



मु०म०प्र०(प्र०)

CONCESSION AGREEMENT

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This **CONCESSION AGREEMENT** is entered into on this the ____ day of ____ Two Thousand and ____ at ____



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BETWEEN

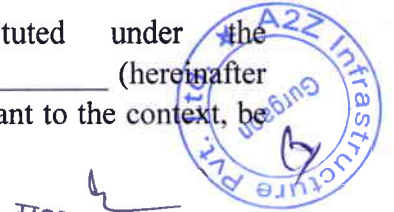


_____, a Municipal Corporation constituted under the _____ Act _____, having its principal office at _____ (hereinafter referred to as "**ULB**") which expression shall unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) of One Part;



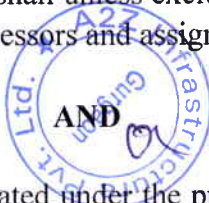
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AND



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Construction and Design Services, Uttar Pradesh Jal Nigam, a Government of UP Enterprise, having its main office at 2, Lal Bahadur Shastri Marg, Lucknow – 226001 (hereinafter referred to as "**C&DS, UPJN**") which expression shall unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) of Second Part;



AND

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M/S A2Z Infrastructure (P) Ltd, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 516, 5th Floor Park Square, Gurgaon (hereinafter referred to as "**the Concessionaire**") which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and substitutes) of the Third Part.



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WHEREAS:

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- A. ULB is the urban local body for the city of Kanpur, in the state of Uttar Pradesh, and is responsible for providing municipal and civic services for the benefit of the public residing within its jurisdiction, which includes the collection, transportation, processing and disposal of Municipal Solid Waste generated within the city.
- B. In accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000 ("MSW Rules"), it is mandatory for every Municipal Authority to implement a scientific municipal solid waste management system wherein Municipal Solid Waste is collected, transported and processed and the remnant waste matter is disposed in accordance with the MSW Rules.
- C. In furtherance its objective of improving the solid waste management services in the city of Kanpur Nagar Nigam, C&DS, UPJN on behalf of ULB has invited private sector participation for design, build, operate, maintain and transfer basis, to undertake door to door collection, secondary collection, transportation and delivery of Municipal Solid Waste at the designated SWM Processing Facility¹.
- D. C&DS, UPJN had prescribed the technical and commercial terms and conditions (the "Request for Proposals" or "RFP") , and invited bids which term shall include written clarifications issued to the Bidders and written addendum to the Request for Proposal from the bidders including the {Selected Bidder/ Consortium comprising A2Z IS (P) Ltd. [BETL] and [KCDC] (collectively the "Consortium") with h2z as its Lead Member}; for implementing the Project;
- E. After evaluation of the bids received, the ULB had accepted the bid of the {Selected Bidder / Consortium} and issued its Letter of Award No. 551 dated 29/3/10 (hereinafter called the "LOA") to the {Selected Bidder / Consortium} requiring, inter alia, the execution of this Concession Agreement;
- F. The Selected Bidder / Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956 (a special purpose vehicle), and has requested the ULB to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project;
- G. By its letter dated 20/5/10, the Concessionaire has also joined in ~~the said request~~ of the Selected Bidder / Consortium to the ULB to accept it as the entity which shall undertake

¹ ULB shall have the right at its sole discretion to designate any other location (s) instead of MSW Processing Facility from time to time and the consequential changes shall apply accordingly.

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and perform the obligations and exercise the rights of the Selected Bidder / Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder / Consortium only for the purposes hereof;

- H. The Concessionaire has submitted a bank guarantee dated 10/8/10 ref No. #2010127184P0481 of an amount 76625000.00 issued by IDBI Bank towards the Performance Security and C&DS, UPJN / ULB acknowledges the acceptance of the same;
- I. The ULB has agreed to the said request of the {Selected Bidder / Consortium} and the Concessionaire, and has accordingly along with C&DS, UPJN agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- J. The Parties hereto are required to enter into this Concession Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound, being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 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 meaning hereinafter respectively ascribed to them hereunder:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.

“**Affected Party**” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 9.

“**Agreement**” or “**Concession Agreement**” means this Agreement including its Recitals, Schedules hereto, as of the date hereof and includes any amendments hereto made in accordance with the provisions hereof.

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“Applicable Laws” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect by GOI or the GoUP 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/Concessionaire.

“Applicable Permits” means all clearances, permits, authorisations, no objection certificates, consents, exemptions and approvals required to be obtained and maintained by the Concessionaire under Applicable Laws, in connection with the Project.

“Appointed Date” means the date of handing over of the Project Site as per Article 3 or an earlier date that the Parties may determine;

“Approved Valuer” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing fixed assets and Project Facilities;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Associate” means, in relation to the Bidder / Consortium Member, a company who controls or is controlled by such Bidder/ Consortium Member (herein referred to as the “Associate”). As used in this definition, the expression “control” means, with respect to a company, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such company.

“Assured Incoming Waste” shall have the meaning ascribed to it in Article 5.7(c).

“Awareness Campaign” shall have the meaning ascribed to it in Schedule K.

“Biodegradable Substance” shall have the meaning ascribed to it under the MSW Rules.

“Bio-Medical Waste” shall have the meaning ascribed to it in the Bio-Medical Waste (Management and Handling) Rules, 1998.

“Book Value” shall mean the cost of the fixed assets incurred and financed by the Concessionaire for the Project, net of accumulated depreciation computed on written down value method in accordance with the rates specified in the Companies Act, 1956 and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties. For avoidance of doubt, it is clarified that the Book Value shall not include cost of fixed assets to the extent funded by any grant given by C&DS, UPJN / ULB and the Existing Assets.

“COD” means the commercial operations date of the Project on which the Independent Engineer has issued the Provisional Completion Certificate or Completion Certificate in accordance with the provisions of Article 5.6(c).

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“**Completion Certificate**” means the certificate issued by Independent Engineer, certifying, inter alia, that the Concessionaire has developed, procured, constructed or provided all Project Facilities in accordance with this Agreement for implementing the Project.

“**Concession**” shall have the meaning ascribed thereto in Article 2.2.

“**Concession Area**” shall have the meaning ascribed thereto in Schedule A.

“**Concession Period**” shall have the meaning ascribed to in Article 2.3.

“**Consortium**” shall have the meaning set forth in the Recital D.

“**Consortium Member**” means a company specified in Recital D as a member of the Consortium.

“**C&DS, UPJN**” means the Construction and Design Services, Uttar Pradesh Jal Nigam.

“**Construction Requirements**” shall mean the requirements as to construction / renovation/ up-gradation of the Project Facilities as set out in Schedule E.

“**Construction Works**” means all modifications, works and things required to be undertaken by the Concessionaire in accordance with this Agreement.

“**Contractor**” means any Person with whom the Concessionaire has entered into/may enter into a contract relating to the execution of any works, provision of services and/or operation and maintenance of the Project.

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay penalty payment or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the ULB or the Independent

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Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the ULB or the Independent Engineer to accord their approval.

“**Damages**” shall have the meaning set forth in Article 1.2.

“**Development Plan**” shall have the meaning ascribed to it in Article 5.4.

“**Dispute**” shall have the meaning set forth in Article 12.

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

“**Drawings**” shall mean all of the drawings, detailed designs, calculations and documents pertaining to the Project in accordance with the Construction Requirements and O&M Requirements.

“**Effective Date**” shall mean the date of signing of this Agreement by both the Parties. It is agreed that this Agreement shall have no effect and implications against any Party unless this Agreement has been duly executed by all three Parties mentioned herein.

“**Emergency**” means a condition or situation or event that is likely to endanger the security of individuals on or about the Project Facilities or which poses an immediate threat of material damage to the Project Facilities or which poses a immediate threat to the health and safety of the residents within the Concession Area or which require immediate attention or action by the ULB.

“**Encumbrance**” means 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 and encroachments on the Project Facilities.

“**Escrow Account**” means and includes an Account which the Concessionaire shall open and maintain with a bank in which all inflows and outflows of cash on account of User Charges shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account;

“**Event of Default**” shall have the meaning ascribed there to in Article 10.

“**Existing Assets**” shall mean collectively the assets of the ULB including the Project Site, movable assets (vehicles and equipments) set out in Schedule C and provided to the Concessionaire by ULB, exclusively for the purpose of implementing the Project.



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“**Financial Proposal**” shall mean the financial offer given by the Concessionaire in response to the RFP released for the Project.

“**Financial Year**” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed thereto in Article 9.

“**Good Industry Practice**” means 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 from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project.

“**GoI**” means the Government of India.

“**GoUP**” means the Government of Uttar Pradesh.

“**Government Agency**” means GoI, GoUP, ULB, C&DS, UPJN or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, central, state, or local, having jurisdiction over the Concessionaire, Concession Area, Project, or any part thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“**Handback Requirements**” shall have the meaning ascribed thereto in Article 11.

“**Hazardous Wastes**” shall have the meaning ascribed to it in the Hazardous Wastes (Management and Handling) Rules, 1989.

“**Incoming Waste**” shall have the meaning ascribed to it in Article 5.17.

“**Independent Engineer**” means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 4 for supervising and monitoring compliance by the Concessionaire with the Construction Requirements and O&M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities has set forth in Schedule H.

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 5.13 and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;


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“**Lenders**” means financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the debt component of the cost of the Project.

“**MSW Processing Facility**” shall mean the facilities as identified by the ULB for processing of Municipal Solid Waste.

“**Management Control**” means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the Concessionaire, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the directors or other individuals exercising similar authority with respect to the Concessionaire.

“**Material Adverse Effect**” means a material adverse effect on (a) the ability of the Concessionaire 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.

“**Material Breach**” means 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.

“**Municipal Solid Waste**” or “**MSW**” shall have the meaning ascribed thereto in the MSW Rules.

“**MSW Rules**” shall mean the Municipal Solid Wastes (Management and Handling) Rules, 2000 and includes any amendment thereto as in force.

“**MSW Processing Facility Operator**” means the concessionaire/ operator/ contractor or any other Person engaged by the ULB for operation and maintenance of the MSW Processing Facility.

“**New Assets**” shall mean collectively the assets set out in Schedule D, to be provided/ procured/ constructed by the Concessionaire for implementing the Project.

“**Non-Biodegradable Substance**” shall mean all substances including packaging material, metal, inerts, plastic, drain silt, street sweeping waste, clothing, rubber paper products and construction debris excluding Bio-degradable Substance.

“**O&M Requirements**” means the requirements as to operation and maintenance of the Project set forth in Schedule F.



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"Operations Period" means the period commencing from COD and ending at the expiry or Termination of the Concession Agreement.

"Parties" means the parties to this Agreement and **"Party"** means each one of them, as the context may admit or require.

"Performance Security" means the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Article 5.1.

"Person" means (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.

"Preliminary Notice" means 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.

"Preparatory Period" means the period beginning from the Appointed Date and ending on COD.

"Project" shall mean the door to door collection, secondary collection, transportation, delivery of MSW at MSW Processing Facility and design, financing, procurement, construction, operation, maintenance and management of the Project Facilities in accordance with the provisions of this Agreement.

"Project Facilities" shall mean the Existing Assets, the New Assets and any other offsite facilities created for the Project.

"Project Site" collectively means the Workshop Site and land for transfer station / any other part of the Project Facilities to be provided by ULB.

"Provisional Completion Certificate" means the Completion Certificate issued by Independent Engineer pending completion of the Punch List items in accordance with Article 5.6.

"Punch List" shall have the meaning ascribed thereto in Article 5.6(c).

"Request for Proposals" or **"RFP"** shall have the meaning set forth in Recital D;

"Right of Way" means the constructive possession of the Project Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for implementation of the Project in accordance with this Agreement;

"Rupees" or **"Rs."** refers to the lawful currency of the Republic of India.



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“**SBI PLR**” means the prime lending rate of the State Bank of India prevailing as on the date of a payment due from which the computation of interest is required to be made under the Agreement;

“**Scheduled Project Completion Date**” means 8 (eight) calendar months from the Appointed Date including any extension thereof provided by the ULB.

“**Statutory Auditors**” means a reputed firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force;

“**Substitution Agreement**” means the agreement substantially in the form set out at Schedule I to be entered into amongst ULB, Lenders and the Concessionaire.

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means termination of this Agreement pursuant to 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 due to efflux of time in the normal course.

“**Termination Date**” means the date specified in the Termination Notice as the date on which Termination occurs.

“**Termination Notice**” means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“**Tests**” means the tests to be carried out in accordance with the Construction Requirements or O&M Requirements and “Testing” and “Tested” shall be construed accordingly.

“**Tipping Fee**” means the amount payable by ULB to the Concessionaire in accordance with Article 8.

“**User Charges**” means the charges/ fees payable by the generators of the MSW in accordance with the notification issued by the ULB.



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“**Vehicle Tracking and Monitoring System**” shall mean the hardware and software of the equipment/ technology required to track the movement of vehicles carrying MSW.

“**Workshop Site**” shall mean the land described in Schedule B provided by ULB to the Concessionaire for the purpose of parking, repairing and refueling of vehicles used by the Concessionaire during the Operations Period.

1.2 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 Laws 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. 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;
- h. 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;



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references to Recitals, Articles, Sub-articles, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Sub-articles, and Schedules of or to this Agreement;

- j. 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 authorized representative of such Party in this behalf and not otherwise;
- k. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- l. 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 (the "Damages").

1.3 Priority of agreements and errors/discrepancies

1.3.1 This Agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents forming part hereof shall, in the event of any conflict or inconsistency between them, be in the following order:

- (a) this Agreement;
- (b) all documents forming part hereof;

i.e., the Agreement at (a) above shall prevail over documents at (b) above.

1.3.2 Subject to the provisions of Article [1.3.1], in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexures, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (e) between any value written in numerals and in words, the latter shall prevail.



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ARTICLE 2

CONCESSION

2.1 Scope of Work for the Project

The scope of work of the Project (the “Scope of Work for the Project”) shall mean and include the provision of the following services and facilities within the Concession Area, during the Concession Period by the Concessionaire:

- (a) Door-to-door collection of MSW;
- (b) Primary storage of collected door-to-door MSW;
- (c) Secondary collection, transportation and delivery of MSW including street sweeping waste, drain silt at the MSW Processing Facility or any other site as may be designated by the ULB either directly or through transfer station;
- (d) Collection transportation and delivery of the MSW littered within the Concession Area as on COD to the MSW Processing Facility either directly or through transfer station;
- (e) Assist ULB in public education / Awareness Campaign related to MSW;
- (f) Collection of the User Charges, on behalf of ULB as determined by the ULB from time to time;
- (g) Develop and implement a Complaint Redressal system
- (h) Development, financing, operation and maintenance of the Project
- (i) Augmentation of equipment/ vehicles, capacity enhancement and provision of ancillary facilities required for implementation of the Project during the Concession Period.
- (j) Deployment of adequate and qualified manpower for procurement/ construction, operation and maintenance management of the Project;
- (k) Procure and/or provide any other required support services and facilities required for the Project; and
- (l) Performance and fulfilment of all the obligations of the Concessionaire in accordance to the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

During the Concession Period, the Concessionaire shall ensure that all MSW generated within the Concession Area is collected, segregated and transported to the MSW Processing Facility either directly or through transfer station in accordance with Applicable Laws and in accordance with this Agreement.



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Primary collection, primary storage and transportation to designated secondary collection points of the drain silt and street sweeping waste shall be the responsibility of ULB.

2.2 Grant of Concession

Subject to and in accordance with the terms, conditions and covenants set forth in this Agreement the Applicable Laws and the Applicable Permits, the ULB hereby grants and authorises the Concessionaire to :-

- (i) undertake door to door collection of Municipal Solid Waste from Persons generating such waste within the Concession Area;
 - (ii) collect Municipal Solid Waste from the street corner bins within the Concession Area, in accordance with Applicable Laws;
 - (iii) transport and deliver MSW at the MSW Processing Facility either directly or through transfer station;
 - (iv) design, engineer, procure, finance, modify, construct, operate, maintain and transfer the Project Facilities; and
 - (v) exercise and/or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement
- (hereinafter collectively referred to as "the Concession").

2.3 Concession Period

The Concession hereby granted is for (i) Preparatory Period and (ii) a period of 30 (thirty) years from the COD or until earlier termination thereof in accordance with the terms of this Agreement ("Concession Period").

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

2.4 Exclusivity of the Concession

The Concessionaire shall be the sole and exclusive person entitled to undertake the Project in the Concession Area and ULB agrees that no agreement or arrangement permitting the activities as per the Scope of Work for the Project for the Concession Area covered under this Agreement by any other party shall be entered into by ULB during the Concession Period.

2.5 Acceptance of the Concession

In consideration of the rights, privileges and benefits conferred upon the Concessionaire by ULB and other good and valuable consideration expressed herein, the Concessionaire



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hereby accepts the Concession and agrees and undertakes to implement the Project and perform/discharge all its obligations in accordance with the provisions hereof.

ARTICLE 3

HANDOVER OF EXISTING ASSETS

3.1 Handover of Existing Assets

- (a) The Concessionaire shall, within a period of 30 (thirty) days from the Effective Date or any mutually agreed date, in consultation with the ULB/ Independent Engineer prepare an implementation plan for the Existing Assets which are required to be used/ accessed by the ULB during the Preparatory Period and require access by the Concessionaire for fulfilling its obligations under this Agreement.
- (b) ULB shall, as per the implementation plan, allow necessary access and handover vacant and peaceful physical possession to the Concessionaire of the Project Site, free from Encumbrance, for enabling the Concessionaire to carry out construction, renovation, upgradation, or modifications thereto in accordance with the Construction Requirements, for the purpose of implementing the Project.
- (c) Upon the Concessionaire being granted access to the Project Site pursuant to the preceding Sub-article (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon and renovate, construct or modify the same at its own costs in accordance with the Construction Requirements and carry out such investigations, development and improvements to the Project Site and arrange for procuring and providing the New Assets, as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- (d) The ULB shall, upon achievement of COD, handover peaceful physical possession to the Concessionaire of the remaining Existing Assets, free from Encumbrance, for enabling the Concessionaire to carry out its responsibilities under this Agreement.
- (e) In case, any part/ component of the Existing Assets become non-operable/ redundant/ useless during the Operations Period, then it shall be handed back to the ULB, without any Encumbrance, within 30 (thirty) days of such event thereafter such part/ component shall cease to be part of the Existing Assets and



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accordingly the Concessionaire's responsibilities/ obligations shall cease to exist in this regard.

During the Operations Period, ULB shall not provide any grant/ assets/ vehicles/ equipments to the Concessionaire..

3.2 Rights, Title and Use of Project Facilities

- (a) The Concessionaire shall have the right to use the Project Facilities in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into or use of the same by third parties.

Provided that ULB shall have the right to put up advertisements on the Project Facilities and retain any and all revenue generated from such activity. The Concessionaire shall provide full support/ cooperation to the ULB in the same.

For avoidance of doubt, it is clarified that the Concessionaire shall have no rights to display any advertisement on the Project Facilities or part thereof.

For avoidance of doubt, it is also clarified that the Concessionaire shall allow necessary access of the Project Facilities or part thereof to the ULB or its authorised representatives to fulfill ULB's obligation under this agreement.

- (b) The Project Facilities are and shall continue to be the property of ULB.
- (c) The Concessionaire shall not part with or create any Encumbrance on the part of the Project Facilities including the Project Site, save and except as set forth and permitted under this Agreement.
- (d) The Concessionaire shall not be allowed to use the Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (e) The Concessionaire shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as ULB may specify / require from time to time.

Provided that such access or use shall not result in a Material Adverse Effect and that ULB shall, in the event of any physical damage to the Project Facilities on account thereof, ensure that the Project Facilities are promptly restored at its own cost and expenses.



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Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/suffer any liability on account thereof.

3.3 Peaceful Possession

ULB hereby represents and warrants that:

- (a) The Project Site
- have been acquired through the due process of law; or
 - belongs to or has been leased to or is vested in ULB,

and that ULB has full powers to hold, dispose of and deal with the same consistent, inter-alia, with the provisions of this Agreement and that the Concessionaire shall, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected directly and/or indirectly thereby.

- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Existing Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Existing Assets 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 Existing Assets or any part thereof, the ULB shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

ARTICLE 4

INDEPENDENT ENGINEER

4.1 Independent Engineer

- (a) The Independent Engineer shall be appointed for the Project by the ULB.
- (b) The role of the Independent Engineer has been detailed in Schedule H and is broadly outlined herein to review/ oversee/ supervision of the:





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Collection and Transportation of MSW for Kanpur Municipal Corporation, UP

- (i) design and construction works of Project Facilities; and
 - (ii) operation and maintenance of the Project.
- (c) ULB and the Concessionaire hereby agree that C&DS, UPJN shall be appointed as the Independent Engineer for the Project for the period commencing from the Appointed Date until 6 (six) months after the COD.
- (d) During the period as specified in Article 4.1 (c), the broad role of C&DS, UPJN shall be review/ oversee the design and supervision of construction / procurement of the Project Facilities including New Assets, processing of claims and payment of the Capital Grant, receiving Performance Security and other related activities as per the Agreement on behalf of ULB.
- (e) All fees, costs, charges and expenses payable to the C&DS, UPJN in accordance with the terms of its appointment shall be borne by the ULB/GoUP. It is clarified that the Concessionaire shall not be responsible for any fees, costs, charges and expenses payable to the Construction Supervisor.
- (f) C&DS, UPJN shall not have any role / obligations in the Project subsequent to the period as specified in Article 4.1 (c) and thereafter it will no longer remain a Party to the Agreement for any other matter except for any rights and obligations accruing as Construction Supervisor prior to this event.

4.2 Procedure for Appointment of Independent Engineer

- (a) ULB shall appoint an Independent Engineer on a fulltime basis for the Project ULB shall endeavour to complete the process of appointment of the Independent Engineer within 30 (thirty) days of the Appointed Date.
- (b) The initial term of the Independent Engineer may extend upto 3 (three) years. On expiry or termination of the aforesaid term, the ULB may in its discretion renew the appointment, or appoint another firm to be the Independent Engineer for another term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment for the duration of the Concession Period

4.3 Payments to Independent Engineer

All fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively "**the Remuneration**") shall be borne by the ULB.



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4.4 Site Office for Independent Engineer

The Concessionaire shall, during the Concession Period provide and maintain a reasonably furnished site office accommodation for the Independent Engineer at the Project Site. Such a site office shall have work stations including heating and cooling equipment and toilet facilities. All expenses / charges in respect of maintenance of the site office, electricity and power charges shall be borne by the Concessionaire.

ARTICLE 5

CONCESSIONAIRE'S OBLIGATIONS

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

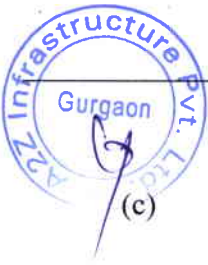
5.1 Performance Security

(a) The Concessionaire shall, for the due and punctual performance of its obligations relating to the Project, deliver to the C&DS, UPJN, prior to / simultaneous with the execution of this Agreement, a bank guarantee substantially in the format provided in the Schedule J from a nationalized bank / State Bank of India or any of its subsidiaries (other than regional rural banks and cooperative banks), ("Performance Security") for a sum² of Rs. 766.25 lakhs (Rupees Seven hundred Sixty Six Lakh two thousand only) valid initially for a period of 12 (twelve) months from the Effective Date.

(b) The Performance Security in favour of C&DS, UPJN shall be kept valid by the Concessionaire for a period of 6 (six) months after the date of COD. Upon expiry of the 6 (six) months after the date of COD, the Concessionaire shall execute and deliver a fresh Performance Security as per the requirements outlined in Article 5.1.(a) in favour of the ULB and keep the Performance Security valid for a period of 7 years by renewal or otherwise. Upon the Concessionaire furnishing the fresh Performance Security to the ULB, C&DS, UPJN shall return the Performance Security issued in its favour within 30 days subject to C&DS, UPJN right to receive or recover amounts, if any, due from the Concessionaire under this Agreement,

The above Performance Security shall be forfeited if the Concessionaire does not replace the Project Facilities (i.e. all collection and transportation equipments and vehicles) within 8 years from the COD as laid down in the Construction Requirements.

² Equivalent to 25% of the Capital Grant as per Clause 1.1.12 of the RFP document



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Subsequent to the completion of 1 (one) calendar year from the COD, the Concessionaire shall submit and maintain an additional Performance Security by way of a Bank Guarantee, issued by a nationalized bank / State Bank of India or any of its subsidiaries (other than regional rural banks and cooperative banks) of an amount equivalent to the 10% of the total Tipping Fee payable for a year to the Concessionaire, which shall be calculated based on the Tipping Fee payable during the immediately preceding calendar year. The amount of the additional Performance Security shall be computed on an annual basis for the incremental amount and kept valid by the Concessionaire throughout the Concession Period by renewal or otherwise. This additional Performance Security shall be submitted to the ULB within 30 days of the commencement of each operations and maintenance year.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to ULB's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

- (d) In case, the Performance Security has been invoked in part or full in accordance with the terms of this Agreement, the Concessionaire undertakes to forthwith furnish a top up guarantee or replenish the Performance Security in the manner such that the aggregate value of the performance guarantee equals the original value of Performance Security at the time of Effective Date and additional Performance Security.

5.2 Applicable Permits

The Concessionaire shall in respect of the Project, procure the Applicable Permits and be in compliance thereof at all times during the Concession Period.

With a view to facilitate the implementation of the Project, the C&DS, UPJN on behalf of ULB has already approached Uttar Pradesh Pollution Control Board, for obtaining the requisite clearance for implementation of the Project. It is however clarified that the Concessionaire shall be solely responsible for obtaining and maintaining such clearances.

5.3 Financing Arrangement

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



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5.4

Development Plan

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- (i) The Concessionaire shall within 15 (fifteen) days of the Appointed Date, submit to the Independent Engineer and ULB a plan (“**the Development Plan**”) in conformity with the Construction Requirements, O&M Requirements and business plan submitted by the Selected Bidder along with the Financial Proposal.
- (ii) Within 7 (seven) days of receipt of the Development Plan, the Independent Engineer shall review the same taking into account, inter-alia, comments of the ULB, if any, thereon, and convey their comments/ observations to the Concessionaire on the Development Plan, including the need, if any, to modify the same. If the comments/ observations of the Independent Engineer require the Development Plan to be modified, the Concessionaire shall suitably modify the Development Plan and re-submit to Independent Engineer, for further review. The Independent Engineer shall give its observations and comments, if any, within 7 (seven) days of receipt of such revised Development Plan, which shall be taken into account by the Concessionaire while finalising the Development Plan.
- (iii) If, within the period stipulated in the preceding sub-article (ii), the Independent Engineer does not respond to the Development Plan submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of the Development Plan submitted by it to the Independent Engineer.
- (iv) Notwithstanding any review or failure to review by the Concessionaire or the comments/observations of the Independent Engineer or the ULB, the Concessionaire shall be solely responsible for the adequacy of the Development Plan and the conformity thereof with the Construction Requirements and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

5.5 Drawings

(a) Preparation of Drawings

- (i) The Concessionaire, subject to the Construction Requirements, shall prepare its own Drawings.
- (ii) The Drawings shall be subject to review by the Independent Engineer as hereinafter provided in Sub-article (b).

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(b) Review of Drawings

- (i) The Concessionaire shall within 30 (thirty) days from the Appointed Date and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the Drawings to the Independent Engineer and ULB.
- (ii) By forwarding a copy of the Drawings to the Independent Engineer and ULB pursuant to the preceding sub-article (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.
- (iii) Within 15(fifteen) days of receipt of the Drawings, Independent Engineer shall review the same taking into account, inter alia, comments of ULB, if any, thereon, and convey their comments/ observations to the Concessionaire on the conformity of Drawings with Construction Requirements. If the comments/observations of the Independent Engineer indicate that the Drawings are not in conformity with the Construction Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- (iv) If, within the period stipulated in the preceding sub-article (iii), the Independent Engineer does not respond to the Drawings submitted to it by the Concessionaire the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Independent Engineer and intimate the same to ULB. The same should be highlighted in the periodic reporting by the Concessionaire.
- (v) Notwithstanding any review or failure to review by or the comments / observations of the Independent Engineer or the ULB, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (vi) The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from Independent Engineer/ ULB.
- (vii) The Concessionaire shall in consultation with the Independent Engineer finalise an implementation schedule for their respective scope.

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5.6 Project Implementation

(a) New Assets

The Concessionaire shall procure/ provide the New Assets in accordance with the Development Plan and Construction Requirements during the Preparatory Period as well as the Operations Period and operate & maintain them during the Operations Period in accordance with the O&M Requirements.

(b) Construction Works

- (i) No Construction Works shall begin until the Independent Engineer has assumed charge.
- (ii) The Concessionaire shall adhere to the Construction Requirements and achieve COD on or before the Scheduled Project Completion Date.

Provided that, on the written request by the Concessionaire for extension of Scheduled Project Completion Date due to reasons solely attributable to the Concessionaire, ULB may consider such a request, subject to the Concessionaire agreeing to pay an amount of Rs. 1.00 (one) lakh per week of extension as liquidated damages. However, such extension shall in no case exceed six months from Scheduled Project Completion Date. In the event Concessionaire is not able to achieve COD within such extended period, it shall be treated as a Concessionaire Event of Default.

- (iii) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.

Prior to commencement of construction, renovation/ repair of any of the Project Facilities, the Concessionaire shall have obtained all such Applicable Permits as are necessary to commence construction/ renovation/ repair of such facilities.

- (iv) The Concessionaire shall, during the Preparatory Period be well organized and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/ ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;

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(c) **Completion Certificate and Provisional Completion Certificate**

i. The Concessionaire shall carry out all necessary and periodical Tests under the supervision of the Independent Engineer for the purposes of determining that the New Assets purchased/ constructed and Construction Works are being undertaken in accordance with the Construction Requirements. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

ii. If the Tests are successful and the Project Facilities can be safely and reliably operated, the Independent Engineer shall, within 3 days issue Completion Certificate for the Project Facilities and New Assets.

Provided, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests, the Independent Engineer determines that the Project Facilities and New Assets can be safely and reliably operated, the Independent Engineer may issue Provisional Completion Certificate for them to the Concessionaire. The Provisional Completion Certificate shall have appended thereto a list of outstanding items ("**Punch List**"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Independent Engineer, not exceeding 3 (three) weeks of the date of issue of the Provisional Completion Certificate. Upon satisfactory completion of all Punch List items, the Independent Engineer shall promptly and in any case within 7 (seven) days thereof, issue Completion Certificate.

iii. If the Concessionaire fails to complete the Punch List items within the said period of 3 (three) weeks, the ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost incurred by ULB in completing the Punch List items, as certified by the Independent Engineer, shall be reimbursed by the Concessionaire to ULB within 7 (seven) days from the date of receipt of a claim in respect thereof from ULB. Thereupon, the Independent Engineer, may issue Completion Certificate.

iv. The Independent Engineer, may, by written notice, require the Concessionaire to suspend forthwith for such period as considered necessary, the whole or any part of the procurement of the New Assets or Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements.

v. The Project Facilities shall be deemed to be complete and ready only when the Provisional Completion Certificate or the Completion Certificate is issued for the


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complete Project Facilities, by the Independent Engineer in accordance with the provisions hereof.

Provided if COD is delayed beyond 90 (ninety) days of the Scheduled Project Completion Date, ULB shall be entitled to terminate this Agreement and to forfeit the Performance Security.

5.7 Operation and Maintenance

The Concessionaire shall undertake the Project in accordance with the O&M Requirements, O&M Plan and O&M Manual.

- (a) The Concessionaire shall undertake the Operation and Maintenance (O&M) of the Project by itself. However, the Concessionaire may sub-contract part of the O&M activities to a Contractor possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- (b) The Concessionaire shall, during the Operations Period:
 - (i) well organized and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/ ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) conduct all Tests to ascertain compliance with the Development Plan and the O&M Requirements.
- (c) The Concessionaire shall during the Operations Period in accordance with the O&M Requirements:
 - (i) undertake door to door collection of MSW from Persons generating such waste in the Concession Area;
 - (ii) collect MSW from Persons generating such waste within the Concession Area
 - (iii) secondary collection of MSW
 - (iv) transport and deliver the MSW collected at the MSW Processing Facility or any other site as designated by ULB
 - (v) ensure supply of minimum Assured Incoming Waste at the MSW Processing Facility on monthly basis:

Assured Incoming Waste for first year of Operations Period = $80\% \times 1500 \text{ TPD} \times \text{number of days in such month}$



The above norms for the quantum of Assured Incoming Waste may be revised periodically as mutually agreed between the ULB and the Concessionaire keeping in view the actual MSW generation, growth in MSW generated and the requirement of MSW for processing by the MSW Processing Facility.

In the event, in any given month an aggregate quantity of Incoming Waste falls short of the Assured Incoming Waste, the Concessionaire shall pay a penalty which is equivalent to higher of (a) 50% of the Tipping fee payable for the shortfall in Assured Incoming Waste quantity or (b) 120% of the amount payable by the ULB to the MSW Processing Facility Operator for its default under the agreement for operation and maintenance of the MSW Processing Facility and SLF.

- (d) The Concessionaire shall during the Operations Period, collect User Charges, on behalf of the ULB as determined by ULB from time to time.
- (i) maintain and update the existing customer database of households available with ULB;
 - (ii) issue bills in accordance with the notification issued by the ULB;
 - (iii) collect the User Charges and deposit the same in the Escrow Account specified by ULB on a daily basis. All the cheque/ demand drafts collected shall be in favour of the Escrow Account.
 - (iv) make a list of Persons, who have not paid the User Charges and submit the same to the ULB for necessary action atleast on a monthly basis.
 - (v) Prepare and maintain appropriate record of User Charges collected, deposited, unpaid and submit the same to ULB in the manner and the periodicity laid down by the ULB from time to time
- (e) The Concessionaire shall ensure minimum collection efficiency of the total amount of user charges billable on a monthly basis at the user charges rates prescribed by ULB in consultation with the Concessionaire from time to time (typical schedule of charges is attached as Schedule XX) as per the threshold limits given in the table below. The User Charges billable shall exclude the specified groups and BPL families:

Operations Period	Threshold limits
I st year	30% of the total amount of User Charges billable on a monthly basis
II nd year	40% of the total amount of User Charges billable on a monthly basis
III rd year onwards	50% of the total amount of User Charges billable on a monthly basis





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In case a Person persistently defaults in making the payments for 3 consecutive months, then ULB shall initiate actions against defaulters for collection of user charges on its own.

In case the Concessionaire is unable to collect the user charges in accordance with this sub-clause (e), the ULB shall withhold such shortfall from the tipping fee payable to the Concessionaire for the particular month. However, if the collection of User Charges exceeds the above threshold limits in future/previous months during the concession period, such excess user charges shall be used to make payments to the Concessionaire of the withheld amount.

In case, the collection efficiency exceeds the above threshold limits on cumulative basis till that financial year end, then the following incentive shall be payable to the Concessionaire:

Incentive = 20% X [Total amount collected *less* amount to be collected as per the threshold limits]

The above incentive shall be calculated on annual basis.

5.8 Escrow Account

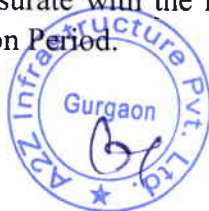
The Concessionaire shall maintain an escrow account with a bank of repute as acceptable to ULB ("**Escrow Account**"), during the subsistence of this Agreement and enter into an agreement with such bank and ensure that all the monies collected towards the User Charges are deposited into the Escrow Account.

Withdrawals and appropriations by ULB during the Operations Period, at any relevant time, from the Escrow Account shall be towards payment of Tipping Fee.

Provided that ULB shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and adequate reserves for next 1 (one) year of estimated Tipping Fee have been created.

5.9 Repair and Replacement

- (a) The Concessionaire shall at its cost, plan for replacement, replenishment and renewal as the case may be of the Project Facilities (including equipment/vehicles) well ahead of the time when the Project Facilities thereof is reasonably expected to expire its operating life or its impending obsolescence and replace the Project Facilities in accordance with Good Industry Practice so as to ensure that the Project commensurate with the requirements of this Agreement, at all times during the Concession Period.



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- (b) In case an irreparable damage to a vehicle and/or equipment, due to any reason (including but not limited to Force Majeure), the Concessionaire shall at its cost, within a maximum period of 30 (thirty) days, replace the damaged vehicle and/or equipment.
- (c) The Concessionaire shall not remove from the Project Facilities, any equipment, materials, consumable and non-consumable items that are required for the Project, without the prior written consent of ULB.
- (d) The Concessionaire shall maintain and complete accurate records of all equipment, materials, consumables and spare parts procured and shall provide copies of such records to ULB upon request.

5.10 Operation And Maintenance Plan and Operation And Maintenance Manual

Prior to making a request for issue of Project Completion Certificate for the Project, the Concessionaire shall, in consultation with ULB/ Independent Engineer, finalise:

- (a) an O&M Plan (“O&M Plan”) prepared in line with the Scope of Work of the Project, Statutory Requirement, Development Plan and compliance with the requirements of this Agreement.
- (b) a manual for the operations, regular and preventive maintenance of the Project Facilities (“O&M Manual”) and shall ensure and procure that at all times during the Concession Period, the Project Facilities are operated and maintained in accordance with the provisions hereof.

5.11 Vehicle Tracking and Monitoring System

The Concessionaire shall, at its own cost and expense install a Vehicle Tracking and Monitoring System in all the vehicles used by the Concessionaire for collection and transportation of MSW including the vehicles provide by the ULB. The Vehicle Tracking and Monitoring System should be able to provide the real time data related to the time, position and route taken by the vehicles and generate reports in the manner desired by the ULB.

5.12 Indemnification Against Accidents

- (a) The Concessionaire shall be solely responsible for and keeps the ULB indemnified against all the claims, damages, expenses, losses or injury to persons or property that may arise during the Concession Period by use of Project Facilities or part thereof including the vehicles/ equipment provide by the ULB.

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- (b) On the occurrence of an accident which leads or may lead to human loss, the Concessionaire shall within 24 (twenty four) hours of such accident, report in writing to the ULB clearly stating the facts in sufficient details explaining the circumstances of such accident and the subsequent actions taken by the Concessionaire.
- (c) In the event, compensation may become payable under any act or by judgment of any court/ competent authority thereof whether such compensation become payable by the Concessionaire or by the ULB, the same shall be borne and paid by the Concessionaire. If Concessionaire fails to pay the requisite compensation, ULB shall have the right to recover the same by encashment of the Performance Security and/ or from the Tipping Fees payable to the Concessionaire.

5.13 Insurance

5.13.1 The Concessionaire shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period all insurances in respect of the Project Facilities in accordance with the Good Industry Practice and have the same duly certified by the Independent Engineer inter alia the following:

- (a) Contractor's all risk insurance;
- (b) Cash-in-transit and cash-in-safe insurance in respect of the collections towards User Charges;
- (c) loss, damage or destruction of the Project Facilities, at replacement value;
- (d) comprehensive third party liability insurance including injury or death to personnel of the ULB and others who may enter the Project Facilities;
- (e) workmen's compensation insurance;
- (f) any other insurance that may be necessary to protect the Concessionaire, its employees, Project Facilities (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

The Concessionaire shall effect all such insurances with an insurer and on terms approved by ULB and if required by ULB in its sole discretion, in the joint names of ULB and the Concessionaire.

The Concessionaire shall maintain a register of entry in order of premiums paid towards the insurance and proof of payments made shall be submitted to ULB whenever requested for.



5.13.2 Application of Insurance Proceeds

Unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed.

5.13.3 Un-insurable Risks

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

5.14 Environmental Compliance

The Concessionaire shall, at all times, ensure that all aspects of the Project and the processes employed in the construction, operation and maintenance of the Project Facilities shall conform to the laws pertaining to environment, health and safety aspects including rules such as MSW Rules, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time necessary clearances from all Government Agencies and for this purpose shall carry out, in accordance with Applicable Laws, the necessary environmental impact assessment studies and implement appropriate environment management plans and submit necessary reports (including the reports to be submitted by ULB) as per Applicable Laws.

5.15 Land Use

The Concessionaire shall ensure optimum utilisation of the Project Site and shall not use the same for any purpose unconnected or which is not incidental to the Project or related activities.

5.16 Weighment of MSW

All the MSW collected in the Concession Area shall be transported and delivered by the Concessionaire at the MSW Processing Facility. There would be joint weighment of incoming MSW collected, transported and delivered by the Concessionaire at the entry gate to the MSW Processing Facility ("Incoming Waste") in the presence of the Concessionaire, Independent Engineer, authorized representative of ULB and the MSW Processing Facility Operator in the manner as set out in the O&M Requirements. The record of weighment shall be jointly signed by the Concessionaire, Independent Engineer

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and authorized representative of ULB and MSW Processing Facility Operator. The Concessionaire would keep a record of the same for a period of at least 10 (ten) years.

5.17 Reject Biomedical Waste, Hazardous Waste, Radioactive Waste

Although, the ULB shall make best efforts to ensure that Biomedical / Hazardous Waste/ radioactive waste does not form a part of the MSW, however in the event that Biomedical / Hazardous Waste/ radioactive waste is found to be mixed with the MSW, the Concessionaire shall segregate the same and transport it to the location as decided by the ULB for its further disposal by the ULB.

5.18 Maintenance of Warranties

The Concessionaire shall honour and preserve all product warranties for machinery and equipment (including the warranties provided by respective OEM). Further the Concessionaire shall take the appropriate action for the same.

5.19 Shareholding

- (a) **Ownership:** The Selected Bidder/ Consortium has caused the Concessionaire to be incorporated as a special purpose company with the sole objective of implementing the Project in accordance with this Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire is as follows:

Name of the shareholder	Number of shares held	Nominal/ face value per share	Percentage in total share capital of the Concessionaire

Equity Lock-In

- (b) The Concessionaire shall ensure that the shareholding in its issued and paid up equity share capital shall be as per the following:
- Where the Selected Bidder is a sole bidder, it shall hold at least 51% of the issued and paid up equity share capital of the Concessionaire throughout the entire Concession Period;
 - Where the Selected Bidder is a bidding Consortium, the Lead Member shall hold at least 51% of the issued and paid up equity share capital of the Concessionaire throughout the entire Concession Period. The other Members whose Eligible Experience Criteria and/or Technical Capability and/or Financial Capability have

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been considered for the purpose of qualification as per the RFP shall hold at least 10% of the issued and paid up equity share capital of the Concessionaire throughout the entire Concession Period.

- (c) If the Selected Bidder, Lead Member or Member, as the case may be, invests through any Associate, the Concessionaire shall ensure that:
- (i) such Associate shall be subject to the above equity lock-in as applicable to the Successful Bidder, Lead Member and/or Member, as the case may be.
 - (ii) the Selected Bidder, Lead Member or other Members shall be liable to ensure that the entity that it is relying upon as an Associate to discharge the above equity lock-in requirement continues to be its Associate during the above equity lock-in period as applicable.

5.20 Awareness Campaign

The Concessionaire shall assist the ULB in organizing and conducting the public awareness programs.

5.21 Books of Account

5.21.1 The Concessionaire shall maintain books of accounts recording all its receipts (including Tipping Fee and other revenues derived/ collected by it from or on account of the Project and/or its use), collection of User Charges on behalf of ULB, income, expenditure, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account along with a report thereon by its Statutory Auditors, within 6 (six) months of the close of the Accounting Year to which they pertain. In addition the Concessionaire shall also submit a statement of fixed assets forming part of the Project Facility, as on the end of the Accounting Year, duly certified by the Statutory Auditor. The statement of fixed assets shall provide the inventory of fixed assets as on the end of Accounting Year along with a list of additions and deletions during the period.

5.21.2 The ULB or its authorised representatives shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts to be provided to the ULB and in the event of any discrepancy or error being found, the same shall be rectified by the Concessionaire in its books of account.



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5.22 General Obligations

5.22.1 Subject to and in accordance with the terms and conditions of this Agreement, the Concessionaire shall to the satisfaction of the ULB, with due care and diligence, design and execute the Construction Works as is required under the Construction Requirements and carry out its other obligations under and/or in relation to or reasonably to be inferred from the Agreement and provide all personnel and labour, including the supervision thereof, materials, offices, workshops, tools, machinery, equipment and all other resources and things, whether of a temporary or permanent nature, required in or for such design and execution and for carrying out such obligations.

The personnel and labour used by the Concessionaire for the Project shall be responsibility of the Concessionaire and ULB shall in no case be responsible, in any manner to such personnel and labour.

5.22.2 The Concessionaire shall assume full responsibility for the proper and timely design and execution of the Construction Works in accordance with this Agreement.

5.22.3 The Concessionaire shall be fully responsible for the acts or omissions of all its employees, agents, workmen, suppliers, consultants, Contractors and any other persons for whom it is contractually responsible for, as if such acts of omissions were its own.

5.22.4 The Concessionaire shall be responsible for maintaining the Project Facilities so as to keep it in good operable conditions which shall include but is not limited to all day-to-day maintenance and repairs of the Project Facility and replacement of equipments/consumables (irrespective of actual usage and loading levels and irrespective of whether the maintenance, repair or replacement work is required because of any defect in the Project Facility (latent or otherwise) or due to faulty workmanship or defective design or construction or any other reason whatsoever and whether or not it is known to the ULB);

5.22.5 The Concessionaire shall at its own cost and expense:

- a. design, engineer, procure, finance, modify, construct, operate, maintain and transfer the Project Facilities in accordance with the provisions hereof;
- b. comply with Applicable Laws at all times during the Concession Period;
- c. endeavor to improve the ancillary conditions and infrastructure related to the Project, including assistance to informal recycling workers;
- d. assist in carrying out Awareness Campaign in accordance with the provisions of Schedule K;



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provide uniforms for all its employees/ Contractor's personnel which shall be worn by such employees/personnel while on duty;

- f. register vehicles used for transportation of segregated MSW with the concerned Government Agencies and ensure that all taxes are paid up-to-date on such vehicles;
- g. 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;
- h. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and 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 ULB against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall ULB be treated as employer in this regard;
- i. make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- j. be responsible for quality, soundness, durability, safety and the overall Construction Requirements and O&M Requirements;
- k. be responsible for all the security, environment and safety aspects of the Project at all times during the Concession Period.
- l. ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- m. upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of ULB for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- n. pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities.
- o. establish a standard protocol for addressing complaints from Persons in the Concession Area to the satisfaction of the Independent Engineer in accordance with the O&M Requirements.



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- p. submit reports regarding matters specified in Schedule E and F.
- q. ensure and procure that any contract relating to the Project, entered into by the Concessionaire for implementing the Project in accordance with this Agreement contains provisions that would entitle Lenders or a nominee of ULB to step into such contract/s at ULB's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement
- r. Replace all equipments and vehicle as and when required, after the completion of their useful life during the entire Concession Period
- s. Transfer all equipments and vehicle in good working condition after expiry of the Concession Period

5.23 Damages for shortfall/ non-compliance in Operations & Maintenance Performance

- 5.23.1 In the event the ULB, whether from the review of reports submitted by the Concessionaire/ Independent Engineer in accordance with the provisions of this Agreement or otherwise, observes that the Project/Project Facilities do not comply or fall short of performance as per the provisions of this Agreement, the ULB may levy the amount of Damages payable by the Concessionaire in accordance with Schedule L of this Agreement and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) days and on failure of the Concessionaire to pay the same, the ULB shall recover the amount from the Concessionaire from the monthly Tipping Fee invoice and/ or by encashment of the Performance Security. Provided that upon receipt of the demand the Concessionaire may make a written representation to the ULB which shall be considered by the ULB on merits and the ULB may waive the payment of Damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution procedure shall apply.
- 5.23.2 The ULB shall review the above performance of the Concessionaire and may levy Damages on a monthly basis in accordance with Schedule L. However, the Damages shall be leviable only after the expiry of 6 months from COD
- 5.23.3 The Damages set forth in Article 5.23.1 may be assessed and specified forthwith by the Independent Engineer; provided that the ULB may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations under this Agreement.

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5.23.4 It is clarified that this provision does not prejudice the rights of the ULB upon a Concessionaire Event of Default as set out in Article 10.1 including the ULB's right to terminate this Agreement which shall remain unaffected.

5.24 Breach of O&M Obligations

5.24.1 The Concessionaire shall be deemed to be in Material Breach of O&M Requirements, if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (i) there has been failure/ undue delay in carrying out scheduled/ planned maintenance or the scheduled/ planned maintenance has not been carried out in accordance with the O&M Requirements;
- (ii) The maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (iii) There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
- (iv) There has been persistent breach of O&M Requirements.

For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a notice to remedy in respect thereof issued by the Independent Engineer/ ULB;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of notice to remedy by the Independent Engineer/ ULB, requiring the Concessionaire to remedy a breach, and
- (iii) repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to notice to remedy or otherwise.

Upon occurrence of a material breach of O&M Requirements, ULB shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, depending upon the nature of the obligation in respect of which a Material Breach has occurred, be entitled to either levy Damages and thereafter terminate this Agreement, if such breach takes place for 2 consecutive weeks or in

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respect of breach of obligations by the Concessionaire which are of a serious nature, immediately terminate this Agreement.

5.25 No Breach of Obligations

The Concessionaire 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:

- (a) Force Majeure Event, subject to Article 9.3;
- (b) ULB Event of Default;
- (c) Compliance with the instructions of the Independent Engineer /ULB or the directions of any Government Agency.

Provided that the instructions should not have been issued as a consequence of a breach by the Concessionaire of any of its obligations under this Agreement; or

- (d) Closure of the Project Facilities or part thereof with the approval of the ULB.

ARTICLE 6

ULB's OBLIGATIONS

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

6.1 Specific obligations

The ULB shall:

- a. notify the User Charges, if any to be collected along with the mechanism for collection, recovery from defaulters, etc.
- b. facilitate the Concessionaire in collection of User Charges in case of non-payment of User Charges by any person as per the procedure laid down by the ULB from time to time.
- c. grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from ULB under this

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Agreement, in connection with implementation of the Project and the performance of its obligations.

- d. subscribe to the Substitution Agreement within 45 days of such written request made by the Concessionaire;

6.2 General obligations

The ULB shall:

- (i) upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Agency for implementation of the Project. It is clarified that, the Concessionaire shall be solely responsible for obtaining all Applicable Permits;
- (ii) observe and comply with all its obligations set forth in this Agreement.

6.3 Change in location of MSW Processing Facility

ULB shall be entitled to change the location where the collected MSW is required to be transported by the Concessionaire. In such a case, both the Parties shall hold discussions in good faith and may conduct necessary surveys/ studies, to revise the Tipping Fees on mutually agreed terms to account for the differential distance to be travelled by the vehicles for dumping of collected MSW.

ARTICLE 7

Capital Grant

7.1 Capital Grant for the Project

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, ULB and C&DS, UPJN agrees to provide the Capital Grant to the Concessionaire as mentioned below:


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Collection and Transportation of MSW for Kanpur Municipal Corporation, UP
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Sl. No	Particulars	Amount
1)	One time capital grant for procurement of the equipment and vehicles towards primary & secondary collection and transportation of MSW. (the "Capital Grant")	Rs. 3064.59 lakhs मु०म०प्र०(प्र०)



(a) C&DS, UPJN shall make the payments of the Capital Grant to the Concessionaire, after obtaining approval from the ULB as per the following milestones :

Sr. No	Milestone	Prerequisite for Release of payment	% of Capital Grant to be Released
Collection and Transportation Services			
1)	On signing of the Agreement	Submission of equivalent amount of bank guarantee	15% of the Capital Grant
2)	Receipt of the equipment/ vehicles at site for collection and transportation in accordance with the Development Plan and rates, make and specifications approved by C&DS, UPJN. (The Concessionaire shall procure the equipment/ vehicle in a manner that the delivery of the same is being made not before 45 days prior to COD, unless otherwise agreed by the C&DS, UPJN)	Monthly Claim for Capital Grant supported by: (i) Monthly statement of equipment/ vehicle purchased providing date of procurement, supplier, make, specifications, purchase order number, date and value and amount paid during the month and till date. (ii) Verification of equipment/ vehicles by Independent Engineer in accordance with the Development Plan (iii) A Chartered Accountant certificate certifying the payment made for the purchase of the equipments/ vehicles	75% of the proportionate total capital expenditure incurred and paid vis-à-vis the total estimated project cost as per the Development Plan. Provided the said payment shall not be more than the expenditure incurred and paid by the Concessionaire on the equipment / vehicle



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Sr. No	Milestone	Prerequisite for Release of payment	% of Capital Grant to be Released
3)	COD	Final Claim for Capital Grant supported by: (i) A Chartered Accountant certificate certifying the total payment made for the purchase of the equipments/ vehicles (ii) Issue of Completion Certificate by Independent Engineer	10% of the Capital Grant *

Note *: This would be paid, subject to the following:

- (i) During the Construction Period, minimum capital expenditure to be incurred on Collection and Transportation Services shall be ~~3064.59 Lakhs~~ ^{3064.59 Lakhs}. In case the actual expenditure incurred is less than Rs ~~3064.59 Lakhs~~ ^{3064.59 Lakhs} then the Capital Grant would be reduced proportionately.
- (ii) In case the capital expenditure incurred on Collection and Transportation Services is more than the Capital Grant, during the Construction Period, then Capital Grant, would be Rs. ~~3064.59 Lakhs~~ ^{3064.59 Lakhs}.

7.2 Mechanism of Payment

- (a) C&DS, UPJN shall, within 20 (twenty) days from the date of receipt of the monthly claim for Capital Grant would verify, review and process the claim and release the monthly claim for Capital Grant.
- (b) On submission of final claim by the Concessionaire, C&DS, UPJN shall, within 20 (twenty) days from the date of its receipt would verify and review the claim and send it to the ULB for their recommendations to release the final installment of the Capital Grant. ULB shall give its recommendations for release the Capital Grant within 15 (fifteen) days of receipt of duly processed final claim from the C&DS, UPJN.
- (c) C&DS, UPJN shall, within 10 (ten) days from the date of receipt of recommendation of the ULB, release the Capital Grant to the Concessionaire subject to the fulfillment of the conditions as detailed above.

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ARTICLE 8

TIPPING FEE

8.1 Payment of Tipping Fee

Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, ULB agrees and undertakes to pay Tipping Fee to the Concessionaire as per this Article.

8.2 Tipping Fee

- (a) The Tipping Fee for the first year of the operation commencing from the COD shall be payable as per the Tipping Fee rate per MT quoted by the Selected Bidder in its Financial Proposal shall be for the first year of the operations and maintenance year. The Tipping Fee for the subsequent operating years shall be payable as per the Tipping Fee rate per MT quoted for the respective subsequent operations and maintenance year in the Financial Proposal. The Tipping Fee per MT quoted by the Selected Bidder for the first year and the subsequent years are reproduced in Schedule G.
- (b) The Concessionaire shall prepare a monthly invoice duly certified by the authorized representative of ULB responsible for verifying the weighment of Incoming MSW and Independent Engineer and submit the monthly invoice by the 7th day of next month. The monthly invoice shall be supported by the original copy of the daily weighment statement duly signed by the authorized representative of ULB responsible for verifying the weighment of Incoming Waste, Independent Engineer and the MSW Processing Facility Operator alongwith the monthly summary statement giving the following:
- Date wise quantity of Incoming Waste for the month
 - Total quantity of Incoming Waste for the month;
 - Amount of total Tipping Fee for the month calculated at the applicable quoted Tipping Fee rate set out in Schedule G multiplied with Incoming Waste.
 - Amount of penalty to be deducted in terms of Article 5.7 (c) towards shortfall of Assured Incoming Waste.
 - Amount of incentive to be payable in terms of Article 5.7 (e) towards the collection of the User Charges (this amount shall be due on an annual

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basis and the details thereof for a year shall be provided in the monthly bill raised in the following year).

8.3 Mechanism of Payment

- (a) ULB shall make the payment, within 30 days from the date of receipt of the Tipping Fee invoice. Further, ULB shall be entitled to make deduction if any, required in respect of the amount payable by the Concessionaire as per the terms of this Agreement. The payment of Tipping Fee shall be further subject to Article 5.7 (e) of the Concession Agreement.
- (b) ULB shall issue instructions to the Escrow Bank for release of payment from the Escrow Account. In case, Escrow Account has funds less than the amount payable to Concessionaire, ULB shall make the balance payments.
- (c) In the event during the first 6 month after COD (Stabilisation Period) ULB is financially constrained to make full payment of Tipping Fee payable to the concessionaire, it shall make minimum payment of amount equivalent to the collected User Charges for the corresponding month plus Rs. 50.00 (Fifty) Lakhs.

The balance accumulated unpaid Tipping Fee for the Stabilisation Period shall be paid by the ULB to the concessionaire in 12 equal monthly installments without any interest. The first month installments shall be payable within 15 days of the completion of 12 months from the COD and subsequent monthly installments shall be payable in subsequent 11 consecutive months within 15 days of beginning of each month.

ARTICLE 9

FORCE MAJEURE

9.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("**Affected Party**"), and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation, landslide, fire, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion,

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- volcanic eruptions caused by reasons not attributable to the Concessionaire or any of the employees, contractors or agents of the Concessionaire
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
 - (c) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - (d) acts of terrorism, war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war;
 - (e) strikes, labour disruptions, any other industrial disturbances or public unrest not arising on account of the acts or omissions of the Concessionaire or the Contractor;
 - (f) action of a Government Agency having Material Adverse Effect, including but not limited to:
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project/Project Facilities or any part thereof or of the Concessionaire's or the Contractor's rights in relation to the Project,
 - (ii) any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Construction Requirements, O&M Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
 - (g) early termination of this Agreement by ULB for reasons of national emergency or national security.

9.2 Notice of Force Majeure Event

- (a) As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify Independent Engineer and the other Party of the same setting out, inter alia, the following in reasonable detail:
 - (i) the nature and extent of the Force Majeure Event;



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- (ii) the estimated Force Majeure period;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding Sub-article(a), the Parties shall along with the Independent Engineer, meet, hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
- (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure period and,
 - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure period provide to the other Party and the Independent Engineer regular (not less than weekly) reports concerning the matters set out in the preceding Sub-article (b) as also any information, details or document, which the other Party may reasonably require.

9.3 Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given as required by the preceding Article 9.2 (a);
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;

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- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Independent Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

9.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, excluding events described under Articles 8.1(f), and 8.1 (g), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 60 (sixty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 60 (sixty) days, be entitled to terminate this Agreement.

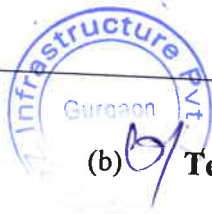
Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is an event described under Article 9.1(f) and the same subsists for a period exceeding 180 (one hundred and eighty) days, then either Party shall be entitled to terminate this Agreement.

Provided that ULB may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Article 9.1(f).



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(b) **Termination Notice**

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub-article (a), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof; and
- (iv) any other relevant information.

(c) **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:

- (i) the Termination Payment, if any, payable by ULB in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date; and
- (ii) the Project Facilities is handed over to ULB by the Concessionaire on the Termination Date free from any Encumbrance.

(d) **Termination Payment**

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by ULB in accordance with the following:

- (i) If Termination is due to a Force Majeure Event, described under Articles 9.1 (a) to (c), ULB shall make a Termination Payment to the Concessionaire, which shall be limited to the 70% (seventy percent) of lower of the following amounts, less Insurance Cover:
 - (a) Book Value
 - (b) the replacement value of Project Facilities (excluding the Existing Assets and any other assets funded/ provided by the ULB), as assessed by an Approved Valuer, who shall be selected and

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appointed by the C&DS, UPJN, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder.

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

For avoidance of doubt, it is clarified that the Termination Payment shall not be payable towards the Existing Assets and any other assets funded/ provided by the ULB.

(ii) If Termination is due to the occurrence of any event described under Articles 9.1(d), or 9.1(e), ULB shall make a Termination Payment to the Concessionaire of an amount, which shall be limited to the 100% (one hundred percent) of lower of the following amounts, less Insurance Cover:

(a) Book Value

(b) the replacement value of Project Facilities (excluding the Existing Assets and any other assets funded/ provided by the ULB), as assessed by an Approved Valuer, who shall be selected and appointed by the C&DS, UPJN, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

For avoidance of doubt, it is clarified that the Termination Payment shall not be payable towards the Existing Assets and any other assets funded/ provided by the ULB.

(i) If Termination is due to the occurrence of the event described under Article 9.1 (f) or 9.1 (g), ULB shall make a Termination Payment to the Concessionaire of an amount that would be payable under Article 10.2(f) as if it were ULB Event of Default.

Provided ULB shall be entitled to deduct from the Termination Payment any amount due and recoverable by ULB from the Concessionaire as on the Termination Date.



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Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover in accordance with Article 5.13 of this Agreement.

9.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

ARTICLE 10

EVENTS OF DEFAULT AND TERMINATION

10.1 Events of Default

Event of Default means either Concessionaire Event of Default or ULB Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Article 5.25:

- (i) The Concessionaire fails to submit the Development Plan/ Drawings beyond 45 (forty five) days of the specified time;
- (ii) The Concessionaire fails to comply with the Development Plan/ Drawings having a Material Adverse Effect on the Project;
- (iii) The Concessionaire has failed to adhere to the Construction Requirements and such failure, in the reasonable estimation of the Independent Engineer, is likely to delay achievement of COD beyond 90 days of the Scheduled Project Completion Date or has actually resulted in the Concessionaire not achieving COD within 90 (ninety) days of the Scheduled Project Completion Date;
- (iv) At any time during the Operations Period, the Concessionaire fails to adhere to the Construction Requirements or O&M Requirements and has

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- failed to remedy the same or has failed to take any effective steps to remedy the same within 45 (forty five) days of receipt of notice from ULB;
- (v) The Concessionaire has failed to make payment of any sum that has become due and payable to ULB under provisions of this Agreement and such amount remains unpaid for a period beyond 45 days;
- (vi) The Concessionaire has failed to prepare and submit reports referred to in Schedule E and F in accordance with this Agreement and such failure continues for a period of more than 60 (sixty) days after intimation by ULB;
- (vii) The Concessionaire has failed to ensure minimum shareholding requirements specified in Article 5.19.
- (viii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 30 (thirty) days;
- (ix) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (x) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (xi) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire 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 ULB, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreements
- (xii) The Concessionaire has abandoned the Project or the Project Facilities;
- (xiii) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xiv) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the

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Project and such attachment has continued for a period exceeding 45 (forty five) days;

b) ULB Event of Default

Any of the following events shall constitute an event of default by ULB ("ULB Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) ULB has failed to make any payments due to the Concessionaire and more than 180 (one hundred and eighty) days have elapsed since such default;
- (ii) ULB has failed to deliver possession of any of the Existing Assets to the Concessionaire or failed to provide adequate access to or Project Site within 45 (forty five) days from the date of receipt of notice from the Concessionaire in that regard;
- (iii) ULB is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- (iv) ULB has failed to execute the Substitution Agreement in accordance with Article 6.1 or having executed the same is in breach of any of its obligations there under and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire.
- (v) ULB has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (vi) ULB has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect; and
- (vii) Any representation made or warranties given by the ULB under this Agreement has been found to be false or misleading.

10.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which ULB may have in respect thereof under this Agreement, upon the occurrence of a

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Concessionaire Event of Default, ULB may subject to the provisions of the Substitution Agreement, terminate this Agreement in the manner as set out under Article 10.2(a)(ii) and Article 10.2(a)(iii).

- (ii) If ULB decides to terminate this Agreement pursuant to preceding Sub-article (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to ULB in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security

(b) Termination for ULB Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of ULB Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding Sub-article (i) it shall in the first instance issue Preliminary Notice to ULB. Within 30 days of receipt of Preliminary Notice, ULB shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "ULB Proposal to Rectify"). In case of non submission of ULB Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If ULB Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, ULB shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however ULB fails to remedy/ cure the underlying Event of Default within such further period

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allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub-article (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

(d) 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:

- i until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- ii the termination payment, if any, payable by ULB in accordance with the following Sub-article (f) is paid to the Concessionaire on the Termination Date and
- iii the Project Facilities are handed over to ULB by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to ULB.

(e) Withdrawal of Termination Notice

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.


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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.

(f) Termination Payments

(i) Upon Termination of this Agreement on account of ULB Event of Default, ULB shall release the Performance Security, if subsisting, and ULB shall pay to the Concessionaire, by way of Termination Payment, an amount which shall be limited to the 100% (one hundred percent) of lower of the following amounts, less Insurance Cover:

(a) Book Value

(b) the replacement value of Project Facilities (excluding the Existing Assets and any other assets funded/ provided by the ULB), as assessed by an Approved Valuer, who shall be selected and appointed by the ULB, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

For avoidance of doubt, it is clarified that the Termination Payment shall not payable towards the Existing Assets and any other assets funded/ provided by the ULB.

Provided that no Termination Payment shall be due or payable to the Concessionaire on account of a ULB Event of Default relating to non-achievement of Appointed Date.

(ii) Upon Termination of this Agreement on account of Concessionaire Event of Default, ULB shall pay to the Concessionaire, by way of Termination Payment, which shall be limited to the 70% (seventy percent) of lower of the following amounts, less Insurance Cover:

(a) Book Value



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the replacement value of Project Facilities (excluding the Existing Assets and any other assets funded/ provided by the ULB), as assessed by an Approved Valuer, who shall be selected and appointed by the ULB, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

For avoidance of doubt, it is clarified that the Termination Payment shall not payable towards the Existing Assets and any other assets funded/ provided by the ULB.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Event of Default occurring up to 1 year from the COD. Further, the ULB shall forfeit Performance Security and would not release any further Capital Grant.

(iii) Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.

10.3 Rights of ULB on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, ULB shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
- enter upon and take possession and control of the Project Facilities forthwith;
 - prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/ dealing with the Project Facilities;
- (b) Notwithstanding anything contained in this Agreement, ULB 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 Concessionaire in connection with the Project, and the handback of the Project Facilities by the Concessionaire to ULB shall be free from any such obligation. It is clarified that only the Project Facilities of the Concessionaire shall be taken over and not the liabilities.



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10.4 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 Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 11

HANDBACK REQUIREMENTS

11.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Facilities, including all modifications, renovations and improvements made therein by the Concessionaire, shall at all times remain with ULB.

11.2 Concessionaire's Obligations

(a) Project Facility

- (i) The Concessionaire shall on the date of expiry of the Operations Period, hand back vacant and peaceful possession of the Project Facility including Existing Assets, any tools, spares, inventory, machinery and all other movables required for its functioning to ULB free of cost and in good operable /working condition.
- (ii) At least 3 (three) months before the expected expiry of the Operations Period a joint inspection of the Project Facility shall be undertaken by ULB, Independent Engineer and the Concessionaire. ULB/ Independent Engineer shall, within 15 (fifteen) days of such inspection prepare and furnish to the Concessionaire a list of minor and petty works/ jobs ("Handback Requirements"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least one month prior to the expected expiry of the Operations Period and ensure that the said Project Facility continue to meet such requirements until the same are handed back to ULB.



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ULB/ Independent Engineer shall, within 15 (fifteen) days of the joint inspection undertaken under preceding Sub-article prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to ULB along with the said Project Facilities

- (b) The Concessionaire hereby acknowledges ULB's rights specified in Article 10.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

11.3 ULB's Obligations

In the event that the Concessionaire has not complied with its obligations with reference to Handback Requirements and/or O&M Requirements, the ULB shall, deduct amounts from the Performance Security in proportion to the activities/tasks outlined herein below:

- (i) carrying out works/jobs listed under Article 11.2, which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to ULB in terms of Article 11.2, and
- (iii) any outstanding dues, which may have accrued in respect of the Project during the Concession Period,

duly discharge and release to the Concessionaire, the Performance Security or balance therein after deductions in respect (i), (ii) and (iii) above, as the case may be, upon issuance of certificate by the Independent Engineer regarding compliance by the Concessionaire with the Handback Requirements.

ARTICLE 12

DISPUTE RESOLUTION

12.1 Amicable Resolution

- (a) 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, including those arising with regard to acts, decision or opinion of the Independent Engineer (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Sub-article (b) below.



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(b) Either Party may require such Dispute to be referred to the Commissioner of the ULB for amicable settlement. Upon such reference, the Commissioner shall meet the Chief Executive Officer of the Concessionaire, at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 12.2 below.

12.2 Arbitration

(a) Procedure

Subject to the provisions of Article 12.1, 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.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Lucknow but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(c) English Language

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

(d) 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.



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(e) 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.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Concessionaire

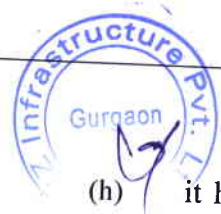
The Concessionaire represents and warrants to ULB that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's charter documents 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;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;



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- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from ULB of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement, all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in ULB on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or ULB;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ULB or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession;
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Existing Assets, and the information provided by ULB, 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 Concessionaire in the course of performance of its obligations hereunder; and
- (n) The Concessionaire 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 ULB shall not be liable for the same in any manner whatsoever to the Concessionaire.

13.2 Representations and Warranties of ULB

ULB represents and warrants to the Concessionaire that:

- (a) ULB has full power and authority to grant the Concession;



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- (b) ULB has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes ULB's legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- (d) There are no suits or other legal proceedings pending or threatened against ULB in respect of the Assets or the Project.

13.3 Obligation to Notify Change

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.

ARTICLE 14

DISCLAIMER

14.1 Disclaimer

- (a) The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Project Site, local conditions, and all information provided by the ULB/ C&DS, UPJN or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy, adequacy, correctness, reliability or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Article 13.2, the ULB and C&DS, UPJN makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the ULB and / C&DS, UPJN in this regard.
- (b) The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article (a) above and hereby acknowledges and agrees that the ULB shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their Associates} or any person claiming through or under any of them.



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ARTICLE 15

MISCELLANEOUS

15.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of ULB.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities, except with prior consent in writing of ULB, which consent ULB shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in Sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

15.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment

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thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 2% over and above SBI PLR % per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same, unless specified otherwise in this Agreement. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

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

15.3 Governing Law and Jurisdiction

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

15.4 Waiver of immunity

Each Party unconditionally and irrevocably:

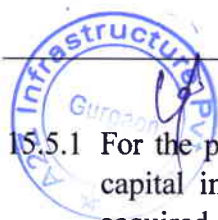
- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

15.5 Depreciation and Interest



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15.5.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the ULB shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

15.5.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement.

15.6 Liability for review of Documents, Reports and Development Plan

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the ULB or the Independent Engineer of any documents including project agreement(s), periodic reports, financial statements, Development Plan, Drawings, O&M Plan, O&M Manual or any other documents submitted by the Concessionaire nor any observation or inspection of the development, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the ULB shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-article (a) above.

15.7 Waiver

- (a) 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:
 - (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;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised 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/breach of any terms, conditions or provisions of this Agreement.



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Termination of this Agreement

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

15.9 Entire Agreement

This Agreement, Annexures 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 such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposal, as the case may be, shall be deemed to form part of this Agreement and treated as such.

15.10 Amendments, Modifications or Alterations

No amendments, modifications or alterations of or any additions to the terms and conditions of this Agreement shall be valid unless the same be in writing and agreed to by the Parties.

15.11 Notices

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

If to ULB:

The Commissioner,



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If to C&DS, UPJN

Director
Construction & Design Services
Uttar Pradesh Jal Nigam
2, Lal Bahadur Shastri Marg
Lucknow – 226001

If to the Concessionaire:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

- (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

15.12 Severability

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

15.13 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.

15.14 Third Parties



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This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

15.15 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

15.16 Language

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

15.17 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.

15.18 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

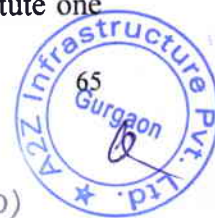
- (a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts;
- (b) consents generally in respect of the enforcement of any judgment against it in any proceedings, in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use.

15.19 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

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and only the Agreement. Further, it is agreed that this Agreement shall have no effect and implications against any Party unless the Agreement has been duly executed by all three Parties mentioned herein.

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 ULB by

Name:

Designation:

SIGNED, SEALED AND DELIVERED

For and on behalf of the C&DS, UPJN by:

Name:

Designation: Chief General Manager

SIGNED, SEALED AND DELIVERED

For and on behalf of the Concessionaire by:

For a2z Infrastructure Private Limited

Authorised Signatory

Name:

Designation:

In the presence of




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SCHEDULES TO THE CONCESSION AGREEMENT

SCHEDULE	PARTICULARS
SCHEDULE A	CONCESSION AREA DETAILS
SCHEDULE B	WORKSHOP SITE
SCHEDULE C	LIST OF EXISTING ASSETS
SCHEDULE D	LIST OF NEW ASSETS
SCHEDULE E	CONSTRUCTION REQUIREMENTS I General II Specific
SCHEDULE F	OPERATION AND MAINTENANCE REQUIREMENTS I General II Specific
SCHEDULE G	TIPPING FEE
SCHEDULE H	INDEPENDENT ENGINEER
SCHEDULE I	SUBSTITUTION AGREEMENT
SCHEDULE J	PERFORMANCE SECURITY
SCHEDULE K	AWARENESS CAMPAIGN
SCHEDULE L	DAMAGES

Enclosures

- Enclosure 1 of Schedule A Map Showing the Boundary of the Concession Area
Enclosure 1 of Schedule B Topographic Survey of the Workshop Site
Enclosure 1 of Schedule E Specifications for Collection & Transportation Equipments

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SCHEDULE A

CONCESSION AREA DETAILS

The Concession area is the area falling within the jurisdiction of the Kanpur Municipal Corporation. The map showing the boundary of the Concession Area is enclosed as Enclosure 1 to this Schedule.



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SCHEDULE B


WORKSHOP SITE

1. Name of the Site:

2. Location of the Site:

The Topographic Survey of the site is enclosed as Enclosure 1 to this Schedule.




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SCHEDULE C

LIST OF EXISTING ASSETS


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SCHEDULE D

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LIST OF NEW ASSETS

Based on the Development Plan, the Concessionaire shall procure the following New Assets for implementing collection and transportation part of the Project in accordance with this Agreement:

Sl. No.	Assets	Specifications	Number
1.	Primary collection bins		
2.	Primary storage bins		
3.	Waste bins		
4.	Loading equipments		
5.	Transport vehicles		
6.	Transfer Stations		
7.	Complaint handling center		



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SCHEDULE E

CONSTRUCTION REQUIREMENTS

The Construction Requirements to be complied by the Concessionaire has been laid down in this Schedule. The Construction Requirements under this schedule has been divided in the following sections:

- I General
- II Specific



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SECTION I

CONSTRUCTION REQUIREMENTS-GENERAL

1. **General**
 - 1.1 The Concessionaire shall, within 15 days of the Appointed Date and prior to any construction activity, finalize in consultation with the Independent Engineer:
 - (i) Development Plan.
 - (ii) Quality assurance and quality control procedures to cover all aspects of the Construction Works so as to ensure the desired quality.
 - 1.2 The Concessionaire shall give due weightage to the intent of ULB to upgrade the collection and transportation system for handling MSW.
 - 1.3 The concessionaire will be responsible to ensure that the Project meets all the Applicable Laws, stipulated including MSW (Handling and Management) Rules 2000, CPHEEO guidelines, pollution norms and other relevant guidelines. The Concessionaire will be responsible to obtain and maintain all the clearances, permits and approvals for the project.
 - 1.4 As per the colour coding requirements of the MSW Rules, the entire MSW management system shall have separate components for Biodegradable Waste and Non- Bio degradable Substance.
 - 1.5 The Concessionaire shall be responsible for the provision of requisite plant, machinery, vehicles, equipments and other equipment essential for implementation of the project. This shall also include any redundancy, spare vehicles/ equipment to meet the Construction Requirements and O&M Requirements.
 - 1.6 The Concessionaire shall provide New Assets, additional vehicles/ equipments, for implementation of the Project, in accordance with the Development Plan and the terms of this Agreement.
 - 1.7 The Concessionaire will be responsible for the provision of intangible assets, technical inputs, consumable materials and required staff for construction, operation, maintenance and management of the project facility. The cost of power & water required during construction and testing period will be borne by the Concessionaire.


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- 1.8 The Concessionaire shall at its own cost and expense provide all additional equipments/ vehicles, capacity addition to the Project Facilities required for the Project during the Concession Period in accordance with this Agreement.
- 1.9 A committee shall be formed with representatives of ULB, Concessionaire and Independent Engineer as members, to ensure that Project Facility funded from the C&T Capital Grant are procured at the competitive prices.

2. Codes and Standards

The following standards in order of preference shall be adopted in consultation with the Independent Engineer, unless otherwise specified:

- (i) MSW Rules
- (ii) Central Public Health & Environmental Engineering Organisation (CPHEEO) guidelines/ standards
- (iii) Bureau of Indian Standards (BIS)
- (iv) All applicable rules, regulations, acts, guidelines, standards of Central Pollution Control Board (CPCB)
- (v) All applicable rules, regulations, acts, guidelines, standards of Uttar Pradesh Pollution Control Board (UPPCB)

3. Procedures

3.1. Before Commencement of Construction

3.1.1. Within 15 days of Appointed Date, the Concessionaire shall submit and finalize a Development plan for the Project in consultation with the Independent Engineer within the timeline specified in Article 5. The Development Plan shall, inter alia, include:

- (i) A detailed schedule of implementation for putting up and operationalising the Project Facilities, which shall specify at least four major milestones;
- (ii) The Critical Path Method (CPM)/ Programme Evaluation and Review Technique (PERT) charts or similar activity planning technique/ method for monitoring. This would cover all stages/ aspects of implementation of the Project Facilities including design and engineering, procurement of materials and equipment, installation, construction and testing;
- (iii) Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project-related activities. (This would include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, safety, environmental

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- management, plant and equipment maintenance, procurement, materials management and quality control);
- (iv) Procurement plan covering including details of equipment and machinery that would be used, their locations, and arrangements for conveying and handling materials
- (v) Details of the quality assurance and quality control procedures.

3.1.2. The Concessionaire shall have:

- (i) Finalized such Development Plan, Drawings in consultation with the Independent Engineer;
- (ii) Obtained all such Applicable Permits as are necessary to commence construction of such Project Facilities;
- (iii) Mobilised the requisite resources, personnel and organisation necessary for the same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise construction of the Project and for exchange of information with the Independent Engineer and ULB;
- (iv) Finalised in consultation with the Independent Engineer quality assurance and quality control procedures to cover all aspects of the work so as to ensure the desired quality of Development Plan. This would include establishment of a well-equipped functional laboratory.

3.1.3. The Concessionaire shall immediately upon commencement of Construction Works notify ULB of the same.

3.2. **During Construction**

3.2.1. The Concessionaire shall:

- a. ensure that the construction/ renovation /rehabilitation of the Project Facilities is undertaken with minimal inconvenience to the public/ ULB operations;
- b. take precautions to avoid inconvenience, damage, destruction or disturbance to any third party's rights and properties;
- c. mobilize adequate numbers of equipment and machinery to ensure adherence to the Development Plan;
- d. deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Independent Engineer/ ULB.



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3.3. Positions and Levels

The Concessionaire shall be responsible for:

- (a) The correctness of the positions, levels, dimensions and alignment of all parts of the Construction Works;
- (b) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities;

If, at any time during construction of the Project Facilities/ Construction Works, any error is noticed in the position, levels, dimensions or alignment of any part of the Project Facilities/ Construction Works, the Concessionaire, on being asked to do so by the Independent Engineer or ULB, shall at his own cost, rectify such errors to the satisfaction of the Independent Engineer.

3.4. Tests

Various quality control Tests would be undertaken as per the Construction Requirements and standards prescribed by Bureau of Indian Standards. Where no Testing methods are specified by the said standards, details of the Tests to be carried out and specifications to be achieved for the respective Project Facilities/ Construction Works or part thereof shall be agreed upon with the Independent Engineer prior to construction.

The Tests would be carried out at a location that the Independent Engineer may reasonably require, at the cost and expense of the Concessionaire.

The Independent Engineer may from time to time require removal of any material, equipment, machinery which, in its opinion, does not meet the Construction Requirements specified in this schedule and Development Plan.

Where material properties of the Project Facilities/ Construction Works vary from or comply only marginally with the specifications contained in this schedule and Development Plan, the Independent Engineer may increase the frequency of testing as appropriate at the cost of the Concessionaire.

The Concessionaire shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, as required by the Independent Engineer to undertake Tests.



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Independent Engineer may from time to time require:

- (a) Removal/substitution of any material, equipment or machinery which, in its opinion, do not meet the standards specified in this schedule from the construction site, within such time as may be specified in its instructions.
- (b) Re-execution, of any or part of the Construction Works which in the opinion of the Independent Engineer do not meet the standards set out in this schedule;

4. Reporting Requirements during the Preparatory Period

During the Preparatory Period, the Concessionaire shall submit to the Independent Engineer fortnightly progress report (for each calendar month or part thereof) within first 7 calendar days of the report period inter alia, including the following:

- (i) Work done in the last month including any slippages.
- (ii) Review of milestones set out in Development Plan and reasons for delay/ deviations, if any.
- (iii) Details of major equipments/ vehicles purchased.
- (iv) Suspension of Construction Works, if any, its reasons, duration and the steps undertaken to resume Construction Works.
- (v) Brief report of any accident/incident / injury/ fatality, property damage, cause of accident and actions taken to avoid recurrence.
- (vi) Notes of meetings between the Concessionaire, the Independent Engineer and ULB highlighting critical decisions taken or agreements reached.

5. Procedures after Completion of Construction

Upon completion of construction but prior to issue of the Completion Certificate, the Project Site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Independent Engineer.



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SECTION II

CONSTRUCTION REQUIREMENTS: SPECIFIC

1. General

- 1.1. The capacity of the containers should match the frequency of collection, so that no MSW is littered.
- 1.2. The Concessionaire shall procure/deploy the equipment/ vehicles which are sufficient to meet with the quantum of MSW generated in the Concession Area, during the Concession Period.
- 1.3. Detailed Specification for the Project are provided in Enclosure 1 to this Schedule.

2. Primary Collection

- 2.1. Door to door collection of MSW shall be undertaken by the Concessionaire from generators of waste by using handcarts/ tricycles handcart with four 50 liter Bins and the MSW is un-loaded at mobile or stationary transfer point.

3. Waste bins

- 3.1. The Concessionaire shall provide waste bins in the Concession Area as per the approved Development Plan.
- 3.2. The Concessionaire shall make provisions for primary storage and transportation of such MSW.
- 3.3. The waste bins should be
 - (i) Aesthetic
 - (ii) Rigid and Durable
 - (iii) UV stabilized
 - (iv) Cold and heat resistant
 - (v) Non – absorbent and water tight
 - (vi) Chemical and corrosion resistant
 - (vii) Rodent proof and easily cleanable
 - (viii) Covered and designed to allow convenient and safe dropping of waste



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3.4. The waste bins should be placed consistently within the Concession Area so as to ensure that distance between two secondary collection points should not be more than 500 meters or as per the approved Development Plan.

3.5. During the Operations Period, the number and location of waste bins could be modified in discussions with ULB/ Independent Engineer. The Concessionaire shall adhere to ULB's instructions approved by the Independent Engineer in this regard.

4. Transfer Station

4.1. The Concessionaire in consultation with the Independent Engineer/ ULB shall identify the locations for the requisite number Transfer Stations, if required to be developed in accordance with the Development Plan.

4.2. The design of Transfer Stations shall meet the following requirements:

- (i) It shall be a 2 storied structure
- (ii) Aesthetic, covered with provision for adequate natural light & ventilation
- (iii) Convenient and safe dropping, compaction and collection of waste.
- (iv) Easy cleaning & disinfections operations.
- (v) Stray cattle, other animals and birds do not have access to the waste
- (vi) Easy monitoring by Independent Engineer / ULB officials.

4.3. During the Operations Period, the number of Transfer Station could change in discussions with ULB/ Independent Engineer.

5. Workshop Site

5.1. The layout shall be designed such that it allows for systematic use of designated parking of vehicles, easy right of way for in and outbound vehicles and separate sections for repair and maintenance of vehicles.

6. Transport Vehicles

6.1. The Concessionaire shall provide transport vehicles for the Project as per the approved Development Plan.

6.2. The transport vehicles and the transportation system should be designed such that:

- (i) Maximum 10% of the waste generated per month is loaded manually; and
- (ii) 100% of the waste handled per month is mechanically unloaded



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- 6.3. The Concessionaire shall be responsible for adhering to the Applicable Law for the transport vehicles including vehicles provided by the ULB.
- 6.4. All transport vehicles shall be equipped with a mobile phone communication system and Vehicle Tracking and Management System.
- 6.5. Before using any vehicle, it shall be inspected and cleared for use ("Fit for Use") by the Independent Engineer.
- 7. Replacement of Equipments/ Vehicles**
- 7.1. All the transport vehicles and other movable equipments shall be replaced by the Concessionaire at its own cost with equipments of similar or better specifications, after the expiry of its useful life or 7 years whichever is earlier.
- 7.2. All such new equipments shall be subject to inspection by the Independent Engineer and shall be used only after obtaining the "Fit for Use" certificate from the Independent Engineer.



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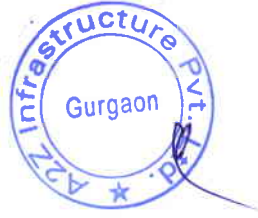
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SCHEDULE F :

OPERATION AND MAINTENANCE REQUIREMENTS

The O&M Requirements to be adhered to by the Concessionaire has been laid down in this Schedule. The O&M Requirements under this schedule has been divided in the following sections:

- I General
- II Specific



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SECTION I

OPERATION AND MAINTENANCE REQUIREMENTS : GENERAL

1. General

1.1. The Concessionaire shall comply with the O&M Requirements as set out in this Schedule. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the standards and specifications as set out in the Construction Requirements and also meet the other requirements, if any, set out in the Agreement.

1.2. Service Goal

It is ULB's goal to improve the existing standards of public health and environmental quality for the members of the public, through the provision of an efficient integrated municipal solid waste management system services.

1.3. Basic Services

During the Operations Period, the Concessionaire shall, in accordance with this Concession Agreement undertake the following activities on a daily basis (all 365 days in an year) irrespective of the MSW generated within the Concession Area, and shall be solely responsible to provide necessary staff and equipment, in a manner consistent with this Agreement and considered Good Industry Practice to the satisfaction of the Independent Engineer and the ULB.

- (i) Door-to-door collection of MSW in the Concession Area;
- (ii) Primary storage of collected door-to-door MSW in the Concession Area;
- (iii) Secondary collection and transportation of MSW including street sweeping waste, drain silt in the Concession Area to the MSW Processing Facility either directly or through transfer station;
- (iv) Collection of the User Charges on behalf of ULB as determined by the ULB from time to time;
- (v) Assist ULB in public education / awareness related to MSW;
- (vi) In consultation with ULB, undertake and implement a public complaint system operational for atleast 8 hours a day.
- (vii) Replace all equipments and vehicle as and when required, after the completion of their useful life during the entire concession period
- (viii) Transfer all equipments and vehicle in good working condition after expiry of the concession period



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During the Concession Period, the Concessionaire shall ensure that all MSW generated within the Concession Area is collected, segregated and transported to the MSW Processing Facility either directly or through transfer station in accordance with Applicable Laws and in accordance with this Agreement.

- 1.4. The Concessionaire shall also collect and transport the MSW presently littered within the Concession Area to the MSW Processing Facility either directly or through transfer station.
- 1.5. ULB is also desirous of making the Concession Area a 'waste storage depots/ waste bins free' city. It is endeavor that the waste storage depots/ waste bins shall be removed by the concessionaire within the time period to be decided in consultation with ULB/ Independent Engineer.
- 1.6. In the design, planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors, if any, agents and employees) in such manner, as will:
 - (i) ensure the safety of personnel deployed on and users of the Project Facilities or part thereof;
 - (ii) permit unimpaired performance of statutory duties and functions of any party in relation to the Project;
- 1.7. During the Operations Period, the Concessionaire shall, in respect of the Project Facilities, ensure that:
 - (i) applicable and adequate safety measures are taken;
 - (ii) adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project Facilities, due to any of its actions, is minimized and is limited to standard as per MSW Rules;
 - (iii) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/ minimised;
 - (iv) disturbance or damage or destruction to property of third party by operations of the Project Facilities is controlled/minimised;
 - (v) all materials used in the maintenance, repair and replacement of any of the Project Facilities shall meet the Construction Requirements;

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1.8. The Concessionaire shall be solely responsible to provide necessary staff and equipment for the above activities in a manner consistent with this Agreement and Good Industry Practice.

2. Operations and Maintenance Manual and O&M Plans

2.1. Prior to making an application for issue of Project Completion Certificate for the Project, the Concessionaire shall finalise in consultation with the Independent Engineer and ULB:

- (i) the O&M Manual (including the formats for the reports to be submitted during the Operations Period)
- (ii) the O&M Plan for the first year of operations.

2.2. Six weeks prior to the anniversary of COD each year, the Concessionaire shall in consultation with the Independent Engineer and ULB finalise an annual O&M Plan for the next year of operations.

2.3. The Concessionaire shall also update the O&M Manual every 3 years in consultation with the Independent Engineer and ULB.

3. Codes and Standards

The following standards in order of preference shall be adopted in consultation with the Independent Engineer, unless otherwise specified:

- (i) MSW Rules
- (ii) Central Public Health & Environmental Engineering Organisation (CPHEEO) guidelines/ standards
- (iii) Any other standards specified by statute and Applicable Laws
- (iv) Bureau of Indian Standards (BIS)
- (v) Suitable specification/standard devised by the Independent Engineer
- (vi) Any other standard proposed by the Concessionaire and approved by the Independent Engineer
- (vii) Any other statutory obligation notified by GOI, GoUP/ any other regulatory authority.

4. Routine Maintenance Standards

4.1. In order to ensure smooth and uninterrupted operations, routine maintenance of the Project Facilities shall include but not be limited to:



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- (i) replacement of equipment/consumables, repairs to equipment, structures and other civil works which are part of the Project Facilities;
- (ii) keeping the Project Facilities in a clean, tidy and orderly condition and taking all practical measures to prevent damage to the Project Facilities or any other property on or near the Site;
- (iii) undertaking maintenance works in accordance with the O&M Plan and O&M Manual;
- (iv) preventing, with the assistance of law enforcement agencies, where necessary, any unauthorised entry to and exit from and any encroachments including any encroachments on the Site;
- (v) taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the Site.

4.2. The Concessionaire, for the purpose of routine maintenance shall, in consultation with the Independent Engineer, set forth such criteria as to conform to Good Industry Practice for sound maintenance of the Project Facilities.

4.3. The Concessionaire shall regularly carry out the necessary preventive maintenance activities for the Project Facilities to ensure adherence to the Construction Requirements/specifications.

5. Emergency Maintenance

5.1. The Emergency Response Protocol ("ERP") shall be developed by the Concessionaire in consultation with the Independent Engineer. This shall be a part of the O&M Manual developed by the Concessionaire.

5.2. The ERP shall set out steps to be taken and measures to be adopted by the Concessionaire in responding to dealing with Emergency including those situations related to vehicle accidents involving personal injuries or fatalities, property damage and force majeure as follows:

- (i) In the event of an Emergency, the Concessionaire shall immediately carry out an inspection of the area affected by the Emergency. Where Emergency has necessitated closure of the Project Facilities or part thereof, the Concessionaire shall promptly carry out any repair works necessary to restore the Project Facilities to safe condition and in any event shall carry out such works before the affected area of the Project Facilities is re-opened to for normal operations.
- (ii) The Concessionaire shall ensure that sufficient staff, plant, equipment and materials, including without limitation medical assistance are available to respond to Emergency within reasonable period at all times during the Operations Period.

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5.3. In case of Emergency, the Concessionaire shall

- (i) carry out such emergency maintenance and repairs as may be required to repair the damages, if any, in consultation with the Independent Engineer and where required under the supervision of the police, if required in order to ensure that the Project Facilities are returned to normal operating standards as quickly as possible
- (ii) take all necessary measures to minimise pollution in accordance with the procedure specified in the O&M Plan.

6. Exclusion

The Concessionaire shall not accept Hazardous Wastes, Biomedical Waste or radioactive waste. In case of any dispute related to the nature of the MSW substance, Independent Engineer's decision shall be final and shall prevail. However, in case bio-medical / hazardous waste is found to be mixed with the MSW, Concessionaire shall segregate the same and transport it to the location as decided by the ULB for its further disposal by the ULB.

7. Complaint Redressal


7.1. The Concessionaire shall design and implement a complaint redressal system to address customer complaints in line with established standard protocol ("Complaint Redressal Center").

7.2. The Complaint Redressal Center implementation shall be finalised by the Concessionaire in accordance with the Development Plan, in consultation with ULB/ Independent Engineer incorporating the below mentioned requirements.

- (i) One manual center for accepting/ dropping of the complaints.
- (ii) Implement and maintain a website, in consultation with the Independent Engineer, for accepting online complaints. This website shall be integrated with/ accessed from the website of the ULB, if any.
- (iii) Having adequate no. of telephones lines with voice recording facility for receiving customer calls/complaints.
- (iv) Mobile communication system between "Complaint Redressal Center" and the supervisory field staff of the Concessionaire.

7.3. The website details and the telephone numbers of the Complaint Redressal Center shall be clearly marked on all the bins/ equipments/ vehicles and should be repainted, as required to maintain the visibility.

7.4. Establish a coding mechanism to easily identify the command areas and nodal officers.


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- 7.5. The Complaint Redressal Centre shall have an overall supervisor, first line supervisors capable of understanding work plan, organizing the work accordingly, and capable of directing, disciplining and controlling work force shall be appointed before commencing the work.
- 7.6. The Complaint Redressal Centre shall be operational from 9 A.M. to 5 P.M. on 6 days a week.
- 7.7. All complaints related to the Project would need to be addressed within 24 hrs of receiving the complaint failing which the Independent Engineer / ULB will have the right to demand an explanation or resolution of the complaint to their satisfaction.
- 7.8. A "complaint redressal log book" should be maintained by the Concessionaire containing the relevant information including the action and time taken for compliant redressal. Format of the complaint redressal log book would be finalised in consultation with the Independent Engineer.
- 7.9. The Concessionaire would be required to submit a monthly complaint and redressal record to the Independent Engineer with a summary of complaints including:
- Categorization of type of complaints
 - Number of complaints during the previous month
 - % of complaints addressed in 24 hours
 - % of complaints not addressed in 24 hours and reasons therefor
 - Major unresolved complaints if any

8. Reporting Requirements

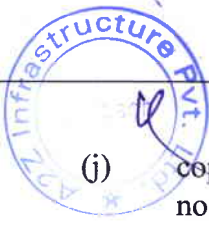
The Concessionaire shall submit to the ULB the following reports duly verified by the Independent Engineer:

- Ward wise quantity of MSW received and its characterization
- Test reports
- Monthly Tipping Fee invoice in accordance with Article 8 of the Agreement.
- Annual compilation of Monthly tipping fee invoice.
- Monthly compilation of capital expenditure
- Monthly compilation of complaint redressal performance
- Annual fitness certificate of the transport vehicles and loading equipment
- Disagreements/ disputes, if any and proposed measures to be taken
- Brief report of any accident/incident related to the Project, injury/ fatality, property damage, cause of accident and actions taken to avoid recurrence



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- (j) copies of any reports submitted for purposes of regulatory compliance and of notices received or reports or notices submitted to any Competent Authority or otherwise
- (k) Yearly physical verification reports of the Project Facilities duly reconciled with the fixed assets register maintained by the Concessionaire
- (l) Yearly statement of Existing Assets (both in quantitative and value terms) giving opening balance, Existing Assets purchased / discarded / disposed off and closing balance.
- (m) Any other report that may be reasonably required by ULB for itself or to fulfill any regulatory compliance.

The frequency and formats for the reports to be submitted shall be finalised in consultation with the Independent Engineer and shall form part of the O&M Plan and O&M Manual.

9. Records

9.1. The Concessionaire shall maintain and keep all operation & maintenance records (the "Records") at the location decided in consultation with ULB inter alia including the following:


- (i) Attendance Cards/ Register of the manpower deployed
- (ii) Log Book of vehicles
- (iii) Register of issue of the disinfectant liquid
- (iv) Register of Stock of implements, and other materials and their issue
- (v) Record of acceptance of personnel carriers with registration Numbers & timings
- (vi) Register for issue of uniforms and protective gears
- (vii) Maintenance & operations records of all vehicles
- (viii) Any other record for regulatory compliance.

9.2. The Concessionaire shall finalize the formats for the records in consultation with the Independent Engineer and document the same.

9.3. The Concessionaire would keep the Records for a period as per the statutory requirements or for atleast 10 years, whichever is higher.

9.4. The Records shall be made available upon the request of the Independent Engineer or the ULB.




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SECTION II

OPERATION AND MAINTENANCE REQUIREMENTS: SPECIFIC

1. Collection and Transportation Service Requirements

- (i) Organise door to door collection of Municipal Solid Wastes through organized door to door collection system by collecting daily on pre-informed timings and scheduling;
- (ii) Organise collection of MSW from Persons generating such waste within the Concession Area and from the waste bins;
- (iii) Organise secondary collection and transportation of waste including street sweeping waste, drain silt in the Concession Area to the MSW Processing Facility either directly or through transfer station;
- (iv) Devising organized collection of waste from slums and squatter areas;
- (v) Direct collection of MSW from bulk generators including markets, hotels, restaurants, cinema theaters, malls, multiplexes, function halls, office complexes, commercial areas and other sources as indicated by ULB from time to time;
- (vi) Wastes from slaughter houses, meat and fish markets, fruits and vegetable markets, which are biodegradable in nature, shall be collected separately as per Applicable Law;
- (vii) Wherever (e.g. public street, parks etc.)/ whenever prescribed (festivals, event, seasons etc. at any point of time during concession period) collection and transportation of MSW will have to be carried out by the Concessionaire;
- (viii) Dead animals shall be collected at the earliest on being reported, or in any case not later than the next working day;
- (ix) Horticultural and construction or demolition wastes or debris or dairy waste shall be separately collected and disposed of after treatment in a proper way;
- (x) Each worker involved in waste handling should be given uniforms, gloves, masks, aprons & other adequate safety gear & implements;
- (xi) The persons employed for undertaking door to door collection shall be fluent in Hindi language (local language), and be well-behaved and presentable;
- (xii) Manual handling and multiple handling of MSW shall be prohibited;
- (xiii) Transport and deliver the MSW collected, at the MSW Processing Facility either directly or through transfer station;
- (xiv) There should be no overflow/ littering of MSW in the collection area.
- (xv) The Concessionaire shall ensure that there is no spillage of MSW during transportation;



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- (xvi) MSW shall be transported in covered bins only and there shall not be any dislocation or removal of covers of the vehicles during transportation, exposing the MSW to the open atmosphere;
 - (xvii) MSW shall not touch ground after primary collection and during transportation upto MSW Processing Facility;
 - (xviii) At any stage the MSW shall not be burnt;
 - (xix) The collection services for MSW generated from construction and demolition activities shall be provided by the Concessionaire;
 - (xx) Efforts should be made to avoid the transportation of MSW during the peak traffic hours, as decided by ULB.
 - (xxi) Replace all equipments and vehicle as and when required, after the completion of their useful life during the entire Concession Period
 - (xxii) Transfer all equipments and vehicle in good working condition after expiry of the Concession Period

2. Segregation Requirements

- 2.1. The Concessionaire shall make efforts for undertaking primary segregation of MSW from households, commercial establishments and other agencies or collection points.
- 2.2. The Concessionaire shall collect segregated garbage, if available (biodegradable and non-biodegradable) in two-bins colour coded system as per MSW Rules. The color coding of the bins shall be as per the MSW Rules

3. Special Collections/ Clearings

- 3.1. ULB may request the Concessionaire specifically mentioning the time and place, for MSW collection trips and clearing of waste bins on special occasions provided that a notice period of at least 6 hours should be provide for such request.
- 3.2. The maximum number of such requests that can be entertained by the Concessionaire in a month shall be 1% of the total number of vehicle trips during the previous month from the Concession Area.

4. Waste Bins

Based on the O&M Plan, the Concessionaire shall operate and maintain the waste bins as follows:

- a) The clearing schedule of waste bins should ensure that the waste bins (Biodegradable Waste and Non-Biodegradable Waste) are lifted at least once every 24 hrs.

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- b) There should be no overflow of MSW from the waste bins.
- c) Cleanliness of surrounding area: The Concessionaire should ensure that the area around the waste bins is kept clean at all times.
- d) Waste bins needs to be maintained so that there are
- (i) No breakages
 - (ii) No cracks
 - (iii) There is no leakages
 - (iv) There is no toppling of bins
 - (v) No dislocation of covers

5. Transfer Station

- 5.1. The Concessionaire shall operate and maintain the Transfer Station in accordance with the O&M Plan.
- 5.2. The Concessionaire should ensure that there is no spillage of MSW around the Transfer Station at any point of time or within the Transfer Station area.
- 5.3. All MSW at the Transfer Station shall be handled mechanically.
- 5.4. The leachate shall be collected and treated as per the Applicable Laws.

6. Weighment Requirements

- 6.1. All the vehicles carrying MSW for delivery at the MSW Processing Facility shall be weighed at the entry gate by the designated weighbridge maintained by the MSW Processing Facility Operator in the manner specified in this Schedule.
- 6.2. The Concessionaire shall get the vehicles weighed and record at least the following data, duly verified by the Independent Engineer, at the weighbridge facility for each of the vehicles:
- (i) Date and time of weighment
 - (ii) Registration Number of the vehicle disposing MSW
 - (iii) Total laden weight of the vehicle
 - (iv) Time of entry of the vehicle
 - (v) Collection area code
 - (vi) Colour code of bins (biodegradable/non biodegradable)
 - (vii) Total unladen weight of the vehicle
 - (viii) Net weight of MSW



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(ix) Time of exit of the vehicle

- 6.3. The format for recording shall be finalised in consultation with the Independent Engineer and the MSW Processing Facility Operator and the same shall be documented as part of the O&M Manual.
- 6.4. In the event that the weigh-bridge is not in operation, the Concessionaire shall use an alternate weighbridge, as directed by ULB/ Independent Engineer. Such weighing and transport of the MSW shall be done only in the presence of the Independent Engineer and the MSW Processing Facility Operator.
- 6.5. In the event that ULB could not provide weighbridge, unless modified with mutual consent of the Parties, the monthly average of the immediately preceding month shall be considered.

7. Workshop Site

Based on the Development Plan, the Concessionaire shall operate and maintain the Workshop Site as follows:

- The maintenance of the Workshop Site should be at par with Good Industry Practice and should have all arrangements to meet emergency situations as per Applicable Law.
- The Workshop Site should have all the facilities for staff as per Good Industry Practice and Applicable Law.
- Regular maintenance and painting of the Workshop Site should be carried out at least once every year.

8. Transport Vehicles

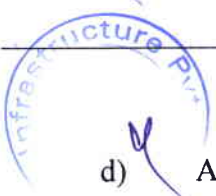
Based on the Development Plan, the Concessionaire shall operate and maintain the transport vehicles as follows:

- The maintenance of the transport vehicles should be undertaken so that atleast 90% of the vehicles are available at any point of time for operations.
- All the vehicles and the drivers shall always be in compliance with the Applicable Laws.
- The maintenance of the transport vehicles should be good so as to prevent break down of the vehicles.

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- d) All transport vehicles employed should contain
- (i) Vehicle controls and dashboard displays
 - (ii) Lamps and lighting, blinker systems
 - (iii) Reflective devices at the back and sides
 - (iv) Rear view Mirrors
 - (v) Occupant protection
 - (vi) Seat belts
 - (vii) Windshield mounting, wiping, and washing
 - (viii) Emergency equipment (fire extinguishers, spare tires, etc).
- e) Vehicle Tracking and Monitoring System (VTM):
- (i) The Vehicle Tracking and Monitoring System (including vehicle mounted units and the control terminal) shall be installed on all transport vehicles including the vehicles provided by the ULB. The VTM system would be accessible from the ULB's control room, also for effective tracking by ULB and the same infrastructure for tracking will be provided to the Independent Engineer for day to day monitoring of work. The said requisite infrastructure shall be set up by the Concessionaire.
 - (ii) The Concessionaire shall ensure that the Vehicle Tracking and Monitoring system is operational at all times.
 - (iii) The reports related to the Vehicle Tracking and Monitoring System should be duly verified by the Independent Engineer and should be submitted with the monthly Tipping Fee statement in accordance with Article 8 of the Agreement.
 - (iv) The Concessionaire shall set up a control room to monitor the movement of every vehicle by using Real time GPS (Global Positioning System) / GSM (Global System for Mobile Communication) / any other advanced technology at the space provided by the ULB for the purpose, at his own cost. The Concessionaire will allow the access to monitoring system [as and when required] to Independent Engineer as well as ULB's officials / representative.
- f) A fitness certificate for each transport vehicle should be obtained by the Concessionaire by the end of first month of every calendar year and given to the Independent Engineer for verification.

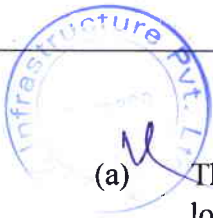
9. Loading Equipments

Based on the Development Plan, the Concessionaire shall operate and maintain the loading equipments as follows:

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- (a) The loading equipments should be either placed on roadworthy vehicles or if the loading vehicles are used then such vehicles should be roadworthy as approved by the competent authority in accordance with Applicable Law.
- (b) The maintenance of the loading equipment should be good so as to prevent break down of the vehicles.
- (c) A fitness certificate for each loading equipment should be obtained by the Concessionaire by the end of first month of every calendar year and given to the Independent Engineer for verification.

10. Other Requirements

Based on the O&M Plan, the Concessionaire shall operate and maintain the part of the Project Facilities required for collection and transportation services as follows:

- a) Washed/cleaned and disinfected at least once every day except the waste bins which shall be washed/cleaned and disinfected at least once a week.
- b) Hygienic and aesthetic conditions shall be maintained by taking proper measures.
- c) The colour coding, numbering, website details and the telephone numbers of the customer complaint cell should be clearly visible and repainted as often as required to maintain clear visibility of the same.
- d) Operated in an environment friendly manner.
- e) Regular maintenance and painting should be carried out at least twice every year.
- f) All the vehicles and the drivers shall always be in compliance with the Applicable Laws.

Independent Engineer shall specifically monitor the above requirements.



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SCHEDULE G

TIPPING FEE (in Rs / MT)

As per the financial Proposal of the Concessionaire (in response to RFP)



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SCHEDULE H

INDEPENDENT ENGINEER

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1. Role and functions of the Independent Engineer
 - 2.1. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
 - 2.2. The scope of work of the Independent Engineer shall be to review and oversee the (i) design and construction works of the Project Facilities and New Assets; and (ii) operations and maintenance of the Project.
 - 2.3. Broadly, the role of the Independent Engineer is set out in the following paragraphs.
 - 1.1. Independently review, monitor and wherever required by the Agreement, to approve the design, construction, operation and maintenance of the Project Facilities to ensure compliance by the Concessionaire with the Development Plan, Drawings, Construction Requirements and O&M Requirements
 - 1.2. Verification and random checks of weighment and Testing of the MSW.
 - 1.3. Verify and submit a monthly report to ULB on compliance by the Concessionaire with the requirement of the agreement and with Applicable Laws.
 - 1.4. Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
 - 1.5. Review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

2. Scope of Services of the Independent Engineer

The specific scope of services to be provided by the Independent Engineer in accordance with the applicable provisions of this Agreement are specified below:

2.1 Implementation Period

The Independent Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation of the Project facilities and ensure compliance with the

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Construction Requirements. For this purpose the Independent Engineer shall undertake, interalia, the following activities and where appropriate make suitable suggestions:

- (i) Undertake the detailed review of the Development Plan submitted by the Concessionaire within 7 days of receipt of the Development Plan.
- (ii) Convey of its comments/observations to the Concessionaire on the Development Plan, including the need, if any, to modify the same.
- (iii) Provide administration of the Agreement in full and in complete accordance with applicable laws;
- (iv) Issue Provisional/Completion Certificate;
- (v) Act on the ULB's behalf as the ULB's representative regarding all contact with the Concessionaire unless expressly indicated otherwise;
- (vi) Designate tests on materials and/or equipment;
- (vii) Review and approve test results and materials and/or equipment used in the Construction Works;
- (viii) Interpret the requirements of the Concession Agreement and make decisions regarding performance of the Concessionaire. The Independent Engineer shall inform and advise the ULB, in a timely manner all matters relating to the execution, progress, and completeness of the Construction Works;
- (ix) Reject work which fails to comply with the specifications and requirements of the Agreement. Whenever considered necessary or advisable to ensure correction of defective work / equipment / vehicle, the Independent Engineer may require inspection or testing of such work/ equipment / vehicle;
- (x) The Independent Engineer shall prepare and submit to ULB, fortnightly progress reports including the following:
 - (a) Fortnightly progress of works;
 - (b) Slippages, if any, in the construction / renovation / procurement vis-à-vis planned construction / renovation / procurement schedule and the reasons thereof;
 - (c) Issues, if any, with regard to the works along with the details of the action taken for the resolution of the same;
 - (d) Photographic record of progress of works over the previous week.




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2.2

Operations Period

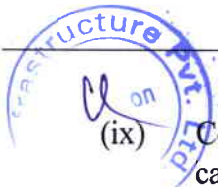
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- (i) The Independent Engineer shall aid and advise the Concessionaire in preparing the O&M Manual.
- (ii) In respect of the Operation Plan and other periodic reports received by the Independent Engineer from the Concessionaire for its review and comments during the Operation Period, the provisions of above Paragraph shall apply, mutatis mutandis.
- (iii) The Independent Engineer shall review the periodic status report furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 7 (seven) days of receipt of such report.
- (iv) The Independent Engineer shall review the activities carried out by the Concessionaire in the Concession Area on a weekly basis. It shall make a report of such review (the "Operation & Maintenance Review Report") stating inter alia the review relating to operations and maintenance of the Project
- (v) The Independent Engineer shall in its Operation & Maintenance Review Report specify the remedial measures that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the operations of the Project is in conformity with the O&M Requirements, Operation Plan, Operation & Maintenance Manual, Applicable Laws and Concessionaire's obligations as per the Concession Agreement. It shall monitor and review the results of actions taken by the Concessionaire in this behalf.
- (vi) As part of the O&M review, the Independent Engineer shall also determine and recommend the damages / penalties, if any in accordance with the Concession Agreement to be levied on the Concessionaire in view of non-adherence to Concessionaire's obligations as per the Concession Agreement, Operational Plan, O&M Manual, etc.
- (vii) The Independent Engineer shall monitor and review the curing of deficiencies and non compliances by the Concessionaire.
- (viii) In the event that the Concessionaire notifies the Independent Engineer of any modifications or expansion / addition / renovation of the Project Facilities and / or procurement of equipment / vehicles, the Independent Engineer shall review the same and send its comments to the ULB and the Concessionaire within 7 (seven) days of receiving the proposal.

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- (ix) Conduct random inspections of the Project Facilities by visual assessment with careful observation of the specific object/ item for identification and quantification of the deficiencies or damages to the Project Facilities and operation and maintenance of the Project Facilities.
- (x) In addition to the daily responsibilities, conduct a general inspection of the Project Facilities at least once a month and as and when exigencies require to ascertain conformity with Construction Requirements and O&M Requirements;
- (xi) Monitor Operation and Maintenance activities (including maintenance of Project Facilities and equipment, standards of service, safety and environmental issues) and the overall quality of O&M activities so as to ensure compliance by the Concessionaire with the O&M Requirements, O&M Plan and O&M Manual;
- (xii) Issue "Notice to Remedy" in event of observing non-compliance to O&M Requirements;
- (xiii) Record and report to the ULB on the incidents of Material Breach or Persistent Breach of O&M Requirements;
- (xiv) If during the course or upon review/inspection undertaken by the Independent Engineer or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Independent Engineer shall, under intimation to both the Parties, require the defaulting Party to remedy such breach/default within such time and in such manner as the Independent Engineer may deem fit and in each case the same shall be recorded.
- (xv) Monthly review of the various records and registers maintained by the Concessionaire and suggest suitable remedial measures/ procedures, where necessary.
- (xvi) Undertake audit of the user charges collected from the MSW generators and verify the collection efficiency;
- (xvii) Provide the services of a full time resident project representative during the period commencing from 3 (three) days from the date of appointment of the Independent Engineer until the expiry of the contract for Independent Engineer's appointment;

In addition to the above, the specific activities to be carried by the Independent Engineer during the Operation Period are:



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Conducting Random Inspections

The Independent Engineer shall conduct random inspections of the Project Facilities as well as the operations as follows:

- (i) The random inspections may be carried out by visual assessment with careful observation of the specific object/item for identification and for quantification of the deficiencies or damages of the Project Facilities and operation and maintenance of the Project Facilities. For this purpose the Independent Engineer can use photographs with time and place record.
- (ii) During the random inspections, the Independent Engineer would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Contractor so as to ensure compliance with the O&M Requirements;
- (iii) Take certificate from Chartered Accountant for fixed assets verification and then physically verify the fixed assets as per O&M Plan.
- (iv) Issue "Notice to Remedy" in the event of non compliance to O&M Requirements and recording the same.
- (v) Record and report to the ULB on the incidents of Material Breach or Persistent Breach of O&M Requirements;

Random inspection of Project Facilities

The Independent Engineer shall undertake inspection of the Project Facilities atleast once a month in such sample selection as mentioned in the table below:

S. No	Project Facilities	Sample selection requirement
1	Workshop Site	
2	Transport and Loading Vehicles	A minimum sample of 10 % of each category of vehicles deployed in the Concession Area. There should not be repetition of the same set of vehicles in the next round of inspection.

3. Handback of Project Facilities to ULB

At the expiry / termination of the Concession Period and / or at the time of handback of the Project Facilities to ULB, the Independent Engineer shall:

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Monitor the compliance with the Handback Requirements as provided in Article 11 of this Agreement and

- (ii) Issue a certificate of compliance on satisfactory completion of Handback Requirements by the Concessionaire.

4. Maintenance of Records

The Independent Engineer would participate in the review meetings/ emergency/ extraordinary meetings held by the Parties and assist the parties in dealing with any problem, Emergency, Force Majeure Event or other exigencies.

The Independent Engineer shall maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

- Manpower deployed and other organizational arrangements of the Independent Engineer ;
- Inspections undertaken and notices/instructions issued to the Concessionaire;
- Review compliance by the Concessionaire with the Agreement;
- Force Majeure Events;
- Material and Persistent Breach of O&M Requirements and Events of Default by the Parties; and
- Compliance by the Concessionaire with Handback Requirements

5. Verification and Reporting by Independent Engineer

The Independent Engineer would be required to verify/issue the following reports to the Parties:

Period/ Event	Verification	Applicable report to be issued by the Independent Engineer
Preparatory Period	<ul style="list-style-type: none"> Verification of purchase order/s of the major equipment/ vehicles for collection and transportation Verification of major equipment/ vehicles at site for collection and transportation Review monthly progress report submitted by the Concessionaire Issue "Notice to Remedy" in event of non compliance by the Concessionaire Issue Provisional/ Completion Certificate 	As per the requirement
Monitoring at	<ul style="list-style-type: none"> Verify weightment slip 	Monthly Inspection

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Period/ Event	Verification	Applicable report to be issued by the Independent Engineer
Weighbridge	<ul style="list-style-type: none"> Verify monthly Tipping Fee statement 	Report
Monitoring at Waste Inspection Area	<ul style="list-style-type: none"> Verify recording of Test results Verify monthly Tipping Fee statement and penalties (if applicable) 	Monthly Inspection Report
Random Inspections of Project facilities	<ul style="list-style-type: none"> Advise ULB on penalties payable by the Concessionaire 	Monthly Inspection Report
Force Majeure/ Material and Persistent Breach of O&M Requirements/ Events of Default.	<ul style="list-style-type: none"> Issue "Notice to Remedy" in event on non compliance Record Events of Default, Material/Persistent Breach of O&M Requirements, Force Majeure Events 	
Handback of Project Facilities	<ul style="list-style-type: none"> Specify list of works/jobs to be carried out by the Concessionaire in accordance with Handback Requirements. Specify list of items to be handed back to ULB by the Concessionaire. Verify compliance by the Concessionaire with Handback Requirements 	Issue of compliance certificate for Handback Requirements

6. Other Aspects

- (i) The Independent Engineer shall review the Awareness Campaign programme conducted by the Concessionaire in accordance with Schedule K.
- (ii) The Independent Engineer shall assist the Parties in arriving at an amicable settlement of disputes, if any, and
- (iii) The Independent Engineer shall review safety and environment management related aspects of the Project.
- (iv) The Independent Engineer shall monitor the performance of the Concessionaire and report on incidence of Material and Persistent Breach of O&M Requirements.

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Collection and Transportation of MSW for Kanpur Municipal Corporation, UP

The Independent Engineer shall devise suitable specification/standard, if required. And approve any other standard proposed by the Concessionaire

- (vi) The Independent Engineer shall carry out such other functions as may be specifically assigned to it under the Agreement including certification of adequacy of insurance and verification of termination payments.



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SCHEDULE I

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of -----
(Month) ---- (Year) at -----

AMONGST,

_____, a Municipal Corporation constituted under the _____ Act, having
its office at _____ (hereinafter referred to as "ULB" which expression shall unless
excluded by or repugnant to the context, be deemed to include its successors and assigns);

AND

_____ Limited, a company incorporated under the provisions of the Companies Act,
1956, having its registered office at _____ (hereinafter referred to as "the
Concessionaire" which expression shall unless excluded by or repugnant to the context include
the successors and permitted assigns),

AND

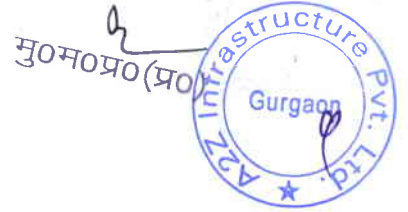
YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----
----- hereinafter referred to as "the Lender".

OR

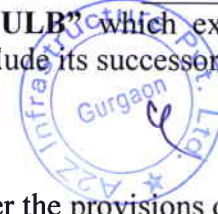
ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at-----
----- acting for and on behalf of the Lenders listed in Schedule hereto
(hereinafter referred as "the Lenders' Representative".

WHEREAS:

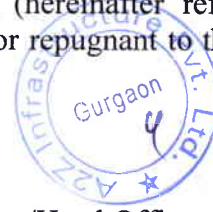
- A. ULB is the Municipal authority _____ city responsible for providing municipal and
civic services for the benefit of the public residing within such territory, which includes
the collection, transportation and disposal of Municipal Solid Waste generated in the city.
ULB currently disposes the collected waste at designated dumping sites, which are,
however, inadequate to handle the increasing quantity of waste generated in the city.
- B. ULB is desirous of improving the solid waste management services in the city of
_____. For meeting the aforesaid objective, ULB has decided to invite private
sector participation on Design, Procure, Renovate, Operate, Maintain, and Transfer basis,
to carry out the functions of collection and transportation of Municipal Solid Waste.



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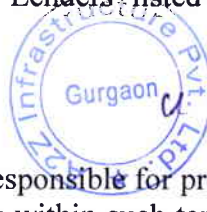
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C. By the Concession Agreement dated ----- entered into between ULB and the Concessionaire (hereinafter referred to as "the Concession Agreement") the Concessionaire has been granted the Concession to implement the Project on PPP basis;

D. With a view to facilitate financing of the Project by the Concessionaire, ULB and the Concessionaire have agreed to enter into a Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 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 meaning hereafter respectively assigned to them.

"**Agreement**" means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

"**Financial Assistance**" means the financial assistance set forth in schedule hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

"**Lender(s)**" means the financial institutions/banks whose name(s) and addresses are set out in schedule hereto.

"**Residual Concession Period**" means the period which shall be the remainder of the Concession Period computed from the date of substitution of the Concessionaire by the Selectee.

"**Selectee**" means a Person proposed by the Lender/Lender's Representative pursuant to this Agreement and approved by ULB for substituting the Concessionaire for the Residual Concession Period, in accordance with the provisions of this Agreement.

"**Suspension Period**" means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice and ending on the date on which all formalities connected with the substitution of the Concessionaire by the Selectee including handing over of the Project Facilities, in accordance with this Agreement are completed and the substitution has become effective.

1.2 Capitalized terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.





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ARTICLE 2

SUBSTITUTION OF THE CONCESSIONAIRE BY THE SELECTEE

2.1 Lenders right to Substitute

ULB and the Concessionaire hereby irrevocably agree that upon occurrence of a Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/financing documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Concessionaire by Selectee for the Residual Concession Period under the Concession Agreement in accordance with the provisions of this Agreement.

2.2 Preliminary Notice of Termination

ULB shall as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the Concessionaire Event of Default issue Preliminary Notice of Termination to the Concessionaire in terms of Article 10.2 (a) (ii) of the Concession Agreement, with a copy thereof simultaneously to the Lenders.

2.3 Termination of Concession and Takeover of the Project Facilities

The Concessionaire irrevocably agrees that if the Cure Period specified in the Preliminary Notice of Termination lapses without the Concessionaire Event of Default having been cured, the Concession shall from the expiry of such Cure Period stand terminated, without any further notice or other act of ULB being required, and that ULB shall have the right to enter upon and takeover the Project Facilities and to take all such steps as are necessary for the continuance of the Project, subject to the substitution of the Concessionaire by the Selectee in accordance with this Agreement. The Concessionaire hereby irrevocably consents to the takeover of the Project Facilities by ULB forthwith upon termination becoming effective.

2.4 Substitution Notice

ULB and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Event of Default specified in the Preliminary Notice of Termination, the Lender/Lender's Representative may, within 30 (thirty) days of the expiry of the Cure Period specified therein, notify ULB and the Concessionaire about the intention of the Lender(s) to seek substitution of the Concessionaire by the Selectee for the Residual Concession Period (the "Substitution Notice").

2.5 Criteria for selection of the Selectee.

The Lender/Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

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- (i) the Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire in respect of the Project, under the Concession Agreement;
- (ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to ULB under and in accordance with the Concession Agreement, and also payment of amounts due to the Lender(s) under the financing documents, upon terms and conditions as agreed to between the Selectee and the Lenders.

ARTICLE 3

MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution.

The following modalities shall be followed for substitution of the Concessionaire by the Selectee pursuant to this Agreement:

- (i) The Lender(s)/Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the preceding Article 2.2 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the substitution of the Concessionaire by the Selectee and propose to ULB for its approval, the Selectee (the "Proposal"). The Proposal of the Lender/Lender's Representative shall contain the particulars and information in respect of the Selectee, particulars of the amounts due to the Lenders under the financing documents, the terms of Substitution and such data and information as would be necessary and relevant for ULB to decide as to the acceptability of the Selectee. The Lender/Lender's Representative shall provide to ULB such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as ULB may reasonably require.
- (ii) The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by ULB of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement, and to assume, take over, discharge and pay the Concessionaire's obligations under the financing documents on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with ULB and the Lender(s) as may be necessary or required to give effect to the substitution of the Concessionaire by the Selectee.

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- (iii) ULB shall convey to the Lender/Lenders' Representative its acceptance or otherwise of the Selectee within 30(thirty) days of (a) the date of receipt of the Proposal by ULB, or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender/Lender's Representative to the ULB, whichever is later.
- (iv) At any time prior to the acceptance of the Selectee by ULB pursuant to this Agreement, ULB may require the Lender/Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of ULB as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Concessionaire. In the event that ULB fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/ the Selectee within a period of 30 days prescribed in preceding sub-article (iii), ULB shall be deemed to have accepted the Proposal/ the Selectee
- (v) The rejection of the Selectee if made by ULB shall be reasoned and be made after hearing the Lender/Lenders' Representative. Following the rejection of the Proposal, the Lender/Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-article (iii) and (iv) shall apply mutatis mutandis to such fresh Proposal.
- (vi) If ULB accepts the Proposal/fresh Proposal, ULB shall take all necessary steps to substitute the Concessionaire by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the Substitution of the Concessionaire by the Selectee for the Residual Concession Period.
- (vii) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favor of ULB and the Lender(s) so as to give full effect to the terms and conditions of substitution, subject to which the Selectee has been accepted by the Lender(s) and ULB and upon the delivery by ULB of the Project Facilities to the Selectee. Upon the substitution becoming effective pursuant to this sub-article all the rights of the Concessionaire under the Concession Agreement shall cease to exist. Provided nothing contained in this sub-article shall prejudice any pending/subsisting claims of the Concessionaire against ULB or any claim of ULB against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of 90 days to cure any breach/default subsisting on the date of substitution and required or agreed to be cured.

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- (viii) The decision of the Lenders and ULB in the selection of the Selectee shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire. The Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.2 Termination and Termination Payment.

- (i) Where the Lender/Lenders' Representative (on behalf of all the Lenders) communicates in writing that (i) the Lender/ Lender's Representative does not intend to seek substitution of the Concessionaire, or (ii) that the Lender/Lenders' Representative has not been able to find suitable Selectee or (iii) that ULB has declined to accept the Selectee proposed by the Lender/Lenders' Representative, ULB shall proceed to terminate the Concession and to make Termination Payment, in accordance with the provisions of the Concession Agreement.
- (ii) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by ULB and it is expressly agreed that ULB has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.

ARTICLE 4

MODE OF TERMINATION PAYMENTS

4.1 Mode of Payment

ULB and Concessionaire hereby irrevocably agree, and confirm that so long as the liabilities of the Concessionaire under the financing documents are outstanding the Termination Payment and any other amounts due and payable by ULB to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender(s)/ Lenders' Representative and advised to ULB and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire towards the satisfaction of the amounts outstanding, due and payable under the financing documents, subject to payment by the Lender(s) of the surplus amount, if any, remaining after discharge of the liabilities of the Concessionaire under the financing documents, to the Concessionaire. Any payment so made shall to the extent of such payment constitute a valid discharge to ULB of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.



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ARTICLE 5
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GENERAL

5.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.
- (iii) The expressions "ULB", the "Concessionaire", the "Lender" and the "Lenders' Representative" herein used shall unless there be anything repugnant to the subject or context include the respective successors, legal representatives, administrators and permitted assigns.
- (iv) This Agreement shall not be affected by reorganization of any Lender, the Concessionaire or ULB and the successor in interest of the Lender or ULB shall have the benefit of this Agreement.
- (v) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by arbitration by a Board of Arbitrators comprising of a nominee of each party to the dispute. Such arbitration shall be held in accordance to and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The arbitrators shall issue a reasoned award. The venue of such arbitration shall be Lucknow. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "Award") without delay.
- (vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in Lucknow alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings there under.
- (vii) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the financing documents.

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- It shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (x) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- (xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.
- (xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

**SCHEDULE
PARTICULARS OF FINANCIAL ASSISTANCE.**

Name and Address of the Lender	Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF
-----LIMITED

BY: _____

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF
ULB

BY: _____




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Name:

Title:


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SIGNED AND DELIVERED ON BEHALF OF THE
LENDERS -----SET FORTH IN SCHEDULE I

BY: _____



Name:

Title:






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मु०म०प्र०(प्र०)


SCHEDULE J


मु०म०प्र०(प्र०)


**PERFORMANCE SECURITY
(PERFORMA OF BANK GUARANTEE)**

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ (Name of the Bank) having its Head/Registered office at _____ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of _____, a body constituted under the _____ Act, (hereinafter referred to as "ULB" which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

A. By the Concession Agreement ("CONCESSION AGREEMENT") being entered into between ULB and _____ a company incorporated under the provisions of the Companies Act, 1956, having its registered office _____ ("Concessionaire"), the Concessionaire has been granted the Concession to implement the Project envisaging collection and transportation of Municipal Solid Waste generated in the Concession Area on Design, Procure, Renovate, Operate, Maintain and Transfer basis, (hereinafter referred to as "The Project").

B. In terms of Article 5 of the Concession Agreement, the Concessionaire is required to furnish to ULB, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ only as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to achievement of COD by the Concessionaire.

C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/ discharge by the Concessionaire of its obligations relating to the Project;

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:


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1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by _____ (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achievement of COD by the Concessionaire, in accordance with the Concession Agreement.
3. The Guarantor shall, without demur, pay to ULB sums not exceeding in aggregate Rs. _____, within five (5) calendar days of receipt of a written demand therefor from ULB stating that the Company has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by ULB and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, ULB shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/delayed exercise of any of its rights by ULB or any indulgence shown by ULB to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by ULB or any indulgence shown by ULB, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ (24 months from the date of the Concession Agreement) unless discharged/released earlier by ULB in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREIN ABOVE WRITTEN.

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मु०म०प्र०(प्र०)

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.



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SCHEDULE K
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AWARENESS CAMPAIGN

The Concessionaire shall assist ULB in organising and conducting public Awareness Campaign programs for ensuring segregation/ separate collection of waste at/ from source.

The Concessionaire shall, in consultation with ULB:

- (a) assist ULB in finalising an annual Awareness Campaign programme so as to reach to all the categories and sections of MSW generators.
- (b) notify the generators of MSW in its Concession Area about the details of the services being provided by the Concessionaire in accordance with this Agreement.
- (c) assist ULB in organising quarterly awareness drives for two bin system for Biodegradable Waste and Non biodegradable Waste and for segregation of MSW at source.
- (d) educate the generators of MSW about the rights and responsibilities of the generators of MSW.
- (e) duly inform and advertise targeting the generators of MSW about the phone numbers of the Complaint Redressal Centre.
- (f) assist ULB in implementing any other public awareness plan.



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SCHEDULE L

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DAMAGES

Notwithstanding anything to the contrary contained in this Agreement, the Damages on the Concessionaire for non-performance of its obligation under this agreement shall be as follows:

Sl. No.	Service Standards	Performance Target	How / When measured by Independent Engineer	Damages ³
A. Waste bins				
1.	Clearing of Biodegradable waste – Daily	100% of bins	Monthly Inspection of: (i) Complaints records, (ii) Log books (iii) Operations	Rs. 1.00 lakh for non compliance of each of the parameters
2.	Clearing of Non Biodegradable waste – Daily	100% of bins		
3.	Cleaning and disinfection – Weekly	90% of bins		
4.	No overflow	95% of bins		
5.	Proper maintenance of bins- no breakages, no large cracks, no toppling of bins, no dislocation of covers, bin coding clearly visible	95% of bins		
B. Transport Vehicles & Loading Equipments				
6.	Weekly cleaning & disinfection	90% of vehicles	Monthly Inspection of: (i) Complaints records, (ii) Log books (iii) Operations	Rs. 1.00 lakh for non compliance of each of the parameters
7.	Uptime of vehicles	100% of scheduled vehicle trips per day		
C. Collection & Transportation Standards				
8.	No spillage/ leakage while transportation	100% of times inspected	Monthly Inspection of Operations	Rs. 1.00 lakh for non compliance of each of the parameters
9.	No dislocation of bin covers while transportation	95% of times inspected		
10.	No dumping of MSW on floor	100% of times inspected		

³ The amount of the Damages mentioned in the table shall be increased by 5% per annum.



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Sl. No.	Service Standards	Performance Target	How / When measured by Independent Engineer	Damages ³
D.	Complaint Redressal Cell			
11.	Timings (9 A.M. to 5 P.M. & 6 days a week)	90% Compliance	Monthly Inspection of Operations	Rs. 1.00 lakh for non compliance of each of the parameters
12.	Complaint redressal within 24 hours	90% of complaints		
13.	Bin coding and Complaint redressal cell numbers clearly visible	90% of bins		
E.	Assured Supply of Waste			
14.	Shortfall in Assured Incoming Waste	100% Compliance	Monthly Inspection of Operations	As per Article 5.7(c)



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Enclosure 1 of Schedule E

SPECIFICATIONS FOR COLLECTION & TRANSPORTATION EQUIPMENTS

1. Minimum Requirement for Collection & Transportation Services

- a) The MSW shall be stored by generators in three separate bins, one each for bio-degradable, non-bio-degradable and recyclables. Waste shall be collected on a day to day basis in separate bins:
 - i) Green bins for bio-degradable MSW
 - ii) Blue bins for non-biodegradable MSWs
 - iii) Yellow bins for recyclable waste
- b) Secondary collection points should be provided for:
 - i) Bio-degradable MSW
 - ii) Non-bio-degradable MSW
- c) Rag pickers shall collect recyclable waste in yellow bins.

2. Wheelbarrows

2.1. Scope

This section covers the specifications for the procurement, supply, manufacturing material, delivery at site and performance of wheelbarrows, which shall be used for collection of street sweeping waste, as per the specifications mentioned herein, to the satisfaction of the Independent Engineer..

2.2. Code and Standard

The design, manufacture and performance of wheelbarrows shall comply with all currently applicable statutes, regulations and safety codes in the locality. The equipment shall also conform to the latest applicable Indian or equivalent International standards. The equipment shall conform to the requirements of MSW Rule.

2.3. Material

Wheelbarrow container shall be manufactured by using Linear Low Density Polyethylene (LLDP), high-density polythene (HDPE) or steel with MS holding frames adhering to

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Bureau of Indian Standards (BIS) specifications. The material shall be UV stabilized, cold, heat and chemically resistant.

2.4. General Specifications

2.4.1. The wheelbarrow should be

1. Rigid and Durable
2. Non-absorbent and water tight
3. Chemical and corrosion resistant
4. Easily cleanable

2.4.2. Heavy duty rubber wheels.

2.4.3. Galvanized steel wheel axle.

2.4.4. The wheelbarrow container should be closed lid in two half with locking system.

2.4.5. The wheelbarrow with lid of international standards specifications are preferable, however the bidder may provide covered bins of the same type, design, dimensions, thickness of body & lid, materials of construction and quality finish indigenously manufactured by ISO 9000/9001 company engaged in manufacture of such covered bins.

2.5. Special Specifications

Specifications of Wheel Barrow

Parameter	Specification
Material of Manufacture of container	Linear Low Density Polyethylene (LLDP), high-density polythene (HDPE)
Container size	
Length	Top 800-900, Bottom 650-750
Width	Top 1050 – 1150, Bottom 350 – 450
Depth	400 – 500 mm
Height (From Ground)	700 – 800 mm
Material of Manufacture of bars and frame	MS

2.6. Painting and Corrosion Protection

A shop coat of paint shall be applied to all steel and cast iron exposed surfaces as required to prevent corrosion, after release has been given for painting and before

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dispatch. All parts shall be adequately protected for rust prevention; grease shall not be used on mechanical surfaces.

2.7. Drawings and Manuals

The Concessionaire shall furnish the following drawings along with datasheet for ULBs approval :

1. Dimensional outline drawings
2. Cross sectional drawing

2.8. Name Plate

All wheel barrows shall have permanent name plates indicating tag number.

2.9. Warranty

Written warranties addressing to material and installation workmanship shall be submitted to and approved by Independent Engineer. The manufacturer's warranty shall state that the material meets all requirements of the contract drawings and specifications and that under typical local atmospheric conditions and weather aging, the sheet material is warranted for 5 years.

3. Four Pot Rickshaws

3.1. Scope

This section covers the specifications for the procurement, supply, manufacturing/ fabrication material, delivery at site and performance of four pot handcart/ rickshaw trolleys, handcarts which shall be used for door-to-door collection of waste from households, as per the specifications mentioned herein to the satisfaction of the Independent Engineer.

3.2. Code and Standards

The design, manufacture and performance of four pot handcart/ rickshaw trolleys shall comply with all currently applicable statutes, regulations and safety codes in the locality. The equipment shall also conform to the latest applicable Indian or equivalent International standards. The equipment shall conform to the requirements of MSW Rules.



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3.3. Material

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Handcart/rickshaw trolley body shall be fabricated out of FRP, steel tube framework and handle, M S fabricated wheels with bush bearing. The material shall be UV stabilized, cold, heat and chemically resistant.

3.4. General Specifications

3.4.1. The handcart/rickshaw trolley should be

1. Light Weight
2. Rigid and Durable
3. Chemical and corrosion resistant
4. Easily cleanable

3.4.2. Heavy duty rubber wheels

3.4.3. Galvanized steel wheel axle.

3.4.4. The shape, size, length and breadth of the handcart/rickshaw shall be able to accommodate 4 pots of required capacity each.

3.4.5. The pots should be closed lid with locking system.

3.4.6. The bidder shall provide handcart of the type, design, dimensions, thickness of body & lid, materials of construction and quality finish indigenously manufactured by ISO 9000/9001 Company engaged in manufacture of such items.

3.5. Painting and Corrosion Protection

A shop coat of paint shall be applied to all steel and cast iron exposed surfaces as required to prevent corrosion, after release has been given for painting and before dispatch. All parts shall be adequately protected for rust prevention; grease shall not be used on mechanical surfaces.

3.6. Drawings and Manuals

The Concessionaire shall furnish the following drawings along with datasheet for ULB approval:

1. Dimensional outline drawings.
2. Cross sectional drawing.




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3.7. Name Plate


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All handcarts / rickshaws shall have permanent name plates indicating tag number

3.8. Warranty

Written warranties addressing to material and installation workmanship shall be submitted to and approved by Independent Engineer. The manufacturer's warranty shall state that the material meets all requirements of the contract drawings and specifications and that under typical local atmospheric conditions and weather aging, the sheet material is warranted for 3 years.

4. 50 Liter Pot For Four-Pot Rickshaw

4.1. Scope

This section covers the specifications for the procurement supply, manufacturing/ fabrication material, delivery at site and performance of 50 liter pot for four pot handcart/ rickshaw trolleys, as per the specifications mentioned herein to the satisfaction of the Independent Engineer.

4.2. Code and Standards

The design, manufacture and performance of 50 liter pot for four pot handcart/ rickshaw trolleys shall comply with all currently applicable statutes, regulations and safety codes in the locality. The equipment shall also conform to the latest applicable Indian or equivalent International standards. The equipment shall conform to the requirements of Municipal Solid Waste (Management & Handling) Rules, 2000 and amendments thereof.

4.3. Material

Pot body shall be fabricated out of LLDPE, The material shall be UV stabilized, cold, heat and chemically resistant.

4.4. General Specifications

4.4.1. The pots should be

1. Light Weight
2. Rigid and Durable
3. Chemical and corrosion resistant
4. Easily cleanable




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4.4.2. The pots should be closed lid with locking system.

4.4.3. The Concessionaire shall provide pots of the type, design, dimensions, thickness of body & lid, materials of construction and quality finish indigenously manufactured by ISO 9000/9001 Company engaged in manufacture of such items.

4.5. Special Specifications

Specifications of Wheel Barrow

Property	Test Method	Specified Value
Size		Top 325 x 325 mm
		Bottom 290 x 290 mm
		Height 325 mm
Material of Manufacture of pots		Linear Low Density Polyethylene (LLDP), Only virgin polymer to be used
Thickness of		3 mm walls of pot
		4 mm bottom of pot
Handle		8 mm handle bar
Density at 23%	ASTMD 1505	>0.930 gm/cc
Melt flow index	ASTMD 1238	>4.2 gms/10 min
Tensile Strength at yield	ASTMD 638	>105 kg/cm ²
Tensile Strength at break	ASTMD 638	> 175 kg/cm ²
Elongation at yield	ASTMD 638	>20%
Elongation at break	ASTMD 638	>800
Impact Strength (12.5 kg/mtr)	IS 1270:96	No puncture or damage
Vicat Softening point	ASTMD 152	>117 degree C
Flexural Modulus	ASTMD 790	>3500 kg/cm ²
Weathering (200 hrs)	ASTMD 2565	Tensile and flexural values should not be less than 70% of ___

4.6. Drawings and Manuals

The Concessionaire shall furnish the following drawings along with datasheet for ULB's approval:

1. Dimensional outline drawings
2. Cross section drawing



4.7. Name Plate


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All posts shall have permanent name plates indicating the tag number

4.8. Warranty

Written warranties addressing to material and installation workmanship shall be submitted to and approved by Independent Engineer. The manufacturer's warranty shall state that the material meets all requirements of the contract drawings and specifications and that under typical local atmospheric conditions and weather aging, the sheet material is warranted for 3 years.

5. Compactor Trucks & Refuse Collector Vehicle

The Compactor Truck shall meet the latest RTO guidelines in all respect. The refuse Collector vehicle is similar to a compactor truck without the compaction arrangement. The specifications given below are applicable for both the types of vehicles except for the compaction arrangement which has to be provided only in the compactor vehicles.

5.1. Compactor Equipment

1. The rear loading compactor shall be mounted on a chassis manufactured by a reputed manufacturer. The compactor shall comprise of three main parts:
 - (i) The body and ejection plate
 - (ii) The tailgate and compaction hydraulic unit at rear body
 - (iii) The bin lifter unit
2. The packing system will comprise of two moving plates: the packing plate and the sweeping plate. The packing plate will travel on cured track. At the end of this track the sweeping plate will be activated and clean the hopper. At the end of its travel the packing plate will reverse its travel thus drawing and compressing the refuse into the body. The tailgate shall be provided with a hydraulic bin lifter, which shall be suitable to lift standard containers of size 500, 600 and 1100 litres. The compactor should have a proper load distribution with allowable axle loading.

5.2. Material

The compactor body shall be constructed of steel as per the details given: -

1. The compactor body shall be sufficiently strong and will have inside volume of minimum 11 cum.




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2. The equipment i.e. the compactor shall be suitable to carry payload of minimum 7-8 tonnes.
3. Hopper for manual loading shall not be more than 800 mm to 1000 mm.
4. The construction of the vehicle shall consist of the body, the ejector system, the tailgate and hydraulically bin loading system.
5. The garbage shall be loaded in the hopper mechanically by emptying the containers hydraulically with the help of lifting mechanism. The garbage from the hopper shall be swept by sweeping plate fitted at the end of packing plate and pushed inside the body and then compressed against the ejection plate.
6. The tailgate shall be equipped with heavy-duty tumbuckle one on each side to hold the tailgate and body together.
7. Grab handles shall be located on each side of the tailgate. The tailgate shall be fixed with heavy-duty pins at the top with the compactor body.
8. The tailgates shall be provided with sturdy arrangement for raising and controlling of descent.
9. The tailgate shall be provided with one piece removal rubber gasket extending across the entire bottom width of the tailgate and vertically up to 600mm.
10. The operation of the tailgate mechanism shall include operation by two hands so that the possibilities of accidents are minimum.
11. Hose burst non return valves shall be provided to prevent the tailgate descending in the event of hydraulic failure-Lever shall be provided on the rear side of the vehicle to start packing mechanism.
12. Arrangement shall be provided to stop the system instantaneously with the help of switches provided at the rear of the vehicle.
13. The packer blade shall be fitted with sturdy mounting to the cylinders.
14. There shall an intern lock valve fitted to prevent packing/ occurring when the hopper is raised.
15. Arrangement shall be provided to control the speed of the engine automatically at the tune of operation of Compacting system so that the speed is not depended on the throttle opening of the engine when the vehicle is stationary.
16. The ejector plate shall suitably angled & so that the proper ejection takes place when operated.
17. Arrangement shall be provided such that the tailgate will not come down even in case of hydraulic failure.
18. Ejector plate shall be supported as well as guided on two C-beam located on both sides of the garbage hold. Free sliding replaceable guide shoes made of high wear resistant polyamide shoes shall be used between the plate and the C-beam.
19. Pressure regulation switch shall be provided for setting desired pressure of telescopic cylinder on the ejector plate. The regulation switch shall have a key lock arrangement for pressure setting & for safety of the system.
20. The ejection panel shall run on a synthetic/bronze guide block (pads) within the lateral longitudinal guides of the boat type bottom group of the refuse collection

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- body and must operated by a telescopic hydraulic ram. It must serve during loading as a resistance for the refuse compaction process.
21. The Compactor Vehicle tailgate hopper should have a capacity of minimum 1.7 cu m. The hopper loading height should not be more than 1.2 m from the ground level.
 22. The bin lifter should be so designed that the cover opener opens the cover of the bin automatically during the tipping of the bin into the machine hopper.
 23. The time taken for unloading garbage from closed bins of 1100 litres capacity should be maximum 15 seconds.

The vehicles shall also meet following minimum specifications:

5.3. Vehicular Chassis

- 5.3.1. The vehicular chassis supplied shall be as per the following specifications for mounting compactor equipment suitable for use with containers as per specifications mentioned in the document.

Type	Full forward
Engine	Water-cooled engine developing suitable BHP. The engine shall be operated with diesel as a fuel and shall meet EURO-II/BS-II emission norms as per applicable prevailing guidelines. A certificate to this effect shall be produced from the manufacturer
Tyres Size	1000 x 20
Gear Box	5 forward and 1 reverse gear (Synchromesh)
Fuel Tank	Capacity of 160 litres (minimum)
Wheel Base	Suitable to accommodate driver cum attendants compartment and compactor body without exceeding the permitted overhang
Drive	Right hand Driver only with power steering
Brakes	Preferably full air brakes with air dryer kit and automatic speed adjuster, power brakes

6. Refuse Collector Bin

6.1. Scope

This section covers the specifications for the procurement, supply, manufacturing / fabrication material, delivery at site and performance Refuse Collector Bins which shall be used as waste storage facility for collection of waste, as per the specifications mentioned herein to the satisfaction of the Independent Engineer.




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6.2. Code and Standards मु०म०प्र०(प्र०)

6.2.1. The design, manufacture and performance of Refuse collector bins shall comply with all currently applicable statutes, regulations and safety codes in the locality. The equipment shall also conform to the latest applicable Indian or equivalent International standards. The equipment shall conform to the requirements of Municipal Solid Waste (Management & Handling) Rules, 2000 and amendments thereof.

6.2.2. The covered bins/dumper containers shall be of standard international design conforming to DIN standard or its equivalent, used all over the world for loading/off-folding solid waste in to refuse collector/compactor vehicles/dumper placers by standardized lifting system conforming to DIN/COMB system.

6.3. Material

These shall be manufactured by using steel adhering to Bureau of Indian Standards (BIS) specifications. The material shall be UV stabilized, cold, heat and chemically resistant.

6.4. General Specifications

6.4.1. The Refuse Collector Bins shall be placed appropriately within the Area of Operations so as to ensure adequate number of waste storage facility.

6.4.2. The covered bins, containers and large containers shall be of standardized design conforming to international standards for covered garbage bins used for automatic loading in to vehicles.

6.4.3. Specification in general shall be as below:

1. The Refuse Collector Bins shall be provided in a set of two, with one bin designated for Biodegradable MSW and the other for Non-biodegradable MSW.
2. The refuse Collector Bins should be color coded and marked as specified in the MSW Rules, ensuring easy monitoring and easy identification of independent Refuse Collector Bins.
3. The design of the Refuse Collector Bins should be such as to restrict stray cattle and other animals (like dogs, pigs etc) and birds to have access the MSW stored in it.
4. The bin shall be compatible with any size of refuse collector vehicle lifting mechanism based on international standards.
5. The Refuse Collector Bins should be
 - Aesthetic
 - Rigid and Durable



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Collection and Transportation of MSW for Kanpur Municipal Corporation, UP

- Non-absorbent and water tight
 - Chemical and corrosion resistant
 - Rodent proof and easily cleanable
 - Covered and designed to allow convenient and safe dropping of MSW by generators of MSW
6. Heavy duty rubber wheels
 7. Galvanized steel wheel axle
 8. Confirming to shape, size, lid arrangement or equivalent for standard loading devices
 9. The lid of bin should be so designed that for putting in waste, the bin can be opened with the help of a pedal. The lid should also open automatically when the bin is lifted into *the* refuse collector.
 10. Number of covered bins/ dumper containers required shall be worked out by the bidder with extra margin of 20% for future use or replacement

6.5. Special Specifications

Specifications of Refuse Collector Bin

Parameter	
Material of Manufacture	Steel adhering to (BIS) specifications
Shape	Such that it can be carried by 16 GVW Chassis loaded with 800-1000 kg/m ³
Size	
Length	
Breadth	
Loading Height	900-1100mm
Lid	With spring loaded/ pneumatic cylinder mechanism
Locking Arrangement	To be provided

6.6. Painting and Corrosion Protection

6.6.1. A shop coat of paint shall be applied to all steel and cast iron exposed surfaces as required to prevent corrosion, after release has been given for painting and before dispatch. All parts shall be adequately protected for rust prevention; grease shall not be used on mechanical surfaces.

6.6.2. The color should not rust, chip, or flake throughout the anticipated life.



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6.7. Drawings and Manuals

The Concessionaire shall furnish the following drawings along with datasheet for ULB's approval:

1. Dimensional outline drawings.
2. Cross sectional drawing.

6.8. Name Plate

All bins shall have permanent name plates indicating the tag number.

6.9. Quality and performance test

The bins should be in accordance with the following tests:

1. Impact resistance test
2. Pavement drop test
3. Static Stability Test
4. Traction, rolling and braking test
5. Lifting and tilting test
6. Corrosion test
7. Extreme atmospheric condition test


6.10. Warranty

Written warranties addressing to material and installation workmanship shall be submitted to and approved by Independent Engineer. The manufacturer's warranty shall state that the material meets all requirements of the contract drawings and specifications and that under typical local atmospheric conditions and weather aging, the sheet material is warranted for 5 years.

7. Dumper Placer Container

7.1. Scope

This section covers the specifications for the procurement, supply, manufacturing / fabrication material, delivery at site and performance Dumper Placer Containers which shall be used as waste storage facility for collection of waste, as per the specifications mentioned herein to the satisfaction of the Independent Engineer.


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7.2. Code and Standards

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The design, manufacture and performance of four pot handcart/ rickshaw trolleys shall comply with all currently applicable statutes, regulations and safety codes in the locality. The equipment shall also conform to the latest applicable Indian or equivalent International standards. The equipment shall conform to the requirements of Municipal Solid Waste (Management & Handling) Rules, 2000 and amendments thereof.

The covered dumper containers shall be of standard international design conforming to DIN standard or its equivalent, used all over the world for loading/off loading solid waste in to refuse collector/compactor vehicles/dumper placers by standardized lifting system conforming to DIN/COMB system.

7.3. Material

These shall be manufactured by using steel adhering to Bureau of Indian Standards (BIS) specifications. The material shall be UV stabilized, cold, neat and chemically resistant.

7.4. General Specifications

The Dumper Placer Containers shall be placed appropriately within the Area of Operations so as to ensure adequate number of waste storage facility.

1. Container should be of volumetric capacity as specified in scope of work and should be strengthen enough to handle the garbage of its maximum capacity.
2. Container rear door lock and emptying lock should be strong enough to handle the rigorous working operation.
3. For fabrication of container normal engineering standards and practice will have to be used by the contactor.
4. Hard industrial rubber pad should be provided at the bottom channel of the container.
5. Contractor has to first provide the sample container and on approval of the same balance quantity should be manufactured.

7.5. Special Specifications

Specifications of Dumper Placer Container

Parameter	
Material of Manufacture	Steel adhering to BIS standards
Bottom plate	5 mm thick M.S.plate
Sides, front and top portion	3 mm thick M.S. sheet
Rear Door	3 mm thick M.S. sheet



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Parameter	
Top leads	4 Nos.
Window	1.6 mm thick M.S. sheet having angle support inside the window for its sturdiness
Cross stiffener/ cross members	Minimum 4 nos. of minimum of ISMC-75 MM M.S Channel
Longitudinal channels beneath the floor	2 Nos. of minimum ISMC-75 size M.S. Channel
Support to Plate/Sheet Joints at container edge/ border	M.S. angle of minimum 40 x 40 x 6 MM thick size and fully welded
Angle for tip lead	Of 25x25x3 MM
Framing for rear door	15 MC – 75 size M.S. Channel
Hook locking arrangement	From 40 mm. M.S. bars beneath the container at rear door side for emptying operation

7.6. Painting and Corrosion Protection

7.6.1. A shop coat of paint shall be applied to all steel and cast iron exposed surfaces as required to prevent corrosion, after release has been given for painting and before dispatch. All parts shall be adequately protected for rust prevention; grease shall not be used on mechanical

7.6.2. The Container outer sides shall be colored with Green as per our S.W.M. Scheme and internally colored with Black anti-corrosive epoxy paint. Bottom of the container shall also be painted with black anti-corrosive color. Prior to painting 2 coats of primer / Red Oxide shall be applied as per the paint

7.6.3. Colour must be of First class quality of of reputed brand.

7.7. Drawings and Manuals

The Concessionaire shall furnish the following drawings along with datasheet for ULB's approval:

1. Dimensional outline drawings
2. Cross sectional drawing

7.8. Name Plate

All dumper containers shall have permanent name plates indicating tab number



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7.9. Warranty

Written warranties addressing to material and installation workmanship shall be submitted to and approved by Independent Engineer. The manufacturer's warranty shall state that the material meets all requirements of the contract drawings and specifications and that under typical local atmospheric conditions and weather aging, the sheet material is warranted for 5 years

8. Transfer Stations

- 8.1. Requisite Number of transfer stations shall be provided and the existing transfer station shall be upgraded with the following facilities.
- 8.2. It is required that the Concessionaire prepare engineering drawings. (recommended scale 1:100) showing construction details including plan and layout of the transfer station, structural details, cross sectional & structural drawings, roads utilities, etc.
- 8.3. During all construction activities, the Concessionaire shall be responsible for maintaining quality control over all suppliers, services, site conditions, and workmanship.
- 8.4. All the steel structure shall be painted with anti-corrosive paints.
- 8.5. The Transfer Stations shall be provided with boundary walls with minimum 2m height
- 8.6. The Transfer Stations shall be provided with sufficient vehicle parking facility with the provision of future expansion.
- 8.7. The Transfer Stations shall be provided with approach and internal roads to allow for two-way traffic and be designed to accommodate vehicles having a minimum 40-ton gross weight.
- 8.8. The Transfer Station shall be provided with office building which should be a permanent structure. It should be equipped with an office area for transfer station management and supervisory staff and also include the following:
 - (i) Office for the facility manager
 - (ii) Office to accommodate working space and desks for the employees.
 - (iii) Office to store landfill drawings and records
 - (iv) Washrooms and shower area.



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- 8.9. Adequate lighting system to achieve a minimum lux level of 20 for the working area. Street lighting with permanent steel light posts for internal roads and access roads. Movable heavy duty focus lamps depending on the operational requirements.
- 8.10. The Maintenance of the Transfer Station should be at par with Good Industry Practice and should have all arrangements to meet emergency situations such as fire hazards as per applicable laws.



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उत्तर प्रदेश UTTAR PRADESH



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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** is entered into on this the 16 day of Oct, Two thousand and Ten at Kanpur;

BETWEEN

Kanpur Municipal Corporation, a municipal corporation constituted under the Municipal Corp Act 1959 having its principal office at KANPUR (hereinafter referred to as "ULB" which expression shall unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) of One Part;



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Construction and Design Services, a unit of Uttar Pradesh Jal Nigam, a Government of UP Enterprise, having its main office at 2, Lal Bahadur Shastri Marg, Lucknow - 226001 (hereinafter referred to as "C&DS, UPJN" which expression shall unless excluded by or

आदेश दि. 30/9/2010 के क्रम में अतिरिक्त हस्ताक्षरित

 16.10.10

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repugnant to the context, be deemed to include its administrators, successors and assigns) of Second Part;

AND

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M/s A2Z Infra Structure Pvt. Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 5th Floor, Enkay Square, 448 A, Udyog Vihar, Phase-V, Gurgaon-122016 (hereinafter referred to as "the Concessionaire" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and substitutes) of Third Part.



WHEREAS:

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- A. ULB is the urban local body for the city of Kanpur in the state of Uttar Pradesh, and is responsible for providing municipal and civic services for the benefit of the public residing within its jurisdiction, which includes the collection, transportation, processing and disposal of Municipal Solid Waste generated within the city.
- B. In accordance with the Municipal Solid Wastes (Management and Handling) Rules, 2000 ("MSW Rules"), it is mandatory for every Municipal Authority to implement a scientific municipal solid waste management system wherein Municipal Solid Waste is collected, transported and processed and the remnant waste matter is disposed in accordance with the MSW Rules.
- C. In furtherance its objective of improving the solid waste management services in the city of Kanpur, Nagar Nigam, C&DS, UPJN on behalf of ULB has invited private sector participation for design, build, operate, maintain and transfer basis, to undertake door to door collection, secondary collection, transfer, transportation and delivery of Municipal Solid Waste at the designated SWM processing facility
- D. C&DS, UPJN had prescribed the technical and commercial terms and conditions (the "Request for Proposals" or "RFP"), and invited bids which term shall include written clarifications issued to the Bidders and written addendum to the Request for Proposal) from the bidders including the {Selected Bidder/ Consortium comprising} M/s A2Z Infra Structure Pvt. Ltd., BETL and KCDC (collectively and consortium) with A2Z as its lead Member, for implementing the Project;
- E. After evaluation of the bids received, the ULB had accepted the bid of the {Selected Bidder/ Consortium comprising} and issued its Letter of Award No. 551 dated 29.07.2010 (hereinafter called the "LOA") to the {Selected Bidder/ Consortium comprising} requiring, inter alia, the execution of this Concession Agreement;
- F. The {Selected Bidder/ Consortium comprising} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956 (a special purpose vehicle), and has requested the ULB to accept the



पर्यावरण अभियन्ता

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Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/ Consortium comprising} under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project;

- G. By its letter dated 20.05.2010, the Concessionaire has also joined in the said request of the {Selected Bidder/ Consortium comprising} to the ULB to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/ Consortium comprising} including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the A2Z {Selected Bidder/ Consortium comprising} only for the purposes hereof;
- H. The Concessionaire has submitted a bank guarantee dated 10-08-2010 ref no. BG 20101271B4P0481 of an amount Rs. 7,66,25000 issued by IDBI BANK LTD. towards the Performance Security and C&DS, UPJN/ULB acknowledges the acceptance of the same;
- I. The ULB has agreed to the said request of the {Selected Bidder/ Consortium comprising} and the Concessionaire, and has accordingly along with C&DS, UPJN agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- J. The Parties hereto are required to enter into this Concession Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound, being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

Article 1 to 15(page no. 2-67) and schedules A to L and its enclosures (no.68 to 135) and Drawing and appendices as detailed in the Articles and schedules.

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

पर्यावरण अभियंता

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SIGNED SEALED AND DELIVERED
For and on behalf of ULB by

Name:
Designation:

आदेश दि.30 / 0 / 2010 के क्रम
में अनुबन्ध हस्ताक्षरित
पर्यावरण अभियन्ता
नगर आयुक्त
16.2.20

SIGNED, SEALED AND DELIVERED
For and on behalf of the C&DS, UPJN by:

Name: Bharat Singh
Designation: Chief General Manager

SIGNED, SEALED AND DELIVERED
For and on behalf of the Concessionaire by:

For a2z Infrastructure Private Limited
Authorized Signatory

Name:
Designation:

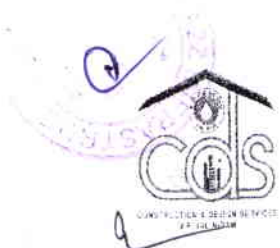
In the presence of

- 1)
- 2)



मु०म०प्र०(प्र०)

पर्यावरण अभियन्ता
पर्यावरण अभियन्ता



CONSTRUCTION & DESIGN SERVICES

UTTAR PRADESH JAL NIGAM

2, Lal Bahadur Shastri Marg, Lucknow

Tel: 91- 0522 -2237768, 2237801, 2235573 Fax:0522-2239088

Email: director@cdsupjn.org Visit us at: www.cdsupjn.org

मु०म०प्र०

Letter No.

551 / LG-2-13/27

Dated: 29-7-10

Mr. Rajneesh Mehra,
Joint Managing Director & CEO,
M/s A2Z Infrastructure (P) Ltd.,
448- A, Enkay Square, 5th Floor,
Udyog Vihar, Phase-V,
Gurgaon-122016

Sub: Letter of Award for Collection and Transportation of Municipal Solid Waste for Kanpur Municipal Corporation, U.P. ("ULB").

Dear Sir,

We refer to:

- 1) The Request for Proposal document dated 30-03-2010 issued by Construction & Design Services, Uttar Pradesh Jal Nigam (C&DS, UPJN) to you for **Collection and Transportation of Municipal Solid Waste for Kanpur Municipal Corporation, U.P.** under the Swiss Challenge route (the "Project"), and as amended till the Base Proposal Due Date by C&DS, UPJN (hereinafter collectively referred to as the "Final RFP");
- 2) M/s A2Z Infrastructure (P) Ltd's (448- A, Enkay Square, 5th Floor, Udyog Vihar, Phase-V, Gurgaon) offer by way of its "Proposal" containing Bid Security (Envelope I) Other Submissions and duly initialed draft Concession Agreement (Envelope II) and the Financial Proposal (Envelope III) above submitted on 10-04-2010, in response to the Final RFP.
- 3) M/s A2Z Infrastructure Services (P), Ltd., revised financial offer vide its letter dated May 20, 2010 (hereinafter referred to as "Final Financial Offer") in pursuance to the invitation by C&DS, UPJN vide its letter ref no. 350/G-2-13/15 dated May 20, 2010 exercising its right to match or better the Counter Proposal.
- 4) The Proposal as referred to in Para (2) above and the Final Financial Offer as referred to in Para (3) above, hereinafter collectively referred to as the "Bid".

Contd. Page-2

Acknowledged and Accepted

Authorized Signatory

पर्यावरण अभियन्ता

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मु०म०प्र०(प्र०)



This is to inform you that the process of evaluating Bids received pursuant to the Final RFP, has been concluded. We are pleased to inform you that your "Bid" has been accepted and M/s A2Z Infrastructure (P). Ltd., is hereby declared as the Selected Bidder as per Clause 3.7.2 of the Final RFP for the above Project and consequently, this Letter of Award (hereinafter referred to as the "LOA") is being issued to you.

This LOA is based on the Final RFP and the Bid and also subject to timely fulfillment of the following conditions on your part:

- a) Acknowledging its issuance and unconditionally accepting its contents by procuring the signature of your Authorized Signatory on each page of the duplicate copy of this letter attached herewith at the places indicated for the same, and returning the same to C&DS, UPJN within seven (7) days of the date of issuance of LOA.
- b) Completion of various activities as stipulated in the Final RFP including in particular Clause 3.8.2 of the Final RFP, within 21 (Twenty one) days from the date of issuance of LOA.
- c) Submission of the Performance Security (as per Article 5.1 of the Concession Agreement) for **Rs. 7,66,25,000/- (Rupees Seven crore sixty six lacs twenty five thousand only)** within 15 (Fifteen) days from the date of issuance of LOA (prior to the execution of the Concession Agreement).

It may be noted that C&DS, UPJN / ULB have the rights available to them under the Final RFP, including rights under clause 3.8.1 of the Final RFP upon your failure to comply with the aforementioned conditions.

As you are aware, the issuance and contents of this LOA are based on the unconditional and unqualified Bid submitted by you as per the Final RFP.

A copy of the Final Financial Offer as submitted by you in your Bid is annexed herewith as Schedule A incorporated herein by way of reference.

Further, please note that M/s A2Z Infrastructure (P), Ltd., contractual relationship with the ULB / C&DS, UPJN will be governed solely on the basis of the Final RFP and the Concession Agreement.

Enclosures:
Schedule A --Final Financial Offer

Yours faithfully,

(P.K. Bhukesh)
Director

Contd. Page-3

Acknowledged and Accepted

Authorized Signatory

मु०म०प्र०(प्र०)



मु०म०प्र०(प्र०)



Endt. No.

Copy forwarded to the following for information and necessary action:-

- 1- Principal Secretary, Nagar Vikas, Govt. of U.P., Lucknow.
- 2- P.S. to Chairman/Managing Director, U.P. Jal Nigam, Lucknow.
- 3- Director, Local Bodies, U.P., Lucknow.
- 4- Commissioner, Kanpur Circle, Kanpur.
- 5- Municipal Commissioner, Nagar Nigam, Kanpur..
- 6- District Magistrate, Kanpur..
- 7- Chief General Manager(I), C&DS, U.P. Jal Nigam, Lucknow.
- 8- General Manager(N-2/8), C&DS, U.P. Jal Nigam, Lucknow.
- 9- Senior Accounts officer, C&DS, U.P. Jal Nigam, Lucknow.
- 10- Project Manager, Unit-11, C&DS, U.P. Jal Nigam, Kanpur.

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Director

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पर्यावरण अभियन्ता



Acknowledged and Accepted

Authorized Signatory

मु०म०प्र०(प्र०)



CONSTRUCTION & DESIGN SERVICES

UTTAR PRADESH JAL NIGAM

2, Lal Bahadur Shastri Marg, Lucknow
Tel: 91- 0522 -2237768, 2237801, 2235573 Fax:0522-2239088
Email: director@cdsupjn.org Visit us at: www.cdsupjn.org

No. 350

/ G-2-13/ 15

Dated- 20-05-2010

To,

M/s A2Z Infrastruc Pvt.Ltd.
448-A, Enakay Square, 5th Floor,
Udyog Vihar Ph - V,
Gurgaon- 122016

Sub: Development of Municipal Solid Waste Collection and Transportation Facilities for Kanpur Municipal Corporation.

Dear Sir,

This is with reference to the Base Proposal submitted by you vide letter dated April 5, 2010 for the above project.

As per the Clause 1.1.9 of the Request for Proposal (RFP) sent to you vide e-mail on 30.03.2010 in continuation to this office letter no. 234/G-2-13/08 dated 27-03-2010, we have invited Counter Proposals to your Base Proposal for the above project through open advertisement wherein your Base Proposal was disclosed in the RFP document released for inviting the Counter Proposals.

In response to the said advertisement, we have received a Counter Proposal enclosed as Annexure I to this letter for the project and after its evaluation we have found that the Counter Proposal is better than the Base Proposal submitted by you.

As per the Clause 3.7.2 of the RFP sent to you, we invite you to exercise your right to match or better the above Counter Proposal for the project latest by 1500 hours IST on May 24th, 2010.

Please note that in case, your revised financial proposal, which matches or betters the above Counter Proposal, is not received by the above-mentioned date, the bidder of the Counter Proposal may be declared as the Selected Bidder.

Kindly note that this letter is subject to the RFP already issued to you including provisions relating right to negotiate by C&DS, UPJN as per Clause 3.7.4 of RFP.

Thanking You,

Yours faithfully,

(V. P. Singh)

General Manager(N-2)

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पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)



Annexure I

Operation and Maintenance Year	Tipping Fee in Rs. Per MT
1	456
2	456
3	456
4	479
5	503
6	528
7	554
8	582
9	611
10	642
11	674
12	708
13	743
14	780
15	819
16	860
17	903
18	948
19	995
20	1045
21	1097
22	1152
23	1210
24	1271
25	1335
26	1402
27	1472
28	1546
29	1623
30	1704

मु०म०प्र०(प्र०)



DP

प्रबंधक अभियन्ता

A2Z Group

मु०म०प्र०(प्र०)



Sir,
Attached is the Consent to Establish
This may please be provided to Mr VP
warm regards,

Muthu Krishnan
General Manager (Program Coordination)
M/s a2z Infrastructure Pvt. Ltd.
548, Udyog Vihar Phase-V
Gurgaon - 122016 (Haryana)
Mobile: +91-9868169469
Landline: +91-124-4776100
Fax No:- 0124- 4776176

T.A.
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May please file
a copy may be
sent to Director
Environment for their Record
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मु०म०प्र०(प्र०)



12/6

पर्यावरण अभियन्ता



a2z INFRASTRUCTURE PRIVATE LTD

Handwritten signature
मु०म०प्र०(प्र०)



Date: 20-05-2010

To,

The Director,
Construction & Design Services,
U.P.Jal Nigam,
Lucknow.

Sub: Your reference No. 350/G-2-13/15 Dated 20-5-2010

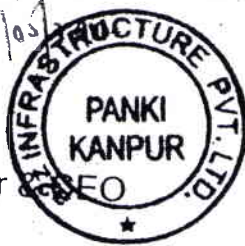
Dear Sir,

We take this opportunity to accept the counter offer sent by you vide your letter no. referred to above. This letter may be considered as our firm acceptance of the said counter offer. The schedule of rates in the counter offer is being submitted duly accepted and signed by us.

Thanking You,

for a2z infrastructure (P) Ltd.

Handwritten signature
20/05/10
(Rajneesh Mehra)
Joint Managing Director & CEO



Handwritten signature
मु०म०प्र०(प्र०)



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पर्यावरण अभियन्ता

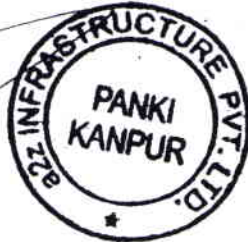
मु०म०प्र०(प्र०)



Annexure I

Operation and Maintenance Year	Tipping Fee in Rs. Per MT
1	456
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4	479
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6	528
7	554
8	582
9	611
10	642
11	674
12	708
13	743
14	780
15	819
16	860
17	903
18	948
19	995
20	1045
21	1097
22	1152
23	1210
24	1271
25	1335
26	1402
27	1472
28	1546
29	1623
30	1704

Accepted



पर्यावरण अभियन्ता

मु०म०प्र०(प्र०)





CONSTRUCTION & DESIGN SERVICES

UTTAR PRADESH JAL NIGAM

2, Lal Bahadur Shastri Marg, Lucknow

Tel: 91- 0522 -2237768, 2237801, 2235573 Fax:0522-2239088
Email: director@cdsupjn.org Visit us at: www.cdsupjn.org

Letter No.

551 / G-2-13 / 27

Dated:

29-7-10

Mr. Rajneesh Mehra,
Joint Managing Director & CEO,
M/s A2Z Infrastructure (P) Ltd.,
448- A, Enkay Square, 5th Floor,
Udyog Vihar, Phase-V,
Gurgaon-122016

Sub: Letter of Award for Collection and Transportation of Municipal Solid Waste for Kanpur Municipal Corporation, U.P. ("ULB").

Dear Sir,

We refer to:

- 1) The Request for Proposal document dated 30-03-2010 issued by Construction & Design Services, Uttar Pradesh Jal Nigam (C&DS, UPJN) to you for **Collection and Transportation of Municipal Solid Waste for Kanpur Municipal Corporation, U.P.** under the Swiss Challenge route (the "Project"), and as amended till the Base Proposal Due Date by C&DS, UPJN (hereinafter collectively referred to as the "**Final RFP**");
- 2) M/s A2Z Infrastructure (P) Ltd's (448- A, Enkay Square, 5th Floor, Udyog Vihar, Phase-V, Gurgaon) offer by way of its "Proposal" containing Bid Security (Envelope I) Other Submissions and duly initialed draft Concession Agreement (Envelope II) and the Financial Proposal (Envelope III) above submitted on 10-04-2010, in response to the Final RFP.
- 3) M/s A2Z Infrastructure Services (P), Ltd., revised financial offer vide its letter dated May 20, 2010 (hereinafter referred to as "Final Financial Offer") in pursuance to the invitation by C&DS, UPJN vide its letter ref no. 350/G-2-13/15 dated May 20, 2010 exercising its right to match or better the Counter Proposal.
- 4) The Proposal as referred to in Para (2) above and the Final Financial Offer as referred to in Para (3) above, hereinafter collectively referred to as the "**Bid**".

Contd. Page-2

Acknowledged and Accepted

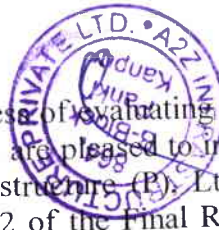
Authorized Signatory

पर्यावरण अभियन्ता

मु०म०प्र०(प्र०)



मु०म०प्र०(प्र०)



This is to inform you that the process of evaluating Bids received pursuant to the Final RFP, has been concluded. We are pleased to inform you that your "Bid" has been accepted and M/s A2Z Infrastructure (P) Ltd., is hereby declared as the Selected Bidder as per Clause 3.7.2 of the Final RFP for the above Project and consequently, this Letter of Award (hereinafter referred to as the "LOA") is being issued to you.

This LOA is based on the Final RFP and the Bid and also subject to timely fulfillment of the following conditions on your part:

- Acknowledging its issuance and unconditionally accepting its contents by procuring the signature of your Authorized Signatory on each page of the duplicate copy of this letter attached herewith at the places indicated for the same, and returning the same to C&DS, UPJN within seven (7) days of the date of issuance of LOA.
- Completion of various activities as stipulated in the Final RFP including in particular Clause 3.8.2 of the Final RFP, within 21 (Twenty one) days from the date of issuance of LOA.
- Submission of the Performance Security (as per Article 5.1 of the Concession Agreement) for **Rs. 7,66,25,000/- (Rupees Seven crore sixty six lacs twenty five thousand only)** within 15 (Fifteen) days from the date of issuance of LOA (prior to the execution of the Concession Agreement).

It may be noted that C&DS, UPJN / ULB have the rights available to them under the Final RFP, including rights under clause 3.8.1 of the Final RFP upon your failure to comply with the aforementioned conditions.

As you are aware, the issuance and contents of this LOA are based on the unconditional and unqualified Bid submitted by you as per the Final RFP.

A copy of the Final Financial Offer as submitted by you in your Bid is annexed herewith as Schedule A incorporated herein by way of reference.

Further, please note that M/s A2Z Infrastructure (P), Ltd., contractual relationship with the ULB / C&DS, UPJN will be governed solely on the basis of the Final RFP and the Concession Agreement.

Enclosures:

Schedule A –Final Financial Offer

Yours faithfully,

(P.K. Bhukesh)
Director

Contd. Page-3

Acknowledged and Accepted

Authorized Signatory

मु०म०प्र०(प्र०)

पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)

Dated:

Endt. No.

Copy forwarded to the following for information and necessary action:-

- 1- Principal Secretary, Nagar Vikas, Govt. of U.P., Lucknow.
- 2- P.S. to Chairman/Managing Director, U.P. Jal Nigam, Lucknow.
- 3- Director, Local Bodies, U.P., Lucknow.
- 4- Commissioner, Kanpur Circle, Kanpur.
- 5- Municipal Commissioner, Nagar Nigam, Kanpur..
- 6- District Magistrate, Kanpur..
- 7- Chief General Manager(I), C&DS, U.P. Jal Nigam, Lucknow.
- 8- General Manager(N-2/8), C&DS, U.P. Jal Nigam, Lucknow.
- 9- Senior Accounts officer, C&DS, U.P. Jal Nigam, Lucknow.
- 10- Project Manager, Unit-11, C&DS, U.P. Jal Nigam, Kanpur.

Director

मु०म०प्र०(प्र०)

Acknowledged and Accepted

Authorized Signatory

पुनर्विभाग अधिकारी

मु०म०प्र०(प्र०)



CONSTRUCTION & DESIGN SERVICES UTTAR PRADESH JAL NIGAM

2, Lal Bahadur Shastri Marg, Lucknow
Tel: 91- 0522 -2237768, 2237801, 2235573 Fax:0522-2239088
Email: director@cdsupjn.org Visit us at: www.cdsupjn.org

No.

350

/ G-2-13/ 15

Dated- 20-05-2010

To,

M/s A2Z Infrastrure Pvt.Ltd.
448-A, Enakay Square, 5th Floor,
Udyog Vihar Ph - V,
Gurgaon- 122016

Sub: Development of Municipal Solid Waste Collection and Transportation Facilities for Kanpur Municipal Corporation.

Dear Sir,

This is with reference to the Base Proposal submitted by you vide letter dated April 5, 2010 for the above project.

As per the Clause 1.1.9 of the Request for Proposal (RFP) sent to you vide e-mail on 30.03.2010 in continuation to this office letter no. 234/G-2-13/08 dated 27-03-2010, we have invited Counter Proposals to your Base Proposal for the above project through open advertisement wherein your Base Proposal was disclosed in the RFP document released for inviting the Counter Proposals.

In response to the said advertisement, we have received a Counter Proposal enclosed as Annexure I to this letter for the project and after its evaluation we have found that the Counter Proposal is better than the Base Proposal submitted by you.

As per the Clause 3.7.2 of the RFP sent to you, we invite you to exercise your right to match or better the above Counter Proposal for the project latest by 1500 hours IST on May 24th, 2010.

Please note that in case, your revised financial proposal, which matches or betters the above Counter Proposal, is not received by the above-mentioned date, the bidder of the Counter Proposal may be declared as the Selected Bidder.

Kindly note that this letter is subject to the RFP already issued to you including provisions relating right to negotiate by C&DS, UPJN as per Clause 3.7.4 of RFP.

Thanking You,

Yours faithfully,

मु०म०प्र०(प्र०)

(V. P. Singh)

General Manager(N-2).

500
R P

पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)

Counter Proposal

Annexure I



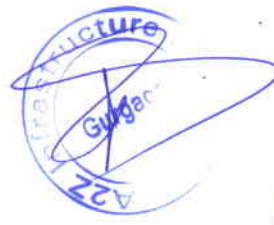
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29	1623
30	1704

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मु०म०प्र०(प्र०)

पर्यावरण अभियन्ता

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A2Z Group

मु०म०प्र०(प्र०)



24/11/16

Sir,
Attached is the Consent to Establish Kanpur.
This may please be provided to Mr VP Singh.
warm regards,

Muthu Krishnan
General Manager (Program Coordination)
M/s a2z Infrastructure Pvt. Ltd.
548, Udyog Vihar Phase-V
Gurgaon - 122016 (Haryana)
Mobile: +91-9868169469
Landline: +91-124-4776100
Fax No:- 0124- 4776176

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May please file
a copy may be
sent to Director
environment for their Record
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मु०म०प्र०(प्र०)

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पर्यावरण अभियन्ता



2: 15/11

मु०म०प्र०(प्र०)



a2z INFRASTRUCTURE PRIVATE LTD.

Date: 20-05-2010

To,

The Director,
Construction & Design Services,
U.P.Jal Nigam,
Lucknow.

Sub: Your reference No. 350/G-2-13/15 Dated 20-5-2010

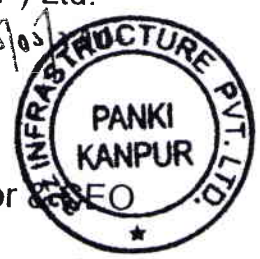
Dear Sir,

We take this opportunity to accept the counter offer sent by you vide your letter no. referred to above. This letter may be considered as our firm acceptance of the said counter offer. The schedule of rates in the counter offer is being submitted duly accepted and signed by us.

Thanking You,

for a2z infrastructure (P) Ltd.

(Rajneesh Mehra)
Joint Managing Director



मु०म०प्र०(प्र०)



पंकज अरोरा

मु०म०प्र०(प्र०)



Annexure I

Counter Proposal

Operation and Maintenance Year	Tipping Fee in Rs. Per MT
1	456
2	456
3	456
4	479
5	503
6	528
7	554
8	582
9	611
10	642
11	674
12	708
13	743
14	780
15	819
16	860
17	903
18	948
19	995
20	1045
21	1097
22	1152
23	1210
24	1271
25	1335
26	1402
27	1472
28	1546
29	1623
30	1704

Accepted



पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)





मु०म०प्र०(प्र०)

कन्सट्रक्शन एण्ड डिजाइन सर्विसेज



0522-2237801(Ph.)
2237768(PBX)
2239088(FAX)

उत्तर प्रदेश जल निगम

(उ० प्र० सरकार का उपक्रम)

प्रधान कार्यालय : 2, लाल बहादुर शास्त्री मार्ग, लखनऊ - 22 6001

पत्र संख्या To, 642/C-2-13/31

दिनांक 13-9-10

Director,
M/S A2Z Infra Structure (P) Ltd.
5th floor, Enkay Square,
448 A, Udyog Vihar, Phase V,
Gurgaon - 122016.

Dear Sir,

Kindly refer to the meeting held with the Commissioner, Nagar Nigam, Kanpur, Project Manager, Unit-11, Director, C&DS, UPJN, General Manager (N-2), and the Technical Advisor regarding payment of Tipping fee during first six months of the Collection & Transportation operation started by you since 1st of September 2010. The following Addendum is required to make in the Concession agreement at the appropriate places i.e. 8.3 (c),

"In the event, during the first 6 months after COD ('Stabilization Period'), ULB is financially constrained to make full payment of Tipping Fee payable to the Concessionaire, it shall make minimum payment of an amount equivalent to the collected User Charges for the corresponding months plus Rs. 50 lakhs.

The balance accumulated unpaid Tipping Fee for the Stabilization Period shall be paid by the ULB to the Concessionaire in 12 equal monthly installments without any interest. The first monthly installment shall be payable within 15 days of the completion of 12 months from the COD and subsequent monthly installments shall be payable in subsequent 11 consecutive months within 15 days of beginning of each month."

Kindly send your acceptance within 3 days so that action could be taken regarding preparation of the Concession Agreement documents.

64-2

For Agreement

For Agreement

You're sincerely,

(V.P. Singh)

General Manager(N-2)

General Manager(N-2)

Copy to:-

1. Commissioner, Nagar Nigam, Kanpur, for his acceptance.
2. CGM-1, C&DS, UP Jal Nigam, Lucknow.
3. GM-2 & GM-8, C&DS, UP Jal Nigam, Lucknow.
4. Project Manager, Unit-11, C&DS, UP Jal Nigam, Kanpur.

accepted



मु०म०प्र०(प्र०)

पर्यावरण अभियन्ता





मुमोप्रो(प्रो)

Nº 283329



Branch:-INDIAN RED CROSS SOCI. BUI., 1 RED CROSS ROAD NEW DELHI - MAIN BRAN

To
THE DIRECTOR, CONSTRUCTION AND DESIGN
SERVICES, UP JAL NIGAM
2, LAL BHADUR SHASTRI MARG, LUCKNOW

226001

Dear Sir/Madam,

Bank Guarantee No: 2010127IBGP0481 ?
 Amount (Rs.) 76625000.00
 Guarantee Cover From 10-08-2010 To 09-08-2011
 Last date for Lodgement of Claim 09-08-2011
 This deed of guarantee executed by IDBI Bank Ltd., a company constituted under the Companies Act 1956 and deemed to be a banking company under the Banking Regulation Act. 1949, having its Registered Office and Head Office at IDBI Tower, WPC Complex, Cuffe parade, Mumbai 400005, and among other places a branch at INDIAN RED CROSS SOCI. BUI., 1 RED CROSS ROAD NEW DELHI - MAIN BRANCH (Hereinafter referred to as 'the Bank') in favour of THE DIRECTOR, CONSTRUCTION AND DESIGN, SERVICES, UP JAL NIGAM, 2, LAL BHADUR SHASTRI MARG, LUCKNOW,, 226001 (hereinafter referred to as 'the Beneficiary/ for an amount not exceeding Rs.76625000.00 (Rs.Seven Crore Sixty Six Lakh Twenty Five Thousand only) at the request of A2Z MAINTENANCE & ENGINEERING SERVICES LIMITED (Hereinafter referred to as 'the Contractor(s)/ This Guarantee is issued subject to the condition that the liability of the bank under this Guarantee is limited to maximum of Rs.76625000.00 (Rs.Seven Crore Sixty Six Lakh Twenty Five Thousand only) and the Guarantee shall remain in full force up to 09-08-2011 (expiry date) and can not be invoked otherwise than by a written demand under this Guarantee served on the Bank on or before the 09-08-2011 (last claim date). The beneficiary is advised to seek a confirmation of the issuance of this Guarantee from the controlling office/Head Office by enclosing a copy of the same.

This Guarantee consists of _____ pages including this page.

Authorized Signatory

Authorized Signatory

contd...

Ass sta
EN

प्रवाहरण अभियन्ता

मुमोप्रो(प्रो)



मु०म०प्र०(प्र०)

दिल्ली DELHI

BG No. 2010127IBGP0481

Dated 10.08.2010

PERFORMANCE SECURITY

Bank Guarantee No. : 2010127IBGP0481
Date of Issue : 10th August 2010
Amount : Rs. 7,66,25,000/-
Valid up to : 09th August 2011

To
The Director
Construction And Design Services
UP Jal Nigam
2, Lal Bahadur Shastri Marg,
Lucknow - 226001

THIS DEED OF GUARANTEE executed on this the 10th day of August 2010 at New Delhi by **IDBI Bank Limited** at **Red Cross Society , Red cross Road, New Delhi 110 001** having our Head office at **IDBI Tower, WTC Complex, Cuffee Parade, Mumbai - 400 005** (hereinafter referred to as "the Guarantor") which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of
Director C&DS , U.P. Jal Nigam (hereinafter referred to as "C&DS" which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

Authorized Signatory
Trans Finance Key Delhi

Page 2 of 4

मु०म०प्र०(प्र०)

पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)

BG No. 2010/181

Dated 10.08.2010

WHEREAS

- A. By the Concession Agreement ("CONCESSION AGREEMENT") being entered into between C&DS and M/s a2z Infrastructure (P) Ltd. a company incorporated under the provisions of the Companies Act, 1956, having its registered office 205, Laxman Palace, 19 Veer savarkar B Block, Shakarpur, Delhi-110092. ("Concessionaire"), the Concessionaire has been granted the Concession to implement the Project envisaging collection and transportation of Municipal Solid Waste generated in the Concession Area on Design, Procure, Renovate, Operate, Maintain and Transfer basis. (hereinafter referred to as "The Project").
- B. In terms of Article 5 of the Concession Agreement, the Concessionaire is required to furnish to C&DS, an unconditional and irrevocable bank guarantee for an amount of **Rs. 7,66,25,000/- (Rupees Seven Crore Sixty Six Lac twenty Five thousand only)** as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to achievement of COD by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance discharge by the Concessionaire of its obligations relating to the Project;

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

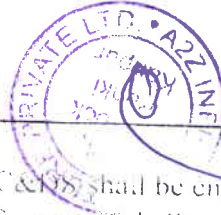
1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s a2z Infrastructure (P) Ltd (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achievement of COD by the Concessionaire, in accordance with the Concession Agreement.
3. The Guarantor shall, without demur, pay to C&DS sums not exceeding in aggregate Rs. 7,66,25,000 (Rupees Seven Crore Sixty Six Lac twenty Five thousand only), within five (5) calendar days of receipt of a written demand therefor from C&DS stating that the Company has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by C&DS and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.



मु०म०प्र०(प्र०)

प्रयोकरण अभियन्ता

मु०म०प्र०(प्र०)



BG No. 2010127IBGP0481

Dated 10.08.2010

4. In order to give effect to this Guarantee, C&DS shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement non exercise delayed exercise of any of its rights by C&DS or any indulgence shown by C&DS to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by C&DS or any indulgence shown by C&DS, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until 09th August 2011 unless discharged released earlier by C&DS in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 7,66,25,000/- (Rupees Seven Crore Sixty Six Lac twenty Five thousand only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under NIL.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

Place: New Delhi

Date: 10.08.2010

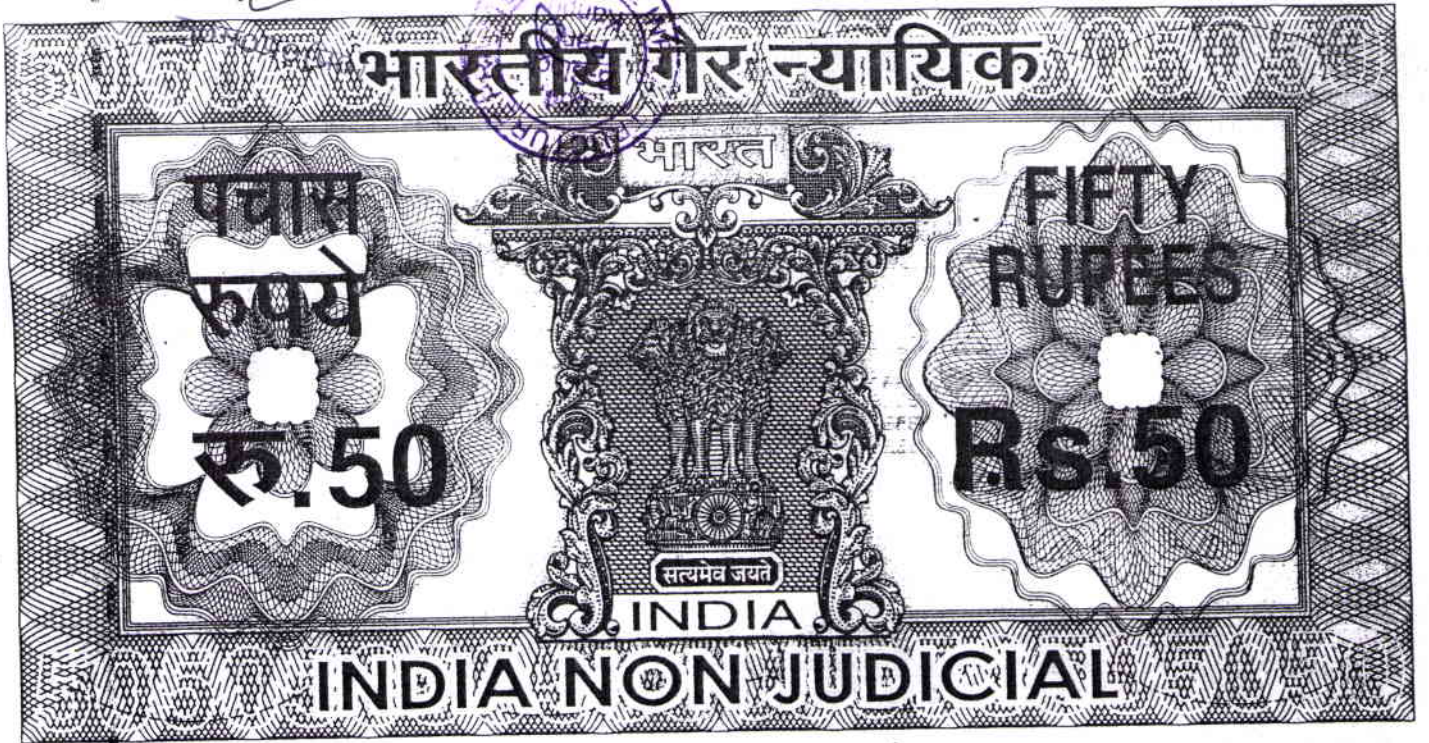
Rs. 7,66,25,000/-
10.08.2010

Sanjeev Kumar
Authorised Signatory
ASSISTANT

मु०म०प्र०(प्र०)



Pr
वर्तमान अभियन्ता



दिल्ली DELHI

R 813149

SPECIAL POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME We, a2z Infrastructure Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 205, Laxman Palace, 19 Veer Savarkar Block, Shakarpur, Delhi-110092 (hereinafter called "the Company") acting through Mr. Amit Mittal, Managing Director of the Company unless repugnant to the context, means & includes a successor in the interest of the Company.

WHEREAS it is necessary to appoint some person to be the true and lawful attorney for all or any of the following purpose in connection with the business of the Company NOW KNOW ALL MEN BY THESE PRESENTS that the Company do hereby nominate, constitute and appoint Mr. Onkar Nath Chaturvedi S/o Late Sh. Beni ram Chaturvedi at present posted at Kanpur as Asst. Vice-President of the Company to be the true and lawful attorney of the Company on its behalf and its name to do the following acts, deeds and things:

1. To sign and execute in the name and on behalf of the Company necessary documentation with the various Government authorities for the purpose of registration under various statutory bodies/ Government authorities/departments/, & telecom department as per Laws applicable to the Company in the State of Uttar Pradesh.
2. To communicate for and on behalf of the Company with Government authorities/departments/statutory bodies in connection with above said purpose and to sign, present and file replies, clarification, supporting documents and writing to query/objection raised by the authorities.



पर्यावरण अभियान्ता

मु०म०प्र०(प्र०)

मु०म०प्र०(प्र०)

भारतीय गैर न्यायिक



R 813150

दिल्ली DELHI

- To sign and execute the lease and agreement in relation to hiring of office space, residential space, vehicle which are to be used for the official purpose in respect of office at Kanpur on behalf of the Company and to make necessary substitution in the clauses from time to time with the mutual consent.

And the Company declares that this Special Power of Attorney unless revoked earlier will remain in force for a period of two year or upto employment of said attorney, whichever is earlier.

AND the Company hereby agrees and undertakes to ratify and confirm all and whatsoever the said Attorney shall lawfully to do or cause to be done on behalf of the Company by virtue of these presents.

In token of the above I have signed on the said SPA on this 8th day of March, 2010 at Delhi

AND the aforesaid Attorney shall sign as under:

(Onkar Nath Chaturvedi)

Onkar Nath Chaturvedi

For a2z Infrastructure Private Limited

Amit Mittal
(Managing Director)



In the Presence of:

1.

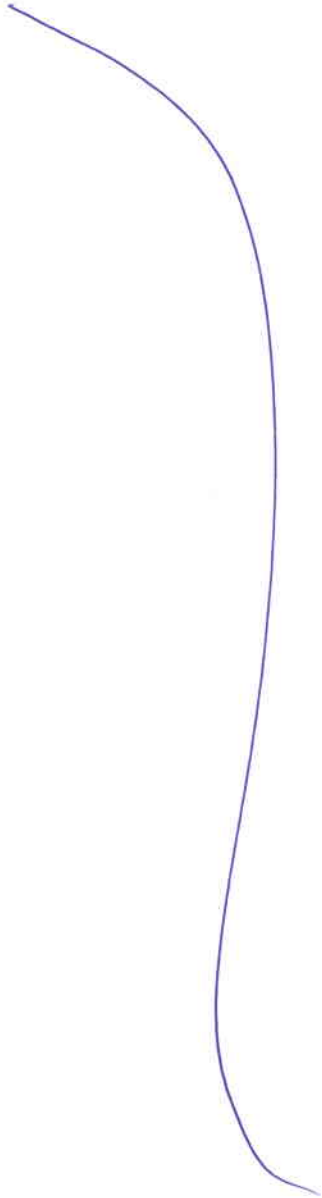
K.S.V. Nair

मु०म०प्र०(प्र०)

ARAY SENGUPTA

परीक्षणी अमियन्ता

मु०म०प्र०(प्र०)



पर्यावरण अभियन्ता



मु०म०प्र०(प्र०)