

OFFICE OF THE EXECUTIVE ENGINEER (RIP)
NEW DELHI MUNICIPAL COUNCIL
2nd FLOOR: ROOM NO. 2001-C
PALIKA KENDRA: SANSAD MARG
(O)-011-23367728, (M)-9899661168

No. D/232 /EE (RIP)

Dated: 27/04/2016

NEW DELHI MUNICIPAL COUNCIL			
SHORT NOTICE INVITING QUOTATION			
Name of Work:- 'Renovation, Operation & Maintenance of 5(Five) PTU's in and outside Lodhi Garden in NDMC area, New Delhi.'			
S. No.		Minimum Concession Fee Per Month (Fixed) for the Project	Concession fee offered to NDMC above Minimum Concession Fee
A	B	C (In figure and in words)	
1	Renovation, Operation & Maintenance of 5 (Five) PTU's (3 Inside Lodhi Garden & 2 Outside Lodhi Garden) with advertisement right on two toilets only (Outside Lodhi Garden) in NDMC area for a period of four months.	INR 55,100/-	

Date of release of NIQ through NDMC web portal : 27.04.2016
Last Date of Receipt : 29.04.2016 at 4.00PM
Date opening of NIQ : 29.04.2016 at 4.30PM

Note:-

1. The bidder who have experience of operation & maintenance of PTU's will be eligible for bidding only.
2. The work shall be awarded to the bidder who will offer maximum concession fee.

DRAFT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this the _____ day of _____(Month)_____ (Year) at NEW DELHI.

BETWEEN

THE New Delhi Municipal Council, a body established under The New Delhi Municipal Council Act, 1994, having its Head Office at Palika Kendra, Parliament Street, New Delhi through _____ in his/her executive capacity (hereinafter called "NDMC", which expression shall unless repugnant to the context or meaning thereof shall mean and include all successors assignee and nominees) of the one part

AND

M/s XXXX Limited, a company /firm/proprietorship having its registered office at _____ through _____ (herein after referred to as the "CONCESSIONAIRE" which expression shall unless repugnant to the context or meaning thereof shall mean and include all its successors, assignees, executors and administrators etc) of the other part.

PREAMBLE

WHEREAS

- A. NDMC intends to offer 5 Nos. of Public Toilet Blocks (3 Inside Lodhi Garden & 2 Outside Lodhi Garden) in the NDMC area (hereinafter referred to as PTUs - Public Toilet utilities) in its area on Concession fee basis for minor renovation, operation and maintenance, with advertisement rights on the specified area of the toilet blocks, more particularly described in Schedule 'A' and hereinafter referred to as "the Project"
- B. In response to the Notice Inviting Quotation, NDMC received the bids from several bidders including the CONCESSIONAIRE (as hereinafter defined) for the Project;
- C. NDMC, after evaluating the aforesaid bids, accepted the bid submitted by the CONCESSIONAIRE and issued the Letter of Intent dated _____(LOI) to the CONCESSIONAIRE; The Concessionaire accepted the LoI vide its letter dated _____
- D. In accordance with the requirements of the said bid submitted by the CONCESSIONAIRE, NDMC has agreed to grant the CONCESSION (as hereinafter defined) for the Concession Period to minor renovate, operate and maintain the Project and at the end of the Concession Period to transfer the PTUs to NDMC, on the terms, conditions and covenants hereinafter set forth in this Agreement.
- E. The CONCESSIONAIRE hereby accepts the CONCESSION granted and undertakes to operate the Project in terms of the CONTRACT.

NOW THEREFORE in lieu of the mutual promises and considerations set out herein, NDMC and the CONCESSIONAIRE (each individually a "Party" and collectively "Parties" hereto) hereby agree to be bound by the provisions of this Agreement.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Agreement" means this Agreement including Schedules 'A' to 'C' hereto, and any amendments thereto made in accordance with the provisions of this Agreement.

"Applicable Laws" means all laws, promulgated or brought into force and effect and all Rules and Regulations made and all Notifications and Guidelines issued there under by the Government of India, Government of National Capital Territory of Delhi and NDMC, including all judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

"Bid Variable" means the Concession fee payable by the CONCESSIONAIRE to NDMC as provided in Article 3 **"Change in Law"** means the occurrence of any of the following after the date of this Agreement:

- a) the enactment of any new Indian law;
- b) the repeal modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the date of this Agreement.
- d) A change in the interpretation or application of any Indian law by a court of record as compared to such interpretation of application by a court of record prior to the date of this Agreement; or
- e) Any change in the rates of the taxes.

"Commencement Date" means the date on which the physical possession of the toilets is delivered by NDMC to the Concessionaire, which shall not be later than 10 days from the date of this Agreement.

"CONCESSION" shall have the meaning ascribed thereto in Article 2.1

"Concession Period" means the period as applicable, specified in Article 2.3.

"CONCESSIONAIRE" means M/s XXXX and shall include its successors and permitted assigns expressly approved by NDMC.

"CONCESSION FEE" means as applicable, specified in Article 3.

"Council" means the New Delhi Municipal Council

"Renovation Works" means all works and things necessary to achieve operation of the Project in accordance with this Agreement.

"Dispute" shall have the meaning ascribed thereto in Article 12.i

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 12.

"Force Majeure Event" shall have meaning ascribed thereto in Article 10.

"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged

under this Agreement and acting generally in accordance with the provisions of the NDMC Act, 1994 and rules made there under and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance by the CONCESSIONAIRE of its obligations and in the operation and maintenance of the Project in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency.

"Government Agency" means the Government of India, the Government of National Capital Territory of Delhi, NDMC, or 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 CONCESSIONAIRE, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the CONCESSIONAIRE under or pursuant to this Agreement.

"Maintenance Manual" shall have the meaning ascribed to it in Article 7.3.

"Maintenance Programme" shall have the meaning ascribed to it in Article 7.4.

"Material Adverse Effect" means material adverse effect on (a) the ability of the Concessionaire to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

"Material Breach" means a breach by either Party of any of its obligations under this Agreement which has/is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period.

"Minimum Maintenance Requirements" means minimum maintenance requirements for the maintenance of the Project as set forth in **Schedule 'B'**.

"O&M" means the operation and maintenance of the Project during concession Period including but not limited to functions of maintenance, collection and retention of Fees and charges and performance of other services incidental thereto.

"Operations Period" means the period commencing from Commencement Date and ending at the expiry of the Concession Period.

"Parties" means the parties to this Agreement collectively and "Party" shall mean either of the Parties to this Agreement individually.

"Performance Security" means Performance Security for operation and maintenance as applicable in terms of Article 4.

"Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

"Project" means the PTUs described in Schedule A which the Concessionaire is required to operate, maintain and transfer in accordance with the provisions of this Agreement.

"Project Completion" shall have the meaning ascribed thereto in Article 7.3.

"Project Facility" means collectively the facilities on the Project Site to be repaired/renovated, or provided to the Concessionaire for use of the users and more specifically set out in **Schedule 'A'**.

"Project Site" means the site of the PTUs particulars whereof are set out in Schedule 'A' on which the Project Facility is to be provided in accordance with this Agreement.

"Public Toilet Utilities (PTU's)" means the public conveniences and garbage stations as set forth in Schedule A

"NDMC Engineer" means the Engineer designated by NDMC under written communication to the Concessionaire to undertake the supervision of work during the concession period and to undertake, perform and carry out the duties, responsibilities, services and activities set forth in **Schedule 'C'**.

"Termination" means termination of this Agreement and the Concession hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement/Concession due to expiry to the Concession Period in the normal course.

"Termination Date" means the date on which the Termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement.

"Termination Notice" means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement.

1.2 Principles of Interpretation

- a) The Article numbers, clause numbers, headings and marginal headings in this Agreement are solely for the purpose of facilitating reference and shall not impact the construction or interpretation of this Agreement.
- b) Words importing Persons or Parties shall include firms, companies, corporations, trusts, associations and any organizations having legal capacity to sue and be sued in their names.
- c) Words importing the singular also include the plural and vice-versa where the context requires.
- d) Words importing one gender also include other gender.
- e) In case of ambiguities or discrepancies in this Agreement, the following shall apply;
 - i) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
 - ii) between the Clauses and the Schedules, the Clauses shall prevail;
 - iii) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
 - iv) between the dimensions scaled from the drawings and their specific written dimensions, the latter shall prevail;
 - v) between any value written in numerals and that in words, the latter shall prevail.

2.0 **Concession & Project Site**

2.1 **Grant of Concession:** Subject to and in accordance with the terms and conditions set forth in this Agreement, NDMC hereby grants and authorizes the Concessionaire to renovate, operate and maintain the Project Facilities and to exercise and/or enjoy the rights to collect revenue from advertisements at the project facility (collectively "the Concession").

2.2 The title of interest, ownership and rights with regard to PTUs renovated by the Concessionaire for NDMC along with fixtures/fittings provided therein and the land beneath shall vest with the NDMC except that these will be operated and maintained by the Concessionaire as agreed in this Agreement.

2.3 **Concession Period:** The Concession hereby granted is for a period of 04 (Four) months commencing from the Commencement Date during which the Concessionaire is authorized to operate the Project Facility in accordance with the provisions hereof. **RFP for the above work is already invited on DBOT basis and may be finalised soon. In case of award of work to the agency selected through this RFP, this work may be terminated by giving 10 days notice.**

2.4 In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination Date.

2.5 **Acceptance of the Concession:** The Concessionaire hereby accepts the Concession and agrees and undertakes to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement.

2.6 **Project Site**

a) NDMC hereby undertakes to handover to the Concessionaire physical possession of the Project Site (PTUs) free from encumbrance within 10 days from the date of this Agreement together with the necessary rights of way/way leaves for the purpose of operation the project in accordance with this Agreement.

b) NDMC confirms that upon the Project Site being handed over pursuant to the preceding Sub-Clause (a), the Concessionaire shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such development and improvements in the Project Site as may be necessary or appropriate to operation the Project in accordance with the provisions of this Agreement.

2.7 **Peaceful Possession**

NDMC warrants that:

a) the Project Site having been acquired through the due process of law belongs to and vested in NDMC, and that NDMC shall have full powers to hold, dispose of and deal with the same consistent, interalia, with the provisions of this Agreement;

b) the Concessionaire shall have no obligation/liability as to payment of any compensation whatsoever to whomsoever the Project Site or any part thereof had been acquired from and that the same shall be the sole responsibility of NDMC; and

c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement remain in peaceful possession and enjoyment of the Project Site during the Concession Period. In the event the

Concessionaire is obstructed by any Person/Company claiming any right, title or interest in or over the Project Site or any part thereof NDMC shall, if called upon by the Concessionaire, defend the Concessionaire against such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

Rights and Title over the Project Site:

- a) The Concessionaire shall have exclusive rights to the use of the Project Site in accordance with the provisions of this Agreement.
- b) The Concessionaire shall allow access to, and use of the Project Site/Project Facility for the authorities/agencies laying telegraph lines, electric lines or such other public purposes as NDMC may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Facility for a period exceeding 30 days at a stretch at any location and that NDMC undertakes to ensure that the Project Facility is restored at the cost and expenses of NDMC as per the Specifications and Standards. Where such access or use causes any loss of revenue to the Concessionaire, NDMC shall compensate the Concessionaire for such loss by increasing the Concession Period suitably.
- c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project/Project Facility.

Concession Fee

The quote for Concession Fee

- a) The Concession fee may offer the fees for the project subject minimum Rs 55,100/- Per Month for the entire Lot of PTU's to be paid monthly in advance to NDMC by the CONCESSIONAIRE.
- b) The CONCESSIONAIRE shall pay all duties and taxes in consequence of its obligations under this CONCESSION Agreement and the Concession fee shall not be adjusted for such costs.
- c) The Concession fee due shall be paid not later than the 10th day of the month in which it is due and failure to do so will attract an interest of 12% per annum on the entire unpaid amount payable during the month chargeable from the beginning of that month on prevalent concession fee.

Performance Security

The CONCESSIONAIRE shall for due and punctual performance of obligations during the contact period deliver to NDMC, on or before the signing of this agreement, a demand draft OR a Bank Guarantee from a nationalized bank for a sum of Rs. 1,10,200/- equal to Two (2) months minimum concession fee as performance security. The same should be valid for the entire period of the concession.

- ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - iii) shall not affect the validity or enforceability of this Agreement in any manner.
- b) 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 of such breach or acceptance or any variation or the relinquishment of any such right hereunder.

15.0 Survival

Termination of this Agreement (a) shall not relieve the CONCESSIONAIRE or NDMC of any obligations hereunder which expressly or by implication survive 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.

16.0 Amendments

16.1 Agreement and the Schedules together constitute a complete and exclusive statement 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.

16.2 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction of 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 will 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.

17.0 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver or any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given at their respective addresses set forth below: If to NDMC: Secretary, NDMC, Palika Kendra, Parliament Street, New Delhi.

<Phone/Fax>

If to the CONCESSIONAIRE:

The Managing Director//Managing Partner/ Name of the Concessionaire/Firm,
<name of the Concessionaire>

<Address>

<phone/fax>

18.0 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.

10.0 Force Majeure

No failure or omission by either Party to carry out or observe any of the terms and conditions of this Agreement shall give rise to any claim against the Party in question or be deemed a breach of this Agreement if such failure or omission arises from any of the causes beyond the reasonable control of that Party, including, without limitation, war, warlike operation, insurrection, riot, fire, explosion; accident; governmental act, material control regulations or orders, act of God, act of the public enemy, epidemic and quarantine restriction provided that the non-performing party has provided the other party with prompt written notice of the obligations it will not be able to perform and has taken all reasonable care to minimize the effect of any such force majeure situation. If a force majeure event that prevents the CONCESSIONAIRE from performing its obligations under this Agreement, does not end within thirty (30) days, then the Council shall be entitled by written notice to terminate this Agreement.

11.0 Representations and Warranties of NDMC

NDMC represents and warrants to the CONCESSIONAIRE that:

- a) NDMC has full power and authority to grant the CONCESSION;
- b) NDMC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- c) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

12.0 General Indemnity.

The CONCESSIONAIRE shall indemnify, defend and hold NDMC harmless against any and all proceedings, actions and, third party claims arising out of a breach by the CONCESSIONAIRE of any of its obligations under this Agreement. Without limiting the generality of this Clause the CONCESSIONAIRE shall fully indemnify, save harmless and defend NDMC including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (i) failure of the CONCESSIONAIRE to comply with Applicable Laws and Applicable Permits, (ii) failure in payments of taxes relating to the CONCESSIONAIRE's Contractors, suppliers and representatives income or other taxes required to be paid by the CONCESSIONAIRE without reimbursement hereunder, or (iii) non-payment of amounts due as a result of materials or services furnished to the CONCESSIONAIRE by any person which are payable by the CONCESSIONAIRE or any one claiming through the CONCESSIONAIRE.

13.0 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

14.0 Waiver

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

Termination Notice, NDMC shall by a notice in writing inform the CONCESSIONAIRE of its intention to issue the Termination Notice (the "Preliminary Notice"). In case the underlying breach/default is not cured within a period of 60 (sixty) days from the date of the Preliminary Notice (Cure Period) NDMC shall be entitled to terminate this Agreement by issuing the Termination Notice. Provided further that

- i) If the default is not cured within 07 (Seven) days of the Preliminary Notice, NDMC shall be entitled to encash the Performance Security with a notice to the CONCESSIONAIRE (Encashment Notice).
 - ii) Alternatively, NDMC, at its discretion may remove and prohibit display of advertisement on the affected PTUs
 - iii) If the default is not cured within 07 (Seven) days of the Encashment Notice and a fresh Performance Security is not furnished within the same period in accordance with Article 4.2, NDMC shall be entitled to issue the Termination Notice.
- (a) The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.
- i) The Cure Period provided in this Agreement shall not relieve the CONCESSIONAIRE from liability for damages and concession fee caused by its breach or default;
 - ii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
 - iii) If the cure of any breach by the CONCESSIONAIRE requires any reasonable action by the CONCESSIONAIRE that must be approved by NDMC or any Government Agency, the applicable Cure Period shall be extended by the period taken by NDMC or the Government Agency to accord the required approval.

9.2 Termination Payments

- 9.2.1 Upon Termination of this Agreement on account of NDMC Event of Default, the Concessionaire shall be entitled to the payment of a sum equal to the "Book Value" of the Project facilities. For the purpose of this Clause, "Book Value" is the value net of depreciation computed on straight-line basis @10 percent per annum. The book value shall have to be certified by an independent auditor.
- 9.2.2 Upon Termination of this Agreement on account of a Concessionaire Event of Default, NDMC shall not be liable to pay any termination payment to the Concessionaire. However, the Concessionaire shall be liable to pay any sums due to NDMC as on the date of termination.
- 9.2.3 Upon termination of this agreement on account of a Force Majeure event, each party shall bear its own costs.

9.3 Rights of NDMC on Termination

Upon Termination of this Agreement for any reason whatsoever, NDMC shall have the power and authority to

- i) take possession and control of Project Assets forthwith;
- ii) forfeit the performance security of the project;
- iii) prohibit the CONCESSIONAIRE and any person claiming through or under the CONCESSIONAIRE from entering upon the Project Assets/dealing with the Project or any party thereof;
- iv) Not to allow the Concessionaire to participate in the next tender for the same set of PTU's

8.0 Events of Default and Termination

8.1 Event of Default

Any of the following events shall constitute an event of default by the CONCESSIONAIRE unless such event has occurred as a result of a breach by NDMC of its obligations under this Agreement or a Force Majeure Event;

- 1) The CONCESSIONAIRE fails to commence the Renovation work within 30 days from the Commencement Date.
- 2) The CONCESSIONAIRE fails to achieve the COD within the Scheduled Project Completion Date.
- 3) Any representation made on warranty given by the CONCESSIONAIRE under this Agreement is found to be false or misleading.
- 4) The CONCESSIONAIRE creates any Encumbrance on the Project Site/Project Facility in favour of any Person.
- 5) A resolution is passed by the shareholders of the CONCESSIONAIRE for the voluntary winding up of the CONCESSIONAIRE.
- 6) Any petition for winding up of the CONCESSIONAIRE is admitted by a court of competent jurisdiction or the CONCESSIONAIRE is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the CONCESSIONAIRE are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the CONCESSIONAIRE under this Agreement and the Project Agreements, and provided that:
 - (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the CONCESSIONAIRE as on the date of this agreement; and
- 7) The CONCESSIONAIRE suspends or abandons the operations of the Project without the prior consent of NDMC, provided that the CONCESSIONAIRE shall be deemed not to have suspended/abandoned operation if such suspension/abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) on account of a breach by NDMC of its obligations under this Agreement.
- 8) The CONCESSIONAIRE repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- 9) The CONCESSIONAIRE suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days.
- 10) The CONCESSIONAIRE has neglected or failed to regularly and properly maintain PTUs in clean and hygienic conditions and to keep the PTUs in a state of good repair at its own cost.

9.1 Termination due to Event of Default

Without prejudice to any other right or remedy which NDMC may have in respect thereof under this Agreement, upon the occurrence of an Event of Default, NDMC shall be entitled to terminate this Agreement by issuing a Termination Notice to the CONCESSIONAIRE, provided that before issuing the

7.5 Monitoring and Supervision during Operations

- a) The Concessionaire shall undertake periodic inspection of the Project in accordance with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and shall submit reports of such inspection ("Maintenance Reports") to the NDMC.
- b) The NDMC Engineer/EE(RIP) or any representative authorized by NDMC may undertake periodic (at least once every calendar month) inspection of the Project jointly with the Concessionaire to determine the condition of the Project including its compliance or otherwise with the Maintenance Manual, the Maintenance Programme, Specifications and Standards and this Agreement and make out a report of such inspection (the "O&M Inspection Report") and forward it to the Concessionaire. The O&M Inspection Report shall set forth defects and deficiencies, if any. The Concessionaire shall within 15(fifteen) days of the receipt of the O&M Inspection Report remedy the defects and deficiencies with a report (O&M Inspection Compliance Report) specifying in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies. Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever, where the remedying of such defects or deficiencies and/or undertaking such tests is likely to take more than 30 (thirty) days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight and finally the O&M Inspection Compliance Report.

7.6 Handover and Defect Liability Period

- 7.6.1 Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concessionaire Period, hand over peaceful possession of the Project Assets including Project Site/Facility at no cost to NDMC.
- 7.6.2 The handing over process shall be initiated at least 1 (One) months before the actual date of expiry of the Concession Period by a joint inspection by the NDMC Engineer and the Concessionaire. The NDMC Engineer shall, within 10(Ten) days of such inspection prepare and furnish to the Concessionaire a list of works/jobs/additions/alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two months prior to the date of expiry of the Concession Period. In case the Concessionaire fails to carry out the above works, within the stipulated time period the NDMC shall be at liberty to have these works executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by NDMC in this regard shall be reimbursed by the Concessionaire to NDMC within 7 days of receipt of demand. For this purpose, NDMC shall without prejudice to any other right/remedy available to it, under this Agreement have the right to forfeit the Performance Security and/or to set off any amounts due, if any and payable by NDMC to the Concessionaire to the extent required/available and to recover deficit amount, if any, from the Concessionaire.

improvements to the Project Facility to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. More specifically, the Concessionaire shall be responsible for:

- i) undertaking daily cleanliness including its maintenance at all points of time depending upon the requirement of the site.
- ii) ensuring the safety and security of the Project Facility.
- iii) undertaking routine maintenance including prompt repairs of potholes, cracks, concrete joints, electric fittings, lighting, sanitary fittings and signage.
- iv) undertaking maintenance works in accordance with Maintenance Manual and the Maintenance Programme;
- v) preventing any encroachments or any unauthorized usage of the Project Facility.
- vi) The PTUs are to be kept open for the use of Public at large, free of any charge.

7.3 Maintenance Manual

The Concessionaire shall in consultation with the EE(RIP) evolve not later than 30 (thirty) days before the Scheduled Project Completion Date, a manual for the regular and preventive maintenance (the "Maintenance Manual"), and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complies with the Specifications and Standards. The Concessionaire shall supply, at least one month before the COD, 2 (two) copies of the Maintenance Manual to the EE(RIP).

7.4 Maintenance Programme

- a) Not later than five (5) days before the beginning of concession period the Concessionaire shall provide to NDMC its proposed programme of preventive and other scheduled maintenance of the Project subject to the Minimum Maintenance Requirements set forth in Schedule 'B' necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:
 - i) Intervals and procedures for the carrying out of inspection of all elements of the Project;
 - ii) criteria to be adopted for deciding maintenance needs;
 - iii) preventive maintenance schedule;
 - iv) intervals at which the Concessionaire shall carry out periodic maintenance;
 - v) intervals for major maintenance and the scope thereof.
- b) Maintenance shall include replacement of equipment, consumable, horticultural maintenance and repairs to equipment, pavements, structures and other civil works which form part of the Project/Project Facility.
- c) Maintenance shall include replacement of equipment, consumable, horticultural maintenance and repairs to equipment, pavements, structures and other civil works which form part of the Project/Project Facility.
- d) The Concessionaire shall keep the Project Facility in a clean, tidy and orderly condition free of litter, dirt and debris.
- e) The Concessionaire shall be responsible for the maintenance of the drainages within the individual PTUs in accordance with Good Industry Practice.

- v) neither place or create nor permit any other person claiming through or under the CONCESSIONAIRE to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the CONCESSIONAIRE therein, save and except as expressly set forth in this Agreement;
- vi) be responsible for safety, soundness and durability of the Project Facility including all structures forming part thereof and their compliance with the Specifications and Standards;
- vii) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- viii) operate and maintain the Project at all times during the Operations Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- ix) ensure that Project Site and facilities created are not defaced by any kind of writings/posters.
- x) The electricity & water connection available in the PTU's for which the commercial charges shall be borne by the concessionaire. It is clarified that wherever water is not available, the Concessionaire shall make its own arrangement at its own cost.
- xi) In case of loss due to theft or damage to the assets created in the PTUs, the CONCESSIONAIRE shall be responsible for making good the same immediately at its own cost and shall continue to keep the PTUs operational and available for public use, at all times, within the CONCESSION Period.
- xii) During the period in which the Concessionaire is unable to get advertisements, he shall display social messages and public interest advertisements as directed by NDMC. It shall be ensured that no advertisement site is left blank at any point of time. The messages can be obtained from NDMC.
- xiii) Handback the PTUs in perfect working condition, to NDMC, at the end of the Concession period.
- xiv) The Concessionaire shall, before the commencement date, submit proof of registration with the Labour Commissioner under section 7 of the contract Labour (Regulations & Abolition) Act, 1970.
- xv) The Concessionaire is required to get all the employees verified from the Police department before deploying on duty.
- xvi) All such employees should wear their name badges over their uniform.
- xvii) All the Ladies & Unisex toilets should have Female attendants only.

6.2 Obligations of NDMC

NDMC shall:

- i) hand over the physical possession of the Project Site to the CONCESSIONAIRE within 10 days from the date of this Agreement;

7.0 Project Implementation, Operation and Maintenance.

7.1 The PTU's in Schedule 'A' are earlier developed by NDMC and are now in the possession of NDMC. These PTUs are required to be operated and maintain good working condition.

7.2 Operation and Maintenance

The Concessionaire shall operate and maintain the Project/Project Facility by itself, or through a Contractor and if required, modify, repair or otherwise make

4.2 **Fresh Performance Security**

In the event of the encashment of the Performance Security by NDMC pursuant to Encashment Notice issued in accordance with the provisions of Article 10.2 the CONCESSIONAIRE shall within 30 (thirty) days of the Encashment Notice furnish to NDMC fresh Performance Security failing which NDMC shall be entitled to terminate this Agreement in accordance with the provisions of Article 10.2 of this agreement. The provisions set forth in Article 4.1 above shall apply mutatis mutandis to such fresh Performance Security.

5 **Revenue**

5.1 **Collection and Appropriation of Revenue**

- i) Subject to the provisions of this Agreement, the CONCESSIONAIRE shall during Concession Period be entitled to demand and collect revenue from advertisement on the specified area of PTUs in accordance with the NDMC Act, 1994 and byelaws and the directions of Supreme Court, if any, on the guidelines to be followed for advertising in Delhi.
- ii) The PTU's are already existing and will be handed over to concession on as it is where it is basis.
- iii) In case any advertisement space remains unutilized, no adjustment in the Concession fee will be allowed under any circumstances.

6.0 **Obligations**

6.1 **Obligations of the Concessionaire**

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement including the Schedules, the concessionaire agrees and undertakes as under:

The CONCESSIONAIRE shall at its own cost and expense:

- i) Renovate/construct the toilets as per the specified designs in accordance with the provisions of this agreement or amendments thereto, good industry practices and applicable laws. This includes modification of at least one seat as Universal acceptable toilet for physically challenged persons, as per the drawings/ details as per the satisfaction of the EE(RIP), NDMC
- ii) ensure that services of water supply, sewerage, drainage, electricity, telephone etc. on and in the vicinity of the PTU are not damaged.
- iii) The CONCESSIONAIRE shall adhere to the provisions of NDMC Act, 1994, bylaws and rules there under in connection with display of advertisements. The CONCESSIONAIRE shall also pay/ensure payment to NDMC of advertisement tax, if any, in respect of the advertisements displayed on the PTUs in accordance with the provisions of NDMC Act and the bylaws and rules there under.
- iv) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the CONCESSIONAIRE's obligations under this Agreement and shall be solely responsible for compliance with all labour laws and shall be solely liable for all possible claims from any third party and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies NDMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall NDMC be treated as employer in this regard;

19.0 Language

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

20.0 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 or any representation by any Party not contained in this binding legal agreement executed by the Parties.

21.0 Independent Contracting Parties

Both parties are independent Principals. Nothing in this Agreement shall be deemed to create an agency, partnership, joint venture, or employer/employee relationship.

22.0 Lost Profits/Consequential Damages

In no event shall either party be liable for any lost profits or consequential damages arising out of, or relating to this Agreement. In witness whereof, the parties hereto have set their hands hereunto on the day, month and year hereinabove mentioned.

SIGNED SEALED & DELIVERED

FOR AND ON BEHALF OF THE CHAIRPERSON, NEW DELHI MUNICIPAL CORPORATION COUNCIL BY:

(Signature)

(Name)

(Designation)

SIGNED SEALED & DELIVERED

FOR AND ON BEHALF CONCESSIONAIRE BY:

(Signature)

(Name)

(Designation)

In the presence of:

1)

2)

SCHEDULE 'A'

The PTU's Existing:-

1.	Outside Lodhi Garden at Lodhi Road	1 No.
2.	Outside Lodhi Garden at Max Muller Marg	1 No.
3.	Inside Lodhi Garden	1 No.
4.	Inside Lodhi Garden	1 No.
5.	Inside Lodhi Garden	1 No.
	Total	5 Nos.

MINIMUM MAINTENANCE REQUIREMENTS

1. Utilities should be opened at 5.00 a.m. and should be closed at 10.00 p.m. However, the Concessionaire may be allowed to close it early, if the utility is located in commercial areas where the activities stop before the said in consultation with NDMC. At some places it may be required to keep it open for longer duration, even for 24 hrs. The decision of EE(RIP) in this regard shall be final.
2. Continuous janitor services for maintaining hygiene and cleanliness inside premises.
3. Dedicated Operations Team, for active monitoring of security and maintenance services on a daily basis.
4. Water must be always available for flushing and washing.
5. The W.C. toilet floor area, approach etc should be dept dry.
6. All fittings and fixtures are to be maintained in fully functional condition always.
7. The surroundings areas are to be kept cleaned at all times. The litter bins should not be overflowing at any time and disposal of garbage to be arranged to as required.
8. The advertisement panel to be kept clean from dust, stains etc. at all times. It is to be ensured that posters etc. are not posted on any of the panels and on structural part of PTUs.
9. No leakage from roof to be permitted.
10. Proper drainage is to be maintained and no accumulation of water, liquid etc. is to be allowed at any time.
11. The lighting arrangement at the PTUs is functional at all times. Electrical safety is to be ensured for users as well as CONCESSIONAIRE'S staff.
12. All structural members, sanitary fittings, electrical fittings and advertisement panel are to be inspected and maintained in good condition as per Good Industry Practices.
13. Broken floor and wall tiles are to be replaced within 3 days of such event.
14. The staff provided at the PTUs should be literate and courteous toward the users and assist handicapped and old age users. The staff will always be in uniform as approved by the EE(RIP).
15. The flower plants and shrubs are to be maintained and watered regularly and the wastes to be disposed off.
16. Security of all assets is to be ensured by the Concessionaire.
17. The advertisements on panels to be changed during off peak periods - preferably during night hours.
18. Exhaust fans should be functional always.
19. A round the clock mobile service van should be provided for attending to electric, plumbing and cleanliness related complaints.
20. The contractor shall be responsible to rectify minor complaint within 24 hours after receipt/ occurrence of complaint & major break down in any Electrical/ Sanitary

installation shall be rectified next day failing which penalty @500/- per day shall be imposed.

21. Penalty for Rs 1,000/- Per Toilet / Per Day for non-completion of work or improper quality of work i.e. improper cleaning, sanitation, improper supervision, short deployment of equipments/ machines and use of inferior quality of consumables as per the schedule of maintenance manual 'Annexure-A', the decision of Engineer-in-charge will be final in this regard.

Annexure 'A'

SCHEDULE OF MAINTENANCE MANUAL

Sr. No	Description of item/ maintenance task	Frequency of Operation Daily
1	Cleaning of MS/ Stainless steel railing including balusters & Signages	Daily & as and when required.
2	Cleaning of doors / windows	Daily
3	Cleaning /Sweeping of pavement/ walkways / floors	Once in each shift & as and when required.
4	Cleaning of litterbins etc.	Once in each shift & as and when required including disposal of litters etc. to the nearest NDMC dustbin/ compactors.
5	Cleaning & Sanitation of toilets/ WC/ Urinals etc.	Regular cleaning of toilets/ WC/ Urinals etc. in each shift and as and when required including dry and wet mopping to keep the floor clean and dry at all times.
6	Cleaning of sanitary fixtures.	2 to 3 times in each shift & as and when required to keep fixture neat and clean.
7	Removal/ disposal of waste of toilets, unchocking of WC, urinals etc.	Once in each shift & as and when required.
8	Checking of all plumbing/ electrical connections / fitting/ fixtures in all the toilet.	Weekly basis or as and when required.
9	Cleaning of surrounding of toilets.	Daily & as and when required.

SCHEDULE 'C'

Role of NDMC Engineer

The NDMC Engineer shall be the NDMC interface with the concessionaire during the implementation period.

He shall be responsible for ensuring that the sites are handed over to the concessionaire within the stipulated period

During the operations period, the NDMC Engineer shall be responsible for periodic inspections of the PTUs (each PTU at least once every month) and bring any instance of non maintenance to the notice of the EE(RIP) and to the Concessionaire through an 'O&M Inspection Report'.

Ensure that the project facilities are handed back to NDMC as per the provisions of this agreement.

ADDITIONAL TERMS & CONDITIONS

1. Utilities shall be opened at 5.00 AM and closed at 10.00PM.
2. No user charges will be allowed. (Free to use for Public)
3. Continuous janitor services for maintaining hygiene and cleanliness inside premises.
4. Dedicated Operations Team, for active monitoring of security and maintenance services on a daily basis.
5. All cleaning material shall be provided by the bidder free of cost.
6. Water must be always available for flushing and hand washing.
7. The W.C. toilet floor area, approach etc should be kept dry.
8. All fittings and fixtures are to be maintained in fully functional condition always.
9. The surroundings areas are to be kept cleaned at all times. The litter bins should not be overflowing at any time and disposal of garbage to be arranged as required.
10. The advertisement panel to be kept clean from dust, stains etc. at all times. No leakage from roof to be permitted.
11. Proper drainage is to be maintained and no accumulation of water, liquid etc. is to be allowed at any time.
12. The charges of Electric consumption as well as water & sewage will be paid by the bidder monthly.
13. The lighting arrangement at the PTUs is functional at all times. Electrical safety is to be ensured for users as well as concessionaire's staff.
14. All structural members, sanitary fittings, electrical fittings and advertisement panel are to be inspected and maintained in good condition as per Good Industry Practices.
15. Broken floor and wall tiles are to be replaced within 3 days of such event.
16. The staff provided at the PTUs should be literate and courteous toward the users and assist handicapped and old age users. The staff will always be in uniform as approved by the Engineer-in-Charge.
17. The flower plants and shrubs are to be maintained and watered regularly and the wastes to be disposed off.
18. Security of all assets is to be ensured by the Concessionaire
19. The advertisements on panels to be changed during off peak periods - preferably during night hours.
20. A round the clock service should be provided for attending to electric, plumbing and cleanliness related complaints.
21. The PTU's will be handed over to NDMC peacefully after expiry of the concession period in good working condition.