

EAST DELHI MUNICIPAL CORPORATION

NIT No. EDMC/HQ/2018/D-709

Date: 16.10.2018

SCHEDULE OF BIDDING PROCESS

TENDER TO RUN TRILOKPURI SPORTS COMPLEX OF EDMC

EDMC would endeavour to adhere to the following schedule:

S. No	Activity	Date / Time	Venue
1.	Sale of Tender Document	16.10.2018	Office Of AO (RP Cell), EDMC HQ
2.	Last Date For Sale Of Tender Documents	05.11.2018	Office Of AO (RP Cell), EDMC HQ
3.	Pre Bid Meeting	23.10.2018 at 04:00 PM	Office Of AO (RP Cell), EDMC HQ
4.	Last date of submission of bids	06.11.2018 till 12:00 Noon	Office Of AO (RP Cell), EDMC HQ
5.	Date of Opening of Technical Bid	06.11.2018 at 02:00 PM	Conference Hall, First Floor, EDMC (HQ)
6.	Date of Opening of Financial Bid	The date of opening of financial bid will be intimated to the technically qualified bidder in due course of time.	
7.	Contact details Designation: Administrative Officer R.P. Cell, EDMC (HQ) 419, Udyog Sadan, Patparganj Industrial Area, Delhi-110092.	Can be contacted on all working days between 11:00 AM – 01:00 PM.	

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DISCLAIMER

The information contained in this Tender for ("TENDER") Document or subsequently provided to Bidder, whether verbally or in documentary form by or on behalf of the East Delhi Municipal Corporation ("Government Representatives") or any of their employees or EDMC, is provided to the Bidder on the terms and conditions set out in this Tender Document and any other terms and conditions subject to which such information is provided.

This Tender Document is not an agreement and is not an offer or invitation by the Government Representatives to any party other than the Bidders who are qualified to submit the Proposal (Bidders). The purpose of this Tender Document is to provide the Bidder with information to assist the formulation of their proposals. This Tender Document does not purport to contain all the information each Bidder may require. This Tender Document may not be appropriate for all persons, and it is not possible for the EDMC to consider the investment objectives, financial situation and particular needs of each party who reads or uses this Tender Document. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this Tender Document and where necessary obtain independent advice from appropriate sources. The Government Representatives, their employees and advisors make no representation or warranty and shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the Tender Document. The Government Representatives may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this Tender Document.

INSTRUCTION TO BIDDERS

i. GENERAL

1. Each Bidder shall submit only one (1) Proposal for the Project in response to this Tender Document. Any entity, which submits or participates in more than one Proposal for the same Project will be disqualified.
2. Terms used in this Tender Document which have not been defined herein shall have the meaning ascribed thereto in the Draft Service Agreement.
3. This tender document consists of Instructions to bidders, draft service agreement, draft bank guarantee format and total of **26 A4 size pages**.
4. **Format and Signing of Proposal** - Bidders would provide all the information as per this Tender Document and in the specified formats. EDMC reserves the right to reject any Proposal that is not in the specified formats.
5. **Proposal Preparation Cost** - The Bidder shall be responsible for all the costs associated with the preparation of its Proposal and its participation in the bidding process. EDMC will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of bidding.
6. **Language and Currency** - The Proposal and all related correspondence and documents shall be written in the English language. Supporting documents and printed literature furnished by the Bidder with the Proposal may be in any other language provided that they are accompanied by an appropriate translation into English. Supporting materials that are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language translation shall prevail. The currency for the purpose of the Proposal shall be the Indian Rupee (INR).
7. **Cost of Tender Document:** The cost of Tender document is Rs. 1000.00 (Rupees One Thousand Only) payable through Demand Draft / Pay Order in favour of Commissioner, East Delhi Municipal Corporation payable at Delhi. The same can be purchased from AO (RP Cell), EDMC after making the payment and taking a receipt of G8 or alternatively the Demand Draft / Pay Order of that value can be attached along with the tender documents if downloaded from website, in addition to applicable EMD fees.
8. **Validity of Proposal:** The Proposal shall indicate that it would remain valid for a period not less than 120 days from the Proposal Due Date (Proposal Validity Period). EDMC reserves the right to reject any Proposal that does not meet this requirement. Prior to expiry of the original Proposal Validity Period, EDMC may request that the Bidders extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Proposal, but would be required to extend the validity of its EMD Deposit for the period of extension. The Successful Bidder shall extend the Proposal Validity Period till the date of execution of the Draft Service Agreement.
9. **Clarifications:** To assist in the process of evaluation of Proposals, EDMC may, at its sole discretion, ask any Bidder for clarification on its Proposal. The request for clarification and the response shall be in writing or by facsimile. No change in the substance of the Proposal would be permitted by way of such clarifications.
10. **Pre-Bid Meeting:** To clarify and discuss issues with respect to the Project and the Tender Document, EDMC will hold Pre-Bid meetings on date specified in the schedule of bidding process.
 - a. Prior to the Pre-Bid meetings, the Bidders may submit a list of queries and propose deviations, if any, to the Project requirements and/or the Draft Service Agreement. Bidders must formulate their responses and forward the same to EDMC at least three (3) days prior to the meeting.
 - b. All correspondence/enquiries should be submitted to the following in writing by post/courier:
ATTN. OF: The Administrative Officer (RP Cell)
ADDRESS: AO (R.P. Cell), EDMC, 419, Udyog Sadan, Patparganj Industrial Area, Delhi-92

- c. In case of change of pre bid meeting date and time, the details of the meeting will be separately communicated to the Bidders. Attendance of the Bidders at the Pre-Proposal meeting is not mandatory. However, subsequent to the meeting, EDMC may not respond to queries from any Bidder who has not attended the Pre-bid meeting.
- d. EDMC may amend the Tender Document based on inputs provided by Bidders that may be considered acceptable in its sole discretion and such changes shall be notified to the bidders who have participated in the pre-bid meeting.
- e. EDMC may choose to send to all Bidders, written copies of EDMC's responses, including a description of the enquiry but without identifying its source to all the Bidders.
- f. No queries/clarifications will be entertained received after the date of pre-bid meeting.

11. **Amendment of Tender Document:** At any time prior to the Proposal Due Date, EDMC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the Tender Document by the issuance of Addenda. Any Addendum will be uploaded on website. Such addenda will be binding upon all bidders wishing to participate in tender process.

12. **EDMC's Right to Accept or Reject Proposal:** EDMC reserves the right to accept or reject any or all of the Proposals without assigning any reason and to take any measure as it may deem fit, including annulment of the bidding process, at any time prior to award of Project, without liability or any obligation for such acceptance, rejection or annulment.

13. **Exclusivity:** The successful bidder shall have exclusive right for the implementation of the said project for the time period as defined in the tender documents and no agreement or arrangement permitting such activities by any other party shall be entered into with any other party during the concession period by the Competent Authority.

14. **Force Majeure:** The bidders shall not be responsible for failure or delay in performing their obligations under presents due to force majeure, which shall include but not be limited to war (invasion, armed conflict or act of foreign enemy, blockade, revolution, riots, insurrection, civil commotion, act of terrorism, or sabotage), Act of God, epidemic, cyber terrorism / cyber criminals, lightning, earthquake, cyclone, whirlwind, flood, tempest, storm, drought, lack of water or other unusual or extreme adverse weather or environmental conditions, action of the elements, meteorites, fire or explosion, strike, embargo put by the Government or any Court Of Law / threats from naxals / anti national elements / political protests against the project or extortion from anti-social elements, theft, loot or any other situation not envisaged at the time of formulation of this project / tender. If the circumstances leading to force majeure occur, the affected party shall give notice thereof to the other party. The notice shall include full particulars of the nature of Force Majeure event, the effect it is likely to have on the Affected Party's performance of its obligations and the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of the Force Majeure Event and restore the performance of its obligations. The obligations of the Affected Party shall be suspended to the extent they are affected by the Force Majeure.

15. **Disputes:** In case of disputes, only Local Courts in Delhi shall have jurisdiction or through Arbitration as per Indian Laws. The Parties shall endeavour to settle by mutual conciliation any claim, dispute, or controversy ("Dispute") arising out of, or in relation to this project. Any Dispute shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996. Such arbitration proceedings shall be conducted in Delhi. The arbitration proceedings shall be conducted in the English language. That all disputes related to the project should be settled through legal civil procedure and arbitration only.

16. **Late Proposals:** Any Proposal received by EDMC after the Proposal Due Date will be returned unopened to the Bidder.

ii. **SUBMISSION PROCESS AND RELATED PRECAUTIONS**

a. **Submission Procedure:** The duly filled tender should either be submitted by hand or sent by registered post (which shall be valid only if received before the due date and time as mentioned in the bid documents).

i. Tender form should be clearly filled in ink/duly typed giving full name and address of the party and in English Language only. All correspondences and other documents pertaining to the contract, which are exchanged between the parties, shall be written in the English.

- ii. If the Proposal consists of more than one volume, Bidder must clearly number the volumes and provide an indexed table of contents.
- iii. Any interlineations, erasures, over-writing, alterations, additions, etc. will disqualify the Tender unless such interlineations, erasures, over-writing, alterations, additions, etc. are legibly attested and signed by the party.
- iv. That the document (all pages) must be signed by an authorized signatory of the bidder.
- v. The Bidder is expected to carefully examine all the instructions, guidelines, terms and conditions and formats of the tender. Failure to furnish all the necessary information as required or submission of a proposal not substantially responsive to all the requirements of the tender shall be at Bidder's own risk and may be liable for rejection.
- vi. No bidder is allowed to modify, substitute, or withdraw the Proposal after its submission.
- vii. Bidders shall submit their Proposals by hand at the office address on or before the last date and time for receipt of proposals mentioned in the tender documents.

b. **Unconditional Bids** - Bidders may note that EDMC will not entertain any deviations to the Tender Document at the time of submission of the Proposal or thereafter. The Proposal to be submitted by the Bidders will be unconditional and unqualified and the Bidders would be deemed to have accepted the terms and conditions of the Tender Document with all its contents including the Draft Service Agreement. Any conditional Proposal shall be regarded as non-responsive and would be liable for rejection.

c. **Rejection Of Bids:** That the EDMC reserves the right to reject any / all bids without assigning any reason thereof and without incurring any liability to the affected bidder(s) or any obligation to inform the affected bidder(s) of the grounds for such decision. The EDMC may at its sole discretion and at any time during the evaluation of Proposal, disqualify any Bidder, if the Bidder has:

- i. Made misleading or false representations in the tender reply or documents in support of mandatory criteria
- ii. Submitted a proposal that is not accompanied by required documentation or is non-responsive. In the absence of any document as required, the concerned party shall be considered as not eligible and in that eventuality their tender shall not be considered.
- iii. Failed to provide clarifications related thereto, when sought;
- iv. Any delay in receipt of tender documents through post / courier shall render the tender invalid. Telegraphic / fax/ e-mail tender etc. shall be summarily rejected.
- v. Information relating to the examination, clarification and comparison of the Proposals shall not be disclosed to any bidder or any other persons not officially concerned with such process until the selection process is over. The undue use by any Bidder of confidential information related to the process may result in rejection of their bid.
- vi. The Technical Bid proposal shall not include any financial information. A Technical Bid proposal containing financial information shall be summarily rejected
- vii. Any superfluous documents / document not related to the mandatory criteria shall result in summary rejection of bids. All participating bidders are clearly instructed to attach only those documents which are relevant to the scope of work / mandatory criteria as specified in the tender document and not any other work.
- viii. Any bid document containing news clips shall be summarily rejected.
- ix. Submission of any documents about projects not related to work experience as outlined above shall result in summary rejection of the bids
- x. Any bidder found indulging in malicious campaign or disinformation campaign against any official of the EDMC or any other bidders either directly or through third parties, at any time during the post tender publishing date, shall be liable for rejection of bids and other legal actions as per law. Such bidders may also be blacklisted by the EDMC.

Sealing and Marking of Proposals

- xi. The Bidder shall seal the Technical Proposal & Financial Proposal in separate envelopes, duly marking the envelopes as "**TECHNICAL PROPOSAL**" and "**FINANCIAL PROPOSAL**". These envelopes shall then be sealed in an outer envelope.

1. Header:

- Technical Proposal Envelope- The envelopes shall clearly bear the following identification: "**TECHNICAL PROPOSAL**" - "**TENDER TO RUN TRILOK PURI SPORTS COMPLEX OF EDMC**" - "**To Be Opened By Tender Opening Committee Only**"

- Financial Proposal Envelope - The envelopes shall clearly bear the following identification: **“TENDER TO RUN TRILOKPURI SPORTS COMPLEX OF EDMC” - “To Be Opened By Tender Opening Committee Only”**

2. Footer: Submitted By: Name, Address of the Bidder”

3. The envelope shall be addressed to: The Commissioner, East Delhi Municipal Corporation, 419, Udyog Sadan, Patparganj Industrial Area, Delhi – 110092

4. If the envelope is not sealed, the Proposal may be deemed to non-responsive and would be liable for rejection.

xii. Contents Of TECHNICAL PROPOSAL - The technical bid should not have any information asked in the financial bid. Any financial information in the technical bid shall result in rejection of the bid. It should consist of the following:

1. Cover letter as per format at **APPENDIX 2** (with Demand Draft/ Pay Order of EMD amount as mentioned in the tender documents).

2. Technical response to scope of work as well as all pages of this tender document (must include registration documents / related documents / eligibility and mandatory criteria documents / authorization letter for person signing the tender document / printed and signed pages of the entire tender documents)

xiii. Contents of FINANCIAL PROPOSAL – Cover letter in the format at **APPENDIX 3** in the tender documents. The prescribed format for financial bid must be strictly adhered and any extra component quoted must be separately indicated.

1. All applicable / statutory taxation requirements shall be the responsibility of the selected bidder and EDMC shall not be responsible for any statutory taxation / legal compliances in this regard.

2. The Financial Bid should contain the total amount both in figure and words duly typed or hand written and in case of any difference in figures and words the amount in words shall be considered to be final.

3. There must not be any interlineations, erasures, over-writing, alterations, additions etc. in the financial bid. Any interlineations, erasures, over-writing, alterations, additions shall result in rejection of financial bid.

4. That EDMC shall have the right to enter into negotiations with the bidder it deems most competent to execute the project.

d. Bidder’s Responsibility – The following due deliberation is the sole responsibility of the bidder:

i. The Bidder may carry out Project Inspection/Site Visit at any time at their own cost.

ii. The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of Tender Document will be at the Bidder’s own risk.

iii. It would be deemed that prior to the submission of Proposal, the Bidder has:

1. Made a complete and careful examination of requirements, and other information set forth in this Tender Document;

2. Received all such relevant information as it has requested from EDMC; and

3. Made a complete and careful examination of the various aspects of the Project including but not limited to:

a. The Project site

b. Existing facilities and structures

c. Space availability

d. The conditions of the access roads and utilities in the vicinity of the Project Site

e. Conditions affecting transportation, access, disposal, handling and storage of the materials

f. Clearances obtained by EDMC for the Project; and

g. All other matters that might affect the Bidder’s performance under the terms of this Tender Document.

iv. EDMC shall not be liable for any mistake or error or neglect by the Bidder in respect of the above.

iii. SCOPE OF WORK AND SUPPORT OF EDMC FOR THE AGENCY EXECUTING THE PROJECT

a. East Delhi Municipal Corporation has been actively promoting sports in its jurisdiction and has been creating necessary infrastructure and other facilities that are pre-requisite for organizing high standard sporting events as well as for the overall development

of sports in Delhi. EDMC has already established a Sports Complex in Trilokpuri Village which has been developed to attain the following objectives:

- i. Long term plan for a sustainable development of sports
- ii. To nurture, train and empower talented sports personnel and produce players who can compete in State / National / International events.
- iii. Promotion and development of Physical Education and Sports through innovative programmes in teaching, coaching, research and outreach activities.

b. Now EDMC intends to engage the services of a suitable AGENCY to use the facilities that are available at the Trilokpuri Sports Complex and put them into optimal use. The AGENCY shall be responsible for upgradation, Operation, Maintenance & Management of Sports Complex. The deliverables of the AGENCY shall be as under:

- i. Providing intensive sports training along with opportunities for formal education and vocational training to any person interested in utilising the services.
- ii. Yoga and physiotherapy
- iii. Advance Sports Training & Technology
- iv. Sports Medicine & Nutrition
- v. Other Sports related activity
- vi. Sports Club with catering and banqueting and executing agency can charge user fees/charge as deemed fit. However, the rates in respect of sports activities should not be more than the nearby DDA sports complex. Also, the rates can be revised at any time with the approval of Commissioner, EDMC only.
- vii. Shall have the freedom to commercially exploit (in line with the desired objective of the Project) the civil structure and open areas in order to make the project commercially viable and also to make the place an education/entertainment/ leisure destination where all age group people can come and spend quality time.
- viii. Financing required for the infrastructure development and day to day operation, maintenance and management of the complex for the duration of the project shall be the responsibility of the successful bidder.

c. The bidder is expected to incur the following costs and deliver the following:

- i. All recurring costs towards utilities like civic maintenance, water / power, parking management within the complex and sanitation of site
- ii. The selected bidder is free to renovate and upgrade the complex at its own cost but the entire civic infrastructure shall be retained by EDMC at the end of the project period.
- iii. That the Bidder has the right to sublet services to professional agencies for ensuring highest quality of delivery services.
- iv. That the Bidder has to maintain proper security of the complex.
- v. Plan of SUCCESSFUL BIDDER for maintenance of the complex, rates of the facility, employee details, sanitation conditions, security arrangements etc. must be shared with EDMC and instructions of EDMC in this regard will be binding on the SUCCESSFUL BIDDER.

d. Term & Tenure Of Concession

- i. That the Bidder shall have the right to operate the premises for a period of 10 years (after gestation period) from the date of execution of agreement (excluding the gestation period). However, the tenure can be extended for further 05 years on mutual agreement.
- ii. At the end of the concession period, the selected bidder shall be allowed to remove all removable assets established by them and have to return the site in good condition back to EDMC.

e. **Gestation Period** - The selected bidder shall also get a maximum gestation period of 4 Months from the date of issue of work order post signing of the agreement to set up the necessary infrastructure to commence the implementation of the project. No extension of gestation period shall be allowed except for force majeure clause or non-fulfilment of Conditions Precedent.

f. **Conditions Precedent:** That the date of the commencement of the project shall become effective and binding on the selected BIDDER from the date of issue of work order, provided however the following conditions are fulfilled by the EDMC to go ahead with the project:

- i. All administrative approvals are granted/ office space allocated/ coordination committee is notified and Nodal Officer is appointed along with the other procedural

formalities for effective implementation of the project as per the project guidelines in the tender documents.

- ii. Non Compliance of Conditions Precedent: it is agreed that, if the above preconditions are not met 120 days from the date of such agreement, then the EDMC shall, at the option of the selected BIDDER, complete all such required approvals by extending the time limit by another suitable duration as both parties may decide collectively.

g. Support of EDMC To The Selected Bidder

- i. Provide the Existing Sports Complex (map and photo at **APPENDIX 1**) to the selected bidder on as is where basis is.
- ii. The SUCCESSFUL BIDDER can employ any qualified staff as per their free will and market economics without any interference from EDMC.
- iii. Providing a conducive organizational atmosphere for the set up to operate the premises without any interference from EDMC.
- iv. An agreement for legal sanctity to the work carried out at the place.

iv. ELIGIBILITY CRITERIA AND EVALUATION METHOD

- a. **Eligibility Criteria:** This tender is limited to single entity which can either be a Central / State Public Sector Undertaking or a Company registered under companies act / Proprietorship Firm and to support this, the bidders have to be registered under the same name and submit only one registration documents be it ROC Registration Certificate / PAN Card or TIN Number or any other registration document issued by Government Authority.
- b. **Mandatory Criteria:** Offers of only those bidders shall be shortlisted who fulfil the under mentioned criteria and submits documents in response to the same:
 - i. Certificate of Incorporation (if applicable).
 - ii. The minimum annual turnover should be 4 crores per annum for the last three financial years (2015-16, 2016-17 & 2017-18) duly supported by a CA certificate. The annual balance sheet certified by CA alongwith 3CD report generated from Income Tax Department portal has to be given as a proof of turnover.
 - iii. Experience of providing Housekeeping/Security Services in any Govt. Department in Delhi & NCR.
 - iv. Labour License.
 - v. FSSAI certificate.
 - vi. The agency should not have been blacklisted by any Government Institution in India. An undertaking in this regard has to be given as per Appendix-4 attached herewith.
 - vii. Copy of PAN card
 - viii. EPF, ESI & GST Registration certificate alongwith copy of returns/challans (minimum of last 06 months)
- c. **Proposal Evaluation** - To assist in the examination, evaluation, and comparison of Proposals, EDMC may utilise the services of consultant/s or advisor/s.
 - i. **Tests of responsiveness**
 1. Prior to evaluation of Proposals, EDMC will determine whether each Proposal is responsive to the requirements of the tender Document. A Proposal shall be considered responsive if it meets the eligibility and mandatory criteria.
 - ii. The evaluation of the proposals shall be carried out in two steps, first the quality (technical proposal) and then the cost (financial proposal).
 1. **Stage I Technical Proposal Evaluation**
 - (i) Evaluators of technical proposal shall not have access to the financial proposal until the technical evaluation is concluded.
 - (ii) Technical evaluation will be carried out on the basis of responsiveness to the key submission. Only those bidders who submit all required documents in the technical bid evaluation process shall be selected for opening of their financial bids. Technically unqualified bids shall not be considered for opening of the financial bid and financial evaluation process.
 - (iii) After the evaluation of quality is completed. Financial proposal of qualified firms shall be opened.

2. **Stage II Financial Proposal Evaluation** - In Stage II, the Financial Proposals of all the Bidders who pass the Stage I evaluation will be opened in the presence of the Bidders' representatives who choose to attend. The Bidders' representatives who choose to be present shall be required to sign and record their attendance. That the bidder offering the highest rental per month (i.e. revenue share from user charges & other miscellaneous activities) to EDMC for the site shall be awarded the contract.

v. FINANCIAL MODEL, AGREEMENT AND RELATED ISSUES

- a. **EMD DEPOSIT** - The tender should be accompanied with an EMD of **Rs 1,00,000/- (Rupees One Lakh Only)** as a Demand Draft/Pay Order payable at Delhi in favour of Commissioner, East Delhi Municipal Corporation. Any tender document without the EMD shall be summarily rejected.
- i. The Earnest Money of the successful bidder shall be returned after the verification of bank guarantee submitted by them.
- ii. The Earnest Money of unsuccessful bidder shall be refunded on request by the bidder within 7 days of issue of Letter Of Intent to the successful bidder. The unsuccessful bidders have to send a written request to that effect.
- iii. The Earnest Money will be forfeited on account of one or more of the following reasons:
1. Bidder withdraws the proposal during the validity period specified in tender
 2. Bidder does not respond to requests for clarification or fails to provide required information during the evaluation process
 3. Bidder resorts to unethical practices or any practice that may mar the chances of rival bidders in the form of sudden complaints/RTI's/Newspaper reporting about competing bidders post the phase when the tender has been published
- b. EDMC reserves the right to negotiate rates in the Financial Proposals from Bidders with or without amendment of the Tender Document at any stage, without liability or any obligation for such invitation and without assigning any reason.
- c. **Schedule of Payments to Competent Authority by the Bidder:** The Bidder shall pay a fixed rental per month to the Competent Authority which shall be payable as quarterly advance basis, failing which penalty @5% will be levied. The monthly rental shall increase by 15% after every three year for the duration of the contract. That the monthly rental shall be payable post the end of gestation period. The minimum reserve price for the project is Rs. 1,80,000/- per month. The rent will be started from the date of completion of gestation period or submission of consent by the bidder about operation of project, whichever is earlier. However, if the bidder did not submit its consent about operation of project and on physical inspection it is found that he has started the work without intimation to EDMC, the rent will be charged from the date of issue of work order. All the recurring charges including the gestation period shall be borne by the successful bidder.
- d. **Notifications:** EDMC will notify the Successful Bidder and by an office order that it's Proposal has been accepted.
- e. **Letter of Intent:** The Letter of Intent (with enclosures of Agreement and Bank Guarantee format) shall be issued within 7 days of finalization of tender.
- f. **Acknowledgement of Letter of Acceptance (LOA):** Within a maximum of 10 days from the date of issue of the Letter of Intent, the Preferred Bidder shall acknowledge the receipt of LOA.
- g. **Work Order:** Upon receipt of LOA from the selected bidder, a work order shall be issued within 7 days of receipt of letter of acceptance from the selected BIDDER in response to the Letter of Intent.
- h. **Agreement** - An agreement would be executed simultaneously along with the issue of work order to ensure successful working of the system between the EDMC and the bidder selected to implement the system that would also define the terms and conditions for completion of the project in a time-bound manner. In the event that any provision of the agreement is rendered invalid or unenforceable by any law or regulation or declared null and void by any Court of Competent Jurisdiction, that shall be reformed, if possible to conform to

law and if reformation is not possible, that part of the Agreement shall be amended/deleted, the remainder of the provisions of the agreement shall remain in full force and effect. That this contract and the agreement shall endure irrespective of change of constitution of the implementing BIDDER or any amendment to the act/rules/regulations/bye laws hereafter made and shall have an arbitration clause in the agreement. That the tender document and outcomes of all negotiations with the selected bidder shall form a part of the agreement. Amendments / additions may also be necessitated on account of Coordination Committee deliberations. The draft agreement is enclosed at **APPENDIX 5**.

i. **SECURITY DEPOSIT:** That the selected bidder shall submit a Security Deposit equivalent to 6 Months Rental quoted by the firm in the form of Demand Draft favouring "Commissioner, EDMC", alongwith the agreement with EDMC which shall remain valid for the period of the contract.

i. That the entire Security Deposit shall be deposited in municipal account of EDMC and will be adjusted in the monthly license fee during the end of the project.

ii. The Security Deposit shall be furnished by the selected bidder alongwith execution of the agreement between the selected BIDDER and the EDMC and within the gestation period.

j. **DISPUTES:** In case of disputes, only Local Courts in Delhi shall have jurisdiction or through Arbitration as per Indian Laws. The Parties shall endeavour to settle by mutual conciliation any claim, dispute, or controversy ("Dispute") arising out of, or in relation to this project. Any Dispute shall be finally settled in accordance with the Arbitration and Conciliation Act, 1996. Such arbitration proceedings shall be conducted in Delhi. The arbitration proceedings shall be conducted in the English language. That all disputes related to the project should be settled through legal civil procedure and arbitration only.

vi. CONTRACT TERMINATION

Any of the following events shall constitute an event of default by the Bidder entitling the Competent Authority to terminate the concessions granted to the Bidder:

i. Failure to commence services after the end of the gestation period.

ii. Failure to pay rental within 15 days of due date repeatedly in more than 2 quarters.

iii. Use of the allocated space by the Bidder for any other purpose other than that approved for this tender.

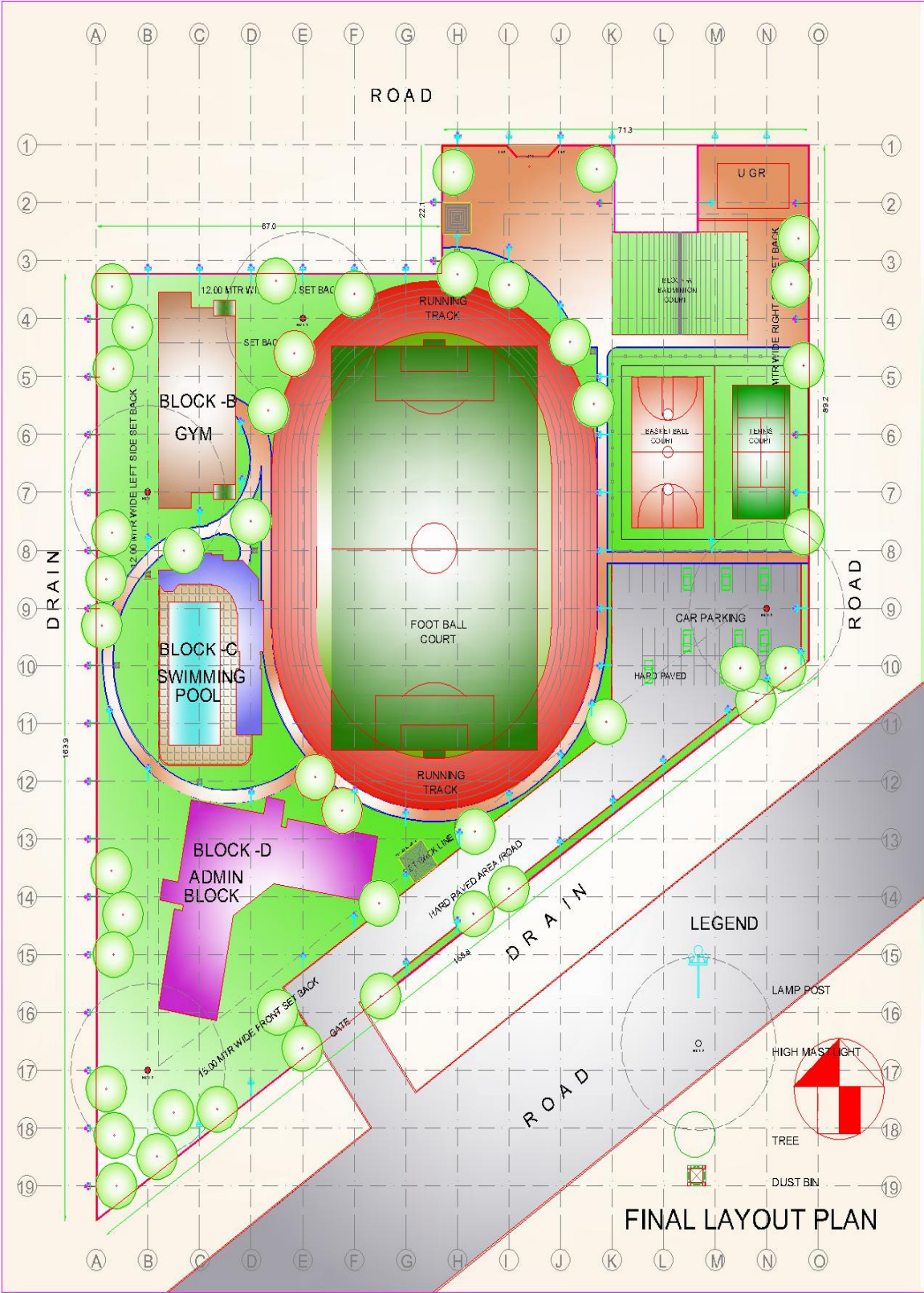
iv. Upon occurrence of any of the defaults, the EDMC would follow the procedures of issuing 30 days Notice/Show Cause before deciding on termination of the agreement. The decision of the EDMC shall be final and binding on the Bidder.

UNDERTAKING: I/we have gone through the tender documents and accepted all the terms and condition of the tender and bound by the conditions given in the document as well as scope of work. That we agree that only the technically qualified tenders shall be selected for financial evaluation. That we agree that any tender may be rejected if the tender award committee feels that the response to tender is not qualified enough for the selected bidder to execute the project.

Seen and accepted. Signature of the Authorized Signatory

(With Office Rubber Stamp)

SITE MAP



FORMAT FOR COVERING LETTER CUM PROJECT UNDERTAKING ON LETTERHEAD

Date:

To
The Commissioner,
East Delhi Municipal Corporation,
419, Udyog Sadan,
Patparganj Industrial Area, Delhi – 110092

REF: TENDER TO RUN TRILOKPURI SPORTS COMPLEX OF EDMC (HEREINAFTER REFERRED AS “THE PROJECT”)

Dear Sir,

With reference to your advertisement as above for selection of an BIDDER as per the subject above, we submit our application and offer for your consideration.

I/We have read and understood the Tender Document in respect of the Project provided to us by EDMC and are submitting our offer with a validity of 120 days for your kind evaluation.

I/we have gone through the tender documents and accepted all the terms and condition of the tender and bound by the conditions given in the document as well as scope of work. That we agree that only the technically qualified tenders shall be selected for financial evaluation. That we agree that any tender may be rejected if the tender award committee feels that the response to tender is not qualified enough as per evaluation criteria.

Dated thisDay of, 2018.

Name of the Bidder

Signature of the Authorised Person

Name of the Authorised Person

Contact Tel No:

Contact Email:

Organisational Structure of the BIDDER (Typed On letterhead)

S. No	Component	Details
1.	Name Of BIDDER	
2.	Office Address /Telephone No / Fax No / Email ID / Website	
3.	Names of person concerned with this work with title and Telephone No / Fax/ Email ID, Etc.	

Dated thisDay of, 2018.

Name of the Bidder

Signature of the Authorised Person

Name of the Authorised Person

Contact Tel No:

Contact Email:

FINANCIAL BID OFFER FORMAT

To
The Commissioner,
East Delhi Municipal Corporation,
419, Udyog Sadan,
Patparganj Industrial Area, Delhi – 110092

SUB: TENDER TO RUN TRILOKPURI SPORTS COMPLEX OF EDMC

Dear Sir,

With reference to your advertisement no..... dated _____ for the above, our offer for rental shall be Rs/- per month.
(Rs. in words)

Dated thisDay of, 2018.

Name of the Bidder

Signature of the Authorised Person

Name of the Authorised Person

Contact Tel No:

Contact Email:

APPENDIX 4:

DECLARATION

(On a stamp paper of not less than ten rupees to be submitted by the tenderer duly attested by the notary public)

I Mr./Ms. _____ S/O, D/O, W/O _____
resident of _____
_____ declare as under:

1. That I am not employee of EDMC.
2. That I do not have any close relative working in EDMC.
3. That I and my firm do not have debarred/black listed/defaulters any time by any organization and do not have any pending criminal case against me/my firm in any police station/court during the last three financial years.

Note: Close relative mean wife/son/unmarried daughter/brother/unmarried sister/father and mother.

**NAME OF THE TENDERER
WITH RUBBER STAMP**

DRAFT AGREEMENT

This AGREEMENT is made at Delhi on the for implementation of the work related to implementation of the scope of work as in the **TENDER TO RUN TRILOKPURI SPORTS COMPLEX OF EDMC [ANNEXURE I] BY AND BETWEEN,**

EAST DELHI MUNICIPAL CORPORATION having its office at Udyog Sadan, 419, Patparganj Industrial Area, New Delhi – 110002 herein after called as “**EDMC**”, (which expression, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) of the **FIRST PARTY**.

AND

(BIDDER) having office at (here in after called as “**SERVICE PROVIDER**”, which expression, unless repugnant to the context or meaning thereof shall be deemed to include its successors and permitted assigns) of the **SECOND PARTY**.

Each of EDMC and **SERVICE PROVIDER** being referred to individually as “PARTY”, and jointly as “PARTIES”.

WHEREAS

A. In response to the **tender (as per ANNEXURE I)** floated by the East Delhi Municipal Corporation, the SECOND PARTY has consented to implement the same vide acceptance letter no dated/...../2018.

B. With this objective both the PARTIES are desirous of recording their understanding, agreed terms and conditions by way of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES AND COVENANTS HEREINAFTER SET FORTH, “**EAST DELHI MUNICIPAL CORPORATION**” AND “**SERVICE PROVIDER**” INTENDING TO BE LEGALLY BOUND HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS & INTERPRETATIONS

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:

- 1.1. “Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 14.
- 1.2. “Agreement” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.
- 1.3. “Applicable Law” shall mean all laws in force and 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 or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Service Provider.
- 1.4. “Applicable Permits” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Service Provider under Applicable Law, in connection with the Project during the subsistence of this Agreement.
- 1.5. “Appointed Date” shall mean the date of this Agreement.
- 1.6. “Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.
- 1.7. “COD” or “Commencement of Operations Date” shall mean the date on which the Service Provider has to start the project as per tender terms and conditions.
- 1.8. “Department” means East Delhi Municipal Corporation
- 1.9. “EDMC” means East Delhi Municipal Corporation
- 1.10. “Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility.

- 1.11. "Financing Documents" shall mean collectively the documents evidencing Lenders' commitment to finance the Project.
- 1.12. "Financial Year" shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.
- 1.13. "Force Majeure" or "Force Majeure Event" shall mean an act, event, condition or occurrence as specified in Article 14.
- 1.14. "Good Industry Practice" shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
- 1.15. "Government Agency" shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Service Provider, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Service Provider under or pursuant to this Agreement."
- 1.16. "Material Adverse Effect" shall mean a material adverse effect on (a) the ability of the Service Provider to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.
- 1.17. "Material Breach" shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.
- 1.18. "Operations Period" shall mean the period commencing from COD and ending at the expiry of the agreement.
- 1.19. "Parties" shall mean the parties to this Agreement and "Party" shall mean either of them, as the context may admit or require.
- 1.20. "Performance Security" shall mean the guarantee for performance of its obligations to be procured by the Service Provider in accordance with tender terms and conditions. The word performance security / security deposit are one and the same thing.
- 1.21. "Person" shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.
- 1.22. "Preliminary Notice" shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
- 1.23. "Project" shall mean the entire scope of work as in clause as in the **TENDER TO RUN SPORTS COMPLEX OF EDMC** and other obligations as spelt in the agreement.
- 1.24. "Project Agreements" shall mean collectively this Agreement and any other material contract entered into or may hereafter be entered into by the Service Provider in connection with the Project.
- 1.25. "Project Requirements" shall mean the obligation of the PARTIES as per **TENDER TO RUN SPORTS COMPLEX OF EDMC** or any other requirements as per the present agreement.
- 1.26. "Project Site" means **Trilokpuri Sports Complex as per APPENDIX 1 of the TENDER TO RUN SPORTS COMPLEX OF EDMC.**
- 1.27. "Rupees" or "Rs." refers to the lawful currency of the Republic of India.
- 1.28. "Services" means the work to be performed by the Bidders pursuant to this contract as described in this agreement.
- 1.29. "Tax" shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Service Provider under Applicable Law.
- 1.30. "Termination" shall mean early termination of the agreement, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.
- 1.31. "Termination Date" shall mean the date specified in the Termination Notice as the date on which Termination occurs.
- 1.32. "Termination Notice" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings 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;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (g) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include such days or dates;
- (h) Any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- (i) The Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) References to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) 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 effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- (m) 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 or liquidated damages (the "Damages")

3. GRANT OF SERVICE ASSIGNMENT

3.1. Subject to and in accordance with the terms and covenants set forth in this Agreement, the Authority hereby grants and authorizes the Service Provider to finance, to establish, operate and maintain the Project and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement, (the "Service Agreement").

3.2. Service Assignment Period

3.2.1. The Assignment hereby granted is for a period as mentioned in tender document from the Appointed Date (hereinafter referred to as the "Service Assignment Period").

3.2.2. Provided, in the event of Termination, the Service Assignment Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

3.2.3. After the completion of Service Assignment period, the EDMC may extend the Assignment period subject to the condition that the Service Provider, has satisfactorily fulfilled the project objectives, deliverables as set forth in this agreement.

3.2.4. The Performance Evaluation of the Service Provider during the initial contract period would be based on, among other sources, the reports of Project Monitoring Committee and other monitoring mechanism of EDMC.

3.2.5. The Service Assignment period, if extended would be based on same or revised terms and conditions to be negotiated at that point of time wherein first-right-of-refusal will be with the Service Provider.

3.2.6. Acceptance of Service Assignment - In consideration of EDMC agreeing to permit the Service Provider to implement the project and any other amounts, and the rights, privileges

and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Service Provider hereby accepts the Service Assignment and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

4. PROJECT SITE HANDING OVER AND MANAGEMENT

4.1. Handover of Project Site

4.1.1. EDMC shall, within 15 (fifteen) days from the Appointed Date, handover to the Service Provider, vacant and peaceful physical possession of the site on as is where is basis for the purpose of implementing the Project.

4.1.2. Upon the Project Site being handed over, the Service Provider shall, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses related to the project as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

4.2. Rights, Title and Use of the Project Site

4.2.1. The Service Provider shall have the right to the use of Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.

4.2.2. The Service Provider shall not part with or create any Encumbrance on the land of EDMC.

4.2.3. The Service Provider shall not without the prior written approval of EDMC use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

4.3. The EDMC shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other project purposes as the SECOND PARTY may specify.

4.4. **Peaceful Possession** - EDMC, as Assigning Authority, hereby warrants that:

4.4.1. The Project Site together with the necessary right of way/ way-leaves has been acquired through the due process of law

4.4.2. Belongs to and is vested in EDMC and that EDMC has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Service Provider shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.

4.4.3. The Service Provider shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Assignment Period/ completion of Hand back Requirements. In the event, the Service Provider is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, EDMC shall, if called upon by the Service Provider, defend such claims and proceedings and also keep the Service Provider indemnified against any consequential loss or damages which the Service Provider may suffer, on account of any such right, title, interest or charge.

4.5. Applicable Permits

4.5.1. The Service Provider shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project from EDMC as well as other Statutory Agencies.

5. PROJECT PERIOD

5.1. Implementation Period shall start from the Appointed Date and would continue till/...../20.....

6. GESTATION PERIOD

6.1. There shall be a gestation period of 4 MONTHS from the date of issue of work order post signing of this agreement to set up the necessary infrastructure to commence the implementation of the project. No extension of gestation period shall be allowed except for force majeure clause or non-fulfilment of Conditions Precedent as mentioned in the tender documents. The gestation period shall be used to put all infrastructure and make the project operational.

7. EDMC'S OBLIGATIONS

7.1. In addition to and not in derogation or substitution of any of its other obligations under this Agreement, EDMC shall have the following obligations:

7.1.1. Provide the Project Site (as per APPENDIX 1 of the tender documents) to the selected bidder as per the tender terms and conditions.

7.1.2. Providing a conducive organizational atmosphere for the set up to operate the Project for the agreement period.

7.1.3. EDMC shall grant in a timely manner all such No Objection Certificates, approvals, permissions and authorizations which the Service Provider may require or is obliged to seek from EDMC under this Agreement, in connection with implementation of the Project and the performance of its obligations.

7.1.4. EDMC shall upon written request from the Service Provider, assist the Service Provider in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Service Provider than those generally available to commercial customers receiving substantially equivalent facilities/utilities;

7.2. The successful bidder can employ any qualified staff as per their free will and market economics without any objection from EDMC.

8. SERVICE PROVIDER'S DELIVERABLES

8.1. The BIDDER shall be responsible for the entire operation and management of the site as per conditions in the tender document as well as this agreement.

8.1.1. OTHERS

8.1.1.1. Project Finance

8.1.1.1.1. The Service Provider shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

8.1.1.2. **General Obligations:** The Service Provider shall at its own cost and expense:

8.1.1.2.1. Sub-meters for electricity and water supply shall be installed and the report shall be submitted to EDMC every month after payment of utility bills

8.1.1.2.2. **Fire NOC** - The BIDDER shall also comply with the fire safety requirements as per the Delhi Fire Service Act and Delhi Fire Service Rules as amended from time to time.

8.1.1.2.3. Building Byelaws as notified from the Local Municipal Authority

8.1.1.2.4. Obtain all Applicable Permits/Approvals/Licenses as required by or under the Applicable Law and be in compliance thereof at all times during the Service Assignment Period;

8.1.1.2.5. Comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Service Assignment Period;

8.1.1.2.6. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project ;

8.1.1.2.7. Appoint, supervise, monitor and control as and when necessary, the activities of Contractors under the respective Project Agreements;

8.1.1.2.8. Make efforts to maintain harmony and good relations among the personnel employed in connection with the performance of its obligations under this Agreement and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies EDMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall EDMC be treated as employer in this regard;

8.1.1.2.9. Be responsible for all the health, security, environment and safety aspects of the Project Site/ Project Facility, as the case may be, at all times during the Service Assignment Period;

8.1.1.2.10. Ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;

8.1.1.2.11. Upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of EDMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within

their authority and upon reasonable notice, the Service Provider shall provide to such persons assistance reasonably required to carry out their respective duties and functions.

8.1.1.2.12. Pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Service Assignment Period.

8.1.1.2.13. The Service Provider shall take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff to preserve peace and protection of persons and Project Site against such conduct.

9. COMMUNICATIONS

9.1. Communications in Writing

Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and in English.

9.2. Method of Services

Any such notice or other communication shall be addressed as provided in Article 9.3 and, if so addressed, shall be deemed to have been duly given or made (unless it is obvious that it has not been) as follows:

- (a) If sent by personal delivery, upon delivery at the address of the relevant Party
- (b) If sent by registered post, fifteen (15) days after dispatch, and
- (c) If sent by facsimile transmission, when dispatched, but only if the sender's transmission report shows the entire facsimile to have been received by the recipient with 'OK' transmission report

9.3. Address for Notices

FIRST PARTY

Address: The Commissioner,

East Delhi Municipal Corporation

419, Udyog Sadan,

Patparganj Industrial Area, New Delhi – 110092

SECOND PARTY

Address:.....,

.....,

.....

.....

9.4. **Change of Address:**

A Party may notify the other Party of a change to its name, addressee, address and telex or facsimile numbers for the purposes of Clause 9.3 provided that such notification shall only be effective on the date specified in the notification as the date on which the change is to take place, or if no date is specified or the date specified is less than five days after the date on which notice is given, the date falling five days after notice of any such change has been given.

10. SECURITY DEPOSIT

10.1. This shall be as per clauses of the tender documents.

11. INDEMNITY BY SERVICE PROVIDER

11.1. The Service Provider shall indemnify and hold harmless EDMC and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Service Provider's negligence or breach in execution of the O&M requirement and any activity incidental thereto.

12. NO BREACH OF OBLIGATIONS

12.1. The Service Provider shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

12.1.1. Force Majeure Event

12.1.2. Compliance with the instructions of the EDMC or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Service Provider of any of its obligations hereunder;

12.1.3. Closure of the Project Facility or part thereof with the approval of EDMC.

13. **MONITORING AND ASSESSMENT**

13.1. That the EDMC shall set up a Monitoring Committee which shall inspect the premises regularly and submit its report to the EDMC regarding the achievement of projects deliverables and improvements if any required in functioning of the site.

14. **FORCE MAJEURE AND CHANGE IN LAW**

14.1. Force Majeure Event - The SECOND PARTY shall not be responsible for failure or delay in performing their obligations under presents due to force majeure, which shall include but not be limited to war (invasion, armed conflict or act of foreign enemy, blockade, revolution, riots, insurrection, civil commotion, act of terrorism, or sabotage), Act of God, epidemic, cyber terrorism/cyber criminals, lightening, earthquake, cyclone, whirlwind, flood, tempest, storm, drought, lack of water or other unusual or extreme adverse weather or environmental conditions, action of the elements, meteorites, fire or explosion, strike, embargo put by the Government or any Court Of Law / threats from naxals / anti national elements / political protests against the project or extortion from anti-social elements, theft, loot or any other situation not envisaged at the time of formulation of this project / tender. If the circumstances leading to force majeure occur, the affected party shall give notice thereof to the other party. The notice shall include full particulars of the nature of Force Majeure event, the effect it is likely to have on the Affected Party's performance of its obligations and the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of the Force Majeure Event and restore the performance of its obligations. The obligations of the Affected Party shall be suspended to the extent they are affected by the Force Majeure.

14.2. Change in Law

14.2.1. Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:

- 14.2.1.1. The enactment of any new Indian law;
- 14.2.1.2. The repeal, modification or re-enactment of any existing Indian law;
- 14.2.1.3. A change in the interpretation or application of any Indian law by a court of record.

14.2.2. Provided that Change in Law shall not include:

- 14.2.2.1. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
- 14.2.2.2. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
- 14.2.2.3. Any change in the rates of the Central Taxes.

14.2.3. Subject to Change in Law resulting in Material Adverse Effect and subject to the Service Provider taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Service Provider is obliged to incur additional costs, EDMC shall not reimburse any such cost.

14.2.4. Upon occurrence of a Change in Law, the Service Provider may, notify EDMC of the following:

- 14.2.4.1. The nature and the impact of Change in Law on the Project
- 14.2.4.2. In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Service Provider on account of Change in Law

15. **EVENTS OF DEFAULT AND TERMINATION**

15.1. **Events of Default** - Event of Default shall mean either Service Provider Event of Default or EDMC Event of Default as the context may admit or require.

15.1.1. **Service Provider Event of Default** - Any of the following events shall constitute an Event of Default by the Service Provider ("Service Provider Event of Default") unless such event has occurred as a result of force majeure or on account of default by EDMC:

- 15.1.1.1. A resolution has been passed by the shareholders of the Service Provider for voluntary winding up/ dissolution of the Service Provider;
- 15.1.1.2. Any petition for winding up of the Service Provider has been admitted and liquidator or provisional liquidator has been appointed or the Service Provider 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 EDMC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Service Provider under this Agreement;

15.1.1.3. The Service Provider has abandoned the Project Facility ;

15.1.1.4. The Service Provider has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

15.1.1.5. The Service Provider has failed to perform/ discharge its obligations as laid out in the tender documents.

15.1.1.6. Penalty

(i) Rate charged from the public must not differ from approved amount. In case of any violation Rs. 5000/- per violation will be imposed.

(ii) Maintenance should be in hygienic condition and will be continuously checked by EDMC and in case of violation Rs. 2000/- per violation will be imposed.

15.2. Termination Due To Event Of Default By Service Provider

15.2.1. Without prejudice to any other right or remedy which EDMC may have in respect thereof under this Agreement, upon the occurrence of a Service Provider Event of Default, EDMC shall be entitled to terminate this Agreement in the manner as provided in this agreement.

15.2.2. If EDMC decides to terminate this Agreement pursuant to preceding clause above, it shall in the first instance issue Preliminary Notice to the Service Provider. Within 30 days of receipt of the Preliminary Notice, the Service Provider shall submit to EDMC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Service Provider's Proposal to Rectify"). In case of non-submission of the Service Provider's Proposal to Rectify within the said period, EDMC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.

15.2.3. If the Service Provider's Proposal to Rectify is submitted within the period stipulated therefore, the Service Provider shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Service Provider fails to remedy/ cure the underlying Event of Default within such further period allowed, EDMC shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

15.3. Termination Due To Event Of Default By EDMC

15.3.1. If the Service Provider decides to terminate this Agreement, it shall in the first instance issue Preliminary Notice to EDMC. Within 30 days of receipt of Preliminary Notice, EDMC shall forward to the Service Provider its proposal to remedy/ cure the underlying Event of Default (the "EDMC Proposal to Rectify"). In case of non-submission of EDMC Proposal to Rectify within the period stipulated there for, Service Provider shall be entitled to terminate this Agreement by issuing Termination Notice.

15.3.2. If EDMC Proposal to Rectify is forwarded to the Service Provider within the period stipulated therefore, EDMC shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however EDMC fails to remedy/ cure the underlying Event of Default within such further period allowed, the Service Provider shall be entitled to terminate this Agreement by issuing Termination Notice.

15.4. Termination Notice - If a Party having become entitled to do so decide to terminate this Agreement, it shall issue Termination Notice setting out:

15.4.1. In sufficient detail the underlying Event of Default;

15.4.2. The Termination Date which shall be a date occurring not earlier than 90 days from the date of Termination Notice;

15.4.3. The estimated termination payment including the details of computation thereof; and,

15.4.4. Any other relevant information.

15.5. Obligation of Parties - Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

15.5.1. Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,

15.5.2. The Project Facility is handed back to EDMC by the Service Provider on the Termination Date free from any Encumbrance along with any payment that may be due by the Service Provider to EDMC.

15.6. Withdrawal of Termination Notice

15.6.1. Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

15.6.2. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

15.7. Termination Payments on account of EDMC Event of Default - Upon Termination of this Agreement on account of EDMC Event of Default, the Service Provider shall be entitled to revoke the Performance Security, if subsisting and shall be entitled to all pending payments due to them.

15.8. Termination Payments on account of Service Provider Event of Default - Upon Termination of this Agreement on account of Service Provider Event of Default, the EDMC shall be entitled to receive the following amount

15.8.1. Amount of Performance Security.

15.8.2. Any penalties due from the service provider

15.9. Rights of EDMC on Termination

15.9.1. Upon Termination of this Agreement for any reason whatsoever, EDMC shall upon making the Termination Payment, if any, to the Service Provider have the power and authority to:

15.9.1.1. Enter upon and take possession and control of the Project Site / Project Facility forthwith;

15.9.1.2. Prohibit the Service Provider and any person claiming through or under the Service Provider from entering upon/ dealing with the Project Site /Project Facility;

15.10. Notwithstanding anything contained in this Agreement, EDMC 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 regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Service Provider in connection with the Project, and the hand back of the Project Facility by the Service Provider to EDMC shall be free from any such obligation.

15.11. Accrued Rights of Parties - Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

16. HAND BACK REQUIREMENTS

16.1. Ownership - Without prejudice and subject to the agreement, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Service Provider, shall at all times remain that of EDMC. However, the Service Provider has the right to dismantle fixtures / equipment's installed in the premises and remove it for usage after approval of EDMC.

17. DISPUTE RESOLUTION

17.1. Amicable Resolution

17.1.1. 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 sub-clause below.

17.1.2. Either Party may require such Dispute to be referred to the Commissioner, EDMC and the Chief Executive Officer of the Service Provider for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and

in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause below.

17.2. Arbitration

17.2.1. Procedure - Subject to the provisions of Clause 16.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

17.2.2. Place of Arbitration - The place of arbitration shall be Delhi.

17.2.3. Enforcement of Award - The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

17.2.4. Performance during Arbitration - Pending the submission of and/or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

18. REPRESENTATIONS AND WARRANTIES, DISCLAIMER

18.1. **Representations and Warranties of the Service Provider:** The Service Provider represents and warrants to EDMC that :

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

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

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

18.1.4. It has the financial standing and capacity to undertake the Project;

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

18.1.6. 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 Service Provider's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

18.1.7. Without prejudice to any express provision contained in this Agreement, the Service Provider acknowledges that prior to the execution of this Agreement, the Service Provider has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by EDMC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Service Provider in the course of performance of its obligations hereunder.

18.1.8. The Service Provider 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 EDMC shall not be liable for the same in any manner whatsoever to the Service Provider.

18.2. **Representations and Warranties of EDMC** - EDMC represents and warrants to the Service Provider that:

18.2.1. EDMC has full power and authority to grant the assignment;

18.2.2. EDMC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

18.2.3. This Agreement constitutes EDMC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

18.3. Obligation to Notify Change

18.3.1. In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

19. SEVERABILITY

19.1. 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.

20. MISCELLANEOUS

20.1. **Governing Law and Jurisdiction:** This Agreement shall be governed by the laws of India. The Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

20.2. **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.

20.3. **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 both parties.

20.4. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties hereto with respect to all contained hereinabove and all the clauses / conditions of the tender document as per **ANNEXURE I** shall be binding on both the PARTIES.

20.5. Waiver

20.5.1. 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:

20.5.1.1. 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;

20.5.1.2. Shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

20.5.1.3. Shall not affect the validity or enforceability of this Agreement in any manner.

20.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation 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.

20.6. **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.

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
EDMC

For and on behalf of
SECOND PARTY

Name/Designation
(Signature with Seal)

Name/Designation
(Signature with Seal)

Witness: