

INDIA NON JUDICIAL

Government of Uttar Pradesh



सत्यमेव जयते

e-Stamp

ACC Name - Bhoon Singh
Stamp Vendor
Licence Number - 64
E-Stamping ACC ID - UP14480504
Tehsil - Sadar Distt. Agra

Certificate No. : IN-UP37115956181671T
Certificate Issued Date : 18-Nov-2021 12:46 PM
Account Reference : NEWIMPACC (SV)/ up14480504/ AGRA SADAR/ UP-AGR
Unique Doc. Reference : SUBIN-UPUP1448050464100577873089T
Purchased by : SWACHATHA CORPORATION
Description of Document : Article 5 Agreement or Memorandum of an agreement
Property Description : Not Applicable
Consideration Price (Rs.) :
First Party : SWACHATHA CORPORATION
Second Party : NAGAR NIGAM AGRA
Stamp Duty Paid By : SWACHATHA CORPORATION
Stamp Duty Amount (Rs.) : 100
(One Hundred only)



Please write or type below this line.

Selection of Concessionaire to undertake Door to Door Collection of Solid Waste in segregated manner and Primary Transportation up to Secondary Storage Points/Transfer Stations within the jurisdiction of Agra Municipal Corporation on PPP mode
CONCESSION AGREEMENT

This CONTRACT AGREEMENT has prepared at the office of AMC Municipal Corporation Office, N Soorsadan, MG Road, AMC, India- 282002

BETWEEN

AMC Municipal Corporation (AMC) (Hereinafter referred to as "AMC", which expression shall, unless repugn to the context or meaning thereof, mean and include its successors and assigns) of the FIRST PART

AND

M/S Swachatha Corporation, (Lead Member) having Registered Office at No-8, 14th Ma Venkathwara Layout, Madiwala, Bangalore, Karnataka Through its authorized signatory Shri P. R Sekhar Reddy (Hereinafter referred to as "Concessionaire", which expression shall, unless repugnant to the cont or meaning thereof, mean and include its successors and assigns) of the SECONDPART

Details of Performance Guarantee:- Bank Guarantee No. 0102121BG0000032 Date 11/11/2021 Rs. 1,39,52,400/- Bank Maharashtra, MICO Layout Branch, Bngaluru.

Statutory Alert:

1. The authenticity of this Stamp certificate should be verified at 'www.shclstamp.com' or using e-Stamp Mobile App of Stock Holding EE(S)N of the Government of India. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

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- स्वच्छ आगरा

WHEREAS

- A. The Ministry of Environment, Forest & Climate Change (MoEFCC), Government of India (GoI), has formulated the "Solid Waste Management Rules, 2016", which makes it mandatory for every municipal authority to implement a scientific solid waste management system.
- B. The AMC Municipal Corporation (AMC) is responsible for providing municipal and civic services in areas falling under AMC area.
- C. AMC is desirous of implementing Door to Door Collection of Solid Waste in an environmentally compliant manner upto the Secondary Storage Point for the Area covered under its jurisdiction through private participation on DBFOT (Design-Build-Finance Operate & Transfer) Basis.
- D. AMC floated tender and invited proposals, through a competitive bid process from eligible parties for implementing the Project. In response thereto, AMC received proposals from several parties including the Successful Bidder for implementing the Project.
- E. Successful Bidder acknowledges that Bid was made in accordance with RFP, and Draft Concession Agreement published as part of Tender documents and further agrees to abide by the terms and conditions of Tender Documents.
- F. Pursuant thereto, after evaluating the aforesaid proposals and negotiations, AMC accepted the proposal submitted by the Successful Bidder and issued Letter of Acceptance No. 385/डी/ईई(एस)/21 dated 02.11.2021 to the Successful Bidder requesting the Successful Bidder to execute the Concession Agreement, which the Successful Bidder has acknowledged by its
- G. Successful Bidder hereby agrees to serve as guarantor towards the role and responsibilities cast upon the Concessionaire under the Concession Agreement.
- H. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

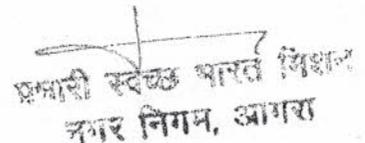
DEFINITIONS AND INTERPRETATION	ARTICLE 1
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1.1 Definitions

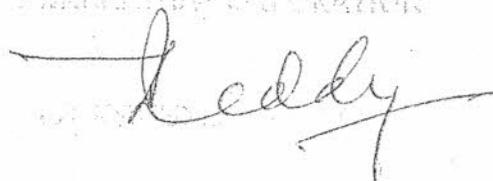
In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

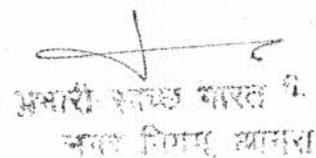
1. "Additional Cost" shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.
2. "Affected Party" shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 13.1.
3. "Agreement" shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.
4. "Applicable Law" shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire as applicable in India.
5. "Applicable Permits" shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.
6. "Appointed Date" shall mean the date of this Agreement.


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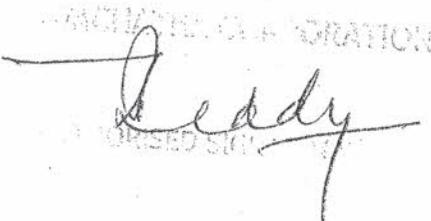
7. "Arbitration Act" shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.
8. "Authorized Representative" means, in respect of a Party, any person designated (whether by name or as the holder of a specified position or office) as such by such Party by notice in writing given to the other Party including, in the case of a person designated by name, a specimen signature of that person certified by the Party issuing the notice;
9. "Bid Security" shall mean security offered at the time of submission of Bid as defined in the RFP as part of the bid documents.
10. "Mobilization Period" Starts with issue of LAO/LOA and ends at Completion Certificate. It indicates the time given for putting all manpower, vehicle, equipment and machinery in place to commence the operation. The date of commencement falls at the end of this period.
11. "Change in Law" shall have the meaning ascribed thereto in Article 13.5.
12. "COD" or "Commercial Operations Date" shall mean the date on which AMC has issued the Completion Certificate for the Project Facilities, in accordance with the provisions of this Agreement. This date shall be as per article 8.5
13. "Completion Certificate" shall mean the certificate issued by AMC certifying, that:
 - i. The Concessionaire has set up the Project Facilities in accordance with the Concession Agreement, RFP, IIOOP (Initial Implementation and Operational Plan), MIOP (Micro Implementation and Operational Plan) and R&M Plan; and
 - ii. The Concessionaire has obtained all approvals necessary for commercial operations of the Project Facilities.
14. "Concession" shall have the meaning ascribed thereto in Article 2 of this Agreement.
15. "Concession Period" shall have the meaning ascribed thereto in Article 2.1(6)
16. "Concessions Authority" or "Contracting Authority" or "AMC" or "Authority" shall mean AMC Municipal Corporation, AMC.
17. "Conforming Waste" shall mean:
 - a) Solid Waste
 - b) And any other type of Solid Waste mutually agreed by Parties to be Conforming Waste from time to time.
18. "Consortium" of parties who submitted bid as consortium.
19. "Effective Date" means the date of 'Letter of Acceptance';
20. "Emergency" shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.
21. "Encumbrance" shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility.

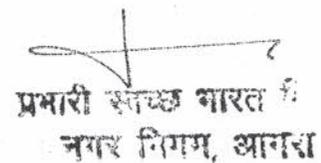



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22. **“Environmental Laws”** means all Laws pertaining to the protection of natural resources, the environment, the health and safety of the public, according to Environment (Protection) Act, 1986, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, and other related laws, Guidelines and any other central, state or local law, regulation, rule, ordinance or order from government for waste handling and management.
23. **“Financial Year”** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.
24. **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 13.1.
25. **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.
26. **“Government Agency”** shall mean Government of India and State Government of Uttar Pradesh, or Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or other Judicial or Administrative Body, Central, State, or Local, having jurisdiction over the Concessionaire, the Secondary Door to Door Collection Points and Workshops or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.
27. **“Lead Consortium Member/ Lead Member (LCM)”** shall be that Consortium Member vested with the prime responsibility of developing and operating the project. The Lead Member shall necessarily make the minimum equity contribution of 51% in the project. The LCM is jointly and severally responsible for performance of the contractual obligation of this agreement.
28. **“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire Or AMC 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.
29. **“Material Breach”** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.
30. **“SWM Rules”** shall mean the Solid Wastes Management Rules, 2016 and includes any amendments thereto or any rule(s) formulated by the Authorities in substitution or suppression of these rules.
31. **“Solid Waste”** shall have the meaning ascribed to it in the SWM Rules, 2016.
32. **“Non-Conforming Waste”** means any Solid Waste which is not a Conforming Waste as set forth in the Article 8.9.
33. **“IOP, MIOP and R&M Plan”** given by the Concessionaire following Good Industry Practice duly approved by the Authority.
34. **“Operations Period”** shall mean the period commencing from COD and ending at the expiry of the Concession/Termination.
35. **“Parties”** shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.
36. **“Performance Security”** shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Article 8.2.

37. "Person" shall mean (unless otherwise specified or required by the context), any individual, company, Council, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.
38. "Preliminary Notice" shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
39. "Project" shall mean designing, financing, procurement, construction, operation and maintenance of Project Facilities for Door to Door Collection, Storage, segregation, transportation of Conforming Waste in Concession area in accordance with the provisions of this Agreement.
40. "Project Agreements" shall mean collectively this Agreement and other supporting documents linked to this agreement in connection with the Project.
41. "Project Assets" shall include:
a. Project Assets-Fixed
b. Project Assets-Movable
42. "Project Assets- Fixed" shall mean all the fixed assets including fixed/ static compactor transfer station and fixed bins procured by the Concessionaire and used during the Concession Period for the Project.
43. "Project Assets- Movable" shall mean all the movable assets including Project Equipment, Door to Door Collection Assets for Solid Waste, Waste Storage Assets, Waste Transportation Assets and Project Vehicles procured by the Concessionaire and used during the Concession Period for the Project.
44. "Project Facility" shall mean collectively the Project Assets, Secondary Collection Points, Workshops and Parking lots.
45. "Rupees" or "Rs." or "₹" refers to the lawful currency of the Republic of India.
46. "Secondary Collection Points" shall mean and include earmarked Dhalaos/ open sites and other places as identified from time to time for the storage of waste.
47. "Concession Area" means the areas falling within territorial jurisdiction of Agra Municipal Corporation, AMC.
48. "Tax" shall mean and include all taxes, fees, cesses, levies that may be payable by the concessionaire under the applicable law whether the responsibility to pay or responsibility to ensure the payment lies with the concessionaire or AMC.
49. "Termination" shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.
50. "Termination Date" shall mean the date specified in the Termination Notice as the date on which Termination occurs.
51. "Termination Notice" shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.
52. "Fee" shall mean the amount payable by AMC to the Concessionaire in accordance with Article 12.1.
53. "Trespasser" means any person/company/private agencies present on the Sites/ concession area and not entitled to be on the Sites/ concession area;
54. "Workshop" shall mean the place where all the repair & maintenance including servicing shall be undertaken for all the Project Assets.

AGRA MUNICIPAL CORPORATION



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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 Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law as applicable in India;
- c) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, councils, joint ventures, trusts, associations, organizations 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 with out limitation;
- f) Any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g) Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- h) Any reference to any period of time shall mean a reference according to Indian Standard Time (IST).
- i) The Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- j) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- k) References to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- l) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party;
- m) References to "Construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto.

CONCESSION	ARTICLE 2
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2.1 Scope of Project

Primary Collection in segregated manner and Transportation of Wastes upto the Secondary Storage Point (O&M by AMC)

- To make all necessary procurements in accordance with assets requirement placed in tables above. The given tables have the minimum requirement placed. The contractor has to make its own assessment of the Zone/Wards and can add more assets, if so required, in order to keep the entire zone area free from litter.
 - Door to Door collection of solid waste in a segregated manner in the project area and transportation to secondary storage point in scientific manner.
 - The collection of solid waste has to be done in segregated manner as per the CPHEEO manual 2016 and SBM guidelines.
 - The concessionaire after signing the contract must undertake a rapid survey to ascertain no. of households, commercial establishments in project area. The monthly invoice will be raised by concessionaire on the basis of the this survey-
- (a). AMC will verify the survey once submitted and finalize the list.
 - (b). Any addition or Omission of the household or commercial establishment in this list will be done only after the permission of AMC.

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नगर निगम, आगरा

- The concessionaire shall make all necessary procurement as per the timeline mentioned in RFP document.
- From households waste will be collected once a day and from commercial establishments waste will be collected twice a day.
- No waste collected shall be dumped or ground anywhere in open. It should be scientifically transferred to designated transfer station /RC compacter as decided by AMC.
- The concessionaire shall make use of all existing ICT monitoring tools developed by Agra Municipal Corporation (scanning of RFID tags/ QR codes through mobile phone provided by AMC). In addition, concessionaire must also independently develop its own ICT based monitoring tools and must submit the reports on monthly basis.
- GPS should be installed on all the vehicles and live tracking of the vehicles should be done .
- Commercial establishment includes industries, factories, shops, street vendors and other commercial establishments but will exclude bulk waste generators.

2.1 Other Conditions

- Maximum No. of Households that to be covered by the deployed vehicle is restricted as follows:
 - 4 Wheeler Mini Tipper (2.0m³ capacity, having segregated chambers): 600 Households
 - Waste Collection Rickshaw, with segregated compartments: 150 waste generating Households.
- Door to door collection of solid waste from residential, street vendors, kiosk, slums, vegetable/ fruit markets, slaughter house, fish/ chicken/ mutton shops, commercial, institutional, gardens, open dumping points, hotels, public places and any other areas not excluded elsewhere in this document from entire sectors within the jurisdiction of AGRA MUNICIPAL CORPORATION. The Bulk Wastes Generators shall be excluded from this list.
- Bear all cost of fuel, vehicle maintenance including breakdowns, insurance, R.T.O Passing, deploying manpower required for operating and managing the Project etc.
- There should be no littering during the operation and bidder have to prepare standard operating procedure plan and get it evaluated and approved by the Authority and strictly adhere to the same.
- To maintain a proper service books/ ledger books/ stock books having clearly described the assets/ inventories to Agra Municipal Corporation. The operation and maintenance of all such tools, equipment's and vehicles will be responsibility of the bidder at their own cost.
- The bidder has to furnish AMC with the work mobilization chart along with the letter of acceptance to the satisfaction of AGRA MUNICIPAL CORPORATION, clearly stating how the successful bidder intends to go about with the contract, mentioning the time frame, the methodologies and route map/ route plan in accordance with the COD stipulated time schedule.
- The Successful bidder shall adhere to the time schedule as decided by the AGRA MUNICIPAL CORPORATION for implementation of the MSWM. The successful bidders shall also ensure additional cleaning requirement on festival, events, functions and other contingency caused by rain and other natural disasters requiring appropriate garbage and other clearing.

The scope would not include

1. Sweeping of main and internal roads, open parks, markets, etc.
2. Collection and transportation of bio-medical waste and industrial hazardous waste.
3. Removal & transportation of construction demolition debris and mud earth from any construction site or residential site

2.2 Repairs and Maintenance

1. Contractor shall carry out regular repairing and maintenance of all equipments and vehicles at his own cost.
2. A Workshop/ Service Station site shall be provided by the AMC in the form of open land with boundary which has to be equipped and maintained by the contractor to ensure timely maintenance of its vehicle and equipments.

AGRA MUNICIPAL CORPORATION

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2.3 Obligation of AMC Authority

- Agra Municipal Corporation Authority shall provide support to the Concessionaire in obtaining timely approvals, permissions from the prescribed authority on specific request of the successful bidder.
- Agra Municipal Corporation shall supervise the Successful bidder's work and services at all times and notify the Successful bidder of any defects found/ identified in operation. The Successful bidder shall have to correct a defect and improve service level within the time specified in the notices.
- Authority shall handover the waste collection and storage assets/ vehicles to the successful bidder after joint inspection and documentation.
- Authority shall also provide a space to the successful bidder within the authority where they will setup central control monitoring room. Also, the MIS data and fleet operation should be linked/ integrated with the Central Control Command Centre as developed under Smart City Project of Agra.
- Suitable space/ open site with boundary wall shall be provided by AMC to help Successful Bidder Park its vehicles, undertake routine services of it etc. on "as-is-where-is basis" for the entire Concession Period free of any charges. It is hereby clarified that the all cost and expenses of constructing the workshop, electric connection and water connection in the dedicated area shall be the sole responsibility of the successful bidder.
- The Authority will ensure that the payments of the successful bidders' service invoice is cleared in a reasonable period .
- The Authority will also ensure to provide all possible and justified cooperation to the successful bidder as requested by the bidder time to time, for ensuring effective operation of the services.
- The Authority will also ensure that no public nuisance, strike or protest should crop up because of the services rendered under the contract obligations.
- Bidder to submit MIS reports, as per the AMC's approved template.
- The assets procured by the bidder need prior approval of AMC.

COMMENCEMENT	ARTICLE 3
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3.1 Conditions Precedent

All rights and obligations of the Parties to this Agreement shall be conditional upon the fulfillment of the conditions precedent set out below.

3.1.1 The Concessionaire shall within 15 Days from the Effective Date satisfy the following conditions precedent:

- a) The Concessionaire shall submit a Performance Security (Security Deposit) of 5% of Annual project value in the form of irrevocable Bank Guarantee or in the form of Fixed Deposit from a Nationalized Bank .
- b) Deliver to the Contracting Authority by the Concessionaire's legal adviser of a legal opinion, confirming, inter alia, that the Concessionaire is duly incorporated and existing under the Laws of India and that the Concessionaire is duly authorized to execute this Agreement.
- c) Provide a copy of its constituent documents and evidence of its shareholding structure duly notarized.
- d) Ensure that all the Approvals to be procured by the Concessionaire in accordance with Article 3 have been procured and that all conditions required for such Approvals to be applicable are fulfilled.
- e) Commit to operate the project through the Concession Period with a documented environmental, health and safety, and social management systems in compliance to the requirements of policy and regulatory framework.

3.1.2 The Concessionaire shall strictly achieve time line mentioned in clause 3.12 of RFP document Effective Date ensure commencement of Commercial Operations:

- a) Make necessary procurements
- b) Employ man power required
- c) Takeover project sites and facilities from AMC
- d) Start operation from Commercial operation date (COD)

3.2 Satisfaction of Conditions Precedent, Commercial Operation Date and Concession Right

3.2.1 the Concessionaire and the Contracting Authority shall use their best efforts and endeavors to procure the satisfaction of the conditions precedent specified in Article 3.1 as soon as practicable and in any event no later than 150 days of the Effective Date.

3.2.2 Within 15 Business Days of the satisfaction of all the conditions precedent specified in Article 3.1 and the Contracting Authority shall issue the Completion Certificate to the Concessionaire. The date of issue of the Completion Certificate shall be the "Commercial Operation Date".

3.3 Termination Prior to Commercial Operation Date

In the event that the Commercial Operation Date cannot be achieved due to the Concessionaire's lack of efforts, negligence or default, the Contracting Authority shall be entitled to forfeit the Performance Security and the provisions of Article 14 regarding compensation upon termination shall not be applicable.

3.4 Mid-Term Termination

In the event of Mid-Term Termination Authority will have their right over depreciation cost of movable and immovable assets procured by concessionaire .

FINANCING	ARTICLE 4
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4.1 Financing

- a) The Concessionaire shall be solely responsible for financing the Project or for procuring any financing which might be necessary in connection with the performance of his obligations under this Agreement.
- b) AMC shall not be liable or responsible for arranging any finances or for repayment of loans or advances taken.
- c) The Concessionaire shall not assign in favor of any person, this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of AMC.
- d) No fixed or movable assets owned by AMC or any Government agency shall be allowed to be mortgaged or kept on lien by the Concessionaire.
- e) The Concessionaire shall neither create nor permit to subsist any encumbrance over the project facilities.

MAINTINANCE	ARTICLE 5
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5.1 Maintenance of the Sites, Facility (ies) and Door to Door Collection Assets

- a) The Concessionaire shall maintain, in accordance with the Law, all Waste Door to Door Collection, and Transportation Assets including Equipment, Vehicles, by whatever name called as per Standard Operating Procedures/Operation Performance Standards, and subject to normal wear and tearing good working order and general condition.
- b) All costs and expenses related to the maintenance, repair, refurbishing or replacement of the Project facilities, Waste Door to Door Collection Assets, shall be the exclusive responsibility of the Concessionaire.
- c) Bidder shall not deploy any old vehicle except the vehicles/equipments to be handed over by AMC as on the date of commencement of the Concession Agreement. All project assets must be in the name of the concessionaire. Physical audit shall be conducted by AMC to ensure compliance.

5.2 Rights, Title and Use of the Secondary Collection Points, Parking Sites and Workshops

- a) The Concessionaire shall have the right to the use of Secondary Collection Points, parking sites and Workshops in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- b) All the Project Facility (ies) developed thereon belongs to AMC and shall continue to be the property of AMC.
- c) The Concessionaire shall not part with or create any encumbrance on the whole or any part of the Secondary Collection Points and Workshops, save and except as set forth and permitted under this Agreement. And RFP

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- d) The Concessionaire shall not without the prior written approval of AMC use the Project Facility (ies) 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 Secondary Collection Points and Workshops for laying/ installing/ maintaining public utility items such as electric lines or for such other public purposes as AMC may specify.
Provided that such access or use shall not result in a Material Adverse Effect and that AMC shall, in the event of any physical damage to the Project Facility(ies)/ on account thereof, ensure that the Project Facility(ies) is/ are promptly restored. 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.
- f) Concessionaire shall not be allowed to use any facility for advertising. Advertising if any will be undertaken by AMC as and when required for the betterment of the project.

5.3 Expiry of the Concession Period

Upon expiry of the Concession Period or in case of early termination of the contract, the movable assets i.e. Door to Door vehicles will remain property of concessionaire.

5.4 Peaceful Possession

- AMC, as Concessioning Authority, hereby warrants that:
- a. The Secondary Collection Points, Workshops and parking lots together with the necessary right of way/ way-leaves:
 - i. Has been acquired through the due process of law.
 - ii. Belongs to and is vested in AMC and that AMC 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, in respect of these sites have no liability regarding any rent, lease or compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
 - iii. AMC indemnifies the Concessionaire on account of any claim against the concessionaire by third party claiming right or title to the Secondary Collection Points, Workshops and parking lots.
 - b. The Concessionaire shall, subject to complying with the terms and conditions of this agreement, remain in peaceful possession and enjoyment of the Project Facilities during the concession period. In the event the Concessionaire is obstructed by any person claiming any right, title or interest in or over the Project Facilities or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any person claiming to have any interest in/ charge on the project facilities or any part thereof, AMC shall if called upon by the Concessionaire, defend such claims and proceeding and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of claim or right, title, interest or charge.
 - c. Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of their obligations hereunder, the Concessionaire shall not be deemed to be in breach of its obligations nor shall it incur/suffer any liability thereof Provided that, the permission to use the project facilities, shall be exercised without any environmental threat to persons living hereby and it shall be ensured that no damage or loss or annoyance is caused to any one by the mode of operation or use of the project facilities. The project facilities shall be returned to the AMC on completion of concession period or on termination of contract by either party in good operable condition without any charge or encumbrance.

PROJECT MONITORING COMMITTEE	ARTICLE 6
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6.1 Project Monitoring Committee

AMC shall form a dedicated team of AMC officials comprising respective Project Engineers and Zonal Sanitary Officers/ Zonal Officers, Supervisor act as Project Monitoring & Review Committee.

6.2 Role of the Project Monitoring Committee

1. The Project Monitoring Committee is expected to play a positive and independent role in discharging its functions for facilitating the smooth implementation and operation of the Project Facilities.

For SWACHATHA CORPORATION

[Signature]
AUTHORISED SIGNATORY

[Signature]
PROJECT MONITORING COMMITTEE

2. Monitor and where required by the Agreement, approve activities associated with the commissioning, operation and maintenance of the project facilities to ensure compliance by the Concessionaire with the commissioning and day to day implementation requirements;
3. Prepare report on various physical, technical and financial aspects of the project based on inspections;
4. Approve Micro Implementation and Operational Plan (MIOP) and issue Completion Certificate.
5. Review matters relating to safety and environment management measures adopted by the Concessionaire for the project.
6. Role and function of AMC's team shall be binding on the Concessionaire at all times
7. In situation where Concessionaire is unable to carry out the work due to unforeseen circumstances not in control of the Concessionaire and disabling the Concessionaire to operate the vehicles on a particular day, the Committee shall take appropriate action in work interest.

Other Conditions	ARTICLE 7
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7.1 Performance Security

- a) The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date. 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 AMC's right to receive amounts, if any, due from the Concessionaire under this Agreement be duly discharged and released to the Concessionaire.
- b) Performance security and other securities submitted/collected from concessionaire shall be released upon expiry of the contract period and after handing over of immovable assets.

7.2 Financial Closure

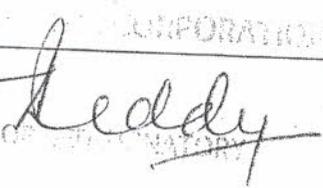
The Concessionaire shall at their own cost; expenses and risk make such financing arrangements as would be necessary to implement the project and to meet all of their obligations under this Agreement in a timely manner.

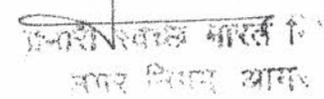
7.3 Project Implementation

The Concessionaire shall within 30 days from the Effective Date submit the MIOP to the AMC for mobilization of resources. The AMC shall approve the MIOP or may ask for improvements if it feels that the level of details required are insufficient or not in conformity with the standards specified or norms. The Concessionaire shall submit such documents and reports from time to time as are reasonably required by the AMC

After completion of Mobilization Period, AMC will review the resources within and AMC Authority will issue the Completion Certificate. With the issue of Completion Certificate, COD period will start.

Sr.	Events	Maximum Permissible Time
A	Issue of Letter of Intent (LoI)	After opening of price Bid
B	Receipt of Letter of Acceptance (LOI)	A+5days
C	Submission of Performance Bank Guarantee with the Authority and Signing Contract Agreement. Filing of Form-1, with the UPPCB for seeking necessary consents and authorizations as required in compliance with SWM Rules, 2016.	B+15days
D	Mobilization of Team: Administrative, Planning & Technical Staffs/ Team to undertake the detailed baseline survey related to Door-to-Door Waste C&T (Primary level upto Secondary point only)& undertake selection of resources for services/ operation.	B+15days
E	Bidder should parallel start a household survey, prepare a list of households which will be getting the services and needs to get a verification on the survey list from the authority.	B+90 days


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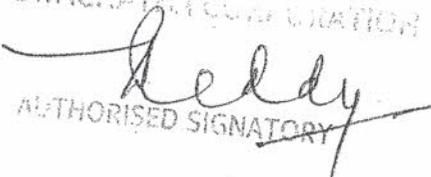
Sr.	Events	Maximum Permissible Time
F	Submission of detailed Operational plan/report: According to defined scope of work, which must include: a) Baseline survey (Waste quantification/ sources/ waste flow/ Dhalao status/ resource gap analysis b) Action Plan to achieve the 100% area coverage under door to door collection, Segregation c) Deployment details with technical specs of Vehicles, Equipment etc. d) Procurement schedule in accordance with Authority's given project implementation time schedule etc.	D+15days
G	Getting Approval of Authority on the submitted asset procurement/ operational plan/ report	E+5days
H	Mobilization of Human Resources which includes- C&T staffs, setting of office, control room etc., their basic counselling & training on Health, Safety & Environmental Compliances.	D+50days
H.1	Partial achievement of COD*: This will include door to door collection of wastes engaging existing infrastructure etc.	70days
I	Completion of Procurement & Civil Activities: Mobilization of Waste Collection Vehicles, Equipments and undertaking civil construction activities along with other supportive activities to meet procurement compliances etc.	G+40days
J	Inspection of Assets by the Authority	H+10 days
J.1	Commercial Operation Date (COD): ZONE 1	90 days
J.2	Commercial Operation Date (COD): ZONE 2	110 days
J.3	Commercial Operation Date (COD): ZONE 3	130days
J.4	Commercial Operation Date (COD): ZONE 4	150 days
J.5	Commercial Operation Date (COD): Complete Achievement of COD*	150days
*Since many of the activities can be performed parallelly thus, procurement need to be planned accordingly to achieve the given time schedule		

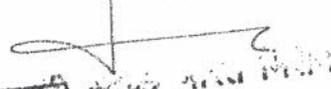
7.4 Resource Procurement, Operation and Maintenance

- The Concessionaire shall provide adequate number of vehicles and manpower, as specified by in the RFP, adhering to various stipulations, regulations, standards, and laws specified herein and/or otherwise in place and amended thereto from time to time to ensure effective and efficient Door to Door Collection, segregation and transportation up to secondary point of in accordance with the provisions of this Agreement.
- The Concessionaire shall operate and maintain the project facilities as per approved technical Proposals made available to AMC at the start of the COD as part of MIOP & R&M Plan.

7.5 Insurance

- Construction Period:**
The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, for the Operations Period, insurance against:
 - loss, damage or destruction of the Project Facility(ies), at replacement value;
 - the Concessionaire's general liability arising out of the Concession;
 - liability to third party;
 - any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.
- Evidence of Insurance:**
The Concessionaire shall maintain records of premium paid towards the insurance of vehicles & operational assets if any and proof of payments made shall be submitted to AMC whenever requested for.

AT SWACHHATA COORDINATION

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- c) **Validity of Insurance:**
The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period.
If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, AMC may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by AMC thereof shall be deducted from the fees of the Concessionaire by AMC.
- d) **Application of Insurance Proceeds:**
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. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

7.6 Project Assets

- a) Concessionaire shall at its own cost procure the Project Assets (Movable and fixed) in accordance with the standards stipulated in RFP .The Concessionaire shall operate and maintain all the Project Assets in accordance with the Technical Proposals given by him as part of IIOP, MIOP, and R&M Plan following Good Industry Practice throughout the Concession Period.
- b) AMC shall certify that all the Project Assets purchased by the Concessionaire are as per the standards provided in this Agreement.
- c) In case the Project Assets are not meeting the standards s as per this Agreement, AMC shall send a notice to the Concessionaire to replace those Project Assets.

7.7 Solid Waste Collection Quality

- a) In case the solid waste collected by the Concessionaire contains Hazardous Waste and/or Biomedical Waste or is nature of Non-Conforming Waste, the Concessionaire shall inform AMC.
- b) The Concessionaire shall ensure that waste collected is not burnt, dumped in roads / areas outside the designated zone or specified sites or transported to any other location except designated sites secondary collection points/Dhalaos/Transfer Stations.
- c) The Concessionaire shall ensure that conforming waste is properly collected and segregated at source level from Door to Door.

7.8 Maintenance and Certification of Records

The Concessionaire shall maintain records of the quantum of Solid Waste and other wastes collected on monthly basis and submit monthly, quarterly and annual reports of the same to AMC.

7.9 Management Information System

The Concessionaire shall establish a Management Information System (MIS) and install appropriate software to maintain records of the Project operations as enshrined in the RFP. MIS shall include details of all the information as specified in the Concession Agreement and RFP.

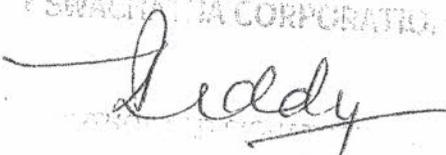
7.10 Indemnity by Concessionaire

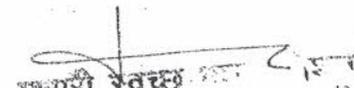
The Concessionaire shall indemnify and hold harmless AMC, and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the Construction Works and any activity incidental thereto.

7.11 General Obligations

The Concessionaire shall at its own cost and expense:

- a) investigate, study, design, construct, operate and maintain the Project Facilities in accordance with the provisions hereof;
- b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;

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- c) comply with Applicable Law governing the operations of the Project Facilities, as the case may be, at all times during the Concession Period;
- d) ensure that Project Agreement contains provisions that would entitle AMC or a nominee of AMC to step into the same at AMC's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement
- e) 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;
- f) 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 labor laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies AMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall AMC be treated as employer in this regard;
- g) be responsible for all the health, security, environment and safety aspects of the Project Facilities, as the case may be, at all times during the Concession Period;
- h) ensure that the Secondary Collection Points and Workshops remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- i) upon receipt of a request thereof, afford access to the Project Facilities to the authorized representatives of AMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facilities and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- j) Pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities, as applicable throughout the Concession Period except Property Tax on Secondary Collection points, workshops and Parking sites which shall be borne by the AMC.
- k) Make its own arrangements for the engagement of the employees and labor engaged for execution of the Construction Work following applicable laws on minimum wages and other employee benefit schemes.
- l) Keep in the registered office of concessionaire, two complete sets of this Agreement, approvals given by the AMC and any other communication given or issued under provisions hereof for inspection, verification and use by the AMC/ or any authority authorized by law to inspect the same or any of them.
- m) Provide and maintain all necessary welfare facilities for its staff and labor. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structures forming a part of the Secondary Door to Door Collection points, Workshops and Parking lots.
- n) Employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works.
- o) Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labor and to preserve peace and protection of persons and property in the neighborhood.

7.12 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 13.1;
- b. AMC Event of Default;
- c. Compliance with the instructions of the Transaction Advisor Cum Project Management Consultant /AMC or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- d. Closure of the Project Facilities or part thereof with the approval of AMC.

7.13 Access and Assured Availability of the Project Facilities

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to AMC / Person nominated by AMC.

SWACI WATER CORPORATION

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7.14 Expenses towards Statutory Deposits and Charges

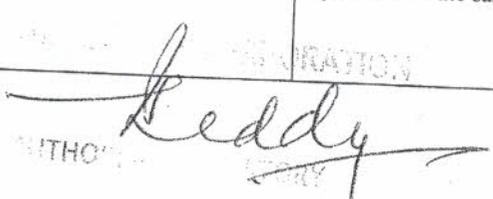
In case AMC pays service charges towards connection of utilities to the Project Facilities, other taxes such as water tax and sewerage charges for the Parking Sites and Workshops, the Concessionaire shall reimburse these charges to AMC.

PENALTIES AND FINES	ARTICLE 8
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8.1 Performance Penalties

Concessionaire is bound to perform as per terms and conditions laid down in the Tender Documents including RFP, and the Concession Agreement. Non-performance or lack of performance shall be viewed seriously resulting into levy of monetary penalties as prescribed in RFP.

Sr	Activity	Unit of Measurement	Penalty imposed
1)	(a). Non-collection of solid waste (garbage) from households during Door-to-door collection. (b). Collection in non segregated form. (c). If non collection of solid waste results in dumping of solid waste on ground.	Complaints as reported by AMC Officials/ ICC/ Swachhata App and not resolved within 24Hrs.	Rs. 25/- per day per house/ shop/ establishment to a max. accumulated value of Rs.2500/- per Vehicle/ day on the designated route. Rs. 25/- per day per house/ shop/ establishment to a max. accumulated value of Rs.2500/- per Vehicle/ day on the designated route.
2)	Door-to-door collection vehicles does not report to duty in the designated area	Complaints as reported by AMC Officials/ ICC/ Swachhata App and not resolved within 12Hrs.	Rs. 500/- per incident/ heap. Rs. 2500/- per vehicle per day.
3)	Deployment of workers without approved uniform and identity card, having valid permissions/ license etc.	Complaints as reported by AMC Officials/ ICC/ Swachhata App.	Rs. 50/- per worker/ day/ default.
4)	Waste transported in unscientific manner (Not covered/ overflowing/ dripping/ un-segregated waste etc.)	Complaints as reported by AMC Officials/ ICC/ Swachhata App.	Rs. 5000/- per vehicle per day/ default.
5)	If the waste is dumped at non-designated place	Complaints as reported by AMC Officials/ ICC/ Swachhata App.	Rs. 10,000/- per day/ default.
6)	If the waste founds at storage points placed in an unhygienic manner	Complaints as reported by AMC Officials/ ICC/ Swachhata App.	Rs. 500/- per points per day/ default.
7)	Successful Bidder fails to make procurement as per the given time schedule	Observed and recommended by PMC (SBM, SWM & SANITATION)	<ul style="list-style-type: none"> ▪ Mini Tipper: Rs.500/- per day delay/ vehicle ▪ In the event of non-achievement of COD because of bidder's issues, Rs.5000/- per day till the date it is achieved.
12.	The successful bidder shall ensure not to cause any damages or physical loss to any third person/ party, due to negligent and rash driving.	If due to negligent and rash driving any damage is caused to the third party and reported to AMC, then the bidder shall bear the cost of repair/s.	As per actual & any legal processes/ expenses shall be on bidder's cost. Successful bidder shall keep the ULB indemnified from any such legal complications/ process.
13.	Any technical/ compliant errors notified by the AMC during operation time.	If fail to rectify the flaws that is noticed and reported to Successful bidder by AMC/ PMC (SBM, SWM & SANITATION) within 8hours of operation on the same date.	Rs.500/- per incident/ day


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Sr.	Activity	Unit of Measurement	Penalty Imposed
14.	If collection is in segregated form below X% in a month (Zone Wise)		(100-X)% deduction in payment to concessionaire for the month.

CHANGE OF SCOPE	ARTICLE 9
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9.1 Change of Scope

AMC may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/ deletion to the works and services which are beyond the scope of Project as contemplated by this Agreement ("Change of Scope"), provided such changes do not adversely affect the COD. All such changes shall be made by AMC by an order (the "Change of Scope Order") issued in accordance with mutual consent along with the concessionaire.

FEES	ARTICLE 10
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10.1 Fees

The payment shall be made as under:

- Monthly payment based on total No. of Households from where waste is collected in D2D collection and invoice will be raised on monthly basis.
- The payment will be released at the earliest by ANN after the vetting of Invoice by the ZO, ZSO and SFI, any other official deputed by Municipal Commissioner or any Independent examiner/Third Party.
- All payments made to successful bidder shall be subjected to tax deduction at source as per applicable taxation rules of State/ Central Government.

10.2 Price Escalation:

Annual Escalation in General Costs

In order to enable stable service provision even in the face of annually escalating general costs, the concessionaire may be allowed an annual increase in the contract value. The following guidance may be used to calculate the allowed increase.

'y'% increase in the base rate 'X' may be given annually to cover the increase in general costs. The increase may be calculated as per these examples:

After 1 year X plus y% of X

After 2 years X plus 2y% of X

After 3 years X plus 3y% of X

After 10 years X plus 10y% of X

After 14 years X plus 14y% of X

Where X is the "base rate" accepted at the time of award of contract as against rate per Household quoted by the selected bidder.

Where Y is the 5% of Annual project cost.

FORCE MAJUERE AND MATERIALLY ADVERSE GOVERNMENT ACTION	ARTICLE 11
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11.1 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 prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

of SWACHH BHARAT CORPORATION

[Handwritten Signature]
AUTHORIZED SIGNATORY

[Handwritten Signature]
स्वास्थ्य विभाग, अहमदाबाद
चार पिरा, अहमदाबाद

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labor disruptions or any other industrial disturbances 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 Facilities or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Agreements.
 - ii. 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.
 - iii. any unlawful, unauthorized 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 Project Requirements, Applicable Laws, and 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 determination of this Agreement by AMC for reasons of national emergency, national security or the national interest.
- (h) Any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-Article for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor

11.2 Obligations of the Parties in case of Force Majeure

- (a) As soon as practicable and in any case within 10 (Ten) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Authority setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated duration of the Force Majeure Event;
 - 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 five (5) days of notification by the Affected Party in accordance with the preceding Article, the Parties shall meet and 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 Event 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 duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Article as also any information, details or document, which the Parties may reasonably require.

Signature of Affected Party

 Sd/-

 AUTHORIZED SIGNATORY

Signature of Authority

11.3 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
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event
- (c) 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 Facility(ies) as a result of the Force Majeure Event and to restore the Project Facility(ies), 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 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, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

11.4 Termination due to Force Majeure Event

(a) Termination

- i. If a Force Majeure Event is an event described under Articles of force majeure as described above continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 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 120 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in of force majeure as described above and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.
- iii. Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event as described above subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Termination clause will be effective in following ways- Based on service level indicators,

1. If the concessionaire is not able to achieve 100% Door to Door collection in 90 days from the start of commercial operation date (To be considered Zone-wise).
2. If the concessionaire is not able to achieve segregated collection of 80% Households by 270days from the start

of commercial operation date and 95% segregation by 12 months

3. Non- Compliance of any condition mentioned in the contract.

4. If all the Dhalow Ghars in the project area are not eliminated within 12months from the of commencement of operation.

(b) 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 AMC in accordance with the following Article is paid to the Concessionaire on the Termination Date
- ii. The Project Facilities are handed back to AMC by the Concessionaire on the Termination Date free from all Encumbrances.

Handwritten signature: *Deddy*
Stamp: AUTHORIZED SIGNATURE

Handwritten signature: *[Signature]*
Stamp: प्रमारी स्वच्छ भारत मिशन
नगर निगम, आगरा

(c) **Termination Payment**

- Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by AMC in accordance with the following:
- i. If Termination is due to a Force Majeure Event, described under Articles 12.4, no Termination Payment shall be made by AMC to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies. In case AMC decides to take over the movable assets financed by the lender Bank or substitute the Concessionaire with another entity, it may do so by undertaking to discharge future negotiated liabilities towards the bank. Liabilities till date of termination shall be discharged by the Concessionaire.
 - ii. If Termination is due to the occurrence of any event described under Articles 13.1, Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall be entitled to receive Termination Payment from AMC and shall be entitled to forfeit the Performance Security. The payment shall be made to the bidder as mentioned here with: (i) Assessment should be made about work done from the previous milestone, for which the payment is made or to be made till the date of the termination. Based on such details, a reasonable assessment of the reimbursable and miscellaneous expenses shall be made based on details furnished by the bidder in this regard with supporting documents and based on the assessment of the work done and the respective rates as provided. Wherever such an assessment is difficult, the rates should be arrived at by calculating the amount on pro-rata basis. The total amount payable shall be the amount calculated as per the applicable tax. Applicable Under such circumstances upon termination, the employer may also impose liquidated damages as per the provisions in RFP and this agreement. The bidder will be required to pay any such liquidated damages to employer within 30 days of termination date.
 - iii. Provided further that the Concessionaire shall pay any amount due to and recoverable by AMC from the Concessionaire as on the Termination Date.

11.5 Changes in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Bid Submission Due Date:
- i. The enactment of any new Indian law;
 - ii. The repeal, modification or re-enactment of any existing Indian law such as minimum wages etc;
 - iii. A change in the interpretation or application of any Indian law by a court of record. Provided that Change in Law shall not include:
 - a. Coming into effect, after the Bid Submission due date, of any provision or statute which is already in place as of the Bid Submission due date.
 - b. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Bid Submission Due Date which is a matter of public knowledge.
 - c. Any change in the rates of the Central Taxes.
- (b) Upon occurrence of a Change in Law, the Concessionaire may, notify AMC of the following:
- i. The nature and the impact of Change in Law on the Project
 - ii. In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - iii. The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimize the Additional Cost.
 - iv. The compensation that AMC authority needs to pay the concessionaire either one time/ recurring due to such changes.

CORPORATION
AUTHORITY
[Signature]

[Signature]
प्रकारी स्वच्छ
नगर निगम

12.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or AMC Event of Default or both as the context may admit or require.

a) Concessionaire Event of Default

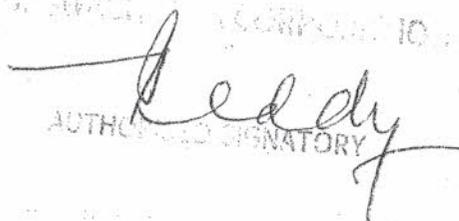
Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as one or more of the reasons mentioned below.

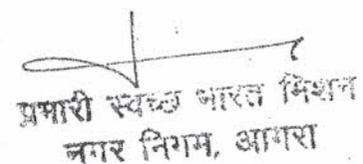
- i. If the concessionaire is not able to achieve 100% Door to Door collection in 90 days from the start of commercial operation date (To be considered Zone-wise).
- ii. If the concessionaire is not able to achieve segregated collection of 80% Households by 270days from the start of commercial operation date and 95% segregation by 12 months
- iii. Non- Compliance of any condition mentioned in the contract.
- iv. If all the Dhalao Ghars in the project area are not eliminated within 12months from the of commencement of operation.
- v. The Concessionaire has failed to adhere to IIOP, Micro Implementation and Operational Plan (MIOP), R&M Plan, RFP.
- vi. The Concessionaire has failed to achieve COD within stipulated time period as mentioned in RFP for any reason whatsoever
- vii. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days or time period prescribed for individual items whichever is less;
- viii. Any representation made or warranty given by the Concessionaire at the time of submission of RFP and under this Agreement is found to be false or misleading;
- ix. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- x. The Concessionaire has abandoned the Project Facility(ies);
- xi. The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xii. The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90days

b) AMC Event of Default

Any of the following events shall constitute an event of default by AMC ("AMC Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- i. AMC has failed to make Fees or any payments due to the Concessionaire and more than 3 (three) months have elapsed since such default from the submission of bill.
- ii. AMC is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 90 days of receipt of notice thereof issued by the Concessionaire.
- iii. AMC has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement without giving reasons
- iv. AMC has unreasonably withheld or delayed 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
- v. Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- vi. Any representation made or warranties given by the AMC under this Agreement has been found to be false or misleading.


 AUTHORIZED SIGNATORY


 प्रमारी स्वच्छ भारत मिशन
 नगर निगम, आगरा

- 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 AMC of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government 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 AMC 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 AMC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or AMC;
- k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to AMC 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 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 Secondary Door to Door Collection Points and Workshops, and the information provided by AMC, 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 here under. 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 AMC shall not be liable for the same in any manner whatsoever to the Concessionaire

14.2 Representations and Warranties of AMC

AMC represents and warrants to the Concessionaire that:

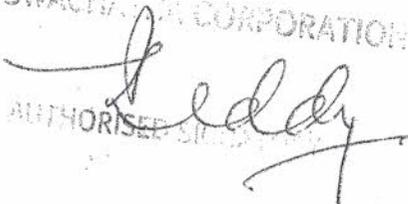
- a) AMC has full power and authority to grant the Concession;
- b) AMC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes AMC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d) There are no suits or other legal proceedings pending or threatened against in respect of the Project or Project Facilities.

14.3 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.

14.4 Assignment and Charges

- a) The Concessionaire shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of AMC.
- b) The Concessionaire shall not create, permit or subsist to any Encumbrance over the Project Facilities, except with prior consent in writing of AMC, which consent AMC shall be entitled to decline without assigning any reason what so ever.

SWACHH CORPORATION

 AUTHORIZED SIGNATORY


 प्रभारी स्वच्छता मिशन
 जगदल नि.स. जगदल

14.5 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided the stipulation regarding interest for delayed payments contained in this Article shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

14.6 Governing Law and Jurisdiction

This Agreement shall be governed and construed in accordance with the laws of India and Dist. Courts at AMC and High Court of Judicature at Allahabad shall have exclusive jurisdiction and all disputes arising under pursuant to and/or in connection with this agreement.

14.7 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 authorized representative of such Party ;and
 - iii. Shall not affect the validity or enforceability of this Agreement in any manner.
- b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

14.8 Survival

Termination of this Agreement:

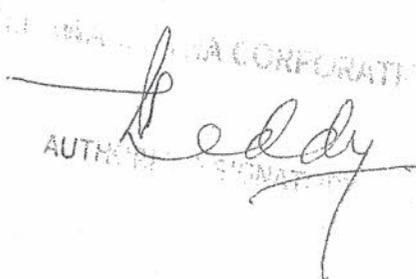
- a) shall not relieve the Concessionaire or AMC of any obligations already incurred hereunder which expressly or by implication survives Termination .
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party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

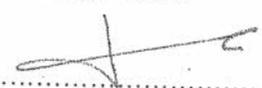
14.9 Amendments

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

14.10 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, Registered Post and delivered to the Parties at their respective addresses set forth below:

AGRA MUNICIPAL CORPORATION
AUTHORISED SIGNATORY



Executive Engineer & Nodal Officer - SBM
Agra Municipal Corporation (AMC),
जगर MG Road, Agra, UP

If to the Concessionaire:

..... as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

In the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address

14.11 Severability

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

14.12 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.

14.13 Language

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

14.14 Exclusion of Implied Warranties etc.

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

14.15 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.
IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN. SIGNED SEALED AND DELIVERED

For and on behalf of AMC by:

भारतीय स्टार. भारत मिशन
नगर निगम, आगरा

For and on behalf of Concessionaire by

SWACHH BHARAT CORPORATION
Addy
AUTHORIZED SIGNATORY

In the presence of:

1)

2)