be incorporated in the sub-lease agreement to protect its interests. Only after such covenants are incorporated in the sub-lease agreement, the Lessee will be entitled to enter into sub-lease agreement and shall be required to
submit copies of each such lease to DMRC for verification and record. In case of any deviation from the above-mentioned standard draft sub-lease agreements, the Lessee shall obtain the prior written consent and approval of the DMRC before entering into an agreement with a Sub-Lessee. DMRC reserves the sole right not to give consent/approval to such a request and no compensation or claim on this account will be entertained in this regard.

4.7.4 At any point of time, the Lessee shall not enter or cause any of its Sub-Lessees to enter into any sub-lease agreement with any person or entity for transfer of its rights which would adversely affect the interests of DMRC or is not available to the Lessee in the first place. Any such act of the Lessee or Sub-Lessee(s) shall render the Lease Agreement liable for termination at the sole cost and expense of the Lessee.

4.8 **End of the Lease Period**

4.8.1 At the end of the Lease Period by efflux of time or premature termination for any reason whatsoever, all rights of the Lessee under the Lease Agreement shall cease to have effect including its rights over the Leased Space(s), all the furniture and fixtures as well as other assets permanently attached to the Leased Space(s) without any obligation on DMRC to pay or adjust any consideration or other payment to the Lessee.

4.8.2 For the purpose of clarification it is mentioned that at the end of the Lease Period or after its termination whatsoever, the DMRC shall have the absolute right to run the Project Site on its own, or re-lease it to any third party or to manage it in any other manner as it may deem fit at its sole discretion.

4.9 **Approvals from DMRC**

4.9.1 All communication in all matters regarding the approvals related to the Leased Space(s) shall be forwarded to the nodal officer as appointed by the DMRC. The nodal officer shall act as a single window for the Lessee and shall be responsible for all the matters related to the Leased Space(s).

4.9.2 The Lessee shall forward all requests, such as approval of plans etc. related to the Leased Space(s) to the nodal officer. Such requests, if completed in all manners, shall normally be approved / rejected by the DMRC within 30 days of the receipt of the request.
4.10 STATUTORY CLEARANCES

4.10.1 The Lessee shall be required to adhere to the building design, but there are no limitations on planning and subdivision of the interior floor space. However, within these parameters, maintaining the structural safety and integrity shall be the sole responsibility of the Lessee. The Lessee shall also ensure that the proposed passenger related commercial development within the station box is neither an impediment for smooth flow of traffic nor a safety hazard for the station structure and for commuters. The Lessee shall also ensure that all station utilities and facilities falling within the said Leased Space(s) will be kept accessible and the Lessee shall not interfere or tamper with those installations at any time.

4.10.2 Notwithstanding anything mentioned above, the Lessee is required to adhere to the provisions of the prevailing master plan and the building bye-laws of the authorities having jurisdiction over the Project Site for the development works to be undertaken.

4.10.3 The Lessee shall obtain all clearances and sanctions as required from the competent authorities for building sub-plans, utilities, fire fighting, etc. It is to be clearly understood that all such clearances are to be obtained by the Lessee and the DMRC may only provide assistance wherever possible without any obligation.

4.10.4 Procuring all the permissions/ leases etc. required from the statutory/ regulatory/ civic/police authorities concerned, to be able to use the Leased Space(s) for desired commercial purposes/ business, will be sole responsibility of the Lessee. DMRC shall not be responsible for any such procurement and shall not entertain any claims in this regard.

4.10.5 Fire fighting and other infrastructure so created within the Leased Space(s) must be integrated with that already provided/planned for MRTS station.

4.10.6 The Lessee shall at all times adhere to all provisions of the Delhi Metro Railway (Operation And Maintenance) Act, 2002 and amendments thereto and shall also comply with all notices and circulars issued by DMRC in this regard.

4.11 ASSIGNABILITY & ENCUMBRANCES

4.11.1 Except for sub-leasing the use of the Leased Space(s) as per the terms of this RFP, the Lessee shall not assign any of its rights, or interest in this Lease Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

4.11.2 Under no circumstance, shall the building or facilities constructed or installed at the Leased Space(s) be mortgaged, charged or otherwise any lien (including negative lien), charge or encumbrance be created or agreed to be created in favour of any person, including the Lenders / Financial Institution(s) / Banks etc.
4.11.3 The lessee shall not be allowed to monetize the lease area, facilities, constructions or installations therein, through Real Estate Investments Trusts (REITs)/Infrastructure Investment Trusts/etc./.

4.12 INFRASTRUCTURE SERVICES

4.12.1 The Internal distribution of electric power, air conditioning systems, fire fighting sprinklers, fire detection, advisable fire alarm panel etc. as per the norms required for the Lessee Space(s) shall be provided by the Lessee at his own cost. The Lessee shall be required to take prior approval from the respective departments of DMRC for the requirement and available infrastructure required like electricity, water for air conditioning etc. The lessee shall follow the “Fitout Guidelines” issued by DMRC and comply with the same and its further amendments as issued from time to time.

4.12.2 The Lessee shall submit all plans / drawings and specification of material whatsoever including but not limited to internal partitions, fire detection & fighting, flooring, lighting, electrical, signage advertisement panels etc; for approval of DMRC before start of any work/s inside the Leased Area. The DMRC reserves the right not to give approval if it deems such works may act as a hindrance in the smooth functioning of its operations at the Project Site. All materials used including electrical materials should be fire resistant as per the standards prescribed by the DMRC and in this connection the approval of the DMRC must be taken before commencement of the installation.

4.12.3 The PD, civil, electrical and fire inspectors of the DMRC will have full and unfettered access to inspect and check the materials before and after the installation, and during the Lease Period. All instructions issued by them in this regard will be complied by lessee in full and within time stipulated by the said inspectors. No claim or compensation will be sought by the Lessee on this account.

4.12.4 Electric Supply

DMRC will supply electric power limited to maximum @ 0.2 KVA /Sqm at one point located inside each retail space. Further LT transformation and distribution will be the responsibility of the successful bidder. The tariff and all terms and conditions will be as per the appropriate electric authority regulations as applicable from time to time. The Lessee shall also charge tariff from its customers at rates stipulated by the applicable electric authority. Lessee shall have to maintain its power demand within the power allocated. The common area’s electricity consumptions for services like lightings, elevators, pumps etc. shall be apportioned pro-rata to the space occupied by the Lessee. The electricity consumption charges through the generator sets will also be charged pro-rata at the rates to be fixed by DMRC.
In case of bulk supply, the bill towards consumption charges shall be raised by DMRC at the tariff applicable for individuals. Delay in release of electricity charges shall attract interest @ 20%p.a.

4.12.5 Water Supply

The Water supply will be arranged by DMRC and provided at one point inside each Leased Area. All the plumbing work for flushing & domestic requirement including connections from Municipal line to underground water tank, from underground tank to overhead water tank and subsequently from overhead water tank to each PD floor at one point for each package shall be provided by DMRC. The Lessee will have to make its own arrangements for distribution of water including the installation of meters, storage and purification at its own cost after taking all the necessary approvals. The discharge of all wastes including the drainage shall also be arranged by the Lessee at its own costs and in this connection it shall follow all the directives as may be issued by the authorized representative of the DMRC.

4.12.6 The additional area as may be required for the purpose of placement of utilities such as water tanks, laying of pipes etc will be charged at a rate equivalent to half the rate (recurring payment) per square meter charged / accepted for the main Leased Area. All user charges in connection with usage/consumption of water will have to be paid as per prevailing rates for such purposes.

4.12.7 Fire Fighting Arrangements

i) All equipment, pumps & common piping etc required to be installed outside Leased Area for firefighting arrangements will be provided by DMRC up-to one point in each Leased Area, from where the Lessee will take the tap off & make further arrangement inside leased areas for fire fighting.

ii) Inside the Leased Area, all fire fighting arrangements, including the fire alarm & detection system for above & below false ceiling shall have to be provided by the Lessee and integrated in seamless manner with the DMRC system. Such fire-fighting arrangements would conform to the National Building Code, relevant Building Byelaws/ IS Codes, Fire Safety (Fire Prevention) Rules & any other instructions issued by DMRC in this regard.

iii) Only after certification by the fire officer / authorized representative of the DMRC, shall the Lessee be permitted to occupy and use the Leased Space(s) for commercial purposes. The fire clearance before & after installment of fire detection/ fire fighting system, shall be obtained by Lessee for the area developed by them.
iv) The DMRC reserves the right to inspect the Leased Space(s) at any time during the Lease Period in connection with fire fighting readiness. DMRC may also issue directives in this regard, which shall have to be adhered to and complied by Lessee. Any additional works as may be indicated on this account will also be carried out by the Lessee at its own cost. No claim for damages or compensation for inconvenience in this regard will be entertained by the DMRC.

4.12.8 The Lessee shall ensure that all relevant approvals / NOC for different commercial activities are obtained by him from respective departments. He shall also ensure:

i) Maintenance of its fire equipment in good condition at all times.

ii) Availability of trained staff round the clock at PD premises.

iii) No additions/ alterations are done without the prior approval of competent authority of the DMRC.

iv) Record of periodic check of fire equipments and installation is maintained as per relevant code of practice.

v) Deviation if any may be brought to the notice of the DMRC on account of its being the controlling authority.

4.12.9 Further, it is clarified that the Lessee will be completely responsible for any loss of life or property in case of an emergency and/or due to the non-functioning of the fire safety system that is exclusively under scope and control of Lessee. The DMRC shall not be responsible for any loss of life and property in PD premises due to any malfunctioning of the fire system in case of any fire emergency within the Leased Area.

4.12.10 The Lessee shall provide unfettered access to the authorized representative of the DMRC and its operation staff for the purpose of carrying out maintenance works if any inside the Leased Area at all times during the Lease Period. The Lessee will not make any claims for damages, or seek any compensation on this account from DMRC.

4.13 Parking & space for chiller plant etc.

4.13.1 Parking is available on the station. Dedicated Parking shall be provided to Lessee on payment of charges as mentioned in this document.

4.13.2 E&M equipments, lifts, escalators, chiller plant, HVAC system, fire fighting arrangement etc. shall have to be provided by the Lessee as per the requirement, at its own cost. The
Lessee shall be allowed to establish a control room and a chiller plant at a designated space suggested by the DMRC. The rental of the space allotted for this purpose shall be charged at half of the rental per month.

4.14 Works

In case where infrastructure facilities as required to be provided by DMRC are not available and provision of the same is likely to be delayed, DMRC may permit the Lessee to execute those infrastructure works in full or in part on behalf of DMRC. The specifications and rates of these works shall be agreed upon between DMRC and the Lessee in writing. During execution, works shall be inspected by authorized representative of DRMC to ensure their execution as per prescribed specifications. The amount payable to Lessee for execution of above mentioned infrastructure works, shall after their successful execution shall be adjusted against bills raised on them for payment of recurring charges.

The adjustment for amount so payable to the Lessee against payment for infrastructure works executed by him may also be made in part, to facilitate his cash flow without prejudice to adjustment of the final amount to be reckoned after completion of works.

4.15 PAYMENTS TO DMRC

4.15.1 In lieu of the rights granted to the Lessee for the Leased Space(s), the Lessee shall make payments to DMRC in following manner:

a) Part A: Fixed Upfront Fee, (Non Refundable and Non Negotiable) for each Retail Space:

<table>
<thead>
<tr>
<th>PD Area (Sq. m.)</th>
<th>Upfront Fee (Rs in Cr)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>3176 Sqm</td>
<td>Rs 1,55,00,000+ Service Tax as applicable (Rupees One Crore Fifty Five Lakhs only)</td>
</tr>
</tbody>
</table>

The Fixed Upfront Fee shall be payable within 30 days of issue of LOA.

b) Part B: Advance Lease Fee

In addition to any outstanding dues over the Lessee, it shall make advance payments for Lease Fee on quarterly basis to the DMRC at the rate quoted in its Financial Bid (Refer to the format given in Annexure 4 of Section 4) within 7 days of commencement of respective quarter. All the taxes including the service tax, as applicable from time to time.
shall also be paid by the Lessee in addition to the amount of the quoted rate of the Lease Fee. The Lease Fee shall be payable from the day falling after the date of the completion of the Moratorium Period. Quarter shall be considered as calendar quarter i.e. Jan - March, Apr – Jun and so on.

The Lease Fee for a specified quarter shall be worked out by multiplying the area of the Leased Space(s) with the per month quoted rate of Lease Fee and further multiplying it by 3 (Lease Fee = Area X NN \(^1\) X 3)

c) Service tax as applicable will be borne solely by the Lessee.

d) All other statutory taxes, statutory dues, local levies, as applicable shall be charged extra from the Lessee and shall have to be remitted along with the Lease Fee for onward remittance to the Government. Property tax of the leased area shall be borne by Developer. The Lessee shall indemnify DMRC from any claims that may arise from the statutory authorities in connection with this Lease Agreement.

4.15.2 Apart from the area mentioned, the additional area on terrace and the ground floor or elsewhere (to the extent available and provided subject to technical feasibility) for the installation of utilities and services such as water tanks, AC plants, Generators, etc. will be charged at half the pro rata rate of Lease Fee. The Lessee shall accept the entire area made available for utilities and services by the DMRC against written request from the former. No part payment or installments will be allowed in this regard.

Parking area shall be charged @ 20% of the lease fee. The utility area shall be charged @ 50% of the lease fee.

4.15.3 The construction and use of mezzanine area shall also be charged at the rate of Lease Fee from the date of commencement of commercial operations or 60 days from the date of approval by DMRC for construction of mezzanine floor whichever is earlier.

The Lease Fee referred to above in 4.15.1 (b), 4.15.2 and 4.15.3 shall be escalated @20% every three year from commencement date and the lease rent shall be paid by the Lessee accordingly. (i.e. if “R” is the quoted lease fees then applicable lease rate after three years shall be 1.2*R and after next three years it shall be 1.2*1.2*R and after next three years it shall be 1.2*1.2*1.2*R and so on).

The Lease Fee in Clause 4.15.1(b) for the Leased Space(s) shall become payable from the day after the date of end of the Moratorium Period.

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\(^1\) Suppose NN is the amount quoted by the Successful Bidder on per square meter per month basis
4.15.4 The maintenance of leased space and for their utilities shall be carried out by the lessee themselves at their own cost.

4.15.5 In case of extension of the Commencement Date or Moratorium Period or both, as the case may be, for whatsoever reason, the escalation on the Lease Fee and maintenance fee shall be counted from commencement date.

4.15.6 The Lessee will make the payments for each quarter in advance within seven days of the commencement of the respective quarter.

4.15.7 Over and above the Lease Fee, the Lessee shall also pay all charges for the energy, water and other utility services to the extent provided at the Leased Area by the DMRC.

4.15.8 Any delay in payments in the preceding Clauses shall attract penalty of interest @20% per annum on the amount outstanding (calculated on a per day basis), till the time the respective payments have been received by DMRC. The delays beyond 60 days of the due dates for the payment of the respective Lease Fee shall be treated as ‘Lessee Events of Default’. In such an eventuality the DMRC retains the right to en-cash the Security Deposit and claim damages from the Lessee and even terminate the Lease Agreement as mentioned in the ‘Security Deposit’ Clause of the Draft Lease Agreement. In cases of termination of lease agreement, DMRC shall have the exclusive rights to disconnect water supply, electricity, sewerage connection to the leased area and also start process for eviction of Lessee from DMRC property.

4.15.9 In the event of default of Lessee in making payments of upfront premium, Lessee fee, maintenance charges (as applicable), charges for electric supply, air conditioning charges, taxes or any other dues towards DMRC in prescribed time, DMRC shall be entitled to discontinue / disconnect the service of electricity /air conditioning / water / sewer etc in leased premises and debar the Lessee from availing use of common areas / facilities (viz., use of stair case / lifts, etc). Apart from the said rights as stated, DMRC shall also have the rights including but not limited to restrict the access of Lessee in leased premises and recover all dues along with interest.

4.16 Extension of Date of Commencement / Moratorium Period / Lessee Period

If in event of, the progress of work being delayed by any act or neglect of DMRC or its employees or by other contractor / Lessee employed by DMRC or in executing the works on which Lessee’s performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighbouring owners or public authority arising otherwise through the Lessee’s own default etc, then upon happening of any such event Lessee shall immediately bring it to the notice of DMRC within 30 days of happening of such an event and accordingly either Commencement Date or Moratorium Period or Lease Period individually or in combination may be extended suitably, as in the
opinion of DMRC are reasonable having regard to the nature and period of delay and the type and quantum of works affected thereby.

Apart from above, the Lessee shall not be eligible for any other compensation for works so carried forward to the extended period of time. In addition, Lessee shall also make constantly its best endeavours to bring down or make good the delay and shall do all that may be reasonably required to the satisfaction of DMRC to proceed with the works.

Any failure or delay by DMRC to provide the Lessee possession of the Leased Space(s), or to give the necessary permission or necessary drawings or instructions or any other delay caused by the DMRC due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Lease Agreement or alter the character thereof or entitle the Lessee to any damages or compensation.

Nevertheless, in the event of the delay being due to reasons being attributable to Lessee, or its failure to complete its obligations within specified time as per the Lease Agreement, for the reasons other than the reasons attributable to DMRC, Lessee shall not be entitled for any extension of date of Commencement Date or Moratorium Period or Lease Period whatsoever.
SECTION 5

(ANNEXURES)
Formats for Submission
Annexure 1
Letter of Application

(To be submitted and signed by the Bidder’s authorized signatory)

Executive Director/Contracts,
Delhi Metro Rail Corporation,
5th floor, A-Wing, Metro Bhawan,
Fire Brigade Lane, Barakhamba Road,
New Delhi –110 001

Sub: RFP for Property Development at Neelam Chowk Ajronda MRTS Station (Line 6 Ext.)

Sir,

1. Being duly authorized to represent and act for and on behalf of……………….(hereinafter referred to as the “Bidder”), and having studied and fully understood all the information provided in the Bid Document, the undersigned hereby applies as a Bidder for Property Development at Neelam Chowk Ajronda MRTS Station (hereinafter referred to as “Project”) on Lease basis, according to the terms & conditions provided by DMRC.

2. Our Technical & Financial Bid as per the requisite formats along with the supporting documents, duly filled and signed are uploaded online on https://eprocure.gov.in/eprocure/app as specified.

3. The Tender Security in the form of Demand Draft / Pay Order / Bank Draft / irrevocable bank guarantee / Fixed Deposit Receipt in favor of Delhi Metro Rail Corporation Ltd. have been deposited before dead line of tender submission as specified in NIT.

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

Name of the person (s): ............
Address: ...........................................
Phone: ................................. Fax: .........................

7. This application is made with full understanding that:

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

(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.

8. 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.

9. 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 Bid. We have also visited the Project Site for the assessment and have made our own due diligence and assessment regarding the Project.

10. We declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.

11. We agree to keep our offer valid for one hundred eighty (180) days from the date of submission of Proposal thereof and shall not make any modifications in its terms and conditions, which are not acceptable to the DMRC and are in violation of the terms of the Bid Documents. We hereby agree to abide by and fulfill all the terms, conditions and provisions of the aforesaid documents.
12. 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 entire tender security.

Authorised signatory       Date:
Name and seal of Bidder      Place:

Encl:
1) The tender security/s as specified in Clause 3.10 for (Rupees ________________ only) and/or _____________________________/- (Rupees ________________ only) in the form of Demand Draft/Pay Order/ BG bearing No. _____drawn upon __________ (bank) dated ________. (Details of each tender security for Multiple Packages).

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

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:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of Member</th>
<th>Proportion of Equity to be held in the Consortium</th>
<th>Role*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   * Specify whether Lead Member / Ordinary Member

Signed
(Name of the Authorized 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)

<table>
<thead>
<tr>
<th>S.N.</th>
<th>Description</th>
<th>Financial Data for Latest Last 3 Years (Indian Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2013-14</td>
</tr>
<tr>
<td>1.</td>
<td>Total Assets</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Total External Liabilities</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Net Worth [= 1 - 2]</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Annual turnover</td>
<td></td>
</tr>
</tbody>
</table>

Note:

1) Attach certified copies of Annual Audited Balance Sheets and IT Returns Certificate for the preceding 3 (Three) years.

2) The above data must be submitted for all Relevant Consortium members, duly certified by CA/Statutory Auditor.

3) All such documents reflect the financial data of the Applicant or member in case of JV, and not sister or Parent Company.

4) Historic financial statements shall be audited by Statutory Auditor of the Company under their seal & stamp and shall be strictly based on Audited Annual Financial results of the relevant period(s). No statements for partial periods will be accepted.

Signed
(Name of the Authorised Signatory) Signature of CA/ Statutory Auditors
For and on behalf of (with seal & registration no.)
(Name of the Bidder)
Designation
Place: Date:
Annexure 4  
Format for Financial Proposal- Property development at Sarai MRTS Station  
(To be submitted and signed by the Bidder’s authorised signatory with the quoted recurring payment.)

Executive Director/Contracts,
Delhi Metro Rail Corporation,
5th floor, A-Wing, Metro Bhawan,
Fire Brigade Lane, Barakhamba Road,
New Delhi –110 001

Sub: “RFP for Property Development at Neelam Chowk Ajronda MRTS Station (“Project”)”

Sir,

We hereby submit our Financial Offer for the 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. Upfront Fee of Rs 1,55,00,000 + Service tax as applicable (Rupees One Crore Fifty Five Lakhs only +Service tax extra) in the form of Pay Order/Cheque/Demand Draft.

2. Monthly Lease Fee of Rs .................................................. per square meter (in figures) (Rupees .................................................................................. (In words) for a Lease Period of 15 yrs.

3. We also agree to pay at half the rate of Lease Fee quoted in item 2 above, for the additional area only for utilities equipment and services & full rate of Lease Fee for mezzanine floor area, which may be requested by us and made available by DMRC subject to availability/feasibility.

4. Escalated Lease Fee in items 2 & 3 above, and as per Clause 4.15.3 of Section 4 of RFP document.

5. Over and above the Lease Fee, we also agree to pay all charges for the energy, water and other utility services to the extent provided at the Leased Space(s) by DMRC.

6. In an event, we are the selected bidder, any failure to deposit Upfront Fee and Security Deposit within 30 days from the issue of LOA would entitle the DMRC to forfeit the tender security.

7. 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 Bid will be rejected & tender security will be forfeited.

8. Service tax as applicable and other applicable taxes including property tax from time to time will also be paid by us/me in addition to the aforesaid charges.
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.

Authorized signatory          Date:
Name and seal of Bidder       Place:
Annexure 5
Affidavit
(Notarized on Stamp Paper of Requisite Value as per Applicable Law)

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”) Property Development at Sarai MRTS Station (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 Bid and as may be deemed necessary by DMRC.

4. I say that if at any point of time including the Lease Period, 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 bidding process for the 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…………………..,2015.

DEPONENT
ANNEXURE 6
SITE PLANS AND AREA BREAKUP STATEMENT

(UPLOADED SEPARATELY)
ANNEXURE 7
CONSORTIUM AGREEMENT/MEMORANDUM OF AGREEMENT

[On non judicial stamp paper of appropriate value to be purchased in the name of the executants]

This Consortium Agreement/Memorandum of Agreement is executed at New Delhi on this ___ day of ____, 2016.

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 1’) 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 SECOND 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 2’) 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 THIRD PART;

(herinafter collectively referred to as “Consortium” or “Parties” and individually as “Party”)
Whereas Delhi Metro Rail Corporation Limited (hereinafter referred to as ‘DMRC’) has invited Bids for the "Property Development at Neelam Chowk Ajronda MRTS Station ("Project") on Lease basis, in terms of the Bid 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 executing the Project for which the Bid has been floated by DMRC.

AND WHEREAS in terms of the Bid Documents 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 all 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.

AND WHEREAS it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THIS CONSORTIUM AGREEMENT/Memorandum of Agreement hereby WITNESSES:

1. That in the premises contained herein the Parties having decided to pool their technical know-how, working experiences and financial resources, have formed themselves into a Consortium to participate in the Bid process for “the “Property Development at Neelam Chowk Ajronda MRTS Station CPD 09R" in terms of the Bid invited by Delhi Metro Rail Corporation Ltd., (DMRC).

2. That the Parties have represented and assured each other that they shall abide by and be bound by the terms and conditions stipulated in the Bid Documents for award of the Project to the Consortium so that the Consortium may take up the aforesaid Project in case the Consortium is declared as the Selected Bidder in the Bid process.

3. That the Parties 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 Bid process for executing the Project.

4. That the Parties have agreed to nominate __________ as the Lead Member who shall be authorized to represent the Consortium for all intents and purposes for dealing with the DMRC or its representatives and for submitting the Bid as well as doing all other acts and things necessary for submission of Bid Documents such as Bid Application Form etc., Mandatory Information, Financial Bid, etc., and such other documents as may be
necessary for this purpose which shall be legally binding on all the members of the Consortium who shall be jointly and severally responsible for the performance and obligations in relation to the Bid submitted to DMRC and execution of the Project.

5. The Consortium further authorizes the Lead Member to represent the Consortium for all correspondence and communications with the DMRC and any notice or communication served upon the Lead Member shall be deemed to be notice or communication to the Consortium.

6. That the share holding of the members of the Consortium for this specified purpose shall be as per the Lease Agreement and at present the proposed shareholding shall be as follows:-

   a) The Lead Member shall have ____ per cent (___ %) of share holding with reference to the Consortium for the Project.

   b) The Participant Member 1 shall have ____ (%) of share holding with reference to the Consortium for the Project.

   c) The Participant Member 2 shall have ____ percent (___ %) of share holding with reference to the Consortium for the Project.

7. That in order to fulfill the requirement of the Bid process and also to keep an altogether separate legal entity of the Consortium, the members of the Consortium undertake to provide their own nominees as shareholders 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 Project.

8. 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 prior written consent approval of DMRC subject to the conditions as may be stipulated by them in this regard in the Lease Agreement and which consent, DMRC shall be entitled to decline without assigning any reason whatsoever.

9. That in order to meet the requirements of Bid documents or any other stipulations of DMRC, if it becomes necessary to execute and record any other documents amongst the Parties, the Parties undertake to do the needful and to participate in the same for the purpose of the Project.

10. That it is clarified by and between the Parties that execution to this Consortium Agreement/Memorandum of Agreement by the Parties does not constitute any type of partnership for the purposes of provisions of the Indian Partnership Act and that the Parties 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 Project.

11. That the Parties undertake to specify their respective roles and responsibilities for the purposes of execution of the Project if awarded to the Consortium in the Memorandum & Articles of Association of the proposed Special Purpose Company to be got incorporated by the Parties 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)

3. Managing Director
   (----------------)
   For (Name of company)

WITNESSES: 1.----------------  2.----------------

Enclosure:

- Board resolution of each of the consortium members authorising execution of the consortium agreement and appointing the authorised signatory for such purpose.
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, 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 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.
ANNEXURE 9

LIST OF USAGES BANNED

1. Any product / Service the sale of which is unlawful /illegal or deemed unlawful under any Indian act or legislation.

2. Any product the storage and sale of which may lead to or be considered as a fire hazard; such as fire crackers, industrial explosives, chemicals etc.


4. Coal based cooking is strictly prohibited. Gas Based Cooking shall also be permitted as per DMRC’s extant Policy / guidelines.
ANNEXURE-10

FORM OF BANK GUARANTEE FOR TENDER SECURITY

(To be stamped in accordance with Stamp Act, if any, of the country of issuing bank)

1. KNOW ALL MEN by these presents that we ……………………………………(Name of Bank) having our registered office at ……………………. (Name of country) (hereinafter called “the Bank”) are bound unto Delhi Metro Rail Corporation Limited (hereinafter called “the DMRC”) in the sum of `. …………….. for which payment will and truly to be made to the said DMRC, the Bank binds itself, its successors and assigns by these presents.

2. WHEREAS…………………………(Name of Tenderer) (hereinafter called “the Tenderer”) has submitted its tender dated__________for Contract CPD-09R: Property Development at Neelam Chowk Ajronda MRTS Station hereinafter called the tender.

AND WHEREAS the Tenderer is required to furnish a Bank Guarantee for the sum of ` …………………… as Tender Security against the Tenderer’s offer as aforesaid.

AND WHEREAS……………………………..(Name of Bank) have, at the request of the Tenderer, agreed to give this guarantee as hereinafter contained.

3. We further agree as follows:

a. That the DMRC may without affecting this guarantee grant time or other indulgence to or negotiate further with the Tenderer in regard to the conditions contained in the said tender and thereby modify these conditions or add thereto any further conditions as may be mutually agreed upon between the DMRC and the Tenderer.

b. That the guarantee hereinbefore contained shall not be affected by any change in the constitution of our Bank or in the constitution of the Tenderer.

c. That any account settled between the DMRC and the Tenderer shall be conclusive evidence against us of the amount due hereunder and shall not be questioned by us.

d. That this Guarantee commences from the date hereof and shall remain in force till ..................... (date to be filled up).

e. That the expression ‘the Tenderer’ and ‘the Bank’ herein used shall, unless such an interpretation is repugnant to the subject or context, include their respective successors and assigns.
4. **THE CONDITIONS OF THIS OBLIGATION ARE:**

   a. if the Tenderer withdraws his Tender during the period of Tender validity specified in the Form of Tender, or

   b. if the Tenderer does not accept the correction of his tender price in terms of Clause 3.20.7 of the “RFP document”.

   c. if the Tenderer having been notified of the acceptance of his tender by the DMRC during the period of tender validity:

      i. fails or refuses to furnish the Security Deposit in accordance with Clause 3.11 of the “RFP document” and/or

      ii. fails or refuses to enter into a Contract within the time limit specified in Clause 3.26 of the “RFP document”.

We undertake to pay to the DMRC mere on demand without demur up to the above amount upon receipt of his first written demand, without the DMRC having to substantiate his demand provided that in his demand the DMRC will note that the amount claimed by him is due to him owing to the occurrence of any one or more of the conditions (a), (b), (c) mentioned above, specifying the occurred condition or conditions.

---

**Signature of Authorized Official of the Bank**

**Signature of Witness**

Name of Official …………………….

Designation …………………….

Stamp/Seal of the Bank …………………….

---

**Name** : …………………….

**Address** : …………………….

---

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the ‘Bank Guarantee’.

2. The ‘Bank Guarantee’ shall be from the Scheduled Commercial Bank based in India, acceptable to DMRC.
ANNEXURE- 11
(As per Clause 3.5.5 of Section-III)

UNDERTAKING FOR CORRUPT & FRAUDULENT PRACTICE

We declare that in the submission of this Tender no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.

STAMP & SIGNATURE OF AUTHORIZED SIGNATORY

NOTE:
1. In case of JV/Consortium, the undertaking shall be submitted by each member of the JV/Consortium.
2. The undertaking shall be signed by authorized signatory of the tenderer or constituent member in case of JV/Consortium.
ANNEXURE- 12
UNDERTAKING FOR DOWNLOADED TENDER DOCUMENT

We here by confirm that, we have downloaded / read the complete set of tender documents (RFP Tender document)/addendum/clarifications along with the set of enclosures hosted on e-tendering portal https://eproure.gov.in/eprocure/app. We confirm that we have gone through the tender documents, addendums and clarifications for this work placed upto the date of opening of tenders on the e-tendering portal [https://eproure.gov.in/eprocure/app]. We confirm that we have considered for these in our tender submission and our financial tender. We also confirm our unconditional acceptance to all the terms and conditions of tender document (RFP Tender document).

STAMP & SIGNATURE OF AUTHORISED SIGNATORY
DMRC Policy for permission of LPG

DMRC shall permit installation of LPG bank (packed installation) for purpose of cooking subject to fulfilling of statutory conditions and compliance of regulatory conditions by the licensee or sub-licensee.

STATUTORY CONDITIONS

1. Packed installations allowed only on ground level.

2. Packed installations not allowed at place where they are likely to cause obstruction, suffer damage or exposure to conditions likely to affect safety of commuters.

3. Packed installation not allowed inside the station building. The site for cylinder manifold is to be located away from the kitchen. A minimum distance of three meters required between packed installation and any building, public place or roadways.

4. A minimum distance of 1 meter is required between the cylinder installation and the open surface water drain, if any.

5. Packed installation not allowed at a place where they may be overheated i.e. close to steam pipe, boilers etc.


7. The maximum permitted capacity of packed installation shall be 500 kg.

8. All workers of shop/DMRC staff on that station be made well acquainted with the operation of packed installation valves by the owner.

REGULATORY CONDITIONS

1. Packed installation is to be slightly raised from the ground level. Cylinders shall be located on a concrete or brick floor without any cavity, in outdoor installation. The cylinders shall be installed in upright position with the valve pointing upwards.

2. The drawing of packed installation system shall be got approved from DMRC before start of work. The Packed installation shall be suitably protected by automatic and manual sprinkler system.
3. The cylinder storage cabinet shall be of fire resistant construction. Flammable materials like wood and plastic not allowed. A lean-to roof with expanded metal on angle iron framework on the side is considered suitable for this purpose. Since LPG is heavier than air, adequate ventilation is to be provided at floor level open to atmosphere. The ventilators shall be provided with 2 layers copper or non-corroding metal wire mesh.

4. Main shut-off valve on the pipeline emerging out of cylinder storage cabinet shall be located in such a manner that it just falls outside the storage cabinet and shall be easily accessible at all times. At the point of entry of each work place, the line shall have a quick shut-off valve.

5. The storage cabinet shall have caution signs such as "DANGER", "HIGHLY INFLAMMABLE GAS SHED", "NO SMOKING" etc. painted in luminous red paint outside at a prominent place.

6. Safety cap is to be put on the empty cylinders.

7. The doors of the cabinet where cylinders are installed shall open outwards.

8. The nearby area of packed installation shall always remain clear of any vegetation.

SPECIAL NOTE

i. In case of any alteration/deviation/violation of any one of above mentioned measures or failure in compliance of standards of IS: 6044 (Part I) - 1971 in packed installations, If noticed by the Fire Wing of DMRC will be liable for Heavy Penalty/cancellation of permission/termination of allotment by DMRC.

ii. Owner of the shop has to apply for grant of permission for use of L.P.G. in the allotted shop with a drawing of proposed packed installation.
DELHI METRO RAIL CORPORATION LIMITED

DRAFT LEASE AGREEMENT
(CPD – 09R)

Property Development at Neelam Chowk Ajronda MRTS Station Building
DRAFT LEASE AGREEMENT (CPD 09R)
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LEASE AGREEMENT

This Agreement is executed on this [*] day of [*] 2017 at New Delhi

BY AND BETWEEN

The Delhi Metro Rail Corporation Limited, a joint venture of the Government of India and the Government of the National Capital Territory of Delhi, having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi 110001 (hereinafter referred to as the “DMRC” or “Lesser” which expression shall unless repugnant to the context include its successors and assigns) of the One Part,

AND

M/s ________________________ Ltd., a company incorporated under the provisions of the Companies Act, 1956/2013* as applicable, having its registered office at ________________________ (hereinafter referred to as the “Lessee” or “Developer” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part

OR

M/s ______________, a Partnership firm, registered under the Indian Partnership Act, 1932 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at _________ (mention full address) and having Registration No._____ dt. _____(hereinafter referred to as the “Lessee” or “Developer” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

OR

M/s _____________, a Partnership firm, registered under the Limited Liability Partnership Act, 2008 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at ___________ (mention full address) and having Registration No.____ dt. ______ (hereinafter referred to as the “Lessee” or “Developer” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

OR

__________________________

1In case of a single company
M/s ____________, a proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at __________ (mention full address) (hereinafter referred to as the "Lessee" or "Developer" which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

*In case Selected Bidder is a Consortium it is required to incorporate an SPC.

(DMRC and the Developer are hereinafter also individually referred to as a 'Party' and collectively as 'Parties').

WHEREAS:

A. The DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the National Capital Territory of Delhi and other areas of the National Capital region (hereinafter called the 'Territory');

B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;

C. The DMRC has been mandated to develop real estate and other commercial facilities in the Metro Stations and standalone(other) places in the Territory and to generate revenues and with the aim of part supporting the project cost & subsidising the charges for the passengers and promoting the use of the Metro Rail;

D. In pursuance of the above, DMRC decided to Property Development of Ajroda Station of 3176 Sq. M. space at Ajronda MRTS station to a Selected Bidder for development, operation, maintenance and management of the spaces (hereinafter referred to as "Project") in return for payments specified in this Agreement. The area is more fully described and delineated in the plan attached hereto as Schedule A (hereinafter referred to as the 'Project Site');

E. DMRC proposed to grant to a Selected Bidder a Lease in the Project Site (hereinafter referred to as “Leased Space(s)” or “Leased Area”) for the purpose of development (to enable operations), operation, management, maintenance and sub-lease the use of the Leased Space(s) as per the terms contained herein.

F. Accordingly, DMRC invited proposals for the Project on a competitive basis through the Bid notice dated __________ and after evaluation of the Bids received, DMRC has accepted the Bid of the Selected Bidder herein and has
issued it/them a Letter of Acceptance ('LOA') bearing No. ________ dated ________, requiring, inter alia, the Selected Bidder to make payment of Upfront Fee & Security Deposit within 30 days of the issuance of the LOA and execute this Lease Agreement, within a period of 7 days from the date of such payment.

G. {The Consortium has since promoted and incorporated the SPC as a limited liability company under the Companies Act 2013, and has requested DMRC to accept the SPC as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.}

H. The Developer/SPC has represented that it has the requisite skill, financial, managerial & technical expertise and experience to undertake the Project. The Lessee further represents and warrants that it/they has/have duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms contained in the Bid Document and are in a position to implement the Project as envisaged in the RFP and this Agreement;

I. The Lessee/ SPC has therefore, in pursuance of its obligations contained in the RFP and this Agreement has paid Rs -------- Crores as Upfront Fee including applicable Service Tax and has also provided the requisite Security Deposit in the required format to DMRC.

NOW THEREFORE, in lieu of the mutual promise and consideration set out herein the Parties hereby agree as under:
ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definition

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

“Advertisements” means display of any advertisement material including but not limited to pictures, printed material, electric / electronic media, smart posters, product display, holographic images, audio-visual display or any other innovative advertising media, etc. designed to sell goods, publicize an event, etc which are not objectionable or prohibited under various statutes, codes, policies, etc. as applicable from time to time.

“Agreement” means this Agreement, and includes any amendments, annexures hereto made in accordance with the provisions hereof.

“Applicable Law” means all Acts, Rules and Regulations in force and in effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs of or orders of any court of record, as may be in force and effect during the subsistence of this Agreement applicable to the Leased Space(s) and the Parties hereto.

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the Leased Space(s) during the subsistence of this Agreement.

“Bid/Bid Documents” means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the Bid submitted by the successful Bidder (Lessee) in response to the Bid Notice in accordance with the provisions thereof.

“Change in Law” means the occurrence or coming into force of any of the following after the date of signing this Agreement:

(a) the enactment of any new Indian law
(b) the repeal, modification or re-enactment of any existing Indian law
(c) any change in the rate of any Tax

Provided that Change in Law shall not include:

(i) coming into effect after the date of signing this Agreement of any provision of a statute which is already in place as of the date of signing this Agreement; or
(ii) any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Agreement, which is a matter of public knowledge.

“Commencement Date” means the date of signing of this Agreement.

“Completion” in relation to the Leased Space(s) shall mean completion of building civil works and other infrastructure services thereof (in accordance with the applicable byelaws and rules in force and approvals and sanctions received) including utilities & services such as electricity, water supply, sewerage, HVAC, lifts & elevators, fire fighting, and other common amenities as duly certified by the grant of Occupancy Certificate by the competent authority.

“Consideration” shall mean and include the payments to be made by the Lessee to the DMRC as provided in Article 3 hereafter.

“Damages” shall mean the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals working for the Leased Space(s) or which poses an immediate threat of material damage to any of the facilities in the Leased Space(s).

“Fit-out Activities” means the activities such as the civil works, fit-outs, finishing works etc. required in order to make the Leased Space(s) ready for operations by the Lessee including construction of partition walls, floors in certain areas and all other related works.

“Moratorium Period” means the period of maximum one year from the Commencement Date provided by DMRC to the Lessee for carrying out Fit Out Activities in order to operationalize the Leased Space(s).

“Force Majeure” or “Force Majeure Event” means an act, event, condition or occurrence as specified in Article 9.

“Governmental Agency” means Central or State Government or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Central or State Government or any other local or municipal bodies or institutions having jurisdiction over all or any part of the Leased Space(s) or the performance of all or any of the services or obligations of the Lessee under or pursuant to this Agreement.

“Independent Auditor” means the auditor appointed by DMRC to independently audit and verify all matters, expenses, costs and realizations of the Lessee.
“Lease Period” means a period of fifteen (15) years beginning from Commencement Date and ending on the Termination of this Agreement either by efflux of time or sooner determination in accordance with the terms of this Agreement or till the Leasehold rights subsist with DMRC in terms of the allotment of the Project Site to DMRC, whichever is earlier.

“Leased Space(s)” or “Leased Area” means the specified area within the Project Site for commercial development as detailed in the Schedule A given on lease by DMRC to the Lessee under and in accordance with this Agreement. The Leased Space(s) is demarcated in the plan placed in Annexure 6 of the RFP.

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Permits” shall mean and include all applicable statutory, environmental or regulatory leases, authorization, permits, consents, approvals, registrations and franchises from the relevant authorities.

“Security Deposit” shall mean the security to be furnished by the Lessee as provided in Article 3 hereafter.

“Specified Purpose” shall have the meaning as ascribed in Clause 2.1.1.

“Sub Lessee” means persons or entities with whom the Lessee has executed Sub Lease Agreement (as required under this Agreement) allowing the use of the Leased Space(s) on the terms and conditions as stated herein.

“Tax” means and includes all taxes (including service tax as applicable from time to time), fees, cesses, levies that may be payable by the Lessee under the Applicable Laws to the Government or any of its agencies.

“Termination” means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.

“Termination Date” means the date of Termination of this Agreement.

The terms appearing in capitals and not defined herein but defined in the RFP shall carry the same meaning as ascribed to them in the RFP.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,
(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

(f) references to “development” include, unless the context otherwise requires, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;

(g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(h) any reference to day shall mean a reference to a calendar day;

(i) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;

(j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(k) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;

(l) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is
not a business day, then the period shall run until the end of the next business
day;

(m) the words importing singular shall include plural and vice versa;

(n) references to any gender shall include the other and the neutral gender;

(o) “lakh” means a hundred thousand (100,000) and “crore” means ten million
(10,000,000);

(p) save and except as otherwise provided in this Agreement, any reference, at
any time, to any agreement, deed, instrument, lessee or document of any
description shall be construed as reference to that agreement, deed, instrument, lessee or other document as amended, varied, supplemented,
modified or suspended at the time of such reference; provided that this Sub-
clause shall not operate so as to increase liabilities or obligations of DMRC
hereunder or pursuant hereto in any manner whatsoever;

(q) any agreement, consent, approval, authorisation, notice, communication,
information or report required under or pursuant to this Agreement from or by
any Party shall be valid and effective only if it is in writing under the hand of a
duly authorised representative of such Party in this behalf and not otherwise;

(r) the Schedules and Recitals to this Agreement form an integral part of this
Agreement and will be in full force and effect as though they were expressly
set out in the body of this Agreement;

(s) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this
Agreement shall, except where the context otherwise requires, mean
references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to
this Agreement, and references to a Paragraph shall, subject to any contrary
indication, be construed as a reference to a Paragraph of this Agreement or of
the Schedule in which such reference appears; and

(u) time shall be of the essence in the performance of the Parties’ respective
obligations. If any time period specified herein is extended, such extended
time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation
required to be provided or furnished by the Lessee to DMRC shall be provided
free of cost and in Two copies, and if DMRC is required to return any such
Documentation with their comments and/or approval, they shall be entitled to
retain a copy thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against
the parties responsible for the drafting and preparation thereof, shall not
apply.
1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of contract documents and errors/discrepancies

1.4.1 The documents forming a part of this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict, discrepancy or ambiguity between them, be in the order they are set out:

(i) This Agreement;
(ii) Schedules to this Agreement;
(iii) The Letter of Acceptance issued to the Lessee;
(iv) The written clarifications and addenda issued to the Bidders;
(v) The RFP including the Bid Document, Draft Lease Agreement and Annexures 1-11.

1.5 Law

The contract shall be dealt under the provisions of Indian Contract Act.
ARTICLE 2: GRANT OF LEASE

2.1 Grant of LEASE

2.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards DMRC by the Lessee, DMRC hereby grants and authorizes the Lessee to the following (the “Specified Purpose”):

(a) To have access to Leased Space(s) at Neelam Chowk Ajronda MRTS Station during the Lease Period, develop, finance, commission, operate, manage and maintain the Leased Space(s) during the Lease Period at the cost and risk of the Lessee. Any development made by the Lessee on the Leased Space(s) shall be deemed to be the property of DMRC and all the rights of the Lessee in the Leased Space(s) shall relinquish in the favour of DMRC.

(b) Subsequent to the Moratorium Period, to sub-lease, at its own costs and risk, the Leased Space(s) to Sub-Lessee only for carrying out activities stated at Clause 4.3.2 during the Lease Period on the terms and conditions stated herein and derive income from it in the form of lease fees, maintenance charges and other user charges etc.

2.1.2 The Lessee shall not be entitled to use or allow the use of the Leased Space(s) by the Sub-Lessee or any other person other than the purpose stated herein above.

2.1.3 DMRC may at its sole discretion, subject to availability and technical feasibility and if the same will not in any manner affect the operation of the other activities of DMRC, provide additional area to the Lessee on terrace of the Leased Area and/or on the ground floor for installation of utilities and services such as water tanks, air conditioning plants and generators etc. on commercial terms mentioned in this Agreement.
2.1.4 Nothing contained herein, including the act of granting permission to develop the Leased Space(s) and to sub-lease the use of the developed Leased Area or any part thereof shall vest or create any proprietary interest in the Leased Area or any part thereof including any permanent fixtures, fittings, etc. installed in the Leased Area in favour of the Lessee or any Sub-Lessee or any part thereof or any other person claiming through or under the Lessee or Sub-Lessee. The Lessee shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Leased Area in any manner except Sub-Lease the use of the Leased Area as provided under Clause 2.1.1 above. The Lessee acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement and shall duly bind the Sub-Lessee to whom any Lease or authorization is given for use of the Leased Area.

2.2 LEASE PERIOD

2.2.1 The LEASE is hereby granted in favour of the Lessee for a total period of 15 (Fifteen) years from the Commencement Date subject to sooner determination of the Lease by the Lesser in its sole discretion at any point of time or Termination hereof.

2.2.2 At the end of the Lease Period or sooner determination of this Agreement for any reason whatsoever all rights given under this Lease Agreement shall cease to have effect and the Leased Area with all the furniture and fixtures and other assets permanently attached to the Leased Area shall revert to DMRC without any obligation on part of DMRC to pay or adjust any consideration or other payment to the Lessee. The Lessee voluntarily gives DMRC the right to seal the said Leased Space(s) and remarket the same as part on its discretion upon Termination of this Agreement. No claim, compensation or damages will be entertained by DMRC on this account.

2.2.3 Restriction on sub-leasing the use of the Leased Area or any part thereof

2.2.4 Subsequent to Moratorium Period, the Lessee shall be entitled to allow the use of the Leased Area through a sub-leasing arrangement to Sub-Lessee/s subject to the terms and conditions contained in this Agreement, Sub-Leasing Agreement and subject to all Applicable Laws.

2.2.5 The Lessee shall be entitled to sub lease the use of the Leased Area, during the subsistence of this Agreement only with a clear stipulation that the leases granted to the Sub-Lessees shall terminate simultaneously with the Termination of this Lease Agreement including
on sooner determination of the Lease granted hereunder for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessees shall specifically stipulate this covenant of Termination of the Sub-Lessees rights and further that the Sub-Lessee shall not have any claim whatsoever against DMRC for any such Termination.

2.2.6 The Lessee shall prepare a draft standard format of the sub lease agreement or arrangement, which the Lessee will be required to sign with the Sub Lessee for the use of the Leased Area (hereinafter referred to as “Sub-Lease Agreement”), which shall capture all the terms of sub-leasing as stipulated in this Agreement. The Lessee shall furnish the draft of such agreement to DMRC for modification or suggestion and approval. DMRC shall be entitled to incorporate such clauses, as DMRC may consider appropriate to protect DMRC’s interest.

2.2.7 The Lessee shall enter into Sub-Lease Agreement strictly as per the draft approved by DMRC and the Lessee shall not incorporate or change the Sub-Lease Agreement that would have any adverse effect on the covenants incorporated by DMRC. In case of any deviation from the draft of the Sub-Lease Agreement in any particular circumstance, which supersedes or adversely affects DMRC’s terms and covenants, the prior written consent of DMRC shall be taken before entering into any such agreement with a Sub-Lessee.

2.2.8 The Sub-Lessee shall use the Leased Space(s) only for the permitted use and shall not subject or part with it in any manner whatsoever.

2.2.9 The Sub-Lessee shall not be entitled to further sub-sub-lease the use of the Leased Space(s).

2.2.10 Subject to Clause 1.4 of this Agreement, the terms and conditions of RFP shall also be deemed to be a part of this Lease Agreement.
ARTICLE 3: CONSIDERATION TO DMRC

3.1. Consideration

In consideration of the rights, privileges and interests granted by DMRC to the Lessee in terms of this Agreement, the Lessee will pay the following amounts to DMRC in addition to the due performance of all other obligations, responsibilities and liabilities assumed by the Lessee under this Agreement:

(i) Upfront of Rs 1.55 Crore + Service Tax (Ruppes One Crore Fifty Five Lac Only) along with service tax as applicable) shall be paid by lessee.

Lease Fee on quarterly basis for the Leased Space(s) area of Rs.................... Lakhs (...........................only) plus applicable service tax payable from the day after the expiry of the Moratorium Period of one year, which shall be escalated @20% every 3 year from commencement datehereinafter referred to as “Lease Fee”). The additional area on terrace, ground floor, concourse or basements if made available as specified under Clause 2.1.4 above for installation of utilities and services area the same will be charged at half the pro-rata rates of Lease Fee for the Leased Space(s) of approx. ------------ sqm and shall also be payable on quarterly basis from the day after the expiry of the Moratorium Period. However, in cases where it is envisaged that DMRC will appoint a facility manager for the leased premise as per Section 2 of RFP, the maintenance charges shall be charged from the last date of submission of bid.

(ii) Payment of charges for the energy, water and other utility services to the extent provided by DMRC in the facilities in the Leased Space(s). Parking area shall be charged @ 20% of the lease fee. The utility area shall be charged @ 50% of the lease fee. The area under mezzanine floor constructed by the lessee shall be chargeable equal to the lease fee.

3.2. The Upfront Fee and Lease Fee shall be adjusted on pro-rata basis if there is any variation in the area or any additional area (the ‘Additional Area’) is available and deemed feasible by DMRC, the Additional Area may be allotted to the Lessee in the sole discretion of DMRC on the request made by the Lessee upon payment of additional Upfront Fee (at applicable rate at that time by increasing @20% every three year as done in the case of recurring payment) and the Annual Lease rate of Upfront Fee and the Lease Fee which shall be calculated on pro-rata basis w. r. t. reference area in original Lease agreement at the prevalent rate of Lease Fee on the date of such request made by the Lessee. The Lease Period of such Additional Area shall however be co-terminus with the Lease Agreement.
3.3. The Lease Fee as mentioned in Clause 3.1(i) and 3.1 (ii) shall become due and payable from the first day falling after the Moratorium Period notwithstanding that the Lessee has not been able to sub lease or otherwise put to use whole or any part of the Leased Area for any reason whatsoever except for Force Majeure as specified in Article 9 or for reasons solely attributable to DMRC without any contributory factor on the part of the Lessee.

3.4. The Lessee shall pay the Lease Fee under Clause 3.1(i) above for each quarter within seven days of commencement of the respective quarter.

3.5. The Lessee shall pay the charges under Clause 3.1 (ii) above as per the bills raised by DMRC based on actual consumption, within 15 (fifteen) days of receipt of such bills. The cost of any apparatus necessary for such determination of consumption including but not restricted to meters necessary for such determination of consumption and all other incidental charges & overheads shall be borne by the Lessee.

3.6. Any delay in payments of the amounts becoming due on the due dates shall constitute a willful material default on the part of Lessee and in such case DMRC shall be entitled to interest @20% per annum on the outstanding amount on daily basis, for each day of delay. Under said circumstances, without prejudice to its other rights and remedies hereunder or in law, the Lesser shall be entitled to encash and appropriate the relevant amounts from the Security Deposit as Damages.

3.7. Security Deposit

3.7.1 The Lessee for the due and faithful performance of its obligations hereunder, has provided to DMRC an irrevocable and unconditional Bank Guarantee in the format provided at Schedule B)/ Demand Draft / Pay Order from a branch in India of a scheduled foreign bank or from a scheduled commercial bank in India payable at New Delhi for a sum equivalent to one year’s recurring Fee as per Clause 3.1 (i). The Security Deposit shall be kept valid on a rolling basis for a period of 6 months beyond the lease period or final settlement whichever is earlier. The Bank Guarantee for Security Deposit shall be renewed every three year for a sum equivalent to one year’s recurring Fee (i.e. Lease fee + maintenance fee if any + utility area fee if any +advance lease fee of additional area including mezzanine area )with a validity of three year.

3.7.2 Upon failure of the Lessee to perform any of its obligations under this Agreement, the Lesser shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Security Deposit as Damages for such defaults.

3.7.3 If the Lessee defaults in payment of Lease Fee for more than 60 days from the due date as per the provisions of this Agreement, DMRC shall be entitled
to encash the entire Security Deposit without being liable in any manner whatsoever to the Lessee.

3.7.4 Upon encashment of the said Security Deposit, the Lessee shall within 7 (seven) days thereof, deposit such amounts with DMRC or replenish to its original amount or furnish a fresh Security Deposit, as the case may be. In case the Lessee fails to provide such amounts or replenish the Security Deposit within the stipulated time, DMRC shall be entitled to Terminate this Agreement in accordance with the provisions of Article 10, without being liable in any manner whatsoever to the Lessee and to appropriate the balance Security Deposit, if any.

3.7.5 In the event of default of Lessee in making payments of upfront premium, Lessee fee, maintenance charges (as applicable), charges for electric supply, air conditioning charges, taxes or any other dues towards DMRC in prescribed time, DMRC shall be entitled to discontinue / disconnect the service of electricity / air conditioning / water / sewer etc in leased premises and debar the Lessee from availing use of common areas / facilities (viz., use of stair case / lifts, etc). Apart from the said rights as stated, DMRC shall also have the rights including but not limited to restrict the access of Lessee in leased premises and recover all dues along with interest.
ARTICLE 4: LEASED SPACE DEVELOPMENTS AND OPERATIONS

4.1 Entry to the Leased Space(s) for work

4.1.1 DMRC shall allow the Lessee access to the area earmarked for the Leased Area as detailed in Schedule A to the Lessee for undertaking the Project immediately from the date of execution of the Lease Agreement. In case such access to the Lessee gets delayed for Force Majeure or for reasons solely attributable to DMRC with no contributory factor on the part of the Lessee, the Commencement Date of the Lease Period shall be proportionately extended.

4.1.2 In the event that Force Majeure prevents access of the Lessee to the Leased Area and the same continues for period of more than 180 days as envisaged in Clause 4.1.1 above, either DMRC or the Lessee shall be entitled to terminate this Agreement. In such event, DMRC shall return the Upfront Fee on pro rata basis and the Security Deposit paid by the Lessee. There shall be no further liability or obligation of either party towards the other in case the Agreement is terminated in terms of this Clause.

4.2 Use of the Leased Space(s) and Peaceful Possession

4.2.1 The Lessee, subject to complying with the terms and conditions of this Agreement, shall be entitled to use the Leased Space(s) during the Lease Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article 2 above. The Lessee shall not use the Leased Space(s) for any other purpose except for the Purpose as mentioned in this Agreement.

4.2.2 The Lessee shall confine its operations to the Leased Space(s). The Lessee shall take all necessary precautions to keep persons and equipment within such areas, and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the Project Site or otherwise cause any inconvenience to the passengers, visitors, employees, representatives and agents of the DMRC.

4.2.3 The Lessee acknowledges and accepts that its Specified Purpose is subservient to the operations of DMRC and is to serve the interest of the commuters and accordingly the Lessee hereby agrees and undertakes to ensure that its activities related to the Specified Purpose as well as those of its Sub-Lessees or any other person acting under or through them, does not cause any inconvenience to commuters and/or disturb/disrupt in any manner or create an impediment for the smooth functioning of the operations of DMRC as also envisaged in the Recitals hereinafore.

4.2.4 The Lessee hereby undertakes that it shall, at all times during the Lease Period, introduce and observe appropriate measures for safety, security and orderliness on the Leased Area.
4.3 **Scope of Work**

4.3.1 The Lessee shall, at its sole expense and risk, carry out the financing, procurement, management, operations and maintenance of the Leased Area in accordance with the provisions of this Agreement.

4.3.2 Activities allowed in the leased premise shall be governed by the extent provisions of Master Plan of Delhi or any activities permitted by the local authority under the administrative jurisdiction. Indicative nature of the activities and facilities that are allowed at the Leased Space(s) are as under:

- Shopping complex / shopping mall / shopping plaza
- Departmental Store, Discount Store, Hypermarket
- Restaurants, Fast Food Stalls, Kiosks, food court
- Offices, Banks, lounge.
- Educational Institutes
- Computer Training Centres, IT centers
- Showrooms for Consumer goods like Garments, Electronics / electrical Items, general utilities, automobiles etc.

4.3.3 The Lessee may use or allow the use of the Leased Area for other activities which are not envisaged in Clause 4.3.2 above, only after taking prior written approval of DMRC.

4.3.4 The Lessee shall carry out the designing and development of the Leased Area in strict compliance with all applicable laws, in particular, applicable building codes and standards and good industry practice, which shall not in any manner endanger the commuters or the Project Site. Further, it is agreed and understood by the Lessee that proprietary interest on all development carried out by the Lessee on the Leased Space(s) shall vest with the Lesser and the Lessee relinquishes all its rights in such development in favor of the Lesser. The guidelines for Fit-out Activities will be provided by DMRC and shall be followed strictly by the Lessee.

4.3.5 Subject to terms of this Agreement and approval of the DMRC, the Lessee shall be free to design the layout plan and undertake the subdivision and partitioning works, interior design works along with utilities like power supply, water supply, toilets, drainage, HVAC, fire fighting, and telecommunications. Provided that, (a) the Lessee, the Sub-Lessee(s) and their representatives, agents and other persons undertaking works shall duly adhere to the provisions of all Applicable Laws including and in particular the prevalent building bye-laws of the place where the Leased Space(s) is located and specified guidelines /requirements of other competent authorities; (b) the facilities and works being undertaken or installed shall not in any manner affect, hinder or interfere with the free movement of the passengers, DMRC’s
staff agents and representatives and visitors; (c) the width of passage and common area for movement of persons in the Leased Area shall be kept as per prevalent building bye-laws; (d) no material shall be stored or kept outside the Leased Space(s) or in the common area meant for movement of persons; (e) no surplus construction machinery and materials, including hazardous materials and wastes shall be left at any place in the Leased Space(s) or the station; and (f) the guidelines for Fit-out Activities shall be strictly followed.

4.3.6 Before applying to any other competent authority for sanction of the scheme/Leased Space(s) layout, the Lessee is required to primarily obtain DMRC’s written approval on its proposed drawings and specifications with due consideration of accessibility for maintenance of existing utilities i.e. water supply, power supply, fire fighting, tele communication, bearing etc. to ensure that the proposed developments do not conflict with the DMRC’s activities and functional requirements, structural aspects, utilities and all traffic movement requirements. It is agreed that DMRC shall not unreasonably interfere with the internal layout of the complex proposed by the Lessee. DMRC shall convey its decision within a maximum period of 30(thirty) days after scrutinizing the submission. Delay by DMRC in communicating such decision beyond the 30 days period, shall not be construed as an approval. In case DMRC is not satisfied and raises any objections, the Lessee shall be required to appropriately amend/modify his scheme / Leased Space(s) layout within a reasonable time frame and seek DMRC’s approval on the same. The Lessee shall approach any other competent authority for sanction of the design etc. only after receiving the written approval of DMRC. The Lessee shall use only standard materials including but not restricted to electrical materials as per standards prevalent in DMRC. In this connection the Lessee is required to get approval of all material from the concerned department of DMRC before commencement of works during the Moratorium Period.

4.3.7 Save as on account of Force Majeure or reasons solely attributable to DMRC with no contributory factor of the Lessee, the Lessee shall have to complete in all respects the Fit-out Activities within the Moratorium Period and DMRC may thereafter be entitled to restrict the development on the Leased Space(s). The liability of the Lessee to pay the consideration and other amounts to DMRC shall however commence from the Commencement Date as stated in Article 3 and the Lease Period shall be restricted to 15years from the Commencement Date notwithstanding the time allowed for completion under this Clause.

For delays on account of Force Majeure or reasons attributable solely to DMRC with no contributory factor of the Lessee, the due date for the first Lease Fee and Lease Period shall be extended accordingly by the ‘period of delay’ in the sole discretion of DMRC, however, no financial claims shall be entertained by DMRC on this account.
4.3.8 The Lessee acknowledges and accepts that the parking facility shall be as per the availability of the Project Site and no special arrangement or exclusive parking area shall be provided by DMRC.

4.3.9 The Lessee shall make its own fire-fighting arrangements for the Leased Area. Such fire-fighting arrangements shall conform to the IS Code of Practice / Delhi Fire Services norms. The Lessee shall ensure installation of automatic sprinkler systems, fire alarm & detection system as per the approval of DMRC and shall only commence the required activities on the Leased Space(s) only upon inspection and approval by the concerned department of DMRC. In this connection the Lessee will provide unfettered access to DMRC’s officers for the purpose of inspection from time to time and shall at own risk and cost install and complete works as may be instructed by the officers of DMRC.

4.3.10 The Lessee shall be solely responsible and liable for development of the Leased Area and implementation of the scheme/Leased Space(s) layout. DMRC shall not be responsible in any manner whatsoever to either the Lessee or its contractors or agents and Sub-Lessees for any default or failure by the Lessee to comply with statutory requirements, design and construction as per the Applicable Laws in particular building codes and good industry practice, observance of safety and security measures at Leased Space(s) etc.

4.3.11 It is the Lessee’s sole responsibility to obtain all necessary clearances and sanctions from competent authorities for approval to the various safety measures such as fire alarm, detection & fighting, required to be installed at the Leased Area. DMRC shall only provide assistance wherever possible (without any legal and binding obligation) to facilitate such process.

4.4 Operations & Maintenance of the said Leased Area

4.4.1 During the Lease Period, the Lessee shall be solely responsible and liable, at its own cost and expense, for all maintenance, upkeep and repairs of the Leased Space(s) and all its components, including buildings, utilities and services and allied works as per best industry practices and Applicable Laws and Applicable Permits. The Lessee shall also carry out rectification of defects in the design or construction of any component of the works at its own cost.

4.4.2 DMRC shall not be liable to any Sub-Lessee or end-user or visitors for any laxity or default by the Lessee or the Sub-Lessee in proper upkeep and maintenance of the Leased Area or any of its components.

4.4.3 The Lessee shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there is minimal disruption of the operations of the Station.

4.4.4 DMRC may inspect the Leased Area at any time for its own assessment of the compliance by the Lessee with its maintenance obligations under this
Agreement. The Lessee shall extend all reasonable assistance to the DMRC representatives during such inspection visits. The Lessee shall at its cost, carry out its own periodic inspections, and also assist DMRC or its nominee (whenever requested) to carry out any random or periodic inspection of any part or component of the works. The cost of any test, if required, shall be borne solely by the Lessee.

4.4.5 The Lessee shall provide unfettered access into the Leased Space(s) at all times to DMRC maintenance staff for carrying out maintenance works related to station utilities running through the Leased Space(s) or accessible only through the Leased Space(s).

4.4.6 The Lessee shall comply with all requirements under the Metro Act and amendments thereto and also comply with all directives as may be issued by DMRC in this regard.

4.5 Reporting requirements

The Lessee shall, whenever required by the DMRC, provide in writing, for information, a general description of the arrangements and methods, which it proposes to adopt for the execution of the works during development of the Leased Area.

4.6 Leased Space(s) Safety and Security Measures

4.6.1 Within 30 days from the date of this Agreement the Lessee shall provide to DMRC details of its safety plan, site logistic plan, list of contractors & consultants, material movement route, debris yard, location and procedures for the works to be undertaken at the Leased Area. The Lessee shall comply with all safety regulations applicable, in its design, access arrangements and operations on Leased Space(s). Unless otherwise stated in this Lease Agreement, the Lessee shall, from the commencement of work on the Leased Space(s) until the expiration of this Lease Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Lessee shall be responsible for the operation of machinery and any other work and shall take all precautions to ensure safety of the staff, labourers and commuters.

4.6.2 The Lessee shall be responsible for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the operation and maintenance of the facilities at its own cost and shall indemnify and keep DMRC indemnified against any third party claims or loss or damage in respect of the same.

4.6.3 Unless otherwise stated in this Lease Agreement:

(i) The Lessee shall be responsible for keeping unauthorized persons off the Leased Space(s), during the Moratorium Period.
(ii) Authorised persons during the Moratorium Period shall be limited to the employees of the Lessee, employees of sub-contractors of the Lessee, and employees and persons authorised by DMRC.

4.7 Co-ordination

The Lessee shall, upon request by DMRC, co-operate in the co-ordination of the works with the work of any other persons to whose systems the facilities are to be connected, provided that such co-operation shall not empower the Lessee to unreasonably interfere with the carrying out of the works. The Lessee shall afford all reasonable opportunities for carrying out their work to:

i) the workmen of DMRC;

ii) any other persons employed by the DMRC and their workmen; and

iii) the workmen of any public authority who may be employed in the execution on or near the Leased Space(s) of any work not included in this Agreement, which DMRC may require.

4.8 Penalty clause

In case any infringement/default as defined under Clause 4.2.2, 4.2.3, 4.3.9 and 4.3.10 occurs, as determined by DMRC, it shall issue a notice to the Lessee to rectify such infringement/default within a stipulated time. If the infringement is not rectified within the stipulated time, a fine upto Rs. 1 Lakh (Rs. One Lakh only) shall be imposed by DMRC, along with the additional time for rectification of such infringement/default.

4.9 Extension of Date of Commencement / Moratorium Period / Lease Period

If in event of, the progress of work being delayed by any act or neglect of DMRC or its employees or by other contractor/lessee employed by DMRC or in executing the works on which Lessee’s performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighbouring owners or public authority arising otherwise through the Lessee’s own default etc, then upon happening of any such event, the Lessee shall immediately bring it to the notice of DMRC within 30 days of happening of such an event and accordingly either Commencement Date or Moratorium Period or Lease Period individually or in combination may be extended suitably, as in the opinion of DMRC are reasonable having regard to the nature and period of delay and the type and quantum of works affected thereby.

Apart from above, the Lessee shall not be eligible for any other compensation for works so carried forward to the extended period of time. In addition,
Lessee shall also make constantly its best endeavours to bring down or make good the delay and shall do all that may be reasonably required to the satisfaction of DMRC to proceed with its duties under this Agreement.

Any failure or delay by DMRC to provide the Lessee possession of the Leased Space(s), or to give the necessary permission or necessary drawings or instructions or any other delay caused by the DMRC due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate this Agreement or alter the character thereof or entitle the Lessee to any Damages or compensation.

Nevertheless, in the event of the delay being due to reasons being attributable to Lessee, or its failure to complete its obligations within specified time as per the Agreement, for the reasons other than the reasons attributable to DMRC, Lessee shall not be entitled for any extension of date of Commencement Date or Moratorium Period or Lease Period.
ARTICLE 5: RIGHTS AND OBLIGATIONS

5.1 The Lessee’s Responsibilities and Duties

In addition to and without prejudice to other obligations under this Agreement, the Lessee’s Responsibilities and Duties shall include the following:

a) to obtain Applicable Permits, necessary approvals, clearances and sanctions from the competent authorities for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire fighting, telecommunication, etc.;

b) to comply and observe at all times with all Applicable Permits, approvals and Applicable Laws in the performance of its obligations under this Agreement including those being performed by any of its contractors/Sub-Lessees;

c) to furnish DMRC with the “As built” Drawings of the Leased Space(s) within the Moratorium Period;

d) to operate and maintain the Leased Area at all times in conformity with this Agreement and Applicable Laws;

e) to be responsible for safety, soundness and durability of the Leased Space(s) including other structures forming part thereof and their compliance with the local building byelaws;

f) to ensure that no structural damage is caused to the existing buildings and other permanent structures at the station as a result of his activities or any of its agents, contractors, Sub-Lessees etc.;

g) to ensure at all times that the said development within the Lesseeed Area is neither an impediment for smooth flow of traffic nor a cause of inconvenience and safety hazard for the station structure and commuters;

h) to take all reasonable steps to protect the environment (both on and off the Leased Space(s)) and to limit damage and nuisance to people and property resulting from development and operations, within guidelines specified as per Applicable Laws and Applicable Permits;

i) to submit the annual audited results of this Leased Space(s) to DMRC on or before 30th of June, every year.

j) to pay at its own cost all applicable existing and future taxes/charges/fees including stamp duty, registration charges and any other related documentation charges, if any, in respect of the said Leased Area, including land, as leviable, except for ground rent.
k) to duly supervise, monitor and control the activities of contractors/Sub-Lessees under their respective agreements as may be necessary;

l) to make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Lessee’s obligations under this Agreement;

m) to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice and furnish copies of the same to DMRC immediately;

n) to take all reasonable precautions for the prevention of accidents on or about the Leased Area and provide all reasonable assistance and emergency medical aid to accident victims;

o) not to permit any contractor or Sub-Lessee or other person, claiming through or under the Lessee, to create or place any encumbrance or security interest over all or any part of Leased Space(s) or the assets of the Leased Space(s), or on any rights of the Lessee therein or under this Agreement, save and except as expressly permitted in this Agreement;

p) to ensure that such Leased Space(s) remains free from all encroachments, encumbrances and tresspass during the entire Lease Period;

q) during execution of works, to keep the Leased Space(s) free from all unnecessary obstruction, and store the equipment or surplus materials dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Project Site and commuters or otherwise to DMRC’s any other activites.

r) within 30 (thirty)days of of the expiry of the Moratorium Period, to remove from the ‘Leased Space(s)’ all surplus machinery and materials, including, without limitation, hazardous materials and wastes, and keep the ‘Leased Space(s)’ in a neat and clean condition, and in conformity with the terms of this Agreement and Applicable Laws; except that the Lessee shall be entitled to retain on any Leased Space(s), until the expiry of the Lease Period, such equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Lease Agreement in respect of operation and maintenance of the Leased Space(s).

s) on expiry of Lease Period, within a maximum period of 30 days, to leave the Leased Area in a clean and safe condition to the satisfaction of DMRC. Provided that if the Lessee fails to clear the Leased Area and the facilities therein, DMRC may invoke the Security Deposit, and get the Leased Space(s) cleaned at the cost of Lessee.
t) to provide all assistance to the independent consultant / expert / independant auditor / arbitrator as it may require for the performance of its duties and services;

u) at all times, to afford access to the Leased Space(s) to the authorised representatives of DMRC, other persons duly authorised by any Governmental Agency having jurisdiction over the Leased Space(s), to inspect the Leased Space(s) and to investigate any matter within their authority and upon reasonable notice;

v) to comply with the divestment requirements and hand over the Leased Area to DMRC upon Termination of this Agreement;

w) Lessee shall comply with all application statutes, ordinances, rules and regulations of central, state government, municipal bodies, and all applicable laws with strict adherence; and

x) to compulsorily register the instrument and pay stamp duty.

5.2 The Lessee shall be solely responsible to DMRC for observance of all the provisions of this Lease Agreement on behalf of its employees and representatives and further on behalf of the Sub-Lessees, their employees and agents and any person acting under or for and on behalf of the Lessee or the Sub-Lessees; as if they were the acts or defaults of the Lessee.

5.3 The Lessee shall be liable for and shall indemnify, protect, defend and hold harmless DMRC, DMRC’s officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments including third party claims arising out of the failure of the Lessee to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.

5.4 The Lessee shall acknowledge and recognize that time is the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

5.5 Assignability and Encumbrance

5.5.1 Except for the sub-leasing the use of the Leased Area as per the terms of this Agreement, the Lessee shall not assign any of its rights, or interest in this Agreement in favour of any entity/person(s) at any time and for any reasons whatsoever.

5.5.2 Under no circumstance, shall the Leased Area including the facilities, constructions or installations therein, be mortgaged, charged or otherwise any lien (including negative lien), charge or encumbrance be created or agreed to
be created in favor of any person, including Lenders / Financial Institution(s) / Banks.

5.5.3 That no tenancy / sub-tenancy is being created by Lesser in favour of Lessee under or in pursuance of this Lease Agreement and it is distinctly and clearly understood, agreed and declared by and between the Parties hereto that:

1. except to carry out the activities permitted over the Leased Space(s) under this Agreement, the Lessee shall not have or claim any right or interest in the said Leased Space(s) as a tenant/sub-tenant or otherwise.

2. no right as a tenant/sub-tenant or otherwise is purported or is intended to be created or transferred by Lesser in favor of Lessee or in respect of the Leased Space(s).

3. the rights, which the Lessee shall have in relation to the Leased Space(s), are only those set out in this Lease Agreement.

5.5.4 The lessee shall not be allowed to monetize the lease area, facilities, constructions or installation therein, through Real Estate Investment Trust (REITs)/Infrastructure Investment Trust/ etc. In exceptional circumstances however, and after considering the exigencies of circumstances, DMRC may consider granting such permission in some specific cases with such safeguards considered necessary. The decision of DMRC in this regard shall be final and binding upon the lessee.
ARTICLE 6: RESTRICTION AND CHANGES IN LESSEE AND SPECIAL PURPOSE COMPANY

6.1 In case the Lessee is an SPC incorporated as per the requirements of the RFP, the members of Consortium shall be required to maintain 100% of the equity of the SPC throughout the subsistence of the Lease Agreement. There shall be no change in the shareholding structure of the SPC during the Lease Period without prior approval of DMRC.

6.2 The members of Consortium of the SPC shall be responsible and liable jointly and severally, for due performance of all the obligations and responsibilities assumed by the SPC under this Agreement.

6.3 The Lead Member shall hold not less than 51% (fifty one per cent) of the equity of the SPC during the subsistence of the Lease Agreement and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of award of the Project shall hold at least 26% (twenty six per cent) of such Equity during the subsistence of the Lease Agreement. Replacement of the Lead Member shall not be allowed at any time during the subsistence of the Lease Agreement. Any deviation from the above shareholding structure shall expressly be with the prior written consent of DMRC. Further, any change proposed in the equity shareholding pattern of the Consortium in the Special Purpose Company during the Lease Period, within the prescribed limits shall be subject to prior permission of DMRC.
ARTICLE 7: INSURANCE

7.1 The Lessee shall, at its cost and expense, purchase and maintain during the Lease Period insurance to cover against:

(a) Loss, damage or destruction of the Leased Area, at replacement value;
(b) The Lessee’s general liability arising out of this Agreement;
(c) Liability to third parties;
(d) The risks that may devolve on DMRC as a consequence of any act of negligence or omission by the Lessee, Sub-Lessee or their employees, agents, contractors etc.; and

Any other insurance that may be necessary under and in accordance with the financing documents, Applicable Laws to protect the Lessee and its employees, including all Force Majeure Events that are insurable, and not otherwise covered in items above.

7.2 The aggregate of the maximum sums insured under the insurance taken out by the Lessee pursuant to this Article 7 are herein referred to as the “Insurance Cover”.

7.3 The Lessee shall, immediately upon obtaining any insurance policy as per the requirement of this Agreement, provide to DMRC copies or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts or renewals of all such insurance policies.

7.4 Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty-five) days after written notice of such cancellation, change or Termination has been given to DMRC in writing.

7.5 If at any point of time the Lessee fails to maintain in force and effect any or all of the insurance policies required under this Agreement, DMRC may, at its option, purchase and maintain such insurance at the cost and expense of the Lessee. All sums incurred by DMRC thereon shall be reimbursed by the Lessee forthwith on demand, failing which the same shall be recovered by the DMRC from the Security Deposit of the Lessee.

7.6 In the event of default i.e. failure of the Lessee to maintain the Insurance Cover, the Lessee agrees and undertakes to indemnify and hold the DMRC harmless against any and all liabilities, losses, damages, claims, expenses suffered by the DMRC.
ARTICLE 8: ACCOUNTS AND AUDIT

8.1 The Lessee shall appoint and have during the subsistence of this Agreement as its ‘Statutory Auditors’ a firm of Chartered Accountants duly leased to practice in India.

8.2 The Lessee shall maintain full accounts of all inflows collected by it from the Leased Space(s) and of O&M Expenses and other costs.

8.3 Notwithstanding anything to the contrary contained in this Agreement, DMRC shall have the right, but not the obligation, to appoint at its cost, another firm of chartered accountants to independently audit (“Independent Auditor”) and verify all matters, expenses, costs, realizations which have been carried out by the Statutory Auditors of the Lessee. In such an event, the Lessee shall provide to such Independent Auditor access to all documents and records, without demur or reservation.

8.4 In the event of their being any difference between the finding of the Independent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Lessee, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute Resolution Procedure.
9.1 The Lessee hereby undertakes to indemnify, defend, save and hold harmless the Lesser and its officers, servants, agents, (hereinafter referred to as the “Lesser Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Lessee of any of its obligations under this Agreement or any related agreement or Applicable Laws or from any negligence of the Lessee under contract or tort or on any other ground whatsoever.

9.2 The Lessee hereby undertakes to indemnify and hold Lesser Indemnified Persons harmless against all costs, damages, liabilities, expenses arising out of any third party claims including Sub-Lessee, relating to non-completion of the Fit-Out Activities; quality of the Fit-out Activities, the activities related to development and operations of the Leased Space(s).

9.3 The Lessee hereby undertakes to indemnify Lesser Indemnified Persons 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 of or in consequence of the execution and completion of works and remedying defects therein and against all claims, proceedings, damages, costs charges and expenses whatsoever in respect thereof or in relation thereto.

9.4 The Lessee hereby indemnifies Lesser Indemnified Persons against any loss or damage to Project Site or otherwise for any act and omission of the Sub-Lessee including for breach of Sub-Lease Agreement or any Applicable Law by Sub-Lessee as the case may be.

9.5 The Lessee hereby undertakes that Lesser Indemnified Persons shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Lessee or Sub-Lessee or any of its contractors / sub contractors. The Lessee shall indemnify and keep indemnified Lesser Indemnified Persons against all such damages and compensation, all claims proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

9.6 Survival on Termination

The provisions of this Article shall survive Termination.
ARTICLE 10: FORCE MAJEURE

10.1 Force Majeure Event

Any of the following events which has materially impaired the performance of this Agreement shall constitute a Force Majeure Event:

a) Earthquake, flood, inundation, landslide;

b) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;

c) Fire caused by reasons not attributable to the Lessee;

d) Acts of terrorism;

e) War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war;

f) Strikes or boycotts, other than those involving the Lessee, Sub-Lessee, its contractors or their employees, agents, etc.;

g) Any other similar act / things beyond the control of the Parties; and

h) any judgment or order of any court of competent jurisdiction or statutory authority made against the Lessee in any proceedings for reasons other than (i) failure of the Lessee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the DMRC;

10.2 Notice of Force Majeure Event

As soon as practicable and in any case within 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:

a) The nature and extent of the Force Majeure Event ;

b) The estimated period for which the Force Majeure Event is expected to last;
c) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;

d) The measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and

e) Any other relevant information concerning the Force Majeure Event, and/or the rights and obligations of the Parties under this Agreement.

10.3 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:

a) Due notice of the Force Majeure Event has been given to the other party as required by the preceding Clause 10.2;

b) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;

c) There shall be no Termination of this Agreement due to Force Majeure Event except as provided in Clause 10.4;

d) Where the Lessee is the Affected Party, the various deadlines set forth in this Agreement and the Lease Period shall be extended by the period for which such Force Majeure Event shall subsist.

e) Where the Lessee 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 facilities in the Leased Space(s) as a result of the Force Majeure Event and to restore the facilities in the Leased Space(s), in accordance with the Good Industry Practice and its relative obligations under this Agreement;

f) 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;

g) 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

h) Any insurance proceeds received by the Lessee shall be entirely applied to repair, replace or restore the assets damaged on account of
the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by DMRC.

10.4 Termination due to a Force Majeure Event

In case a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Agreement by giving 30 (thirty) days prior Termination Notice in writing to the other Party without being liable in any manner whatsoever.
ARTICLE 11: TERM AND TERMINATION

11.1 Term

This Agreement shall continue to operate and be binding on the Parties for the Lease Period of 15 years commencing from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 11.

11.2 Termination by DMRC

DMRC, in its sole discretion, may terminate this Agreement due to any of the following events of default by the Lessee (hereinafter called the “Lessee Event of Default”):

a) The Lessee has failed to perform or discharge any of its obligations in accordance with the provisions of this Agreement, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to DMRC without any contributory factor of the Lessee;

b) If at any time during the Lease Period, any payment, assessment, charge, lien, penalty or damage herein specified to be paid by the Lessee to DMRC, or any part thereof, shall be in arrears and unpaid for a continuous period of 180 days;

c) The Lessee has failed to submit security deposit for renewed amount six months before the date of the expiry of existing Security Deposit.

d) Any representation made or warranties given by the Lessee under this Agreement is found to be false or misleading;

e) The Lessee has engaged or knowingly has allowed any of its employees, Sub Lessee, agents, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;

f) The Lessee has been adjudged as bankrupt or become insolvent;

g) The Lessee has created any encumbrance, charges or lien in favour of any person or agency, over the Leased Area, save and except as otherwise expressly permitted under this Agreement;

h) A resolution for voluntary winding up has been passed by the shareholders of the Lessee;

i) Any petition for winding up of the Lessee has been admitted and liquidator or provisional liquidator has been appointed or the Lessee has been ordered to be wound up by Court of competent jurisdiction,
except for the purpose of amalgamation or reconstruction with the prior consent of DMRC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Lessee under this Agreement;

j) The Lessee has abandoned the Project;

k) The shareholding pattern of the SPC (being the Lessee) has been changed without obtaining prior written consent of DMRC.

l) In case the Lessee or its Sub Lessee had entered into any Sub Lease Agreement without the prior written consent of DMRC;

Provided that in the event of application under sub-clauses (a) and (b), above DMRC shall give to the Lessee 30 days time to cure the default prior to considering the events specified therein as Lessee’s events of default and in the event the Lessee remedies the default to the satisfaction of the DMRC within 30 days, the event will not be considered as a Lessee Event of Default.

In the event of default under sub-clauses (c) to (l), above, the Lessor shall be entitled to terminate this Agreement at any point of time in its sole discretion by giving 30 days notice period to the Lessee. This Agreement shall thereafter automatically stands terminated notwithstanding any further action by either Party. The Lessee shall incorporate these termination clauses in the agreement of sub-lessees. All such sub-lease agreements will stand terminated once this contract is terminated.

11.3 Termination for Force Majeure

The Agreement may be terminated for Force Majeure reasons as specified in Clause 10.4.

11.4 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon Termination:

i) the Lessee or Sub-Lessee shall cease to have any access to the Leased Space(s). However, DMRC at its own discretion may allow the Sub-Lessees/ end users to continue to have access on mutually negotiable terms & conditions.

ii) surrender all its rights on the Leased Space(s). Transfer all its rights, titles and interest in or over the assets comprised in the Leased Space(s) which are required to be transferred to DMRC in accordance with this Agreement and execute such deeds and documents as may
be necessary for the purpose and complete all legal or other formalities required in this regard.

iii) The Leased Space(s) shall have been renewed and cured of all defects and deficiencies as necessary so that the Leased Space(s) is in accordance with the specifications & standards as per the terms of this Agreement.

iv) Hand over to DMRC all documents including as-built drawings, manuals and records relating to development, operation and maintenance of the Leased Space(s) and a certificate from his statutory auditors certifying zero financial encumbrance on the Leased Space(s);

v) At its cost remove from the Leased Space(s) all such moveable assets, which are not taken over by or transferred to the DMRC.

vi) At its own cost, immediately terminate the Sub-Leasing Agreements entered into with Sub-Lessees, without any liability of the DMRC. However, DMRC may in its discretion, instruct the Lessee to assign the Sub-Leasing Agreement in favour of the DMRC, if the DMRC considers appropriate to continue to provide access to the Sub-Lessee on the Leased Space(s).

vii) The Lessee shall, at its cost, transfer to DMRC all such Applicable Permits, which the DMRC may require and which can be legally transferred.

It is hereby agreed between the Parties that the Lessee or the Sub-Lessee or any other person acting through or under them shall not remove any of the facilities at Leased Space(s) including all equipment and other fixtures attached to the Leased Space(s) and shall remove only moveable which can be removed without causing any damage to the structure of the Leased Area. Both Parties shall at least 6 (six) months prior to the expiry of the normal Lease Period of 15 (Fifteen) years or sooner determination as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid consequences of Termination.

Each Party shall pay the other Party the various payments due as on the date of Termination in accordance with this Agreement.

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Termination in entirety, and unless otherwise provided in this Agreement, the cost involved in transfer contemplated shall be shared by the respective Parties.
11.5 Rights of DMRC on Termination

Notwithstanding anything contained in this Agreement, DMRC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Lessee and/or Sub-Lessee in connection with the Leased Space(s).

In cases of termination of lease agreement due to default of lessee, DMRC shall have the exclusive rights to cut water supply, electricity, sewerage connection to the leased area and also start process for eviction of lessee from DMRC property.

11.6 Right to re-market the said Leased Space(s) on Termination

Notwithstanding anything contained in this Agreement, DMRC shall have right to re-market the Leased Space(s) on Termination of this Agreement for any reasons whatsoever.
ARTICLE 12: DISPUTE RESOLUTION

12.1 Amicable Resolution

12.1.1 Save where expressly stated to the contrary in this Agreement, 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.

12.1.2 Except where otherwise provided for in the Agreement, all questions and disputes arising between the Parties pertaining to or directly or indirectly connected with this Agreement shall in the first place be referred to a sole conciliator who shall be an official of DMRC of the rank of deputy and above (the “Conciliator”).

12.1.3 Upon conciliation as above, in case the Parties reach an agreement, the Conciliator shall make the settlement agreement and give an authenticated copy thereof to each of the Parties (the “Settlement Agreement”). The Settlement Agreement shall be final and binding on the Parties. The Settlement Agreement shall have the same status and effect as arbitration award.

12.1.4 The views expressed, or suggestions made or the admissions made by either Party in the course of conciliation proceeding shall not be introduced as evidence in any arbitration proceedings. The cost of conciliation shall be borne by both the Parties equally.

12.1.5 Any dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure under Clause 12.2 below.

12.2 Arbitration

12.2.1 If the efforts to resolve all or any of the disputes through amicably resolution fails, then such disputes or differences, whatsoever arising between the parties shall be referred to Arbitration in accordance with the following provisions:

a. Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is upto Rs.5 million and to a panel of three Arbitrators if total value of claims is more than Rs.5 million. DMRC shall provide a panel of three arbitrators which may also include DMRC officers for the claims upto Rs.5 million and a panel of five Arbitrators which may also include DMRC officers for claims of more than Rs.5 million. The lessee/concessionaire/licensee shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The DMRC shall also choose one Arbitrator from this panel of five and the two
so chosen will choose the third arbitrator from the panel only who shall act as the Presiding Arbitrator. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before DMRC for the purpose of obtaining his decision. No decision given by DMRC in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings, that of documents and communication shall be English.

b. DMRC at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the contractor.

c. The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties.

12.2.2 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.

12.2.3 The cost of arbitration shall be borne by the respective parties. The cost shall, inter alia, include the fees of the Arbitrator(s) as per rates fixed by the DMRC from time to time.

12.2.4 Where recourse to a Court is to be made in respect of any matter, the court at Delhi/ New Delhi shall have the exclusive jurisdiction to try all disputes between the parties.

12.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
ARTICLE 13: REPRESENTATIONS AND WARRANTIES, DISCLAIMER

13.1 Representations and Warranties of the Lessee

The Lessee (in the case of Consortium each member) represents and warrants to DMRC that:

a) It is duly organized, validly existing and in good standing under the laws of India;

b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;

d) It has the financial standing and capacity to undertake the development of Leased Space(s);

e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

f) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Lessee or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Lessee is a party or by which Lessee or any of its properties or assets are bound or affected;

g) There are no actions, suits, proceedings or investigations pending or to the Lessee’s knowledge threatened against the Lessee at law or in equity before any Court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Lessee Event of Default or which individually or in the aggregate may result in a Material Adverse Effect;

h) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;

i) It has complied with all Applicable Law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
j) No representation or warranty by the Lessee contained herein or in any other document furnished by the Lessee to DMRC or to any government authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

k) The Lessee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that DMRC shall not be liable for the same in any manner whatsoever to the Lessee; and

l) The Lessee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour are being recruited for and on behalf of DMRC. The Lessee shall at all times comply and represent to the staff and labour employed / engaged by them the requirement for complying with Applicable Laws and Applicable Permits, particularly in relation to safety and environmental regulations.

13.2 Obligation to notify change

In the event that any of the representations or warranties made/given by the Lessee ceases to be true or stands changed, it shall promptly notify DMRC of the same.
ARTICLE 14: MISCELLANEOUS

14.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate of 20% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided that the stipulation regarding interest for delayed payments contained in this Clause 14.1 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

14.2 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Delhi shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

14.3 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

c) shall not affect the validity or enforceability of this Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

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

14.5 Amendments

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

14.6 Notices

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

If to DMRC

The Managing Director
Delhi Metro Rail Corporation Ltd.
Metro Bhawan,
Fire Brigade Lane Barakhamba Road ,
New Delhi 110 001
Fax No. +91 11 23418311

If to the Lessee

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

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

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

14.8 **No Partnership**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. DMRC is also not a principal employer in regard to the activities of the Lessee or the Sub-Lessee as the case may be.

14.9 **Language**

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

14.10 **Exclusion of Implied Warranties etc.**

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

14.11 **Counterparts**

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

14.12 **Employees of Lessee**

The employees/ staff of the Lessee shall not be deemed or construed to be the employees of the DMRC. The Lessee understands and undertakes that its employees/ staff shall make no claim against the DMRC for any reasons whatsoever. Further, the Lessee also agrees that the DMRC shall not be liable for any accident/ injury or claims of the workers/ employees during the
execution of the developmental works under this Agreement and the Lessee hereby indemnifies and undertakes to keep DMRC indemnified in respect of the same.

14.13 Encroachment

The Lessee shall have no exclusive rights for using the Common Areas and restrict its operation to within the Leased Area. The Common Areas shall not be allowed to be encroached or used for any other purpose and any encroachment of Common Area shall be construed as breach of the Lease Agreement inviting action as applicable for breach of the Lease Agreement.

14.14 Signage and Advertisements:

a) The Lessee shall have the right to display signage(s) of suitable size for displaying its generic name of each Space. The signage may be illuminated or non-illuminated at the Lessee’s option, however it shall need to confirm to all governmental laws, regulations or ordinance relevant thereto. The Lessee shall also need to obtain a written approval from DMRC before putting up any form of signage and DMRC reserves the right to refuse or to suggest an alternation to the same. The size, shape, location, etc. of signage are subject to architectural controls to be issued by DMRC. Signage should be used only for the business being run by the Lessee in the leased premises. In addition, the Lessee shall also be required standard materials as per standards prevalent in DMRC, for which he shall seek necessary approval from DMRC.

b) Space for 1 totem pole shall be provided by the DMRC without any additional lease fee at a suitable location. Totem pole will be provided on the Ground/Concourse floor admeasuring 15 feet by 4 feet. The totem pole shall be backlit. The installation cost, electricity consumption charges, taxes etc. (if any) shall be borne by the Lessee.

c) No advertisement in any format shall be permitted on the outer surface of the Leased Space. However, the lessee shall be allowed to use interior of the leased spaces for display of advertisement only about the business / commodity being run / sold by the Lessee in the Leased space(s). In addition, advertisement area up-to 8’ x 6’ shall also be provided for each PD floor at designated places in the circulating area of station on charges @ half of the Lease fees.

d) The Lessee shall need to obtain a written approval from DMRC by way of a notice before putting up any form of signage/advertisement within/outside their premises and DMRC reserves the right to refuse or to suggest an alternation to the same. The signage/advertisement shape and location etc are subject to architectural controls to be issued by DMRC.
c) Placement of signage/ advertisement without the permission of DMRC or placement in non approved locations shall attract a penalty of Rs.5000/- per signage/ advertisement on the first occasion and Rs.50,000/- per signage/ advertisement on the second occasion. In case of persistence default, DMRC reserve the right to terminate the agreement with forfeiture of the (interest free) security deposit and advance lease fee paid in its favour.

f) DMRC shall not unreasonably interfere with the signage/ advertisement plan. If DMRC is not satisfied and raises any objections, the lessee shall be required to appropriately amend/ modify his scheme within a reasonable timeframe and seek DMRC approval once again.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by: For and on behalf of the Lessee by:

In the presence of:

1) 1)

2) 2)
SCHEDULE A
Plans/Drawings of the Leased Space(s) and Project Site
SCHEDULE B
PERFORMA FOR SECURITY DEPOSIT

(To be issued by a Scheduled Commercial Bank in India, ‘except Regional Rural Banks(RRB’s) & Local Area Banks (LAB’s)’ acceptable to DMRC,
on non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO._____________________ dated _____

This Deed of Guarantee made on this day of ……………………..(month & year) by M/s________________________________________, a financial institution incorporated under the___________________________ Act and having its registered office at __________________and Corporate office at_______________________________ and Branch/Zonal office at _________________________________ (Name and address of Bank) (hereinafter referred to as “the Bank” or “the Guarantor”, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns)) of the one part

In favour of

The Delhi Metro Rail Corporation Limited (hereinafter called “DMRC”, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns), having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi-110001 of the other part;

Whereas DMRC has accepted the Bid of M/s…………………………………(hereinafter referred to as the “Lessee”, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) having its registered office at…………………. for the work of………………………………..(Name of work).

And Whereas the Lessee under the terms of Lease Agreement is required to furnish an unconditional irrevocable Bank Guarantee for an amount of Rs.________/- (Rupees ______________ only) as Performance Security and has thus requested the Bank to issue the said Bank Guarantee in favor of the DMRC.

And Whereas, accordingly the Bank has agreed to guarantee to DMRC the obligations of the Lessee under the terms of the Lease Agreement, on the terms and conditions stated herein.

NOW THIS GUARANTEE HEREBY WITNESS:

1. The Bank, as primary obligor, on receipt of a written demand from DMRC, shall pay on the same day to DMRC the aforementioned amount of Security Deposit or part thereof, without demur, reservation, contest, recourse whatsoever and without need for ascribing any reason to the demand and without any reference to the Lessee. Any such demand made by DMRC shall
be conclusive, final and binding on the Bank and the Bank shall pay the amount so demanded without demur notwithstanding any dispute/disputes raised by the Lessee in any suit or proceedings pending before any Court, tribunal or arbitrator/s relating thereto and the liability of the Bank under this guarantee shall be absolute and unequivocal.

2. This Guarantee shall be valid upto dd/mm/yyyy till the entire Lease Period and for a period of 1 (one) year thereafter against any dues payable by the Lessee to the DMRC and shall not be revoked by the Bank at any time without DMRC’s prior consent in writing. Further the Bank shall be liable to pay the guaranteed amount or part thereof under this guarantee only and only if DMRC serves upon the Bank a written claim or demand on or before dd/mm/yyyy.

3. This Guarantee is unconditional and irrevocable till such time DMRC discharges this guarantee by issuing a letter to the Bank in this behalf.

4. The Bank undertakes to pay the amount mentioned herein as principal debtor and not a surety and the DMRC at its option, shall be entitled to enforce this guarantee during its currency against the Bank, as a principal debtor in the first instance, without proceeding against the Lessee and notwithstanding any security or other guarantee that the DMRC may have in relation to the Lessee’s liabilities.

5. The Bank shall not be relieved from its obligations under this Bank Guarantee on account of any variations in the terms and conditions of the Lease Agreement or by extension of time granted to the Lessee or due to any postponement / non-exercise / delayed exercise of any of its rights by DMRC against the Lessee or omission on the part of DMRC or any indulgence by DMRC to the Lessee to give such matter or thing whatsoever, which under the law relating to sureties would, but for this provision, have effect of so relieving the Bank.

6. The expression “Lessee”, “ Bank” and “DMRC” hereinbefore used shall include their respective successors and assigns. Also the Guarantee shall not be affected by any change in the constitution of the Lessee or of the Bank.

7. Notwithstanding anything contained herein:
   a) The Bank liability under this bank guarantee shall not exceed Rs.…………….(Rupees in words).
   b) This Bank guarantee shall be valid upto dd/mm/yy
   c) The Bank is liable to pay the guaranteed amount or part thereof only and only if the DMRC serves upon the Bank a written claim or demand on or before dd/mm/yyyy.
IN WITNESS WHEREOF I/We of the Bank have signed and sealed this guarantee on the........ day of......... month and year being herewith duly authorized.

For and on behalf of the ______________
Bank.

Signature of Authorized Bank Official:
Name _________________________________
Designation _______________________________
Stamp/Seal of the Bank : ____________________

Signed, sealed and delivered for and on behalf of the Bank by the above named _________________________________

In the presence of:

Signature _________________________________
Name _________________________________
Address _________________________________

Signature _________________________________
Name _________________________________
Address _________________________________

Notes:
1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the ‘Bank Guarantee’.
2. The ‘Bank Guarantee’ shall be from the Scheduled Commercial Bank based in India, acceptable to Employer.
ANNEXURE-6
LAYOUT PLAN