**DRAFT CONCESSION AGREEMENT**

between

**MUNICIPAL CORPORATION OF BAREILLY**

acting through

its authorised Officer on this behalf

 and

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

**(Concessionaire)**

For

**Door to Door collection, Transfer, Transportation,**

**Refurbish, Construction, Finance, Operations & Maintenance of an**

**integrated Municipal Solid Waste Processing Facility at Bareilly as**

**per MSW (M&H) Rules 2016, for Bareilly Nagar Nigam, on 30 Years**

**term basis; for Municipal Solid Waste.**

October, 2016

**Municipal Corporation of Bareilly**

**(Uttar Pradesh)**

To be printed on a Non-Judicial Stamp Paper of Rs.100/-)

This Concession Agreement mutually agreed and entered into on this ……….. day of …………….,Two Thousand and Sixteen at Bareilly, Uttar Pradesh, India.

**BETWEEN**

Municipal Corporation of Bareilly, a body constituted under the Bareilly Municipal Corporation Act,1957 (hereinafter referred to as “BNN” or “the Concessioning Authority” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

&

Construction & Design Services, A unit of U P Jal Nigam, Government of Uttar Pradesh, Lucknow, herein referred to as “Construction Supervisor”.

**AND**

.........................., a company incorporated under provisions of the Companies Act, 1956, having its registered office at ………………….. (hereinafter referred to as “CONCESSIONAIRE” or “the Concessionaire” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns)

**&**

.........................., a company incorporated under provisions of the Companies Act, 1956, having its registered office at ………………….. a special purpose vehicle (SPV) formed to execute this agreement (hereinafter referred to as “SPVs” or “the Concessionaire” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns)

**WHEREAS,**

1. BNN is the municipal corporation for Bareilly responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Municipal Solid Waste generated in the city.
2. CONCESSIONAIRE is the shortlisted and qualified party, whose proposal has been accepted by BNN vide a Letter of Intent ………………
3. SPV is the Special Purpose Vehicle, formed by CONCESSIONAIRE as it’s subsidiary, through which this project will be executed.
4. The Ministry of Environment and Forests (MoEF), Government of India (GoI), has formulated the Municipal Solid Wastes (Management and Handling) Rules 2016 ("MSW Rules"), which makes it mandatory for every municipal authority to implement a scientific solid waste management system wherein the Municipal Solid Waste is duly processed and the residual inert/non-biodegradable solid wastes disposed in an Engineered Sanitary Landfill (as hereinafter defined).

 E. BNN desires to outsource following activities:

1. Door to Door Collection of Solid Waste from every household / commercial/ institutional areas on daily basis using Rickshaw/ auto tipper etc and transfer of waste to mutually agreed pre identified Primary Collection Centers.

2. Management of Primary Collection Centers & Transfer Station.

3. Transfer of Waste from Primary Collection Centers & Transfer Stations to Plant site.

4. Refurbish, Finance, Construction, Operations & Maintenance of Integrated Municipal Solid Waste Processing at Bareilly through private participation on Refurbish, Own, Operate & Maintain (ROOM) basis for existing plant.

5. BNN had invited competitive proposals from eligible parties for implementing the Project and in response thereto BNN received proposals from several parties including the Concessionaire for implementing the Project.

BNN, after evaluating the aforesaid Proposals accepted the Proposal submitted by the Concessionaire and issued Letter of Acceptance No. ………….. dated ……………to the Concessionaire for executing the Project. The Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

1. BNN, after evaluating the aforesaid Proposals accepted the Proposal submitted by the Concessionaire and issued Letter of Acceptance No. ………….. dated ……………to the Concessionaire for executing the Project.
2. 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: -

**ARTICLE 1**

1. **INTRODUCTION**

1.1 **Background and the Project/Work**

The task of managing solid waste collection, transfer, transportation, Design, finance, operating & maintaining an integrated Municipal Solid Waste Processing Facility as per MSW (M&H) Rules 2016, on a long-term basis; for Municipal Solid Waste; in the Concession Area has been initiated in order to provide clean, hygienic and litter free environment in and around the concession Area. The proposed system will be helpful to remove the requirements of Dust bins/Dhalaos/Open sites from the concession area.

**Concession Area Profile : Bareilly Municipal Area**

1.2 **Generation of Municipal Solid Waste and present mode of the service**

a) The collection and transportation of solid waste in Project Area is generally carried out from the Dhalaos (waste storage depots) and dustbins/designated sites on public streets/roads by deploying tipper trucks.

b) The present system does not provide for a sound and effective approach since public awareness and enforcement of the compliances under the MSW (M&H) Rules 2016 are marginally done. This creates multifold problems in providing timely, quality, aesthetic and hygienic services desired under the MSW (M&H) Rules 2016; i.e. Doorstep collection, separate/ segregated collection of MSW from source in Biodegradable, Non-biodegradable and environment friendly transportation, disposal. Thus, the present services are not compliant with MSW (M&H) Rules 2016 and the present service level as it appears is also far from users’ satisfaction.

**1.3 Approach for Improvement Desired Under the Scope**

a) Municipal Corporation of Bareilly intends to revamp entirely its collection, transfer and transportation systems of handling the Solid Waste in Concession Area. The CONCESSIONAIREs have to note the following aspects and they shall have to plan, procure items and provide the intended services accordingly.

b) All the types of wastes (excluding Biomedical, Hazardous waste & C&D waste) shall be collected by CONCESSIONAIRE from the Concession Area assigned for the work directly from Waste generators and transferred to the Plant.

c) BNN shall provide Pre agreed closed Primary Collection Centres /Transfer points which will be managed by CONCESSIONAIRE on public roads and places for collection of all types of wastes which shall be litter free and there shall be no spillage of waste while transferring the waste from collection vehicle i.e. auto tippers to refuse compactor.

d) All the equipment, vehicles for collection, transfer or transportation shall have closed body and eco–friendly operations; no manual handling, garbage not to be seen outside by citizens and commuters.

e) The transfer points shall be maintained nuisance free of solid waste round the clock in two Shifts.

**1.4 The Scope of Work (Summary)**

Door to door collection, Bin less operation, transfer and transportation of municipal solid waste from every generators/producer in the concession area to processing site operated by the Concessionaire, by using auto lifter, refuse compactors and closed tippers etc., operating & maintaining integrated Municipal Solid Waste Processing Facility as per MSW (M&H) Rules 2016, on a long-term basis for 30 years for refurbish, Operate, Maintain and Transfer basis; for Municipal Solid Waste;

The work would comprise the following items:

**PART A: Door to Door collection (DTDC)**

a) Collection of waste from source of generation.

b) Transferring the collected waste to the 10 nos. of pre-identified Primary Collection centres.

c) User Charge Collections

**PART B: Secondary Transportation:**

a) Lifting and transportation of waste from the 10 Nos. of primary collection centres & transfer stations to processing facility.

b) Operation & Management of Primary Collection Centres & Transfer Stations (total 10 Nos.) including maintenance of vehicles.

**PART C: Refurbish, Finance, Construct, Operation & Maintenance of Plant on RFOM basis**

 Refurbishing of existing setup ,Operation & Maintenance of integrated processing plant in consonance with the characteristics of the waste and compliance of MSW (M&H) Rules 2016.

**1.5 PART A: Door to Door collection (DTDC)**

**1.5.1 Identification of the Transfer Points / Collection Centres.**

a) There shall be no dust bin system for the storage of waste. Waste shall be collected from each household by using auto lifters/ Rickshaw’s and shall be transferred to Primary Collection Centers and the compactor vehicle/ dumper placer vehicles shall carry the waste to disposal /processing site.

b) CONCESSIONAIRE shall identify the Primary Collection centres, where sufficient bins would be placed for intermediate storage. Such transfer points shall not cause inconvenience to inhabitants. The CONCESSIONAIRE shall submit the details of such arrangements in writing to Municipal Corporation of Bareilly. Thereafter, BNN will ensure construction of walled Primary Collection Centers with doors.

**1.5.2 Mode of Operations of the Service**

Street wise generators (premises, plots, buildings of house holds, commercial, institutional and others) shall be identified in each work area and Route plans shall be developed by CONCESSIONAIRE.

(a) Mode of Collection of Waste from the Collection Centers; from Doorstep & from Transfer Points.

(b) Doorstep collection of Biodegradable waste and Non-biodegradable waste shall be carried out street wise from generators daily (premises, plots, buildings) as per route plans. Auto lifter shall be deployed for this purpose.

(c) The auto lifter for doorstep collection shall have two compartments of appropriate capacity. The Auto lifter shall unload Biodegradable waste and Non-biodegradable waste in the Bins kept at Primary Collection Centers separately.

(d) The bins full with waste kept by generators in the front yard or from the nearest approachable gate of the building/premises to the collection vehicle shall be brought to the vehicle by the concessionaire and they shall be kept back in place after unloading in to the vehicles.

(e) The ground at the place where vehicles stop for loading shall be clean-swept if there are any dropping of the refuse from the container while loading and it should be disinfected by an approved disinfectant liquid spray.

(f) All waste collection vehicles shall be thoroughly cleaned and disinfected by the collection crew by approved disinfectant liquid spray at the time of attendance.

(g) Based on its micro plan, CONCESSIONAIRE shall prepare for streetwise plan of doorstep collection indicating generators collection points, waste expected, type of vehicle, vehicle route, , timings of collection, manpower allotted to each vehicle and output expected.

(h) Identify vehicle allocation recommended for each area; device and mark routes of the vehicle and equipment; decide on stop and identify transfer point and mark on map;

assign route no, timings to each vehicle route.

(i) Prepare Summary of Daily Route Plans for all the two types of services Doorstep and on Demand

(j) Daily Route Wise Plan and Record of Attendance.

(k) The results are required to be recorded for every vehicle or equipment trip, every day to ascertain the completion of desired quantity of work with acceptable quality in stipulated time while implementing the system.

(l) Identifying Places of Operations and Maintenance Infrastructure

(m) All vehicles are to be fitted with GPS for effective tracking from a centrally located control room for day to day monitoring of work; by the CONCESSIONAIRE.

**1.5.3** The collection service has to start from door of the MSW producer i.e. source. The CONCESSIONAIRE shall collect garbage in an auto tipper/ Rickshaw containing two-bins, having colour coded system as per MSW (M&H) Rules 2016 and a sound Management Information System (MIS) for monitoring of MSW collection including RFID tagging/ GPS etc., aimed at minimum 70% MSW pick up.

**1.5.4** Nagar Nigam will be responsible for NFC tagging of every house hold /waste generator unit at its own cost for better transparency & visible monitoring system.

* + 1. **Scope of Work of Concessionaire shall include following activities:**
1. To Create Awareness among waste generators for Segregation@ Source and handing over of Garbage to Garbage Collector only against a Service charge.
2. To collect waste from every waste generator @ source every day between 7 AM to 3 PM.
3. To Deposit waste collected @ Primary collection Centers/ Transfer stations.
4. To collect user charges on monthly/ quarterly basis.
5. To create a 12X7 command & control center with toll free No. for complaint registration.
6. To record customer’s reason for not making payments, if any. & If reasons are not attributable to the concessionaire, the same is forwarded to BNN for their necessary action for recovery.

**1.5.6 SCOPE OF WORK OF BNN:**

(i) Before commencement of services, BNN will Issue Notifications for following: -

(a) DTDC Commencement

(b) Making Garbage throwing illegal & imposition of heavy penalty authorizing BNN Sanitary Inspectors & Consortia Ward Supervisors to levy penalty on spot.

(c) Declaration of user charges for every type of waste generators.

(d) Declaration of user charges by Weight for Bulk generators.

(e) RFID tagging & Registration Charges.( As approved by Nagar Nigam)

(ii) Identification & Allocation of following:

a) Parking hubs with Electricity Points

b) Predefined Primary Collection Centers/ transfer stations to be constructed with 4 side coverage as per list attached.

1. Office Space & Vehicle Maintenance & repair Centers.
2. RFID / NFC tagging will be provided by Nagar Nigam at its own cost for better transparency & visible monitoring system.
3. Distribution of twin bin to house hold.

**1.5.7 Waste from Bulk Generators:**

CONCESSIONAIRE shall provide Dumper Placer/ compactor placer Bins at major Bulk Generators premises who generate more than 150 kg /day on chargeable basis as per (per kg) rates approved by Bareilly Municipal Corporation (Rate Charts are attached in annexure 2).

* + 1. CONCESSIONAIRE will ensure lifting of this waste on regular intervals by using Dumper Placer/ compactor Vehicles.
		2. **Roll Out of DTDC:**

DTDC will be rolled out in 5 phases over next 12 months. Phase wise ward selection will be done on mutual understanding basis. Concessionaire will achieve minimum 70% coverage within 3 months of complete roll out.

* + 1. **User Charges:**

The Concessionaire shall be eligible to demand user charges from every households and waste generators, once they have provided services of lifting of garbage from their source of generation for one month. Concessionaire will be free to charge on monthly/ bimonthly/ quarterly or annual basis as per their one to one negotiation and convenience of the user. User Charges approved by BNN is as attached (annexure 1). User charges will vary on yearly basis based on following Formula (Base year will be the financial year of signing the agreement and first increment will be applicable only after completing of the one year of work or start of the next financial year whichever is later): -

**Weightage of factors impacting User Charge Rates**

* + Skilled (Ws): 25%
	+ %age Change in Skilled Labour Salary over past 1 year= CWs
	+ Semi Skilled (Wss): 17%
	+ %age Change in Semi Skilled Labour Salary over past 1 year= CWss
	+ Un skilled (Wus): 30%
	+ %age Change in Un Skilled Labour Salary over past 1 year= CWus
	+ Fuel (D): 15%
	+ %age Change in Fuel Rate over past 1 year= CD
	+ Others (CPI): 13%
	+ %age Change in CPI over past 1 year= CCPI

X\*(CWs\* Ws+CWss\* Wss+ CWus\*Wus + CD\* D+ CPI\*CPI)/100

Where X is the user charge. The above formula gives the %age change in user charge on yearly basis.

For Example:

If User Charge for HIG is Rs. 100 & after 1 year,

* 1. %age Change in Skilled Labour Salary over past 1 year= 6%
	2. %age Change in Semi Skilled Labour Salary over past 1 year= 5%
	3. %age Change in Un Skilled Labour Salary over past 1 year= 10%
	4. %age Change in Fuel Rate over past 1 year= 20%
	5. %age Change in CPI over past 1 year= 2%

Change in User Charge using the above formula is as follows: (6%\*0.25)+(5%\*0.17)+(10%\*0.3)+(20%\*0.15)+(2%\*13%)= 11% So the new user charge for HIG would be Rs. 111/-

From the 13th Month onwards, while concessionaire collects user charges and all user charges collected will be deposited in the CONCESSIONAIRE’s Bank account directly and details of which should be submitted to Nagar Nigam on monthly basis. Out of this amount, 10% amount shall be kept as a security in a separate escrow account to be jointly operated by the parties. BNN shall retain Rs. 25 lakhs as security deposited and release the balance amount from the escrow account in favour of CONCESSIONAIRE. Further, CONCESSIONAIRE shall ensure that an amount of maximum Rs. 25 lakhs is maintained throughout tenure of the contract in the said account.

**1.5.11 Viability Gap Funding: -** BNN will provide Viability Gap Fund (VGF) of Rs.1.2 Crores to be paid in equal instalments of Rs. 20 lakhs over the date of first DTDC Roll Out. The Above fund will be treated as loan and the Concessionaire agrees to pay back this amount in 40 equal instalments of Rs.3 Lakhs each commencing from 13th month from the date of commencement of DTDC. This amount will be released within 3 months of the date of concessionaire ceases to operate after deduction if any due to non-performance as per article-12 of this agreement.

**1.5.12 DTDC Operations:** The waste shall be collected from each unit i.e. source in an auto lifter/ Rickshaw. The auto lifter/ Rickshaw shall have capacity upto 1000 Ltr and shall have two compartments for carrying biodegradable and non-biodegradable waste separately. Working time for door-to-door collection of waste from each unit shall be between 7.00 AM to 3.00 PM. CONCESSIONAIRE may also deploy wheel barrow/cycle rickshaws in the streets where auto lifter cannot enter; with the prior approval of BNN.

**1.5.13 CONCESSIONAIRE shall prepare a detailed Standard Operating Procedure (SOP) document and submit it to BNN for approval within four weeks of execution of this agreement.**

**In particular, and without prejudice to any generality which BNN may prescribe, such SOP will make provisions for the following:-**

1. places to be brought under the umbrella of DTDC viz. households, hotels, restaurants, hospitals, institutional areas, factories, schools, colleges, markets, mandies, marriage halls, dharamshalas, thelas, etc., and such other places as the BNN may prescribe from time to time.

2. work timing of collection of waste

3. Frequency of work

4. Manner in which waste would be collected from the places aforesaid.

5. Deployment of vehicles for the purpose

6. Monitoring of vehicles using GPS systems

7. Manner and mode of creating public awareness among the residents

8. Complaint Redressal System, including mandatory toll free number and such other

 measures as BNN may prescribe.

**This SOP will form integral part of this Contract.**

**1.5.14 Toll Free No.** There will be a complaint redressal cell established with a toll free number, as detailed in the SOP .The toll free number should be communicated to all the users of the system in Concession Area. The complaint received up to 3.00 PM shall be redressed on the very same day and the complaints received after 3.00 PM; these shall be redressed by 11.00 AM on the next day. If the complaints are not redressed as per the time schedule given above; a penalty of Rs.100/- per day per offence shall be imposed on the CONCESSIONAIRE/concessionaire.

* 1. **PART B:**

**1.6.1 Transportation of MSW:**

a) Commencement of Secondary Transportation services: Concessionaire will be responsible for Secondary Transportation from pre-identified mutually agreed Primary Collection Centers. BNN will ensure that all waste collected from Streets sweeping, Drain Cleaning etc.. And from other Dhalon Ghars are brought to these Primary collection Centers with their own resources.

b) CONCESSIONAIRE must take over all secondary transportation of all zones within 2 months from the date of this agreement. BNN will hand over all its existing resources as per list attached to the concessionaire to facilitate the secondary transportation.

**c) Process:**

CONCESSIONAIRE shall prepare a detailed Standard Operating Procedure (SOP) document detailing the manner and mode of Collection and Transportation (CNT) and submit it to BNN for approval within two weeks of execution of this agreement. Provided that while approving the SOP, BNN may itself prescribe manner and mode of performing C&T, which after due mutual discussions may be thereafter incorporated in the SOP by CONCESSIONAIRE. SOP (CNT) shall be reviewed after every six months by both the parties mutually.

In particular, and without prejudice to any generality which BNN may prescribe, such SOP

 (CNT) will make provisions for the following: -

 1. Manner and method of collection of waste

 2. Setting up of a Control Room for monitoring purposes.

 3. Identification of Primary Collection Centers.

 4. Setting up and maintenance of Transfer Stations.

 5. Such other matters as the parties may by consultation decide from time to time.

d) Exclusions from Scope of work of Concessionaire:

 Concessionaire shall not be responsible for following activities:

 i) Cleaning of drains/ public toilets etc.

 ii) Street/lanes/ bylanes Cleaning.

 iii) Lifting of Drain silt/ concrete & debris waste.

 iv) Since it will be a Bin less operations, no bin cleaning or lifting other than 10

 Primary Collection centers are envisaged.

**1.6.2 Tipping Fees:**

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, the Authority agrees and undertakes to pay the Concessionaire a Tipping Fee, which shall be the only fee paid by the Authority to the Concessionaire for performing the services under this Agreement. The Concessionaire has quoted the Tipping Fee per ton of MSW (also called the base Tipping Fee) received and weighed at the gate of the Processing Site for the first year of operations. The Tipping Fee shall be subject to escalations and shall as per following formula (Base year will be the financial year of signing the agreement and first increment will be applicable only after completing of the one year of work or start of the next financial year whichever is later):: -

**Weightage of factors impacting C&T Charge tipping fee rates**

* Skilled (Ws): 25%
* %age Change in Skilled Labour Salary over past 1 year= CWs
* Un skilled (Wus): 15%
* %age Change in Un Skilled Labour Salary over past 1 year= CWus
* Fuel (D): 45%
* %age Change in Fuel over past 1 year= CD
* Others (CPI): 15%
* %age Change in CPI past 1 year= CCPI

Y\*(CWs\* Ws+ CWus\* Wus + CD\* D+ CCPI\*CPI)/100

Where Y is the C&T Fees. The above formula gives the %age change in C&T charge on yearly basis.

 The Authority shall during each year of the term of this Agreement, pay the Tipping Fee on the basis of the projected minimum guaranteed weight of the waste created in Project Site area(“Minimum Obligated Waste”) for each day of a relevant year.

The Concessionaire shall, on or before the 15th of every month, during the Operations Period, or in case the 15th day of a month being a holiday then on the following working day of such Month, submit to the Independent Engineer a consolidated statement (“Monthly Statement”) providing the following details.

a) Records maintained and certified by the Independent Engineer.

b) Amount of Tipping Fee for the previous Month calculated in accordance with above formula.

The Tipping Fee shall be payable from the date of commencement of secondary frame work

**Revolving Letter of Credit:-**

 At least 30 (thirty) days before the start of the secondary transportation, BNN shall cause to establish a Letter of Credit for an amount equivalent to the estimated Tipping Fee for 3 (three) months of operations. This Letter of Credit shall be established with a Scheduled Public Sector Bank. BNN shall at the start of each year, after the expiry of the first year from the commencement of secondary, revise the amount of said Letter of Credit to reflect the estimated Tipping Fee for next year and shall continue to do so till the end of the Concession Period.

**Mechanism of Payment during the Concession Period**

Tipping Fees shall be paid to Concessionaire by the Authority within a period of 30 (thirty) days from the date of submission of Monthly Statement by Concessionaire, duly certified by the Independent Engineer. If there is a delay in the payment beyond 30 (thirty) days, the Authority shall pay an interest of 2% above the corresponding State Bank of India (Medium Term) Lending Rate.

Any delay of more than 30 (thirty) days from the Receipt of Tipping Fee Statement, by BNN in making the payment of Tipping Fee, shall allow the Concessionaire to recover the same by encashing the Letter of Credit established in accordance with Clause “**Revolving Letter of Credit”** and recovering the amount due. The Concessionaire shall give a written notice to BNN at least 7 (seven) days before encashment of the Letter of Credit.

BNN shall before the expiry of 30 (thirty) days from the date of receipt of Notice of Encashment issue a fresh Letter of Credit of the amount specified in Clause “**Revolving Letter of Credit”**.

In case BNN fails to issue a fresh Letter of Credit within 30 (thirty) days of receipt of Notice of Encashment, the Concessionaire shall promptly notify the Department of Urban Development, Government of Uttar Pradesh (“DoUD”). In case no solution is provided by DoUD, the same shall be considered as Concessioning Authority Event of Default.

Notwithstanding the provisions of above Clause , failure of BNN to issue a fresh Letter of Credit in conformance with Clause “**Revolving Letter of Credit”** within 30 (thirty) days of receipt of Notice of Encashment shall be deemed as an Authority Event of Default .

**The Authority shall deduct / withhold the following charges:**

 a) The applicable statutory deductions, such as Income Tax

 b) Any Damages for operational breaches, which is determined to be due and payable, as specified in this contract.

c) Any other recoveries under the terms of this Agreement. All payments to the Concessionaire by the Authority shall he made by way of cheque payable at par at Bareilly.

**1.7 PART C:**

**1.7.1 Processing facility:** Refurbish, Finance, construct, Operating & Maintaining the Waste Processing Units:

The CONCESSIONAIRE shall undertake refurbishing & processing of waste in such a manner that it complies with the UP Pollution Control norms and as per MSW (M&H) Rules 2016.

BNN will hand over Land, plant & machinery to the Concessionaire within 15 days of the agreement along with a 30-year lease agreement. CONCESSIONAIRE will pay Rs 1/- per Sq mtr/ annum to BNN towards Lease Rental. Concessionaire will have right over entire waste generated from municipal limits of city during the tenure of contract. Concessionaire will also be free to align itself with nearby ULBs for collection of waste and bringing it for processing in it’s plant at Bareilly with prior written permission of nagar nigam.. Concessionaire shall be free to use any or multiple technologies to process waste through various Special Purpose Vehicles (SPVs) specifically formed to execute such Projects.

**1.7.2** The Concessionaire will not be responsible for building and /or managing the waste dumping area and /or Sanitary Land Fill(SLF).

Nagar Nigam shall lift reject as per maximum limit specified in this agreement at its own expense in the plant. However for any additional reject weight concessionaire will make its own arrangement for disposing the same to landfill generated by concessionaire .

**1.7.3** Its Nagar Nigam responsibility to develop new SLF at its own expenses.

**1.8 Change of Processing Technology:**

There are all possibilities that during the passage of time the MSW characteristics may change. Therefore, the CONCESSIONAIRE may require change in the processing technology/method to treat the MSW in an efficient manner. For that the CONCESSIONAIRE, will be allowed the option of change(s) in technology at its own cost. However, the CONCESSIONAIREs shall submit his/her proposal for change in technology/method for approval of BNN.

**1.9 CDM (Clean Development Mechanisms) Benefits:**

The CONCESSIONAIRE will be responsible to plan and execute all steps in CDM development process (project structuring, documentation, registration, validation, verification and marketing) and will integrate mechanisms including end use of methane to maximize the CER (Certified Emission Rates) revenues accruing from the project. The CONCESSIONAIRE will share the CER revenue as per the concession agreement and will provide all CER accrual and sale related information with BNN. **The sale of CDM and**

**CER shall be strictly through escrow account and all revenue shall be deposited in the same, to have a transparency in all transaction(s). CONCESSIONAIRE will be given 100 % of the revenues from carbon credits.**

**1.10** Also, the BNN will make necessary budgetary provisions to make the payment of the tipping fee to the Concessionaire, in pursuant to the Concession Agreement at a regular interval.

**1.11 Performance of the Contract and Achieving Desired Results**

**a) Sub Contracts**: CONCESSIONAIRE cannot sub contract entire work to any Company/ party, however, they are allowed to subcontract part of this contract to NGOs/ trusts/ Individual entrepreneurs as part of developing entrepreneurs and under privileged, under this contract. The concessionaire may also obtain support for maintenance services for vehicles etc. from outside (the work shop shall be set up by the CONCESSIONAIRE), authorized agencies of the manufacturer or other reputed agencies for the work.

**b)** Performance of Contract through Special Purpose Vehicle (SPV)- CONCESSIONAIRE is allowed to form SPVs for execution and performance of the contract and can dilute it’s share upto maximum 49% to accommodate investors.

**1.12 Supervision, inspection and control**

**a)** The Commissioner shall appoint an Independent Engineer for inspection of daily performance and supervision of the contract work. The Independent Engineer may be a reputed firm/ person being an association of persons, a panel of individuals, firm, company or a body corporate appointed for supervising and monitoring compliance by the concessionaire.

 **b)** Such Independent Engineer shall have inspection of the work and convey view points within the frame work of stipulated terms & conditions for better performance or corrective action for the work of Collection, Transfer & Transportation of Municipal Solid Waste, carried on by the Concessionaire with a view to ensure that the work is carried out smoothly and efficiently as stipulated in the contract and without any inconvenience to the citizens. The Concessionaire shall permit the Independent Consultant to inspect plant and machinery or any other work/goods/waste/site without creating any hindrance.

**C)** The Concessionaire shall, promptly comply with the deficit in requirement conveyed by the Independent Consultant /Commissioner from time to time in this regard.

**1.13 Management of Labour and Prevention of Events of Accidents**

**1.13.1** Labour

**(i)**  The CONCESSIONAIRE shall comply with all the provisions of the laws regarding deployment of labour under the contract; The Abolition of contract Labour Act, The Minimum Wages Act, The Workmen’s Compensation Act and the provisions of the MSW (M&H) Rules 2016.

**(ii)** It shall be the liability and responsibility of the concessionaire to implement the provisions of these acts.

**(iii)** In addition,

(a) The CONCESSIONAIRE shall not employ in connection with the work any person who has not completed 18 years of age.

(b) The CONCESSIONAIRE shall furnish to the Commissioner; information on the various categories of labour employed by him and the facilities given to the employees in the form prescribed for the purpose at such intervals as may be specified in the work specification.

(c) The CONCESSIONAIRE shall keep all records desired under the said labour laws and submit periodical returns to the respective statutory authorities.

(d) The CONCESSIONAIRE shall in respect of labour employed by him comply with provisions of the various labour Laws and the Rules and Regulations as applicable to them in regards to matters provided therein and shall indemnify BNN in respect of all claims that may be raised against BNN for non-compliance thereof by the concessionaire.

(e) The CONCESSIONAIRE shall obtain the license in accordance with the rules and provisions of contract Labour (regulation and abolition) Act, 1970 and adhered to all terms and conditions stipulated therein.

(f) The CONCESSIONAIRE shall pay their worker - supervisor, labourer, drivers etc. as per the minimum wages act in force and amended from time to time.

(g) The CONCESSIONAIRE or their authorized representative shall on the written directions of the Commissioner or authorized officer of Municipal Corporation of Bareilly, immediately take disciplinary action for default or non-performance.

(h) In the event of the CONCESSIONAIRE committing a default or breach of any provision of the above labour laws and MSW (M&H) Rules 2016 and Regulations as applicable, and pointed out by the statutory authority, the CONCESSIONAIRE shall without prejudice to any other liabilities under the Act pay to BNN, a sum not exceeding Rs. 500/- per day for each default till it is redressed.

( i) Notwithstanding anything contained herein, the Commissioner, may take such action as may be necessary for compliance of the various labour laws for this contract and to recover the actual cost incurred by the corporation there of from the CONCESSIONAIRE if the CONCESSIONAIRE is the defaulter.

**1.14 Relationship with the Concessionaire’s Suppliers and Service Providers.** All transactions between the concessionaire and third parties shall be carried out as between the two principals without any reference to committing or purporting to commit BNN in any manner for this work. The CONCESSIONAIRE should give undertaking to make such third parties fully aware that the CONCESSIONAIRE has no authority to bind BNN in any manner.

**1.15 Legal Jurisdiction:** The legal Jurisdiction for purpose of any matter in this tender / contract agreement shall be the courts of Bareilly, only.

**1.16 Penalty**: As specified in performance evaluation and mode of payment.

**1.17 Operational Records and Operations Control**

 **CONCESSIONAIR**E shall keep all the statutory documents and registers duly recorded for inspection of BNN before 10 days of commencement on regular basis. CONCESSIONAIRE shall make reports promptly available to BNN in the desired format as and when asked. The SOP (O&M) shall prescribe all the relevant details in this aspect.

**1.18 Statutory Laws, Rules and Rules and Regulations Applicable**

**CONCESSIONAIRE** should adhere to the following laws, rules, regulations and all Government of India (G.O.I.) Rules , Regulations and Directives present, amended, updated and added during the work period applicable to the Project / Work of the components covered ;

a. The MSW Rules 2016 of MoEF, GOI, under EPA, 1986

b. Recommendations of the Committee constituted by the Hon. Supreme court, in 1999.

d. Rules under Environmental, Health and Safely Aspects

e. Other Environmental Pollution Control laws, rules and directives

f. Environmental Emission laws

g. Motor vehicle Act and Vehicles Emission Control

h. Labour Laws –Minimum wages, Contract Labour Abolition and Regulation

i. Good Industry Practice

j. Directives on SWM services in the Act for BNN, Governing the Civic services

k. Any other norms prescribed by the authorities who are applicable from time to time for

the project/ work.

**ARTICLE 2**

**2.0 DEFINITIONS AND INTERPRETATION**

**2.1 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:

**Act and Rules:** The term "said Act" and “said Rules" shall mean and include the Municipal Corporation of Bareilly Act 1957 amended upto date and Rules framed there under from time to time, the Solid Waste (Management and Handling) Rules 2016 and all those/labour laws/ relevant laws and rules mentioned above/applicable to the contract.

 **“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.

 **“Agreement”** shall mean this Agreement, and include any amendments hereto made in accordance with the provisions hereof.

**“Applicable Law”** shall mean all laws in force and effect, including MSW Rules, 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.

 **“Applicable Permits”** shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement.

**“Appointed Date”** shall mean the date of this Agreement.

**“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.

**Bio-degradable waste** means the waste of plant and animal origin e.g. kitchen waste, food & flower waste, leaf litter, kitchen-garden waste, animal dung, fish/meat waste and any other material that gets decomposed by the action of living organism, as defined in MSW (M&H) Rules 2016.

**“Bio-medical Waste”** shall have the meaning ascribed to it under the Biomedical Wastes (Management & Handling) Rules, 1998.

**"Book Value"** shall mean the cost of the fixed assets incurred by the Concessionaire for the Project, net of accumulated depreciation computed on straight line basis in accordance with the rates specified in Companies Act, 1956 and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties.

**Bulk generator** means the owner, occupier or any other person representing owners and occupiers of housing society / housing complexes, restaurants; hotels, markets, industrial estates, parks, garden, traffic islands etc. and shopping complexes / malls and includes any government or public office building, or other users such as clubs, gymkhanas, marriage halls, recreation/ entertainment complexes hospitals, educational institutions, commercial establishments or other establishment sources / premises etc.

 **“COD”** shall mean the commercial operations date of the Project which shall be the date on which the Independent Consultant has issued the Provisional Readiness Certificate or the Readiness Certificate in accordance with the provisions of this agreement.

**Collection** means lifting and removal of municipal solid waste (MSW) from designated collection points or any other location.

**Collection at Source** means the collection of municipal solid waste by the CONCESSIONAIRE directly from the premises of any building, bulk generators or common premises of a group of buildings etc..

**Contract:** The term "Contract" shall mean and include (i) EOI (ii) Terms and conditions of Contract

iii) Additional or modified clauses added on account of the pre-bid meeting (iv) Mutually accepted conditions in writing signed by both the parties; MUNICIPAL CORPORATION OF BAREILLY and Concessionaire. Thus the Contract means the agreement between CONCESSIONAIRE(The CONCESSIONAIRE to whom the LOI is given) and MUNICIPAL CORPORATION OF BAREILLY as recorded in the article of agreement signed by CONCESSIONAIRE and MUNICIPAL CORPORATION OF BAREILLY, including all appendices, attachment and documents mentioned there in.CONCESSIONAIRE then becomes the Concessionaire/ service provider of the project/work. “Concessionaire” shall mean any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Construction Works and O&M Requirements.

**Contract Amount:** The term "Contract Amount" shall mean the sum quoted by the Concessionaire in his offer and accepted by the Corporation.

**Commissioner:** The term “Commissioner" shall mean and include the Commissioner of Municipal Corporation of Bareilly.

**Door Step Collection** shall mean collection of solid waste from building to building or property to property, bungalow to bungalow.

**“UPSPCC”** shall mean the Uttar Pradesh State Pollution Control Committee.

**“Emergency”** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities.

**“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 Facilities.

**“Engineered Sanitary Landfill”** shall mean the area within the Landfill Facility, designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind blown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion, and utilitised for disposal of Landfill Waste.

**“Expiry Date”** shall mean the date on which Post Closure Period ends.

**“Financing Documents”** shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

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

**“Fit for Land filling”** shall have the meaning ascribed to it in Schedule 5.

 **“Force Majeure”** or “Force Majeure Event” shall mean an act, event, condition or occurrence as specified.

**“GoI”** shall mean the Government of India.

Good Industry Practice: The term shall mean exercise of that degree of skill, diligence prudence & foresight in compliance with the undertakings and obligations as under the agreement which would reasonably and ordinarily are expected of a skilled & experienced persons engaged in the implementation, operations and maintenance or supervision or monitoring thereof of any of them of

a project similar to this project

 **“Government Agency”** shall mean GoI, BNN or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project Facilities 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.

**“Hazardous Waste”** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto.

Inert Solid Waste means any solid waste or remnant of processing whose physical, chemical and biological properties make it suitable for sanitary land filling.

**“Implementation Period”** shall mean the period from the Agreement Date to COD.

**“Land filling”** shall mean disposal of the Landfill Waste in the Engineered Sanitary Landfill in accordance with the terms of this Agreement.

**Landfill** means a waste disposal site for the deposit of residual solid waste in a facility designed with protective measures against pollution of ground water, surface water and air fugitive dust, windblown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion.

**"Landfill Facility"** shall mean collectively the facilities set out in Schedule 3, including the Engineered Sanitary Landfill to be duly designed, engineered, and constructed in accordance with the provisions specified thereto.

 **“Landfill Life”** or **“Active Operations Period”** shall mean the period commencing from COD till the completion of activities as per Clause **5.4** of Operations and Maintenance Requirements for Landfill Facility **(Schedule 5)** when the Engineered Sanitary Landfill is fully filled with Landfill Waste and a final cover designed in accordance with the MSW Rules is laid on the Engineered Sanitary Landfill, and in accordance with the provisions of this Agreement. Provided that, the Landfill Life may be further extended after discussions between Parties on mutually agreed terms.

**“Landfill Waste”** shall mean the Residual Inert Matter, duly certified as fit for land filling by the Independent Consultant in accordance with the O&M Requirements.

**“Lenders”** shall mean financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided funds to the Concessionaire for financing any part of the Project.

**“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights to 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”** 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.

**“BNN”** shall mean Municipal Corporation of Bareilly, the municipal corporation established under the provisions of the Bareilly Municipal Corporation Act, 1957.

 **“MSW Rules”** shall mean the Municipal Solid Wastes (Management and Handling) Rules 2016 and includes any amendments thereto.

**Municipal Solid Waste:** Municipal Solid Waste includes commercial, residential and other waste

generated within the limits of Municipal Corporation of Bareilly either in solid or semi-solid form excluding industrial hazardous waste but including treated bio-medical waste. The term Solid Waste shall further mean the Municipal Solid Waste as described under the MSW (M&H) Rules 2000 notified by MoEF, Govt. of India, notified on 25 September, 2000, generated in the Concession area by all generators which includes domestic/residential, commercial, institutional, green waste generated in the work area inclusive of private markets, recreation centers, public places and from the places of occasional accumulation of such solid waste.

**Concession Area means:** Bareilly Municipal Corporation Limits Party or Parties mean MUNICIPAL CORPORATION OF BAREILLY and the Concessionaire/Service provider who has been assigned the work. “Parties” shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.

 **“Permissible Landfill Waste”** shall mean and refer to the maximum allowable waste that can be diverted to the landfill site, without attracting any penal provisions.

**“Person”** shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or government body or any other legal entity.

**“Post Closure Maintenance Plan”** shall have the meaning ascribed thereto in this agreement.

**Premises** includes buildings, tenements in a building, house, outhouse, stable, shed, hut, and any other structure whether of masonry, brick, mud, wood, metal or any other material whatsoever and lands of any tenure whether open or enclosed whether built upon or not being used for the time being for purposes of residence, trade, industry, service, business, government or any other public or private purpose including weddings, banquets, meetings, exhibitions, organized events, etc. It also includes any portion of a public road that is permitted by the Commissioner to be used for the time being for parking of vehicles, street vending, and storage of materials at a work site or for any public or private purpose whatsoever other than the movement of vehicles.

 **“Post Closure Activities”** shall mean the activities to be undertaken by the Concessionaire during the Post Closure Period in accordance with the provisions of **Schedule 5.**

“Post Closure Period” shall mean the period commencing from the day immediately following the Active Operations Period and ending on the fifteenth anniversary of the said day.

**“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.

**“Processing”** shall mean the process by which Municipal Solid Waste is transformed into new or recycled products including processes like composting as defined in the MSW Rules.

**“Project”** shall mean operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

The **“Project Work”** means Own, Operate and Maintain vehicles, equipment, systems, installations, infrastructure, manpower and provide services of Door to Door Collection and Operate & Maintain Transfer station, Transportation, Municipal Solid Waste Processing Facility and Engineered Sanitary Landfill Facility, on a long-term basis respectively; for Municipal Solid Waste collected from properties / premises in the Concession Area Zone of MUNICIPAL CORPORATION OF BAREILLY; and organize public awareness periodically for achieving compliance of the MSW (M&H) Rules 2016, as defined in the scope of work.

**IC** means Independent Consultant. “Independent Consultant” shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with this agreement for supervision and monitoring of compliance by the Concessionaire with the Construction Requirements and O&M Requirements, more particularly to undertake, perform and carry out the duties, responsibilities, services and activities set forth in this agreement.

**“Project Facilities”** shall mean the Site, together with the Waste Processing Facility, Landfill Facility and all other related facilities located thereon, and any other offsite facilities created for the Project.

**Public place** includes any road, arch road, viaduct, lane, footway, alley or passage, highway, causeway, bridge, square alley or passage whether a thoroughfare or not over which the public have a right of passage, and such places to which the public has access such as parks, gardens, recreation grounds, playgrounds, beaches, water bodies, water courses, public plazas and promenades, government and municipal buildings, public hospitals, markets, slaughter houses, courts, etc.

**“Remuneration”** shall mean all fees, costs, charges and expenses payable to the Independent Consultant in accordance with the terms of his appointment.

**“Residual Inert Matter”** shall mean the material left as residue after Processing of Municipal Solid Waste and segregation and removal of the organic matter, compost or organic manure there from, either wholly or in part, and includes pre-processing rejects.

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

**The Services** means all activities direct or ancillary to the work like guarding, up keeping, operating and maintaining the vehicles, equipment, systems and related infrastructure required performing the Work assigned to CONCESSIONAIRE / Concessionaire in a specified manner for a specified period for fulfilling the desired performance. The services will include collection, transfer and transportation, operating & maintaining an integrated Municipal Solid Waste Processing Facility and Engineered Sanitary Landfill Facility as per MSW (M&H) Rules 2016, on a long-term Build, Operate and Transfer (BOT) basis; for Municipal Solid Waste.

**SPV** means Special Purpose Vehicle Company.

**“Tax”** shall mean and includes all taxes, fees, cesses, levies that may be payable by the Concessionaire under Applicable Law.

 **“Termination”** shall mean early 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 expiry of this Agreement due to efflux of time in the normal course.

**“Termination Date”** shall mean the date specified in the Termination Notice as the date on which

Termination occurs.

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

**“Tipping Fee”** shall mean the amounts payable by BNN to Concessionaire in accordance with

**Article 8.**

**“Tipping Fee Statement”** shall have the meaning as ascribed thereto in Article 8.

**“Tipping Fee Rate”** shall mean the amounts payable per ton of Landfill Waste as set out in

**Schedule 6.**

Transportation means conveyance of Municipal Solid Waste from place to place hygienically through specially designed transport system, so as to prevent foul odour, littering, spillage unsightly condition and accessibility to vectors.

**“Viability Gap Funding”** means the interest free loan given to CONCESSIONAIRE during the incubation period or initial period to maintain viability of the project during initial days only.

 **“Waste Processing Facility (ies)”** shall mean the facilities for Processing Municipal Solid Waste to be operated & maintained, within the area earmarked on the Site, by the Concessionaire in accordance with the provisions of this agreement.

**OTHER DEFINITIONS of TERMS:** As defined in the MSW (M&H) Rules 2016 of MoEF, Govt. of India.

**2.2 The Standards**

The Goods, vehicles, equipment, systems and services provided under the Contract shall conform to the standard as specified in the technical specifications; In specific, Vehicles should conform to Euro III standards of emission and above - up graded from time to time as per statutory requirement Where no standards are specified for particular goods, vehicles, equipment, services, they should conform to the latest minimum Bureau of Indian Standards specifications if prescribed for the product, machinery, equipment, services required in the tender, if not prescribed under BIS they should conform to the latest ISO standard. Or the authoritative latest standards used in the country of origin, appropriate to the specified goods, vehicles, equipment systems, and services.

A declaration will be submitted by the CONCESSIONAIRE / concessionaire for the above with the certification of the authorized agency of the origin

**2.3 Interpretation**

In this Agreement, unless the context otherwise requires,

1. 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;
2. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;

(c ) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);

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

( e) the words "include" and "including" are to be construed without limitation;

(f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;

(g) 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;

(I ) 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;

(j) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or by Independent Consultant shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or Independent Consultant 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;

**ARTICLE 3**

**3.0 CONCESSION**

**3.1 Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessioneering Authority hereby grants and authorizes the Concessionaire to Operate and maintain the Project Facilities and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (“the Concession”).

**3.2 Concession Period**

The Concession is hereby granted for a period of 30 years, which can be extended by further 10 years at the sole discretion of BNN, commencing from the Appointed Date and ending on the Expiry Date ("the Concession Period") during which the Concessionaire is authorised to Operate and maintain the Project Facilities in accordance with the provisions hereof. 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.

**3.3 Acceptance of Concession**

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

**ARTICLE 4**

**4.0 PROJECT SITE**

**4.1 Handover of Site**

(a) BNN shall, within 15 days from the Date of signing of this agreement, handover to the Concessionaire on as-is-where-is basis, vacant and peaceful physical possession of the Site free from Encumbrance, for the purpose of refurbish & Operating & maintenance of the Project. BNN shall lease the site for 30 years.

(b ) Upon the Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use and operate the same and to repair at its costs, charges and expenses such investigation, development and improvements in the Site as may be necessary or appropriate to implement the Project and provide the Project Facilities in accordance with the provisions of this Agreement.

**4.2 Rights, Title and Use of the Site**

(a) The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties. It will place it’s own security arrangements to secure it’s premises.

(b ) The Project Facilities shall be and continue to be the property of BNN.

(c ) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Facilities, including the Site save and except as set forth and permitted under this Agreement.

(d ) The Concessionaire shall not, without the prior written approval of BNN, 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 Site for laying / installing / maintaining electric lines or for such other public purposes as BNN may specify.

**4.3 Peaceful Possession**

BNN hereby warrants that:

(a) The Site together with the necessary right of way/way-leaves

(i)has been acquired through the due process of law

(ii)belongs to, or has been leased to BNN and is vested in BNN and that BNN has full powers to hold, dispose of and deal with the same consistent, interalia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected thereby.

(b ) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of

• the whole Site during the Active Operations Period, and

* the area on which the Landfill Facility has been created during the Post Closure Period.

In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, distrain, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Site or any part thereof, BNN 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.

**4.4 Applicable Permits**

The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued.

**ARTICLE 5**

**5.0 INDEPENDENT ENGINEER**

**5.1 Procedure for Appointment**

BNN and CONCESSIONAIRE shall in consultation appoint a panel of experts consisting of waste/environmental experts, legal expert, chartered accountant, etc. for continuous monitoring and supervision of the project facility, from inception till processing. The initial term of the Independent Consultant shall be 3 years, which may be renewed/ extended for a period not exceeding 2 years at a time.

**5.2 Payments to Independent ENGINEER**

All fees, costs, charges and expenses payable to the Independent Consultant in accordance with the terms of its appointment (collectively "the Remuneration") shall borne by BNN and CONCESSIONAIRE jointly.

**5.3 Replacement of the Independent ENGINEER**

The Parties may replace the Independent Consultant for the time being in any of the following circumstances by giving a 30 day written notice: If BNN or the Concessionaire has reason to believe that the Independent Consultant has not discharged its duties in a fair, appropriate and diligent manner; if the Parties decide not to renew the term of the Independent Consultant; if, in accordance with the terms of its appointment the Independent Consultant resigns or notifies its intention not to continue as the Independent Consultant; Any other circumstance which in the opinion of the Parties warrants replacement of the Independent Engineer.

**INDEPENDENT CONSULTANT - SCOPE OF WORK**

**5.4 Role of the Independent Consultant**

The Independent Consultant is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. The Independent Consultant shall report directly to the Municipal Commissioner. Broadly, the role of the Independent Consultant shall encompass:

5.4.1 Verification and random checks of weighment and Testing of the MSW at the Processing and Landfill Site.

5.4.2 Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,

5.4.3 Assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and

5.4.4 Review matters related to safety and environment management measures adopted by the CONCESSIONAIRE for the Project.

**ARTICLE 6**

**6.0 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:

**6.1 Financing Arrangement**

The Concessionaire shall at its cost; expenses and risk make such financing arrangements including grant, subsidy, viability gap funding or assistance from central / state Governmental Agencies, as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner. BNN will provide all necessary support and documentations required to facilitate above financial helps.

**6.2 Project Implementation: Operation and Maintenance**

(a) The Concessionaire shall operate and maintain the Project Facilities in accordance with the O&M Requirements.

(b ) The Concessionaire may undertake operations and maintenance of the Project Facilities by itself or through a Concessionaire possessing requisite technical, financial and managerial expertise / capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

(c ) The Concessionaire shall, during the Active Operations Period;

1. have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Consultant/BNN and to be responsible for all necessary exchange of information required pursuant to this Agreement;
2. Maintain a reasonably furnished offices at site office at the Project Site;
3. for the purposes of determining that Project Facilities are being maintained in accordance with the Construction Requirements and O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Independent Consultant. 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.
4. Conduct all Tests to ascertain compliance with O&M Requirements.

**d) Insurance**

The Concessionaire shall at its cost and expense, purchase and maintain by due re- instatement or otherwise, during the Concession Period all insurances in respect of all insurable Project Facilities in accordance with the Good Industry Practice. The Concessionaire shall maintain a register of entry in order of premiums paid towards the Project Facilities and proof of payments made shall be submitted to BNN whenever requested for.

**6.3 Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents and 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. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible 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.

**6.4 Un-insurable Risks**

If during the Concession Period, any risk which has been previously insured becomes un- insurable because 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.

**6.5 Environmental Compliance**

The Concessionaire shall, atall times, ensure that all aspects of the Project Facilities and processes employed in the construction, operation and maintenance thereof shall conform with 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 all necessary clearances from the UPSPCC or any other similarly empowered Government Agency and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.

**6.6 Commercial Operation Date:**

|  |
| --- |
| The concession period for the Project shall be 30 (thirty) years inclusive of the refurbish period of 6 months. COD will be achieved by the Concessionaire within the above 6 months duration from the date of the agreement. However, incase Concessionaire is required to do the door to door collection of and transportation, they will be eligible for collection of user charges and payment of tipping fee from Nagar Nigam. Concessionaire would be responsible for fulfilling NGT’s directions as part of COD at it’s own cost. Nagar Nigam will provide all necessary support. |
| . |

**6.7 Land Use**

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

**6.8 Refuse Derive Fuel (RDF):**

The Concessionaire will supply RDF (30% of the Input MSW) to Rampur ULB at it’s own cost till the validity of concession period.

**6.9 Weighment, Acceptance of Municipal Solid Waste**

(a) The Concessionaire shall weigh the Municipal Solid Waste at the entry gate to the Site and weight the Landfill Waste prior to disposal of the same in the Landfill Facility in the manner as set out in the O&M Requirements.

(b) The Concessionaire also undertakes not to accept Municipal Solid Waste which is not supplied by any Person appointed by it.

**6.10 Sales/Distributing of product of plant**

(a) The Concessionaire may adopt such processes and methods as it considers necessary or expedient for Processing of Municipal Solid Waste at the Project Facilities, subject to meeting the Construction Requirements and O&M Requirements.

( b) The Concessionaire shall be free to sell or otherwise dispose of the compost or organic manure, after Processing the Municipal Solid Waste, at the Project Facilities at such price and to such Persons and using such marketing and selling arrangements and strategies as it may deem appropriate subject to meeting the O&M Requirements.

**6.9 General Obligations**

The Concessionaire shall at its own cost and expense:

1. investigate, study, design, construct/ renovate, operate and maintain the Project Facilities in accordance with the provisions hereof;
2. obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
3. comply with Applicable Law governing the operations of Municipal Solid Waste processing units and engineered sanitary landfills at all times during the Concession Period;
4. 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 BNN to step into such contract/s at BNN's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement
5. endeavour to sell or otherwise dispose off, all recyclables in a manner which is not detrimental to the environment;
6. endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers,
7. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
8. 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 and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies BNN against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall BNN be treated as employer in this regard;
9. make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits;
10. be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
11. ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
12. upon receipt of a request thereof, afford access to the Project Facilities to the authorised representatives of BNN for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
13. pay all Taxes, duties and outgoings, including utility charges relating to the Project Facilities.

**6.10 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:

1. Force Majeure Event, subject to Article 8.3;
2. BNN Event of Default;
3. Compliance with the instructions of the Independent Engineer /BNN 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;
4. Closure of the Project Facilities or part thereof with the approval of the Independent Engineer / BNN.

**6.11 Maintenance of Records**

The Concessionaire shall maintain records of the quantum (measured in tonnes) of biodegradable substance, non-biodegradable, recyclable and green waste substance, Landfill Waste deposited at the Waste Processing Facility and the Landfill Facility, duly countersigned by the Independent Engineer and provide monthly, quarterly and annual reports of the same to the Independent Enginner and BNN.

**ARTICLE 7**

**7. BNN’s OBLIGATIONS**

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

**7.1 Specific Obligations**

 MUNICIPAL CORPORATION OF BAREILLY shall provide:

a) Existing Plant along with land Land & other facilities available at site. Nagar Nigam will provide all necessary support to get power connection. Nagar Nigam will clear all pending dues of any kind (including Water & electric charges) till the date of hand over of site.

b) Help & support for obtaining statutory clearances.

c) BNN shall provide barest minimum land area at one or more locations for storage and T&P for parking door to door collection vehicles as mentioned above Separate workshop area shall also be provided as mentioned above by BNN. The concessionaire shall make own arrangements at such parking facilities including security, light, water, telephone etc. BNN shall provide required land allotment documentation for the same.

d) BNN shall provide office space, however will not provide any infrastructure or services to the concessionaire on this account, such as printing, stationary, electricity, water supply, telephone. The concessionaire shall make their own arrangement and the charges for all such services will have to be borne by the concessionaire.

e) BNN shall request development authorities to declare and maintain, or cause to declare and maintain, a no-development zone around the Processing and Land Fill Site in accordance with Applicable Laws.

f) BNN shall provide predefined no. of covered Primary Storage Points of mutually agreed sizes at its own expense.

g) BNN shall sign irrevocable lease agreement of the plant site for 30 year within 15 days of this agreement.

h) The Concessionaire will not be responsible for building and /or managing the waste dumping area and /or Sanitary Land Fill(SLF).

Nagar Nigam shall lift reject as per maximum limit specified in this agreement at its own expense in the plant. However for any additional reject weight to concessionaire will make its own arrangement . Its Nagar Nigam responsible to develop new SLF at its own expenses.

**7.2 General Obligations**

BNN shall :

1. where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits/Licenses;
2. Observe and comply with all its obligations set forth in this Agreement.

**ARTICLE 8**

**8. 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, the Authority agrees and undertakes to pay the Concessionaire a Tipping Fee, which shall be the only fee paid by the Authority to the Concessionaire for performing the services under this Agreement. The Concessionaire has quoted the Tipping Fee per ton of MSW (also called the base Tipping Fee) received and weighed at the gate of the Processing Site for the first year of operations. The Tipping Fee shall be subject to escalations and shall as per following formula (Base year will be the financial year of signing the agreement and first increment will be applicable only after completing of the one year of work or start of the next financial year whichever is later): :-

**Weightage of factors impacting C&T Charge tipping fee rates**

* Skilled (Ws): 25%
* %age Change in Skilled Labour Salary over past 1 year= CWs
* Un skilled (Wus): 15%
* %age Change in Un Skilled Labour Salary over past 1 year= CWus
* Fuel (D): 45%
* %age Change in Fuel over past 1 year= CD
* Others (CPI): 15%
* %age Change in CPI past 1 year= CCPI

Y\*(CWs\* Ws+ CWus\* Wus + CD\* D+ CCPI\*CPI)/100

Where Y is the C&T Fees. The above formula gives the %age change in C&T charge on yearly basis.

 The Authority shall during each year of the term of this Agreement, pay the Tipping Fee on the basis of the projected minimum guaranteed weight of the waste created in Project Site area(“Minimum Obligated Waste”) for each day of a relevant year.

The Concessionaire shall, on or before the 15th of every month, during the Operations Period, or in case the 15 day of a month being a holiday then on the following working day of such Month, submit to the Independent Engineer a consolidated statement (“Monthly Statement”) providing the following details.

a) Records maintained and certified by the Independent Engineer.

b) Amount of Tipping Fee for the previous Month calculated in accordance with above formula.

The Tipping Fee shall be payable from the date of commencement of secondary frame work

**Revolving Letter of Credit :-**

 At least 30 (thirty) days before the start of the secondary transportation, BNN shall cause to establish a Letter of Credit for an amount equivalent to the estimated Tipping Fee for 3 (three) months of operations. This Letter of Credit shall be established with a Scheduled Public Sector Bank. BNN shall at the start of each year, after the expiry of the first year from the commencement of secondary , revise the amount of said Letter of Credit to reflect the estimated Tipping Fee for next year and shall continue to do so till the end of the Concession Period.

**Mechanism of Payment during the Concession Period**

Tipping Fees shall be paid to Concessionaire by the Authority within a period of 30 (thirty) days from the date of submission of Monthly Statement by Concessionaire, duly certified by the Independent Engineer. If there is a delay in the payment beyond 30 (thirty) days, the Authority shall pay an interest of 2% above the corresponding State Bank of India (Medium Term) Lending Rate.

Any delay of more than 30 (thirty) days from the Receipt of Tipping Fee Statement, by BNN in making the payment of Tipping Fee, shall allow the Concessionaire to recover the same by encashing the Letter of Credit established in accordance with Clause “**Revolving Letter of Credit”** and recovering the amount due. The Concessionaire shall give a written notice to BNN at least 7 (seven) days before encashment of the Letter of Credit.

BNN shall before the expiry of 30 (thirty) days from the date of receipt of Notice of Encashment issue a fresh Letter of Credit of the amount specified in Clause “**Revolving Letter of Credit”**.

In case BNN fails to issue a fresh Letter of Credit in conformance with clause 17.4.1 within 30 (thirty) days of receipt of Notice of Encashment, the Concessionaire shall promptly notify the Department of Urban Development, Government of Uttar Pradesh (“DoUD”). In case no solution is provided by DoUD, the same shall be considered as Concessioning Authority Event of Default.

Notwithstanding the provisions of above Clause, failure of BNN to issue a fresh Letter of Credit in conformance with Clause “**Revolving Letter of Credit”** within 30 (thirty) days of receipt of Notice of Encashment shall be deemed as an Authority Event of Default .

**The Authority shall deduct / withhold the following charges:**

 a) The applicable statutory deductions, such as Income Tax.

 b) Any Damages for operational breaches, which is determined to be due and payable, as specified in this contract.

c) Any other recoveries under the terms of this Agreement. All payments to the Concessionaire by the Authority shall he made by way of cheque payable at par at Bareilly.

**ARTICLE 9**

**9.0 FORCE MAJEURE AND CHANGE IN LAW**

**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:

1. earthquake, flood, inundation and landslide
2. 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, Concessionaires or agents appointed by the Concessionaire for purposes of the Project;

(d ) acts of terrorism;

1. strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Concessionaire

(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 Concessionaire’s rights in relation to the Project,

(ii) any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Concessionaire in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and

1. early determination of this Agreement by BNN for reasons of national emergency or national security.
2. any failure or delay of a Concessionaire caused by any of the sub-clauses (f) and (g) hereinabove, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Concessionaire.
3. War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots,weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Concessionaire caused by the events mentioned in this subclause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Concessionaire

**9.2 Notice of Force Majeure Events**

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

1. the nature and extent of the Force Majeure Event;
2. the estimated Force Majeure Period;
3. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
4. 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
5. 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 clause (a), the Parties shall alongwith the Independent Consultant, meet, hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:

1. assess the impact of the underlying Force Majeure Event,
2. to determine the likely duration of Force Majeure Period and,
3. 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.

1. The Affected Party shall during the Force Majeure Period provide to the other Party and the Independent Consultant regular (not less than weekly) reports concerning the matters set out in the preceding clause (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:

1. due notice of the Force Majeure Event has been given as required by the preceding Clause 9.2;
2. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
3. 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;
4. 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 Consultant 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;
5. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
6. any insurance proceeds received shall be, subject to the provisions of Financing Documents, 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

If a Force Majeure Event, excluding events described under Clauses 9.1(f), 9.1(g) and 9.1(h), 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. Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is an event described under Clauses 9.1(f), or 9.1(h), and the same subsists for a period exceeding 365 days, then either Party shall be entitled to terminate this Agreement. Provided that BNN may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 9.1(f) or 9.1(h).

**(b) Termination Notice**

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

1. in sufficient detail the underlying Force Majeure Event;

(ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

1. the estimated Termination Payment including the details of computation thereof and;
2. any other relevant information.
3. **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;

1. the Termination Payment, if any, payable by BNN in accordance with the following clause (d) is paid to the Concessionaire on the Termination Date and

(ii) the Project Facilities are handed back to BNN by the Concessionaire on the Termination Date free from all Encumbrance.

1. **Termination Payment**

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

1. If Termination is due to a Force Majeure Event, described under Clauses 9.1(a) & 9.2(b) no Termination Payment shall be made by BNN to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate.
2. the proceeds of any amounts under insurance policies and
3. the amounts in the Post Closure Performance Account

(ii) If Termination is due to the occurrence of any event described under Clauses 9.1(c) to 9.1(h), BNN shall pay to the Concessionaire Termination Payment equal to 120 % of the investments made by concessionaire as on the Date of Termination Notice.

1. If Termination is due to the occurrence of any event described under Clause 9.1(i), BNN shall subject to the certification of Independent Consultant, pay to the Concessionaire, Termination payment equal to 100% of the investments made by the concessionaire as on the date of Termination Notice.Provided BNN shall be entitled to deduct from the Termination Payment any amount due and recoverable by BNN from the Concessionaire as on the Termination Date.

**9.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article 9, 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.

**9.6 Change in Law**

(a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:

1. The enactment of any new Indian law including laws related to environment;
2. The repeal, modification or re-enactment of any existing Indian law
3. A change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

1. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
2. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,

(iii) Any change in the rates of the Taxes.

(b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, and BNN shall subsequently reimburse to the Concessionaire 50% of such Additional Costs, provided such additional cost is not less than Rupees Seventy-Five lakhs.

(c) Upon occurrence of a Change in Law, the Concessionaire may, notify BNN and the Independent Consultant of the following:

1. The nature and the impact of Change in Law on the Project
2. In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire because Change in Law
3. The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including minimising the Additional Cost
4. The relief sought by the Concessionaire

(d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-clause, BNN and the Concessionaire shall along with the Independent Consultant hold discussions and take all such steps as may be necessary including determination/certification by the Independent Consultant of the quantum of the Additional Cost to be borne and paid by BNN.

1. BNN shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties.

**ARTICLE 10**

**10.0 EVENTS OF DEFAULT AND TERMINATION**

**10.1 Event of Default**

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

**(a) Concessionaire Event of Default**

a) BNN at any time may terminate the contract by giving written notice to the CONCESSIONAIRE.

If the CONCESSIONAIRE/ Concessionaire becomes bankrupt or otherwise insolvent, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to BNN. If the CONCESSIONAIRE/ Concessionaire creates events of default of any of the terms

and conditions governing the contract or any clause of the contract including those of operation clauses of house to house collection, deployment of right type of vehicles and compactors, transportation of waste, designated processing & disposal of waste etc. If it is proved that the Concessionaire is intentionally and deliberately violating the provisions of the contract. The decision of the Municipal Commissioner shall be final in this regard.

b) BNN requires that the CONCESSIONAIREs under this contract observe the highest standards of ethics during the execution of such Contracts. In pursuance of this policy, BNN defines for the purposes of this provision, the terms set forth as follows:

“Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of the public official in the procurement process or in contract execution; and

c) If the CONCESSIONAIRE indulges in Corrupt Practices, BNN may at any point of time terminate the contract by giving written notice to the CONCESSIONAIRE, even after the work is started, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the BNN.

d) In case of failure to clarify or improve the work to the utmost satisfaction of BNN, letter of termination will be sent to the CONCESSIONAIRE.

e) If the order /contract is cancelled / terminated after commencing the work, on account of the reasons and / or failure of the Concessionaire to perform up to the standard as evaluated, Concessionaire shall;

• Hand over the entire infrastructure to an authorized representative of BNN; without any compensation.

• Hand over vehicles, equipment, to an authorized representative of BNN; without any compensation.

BNN may/shall assign the entire work and its set up to any other company or individual for operations of the services along with infrastructure, places and all vehicles and equipment acquired from the Concessionaire, at the risk and cost of the CONCESSIONAIRE.

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 this agreement:

(I ) The Concessionaire has failed to make any payments due to BNN and more than 90 days have elapsed since such payment default;

(ii ) 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;

1. A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
2. 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 BNN, 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 Agreement.
3. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
4. The Concessionaire has abandoned the Project Facilities;
5. The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
6. 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 90 days.

(**b) BNN Event of Default**

a) The Concessionaire may at any time terminate the contract if desired on default on the part of BNN; such as non-payment of bills or resistance from citizens and it does not get resolved by BNN, by giving written communication to BNN, the Concessionaire may hand over the vehicles, equipment, bins, and fixed assets created by them to BNN.

b) In case of termination /cancellation of the contract after commencing the work when BNN asks to do so on account of BNN’s inability to continue, all the infrastructure, vehicles , equipment, containers brought by the Concessionaire may be taken over by the BNN; if requested by the Concessionaire; as per Book Value without any prejudices to rights of damage claims by the Concessionaire.

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

1. BNN has failed to make any payments due to the Concessionaire and more than 90 days have elapsed since such default;
2. BNN is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 90 (ninety) days of receipt of notice thereof issued by the Concessionaire;
3. BNN has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

**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 BNN may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, BNN shall be entitled to terminate this Agreement in the manner as set out under this agreement. Provided however that upon the occurrence of a Concessionaire Event of Default as specified under this agreement, BNN may terminate this Agreement by issue of Termination Notice in the manner set out under this agreement.

(ii) If BNN decides to terminate this Agreement pursuant to preceding clause 10.1 (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to BNN 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 days, BNN shall be entitled to terminate this Agreement by issuing Termination Notice.

(iii ) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 60 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, BNN shall be entitled to terminate this Agreement, by issue of Termination Notice

. **(b) Termination for BNN 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 BNN 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 clause (i) it shall in the first instance issue Preliminary Notice to BNN. Within 30 days of receipt of Preliminary Notice, BNN shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "BNN Proposal to Rectify”). In case of non submission of BNN Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(iii ) If BNN Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, BNN shall have further period of 60 days to remedy/ cure the underlying Event of Default. If, however BNN fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

1. **Termination Notice**

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

1. 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,

1. any other relevant information.
2. **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 BNN in accordance with the following sub - article (f) is paid to the Concessionaire on the Termination Date; and

(iii ) the Project Facilities are handed back to BNN by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to BNN.

1. **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. 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.

1. **Termination Payments**

Upon Termination of this Agreement on account of BNN Event of Default, the Concessionaire shall be entitled to receive from BNN, termination payment equal to 120% of the book value of the investments made as on Termination Date. Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall be entitled to receive from BNN termination payment equal to 70% of the investments made as on the Termination Date.

The aforesaid payments shall be subject to any claim including damages, penalty, etc which either party may have against each other.

**10.3 Rights of BNN on Termination**

(a) Upon Termination of this Agreement for any reason whatsoever, BNN shall have the power and authority to:

(I ) enter upon and take possession and control of the Project Facilities i.e., plant, vehicles, workshop etc. forthwith;

(ii) 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, BNN 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 hand back of the Project Facilities by the Concessionaire to BNN shall be free from any such obligation.

**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 the 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**

**11.0 HANDBACK OF PROJECT FACILITIES**

**11.1 Ownership**

Without prejudice and subject to the Concession, the ownership of the AS IS Project Facilities owned and including all improvements made therein by the Concessionaire, shall at all times remain that of BNN. This will extend to all facilities under Part A, B and C of this agreement. However, any new asset/ project created by the Concessionaire with his own investment will be owned by the concessionaire at all times.

**11.2 Concessionaire’s Obligations**

11.2.1 **Transfer of the movable and immovable assets by the CONCESSIONAIRE; after Completion of the Contract i.e. 30 Years unless extended by another 10 years in that case 30 years to the BNN.**

1. The Concessionaire shall at the end of the Contract period hand back vacant and peaceful possession of the Project Facilities to BNN at book value and in good operable condition as received at the time of signing of Contract.
2. BNN may decide to extend the contract or BNNounce completion; a letter to this effect shall be given by BNN. On acceptance of the extension a new contract agreement shall be signed and the work shall continue un-interruptedly with use of same vehicles, equipment and infrastructure etc.
3. **All Vehicles, Workshops, Offices, Communication arrangements etc. and immovable infrastructure/ facilities:** On completion of the contract period, unless it is extended, the CONCESSIONAIRE will transfer All Vehicles (owned by the BNN), Workshop, Offices, Communication arrangements etc. to BNN, in working conditions, free of cost.

**Article 12**

**Liquidated Damages & Penalities**

It is acknowledged that the Concessionaire’s failure to achieve performance levels as stipulated below, will cause the Bareilly Nagar Nigam to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the BNN of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such non performance, the Concessionaire agrees that liquidated damages may be assessed and recovered by the BNN as against Concessionaire, in the event of non performance and without the BNN being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore Concessionaire shall be liable to the Owner for payment of liquidated damages beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Concessionaire shall pay them to BNN without limiting BNN's right to terminate this agreement for default as provided elsewhere herein. The Performance Matrix along with liquidated damages are as follows:

**Performance Parameters & Liquidated Damages:**

**1. Door To Door Collection (DTDC) of Waste:**

CONCESSIONAIRE will provide Door to Door services to minimum 70% users on an average monthly basis with effect from 15th month of commencement of DTDC. In case of shortfall, BNN will levy Liquidated damages @ Rs.1/- per day per instance.

**2. Secondary Transportation:**

CONCESSIONAIRE will ensure Zero Waste on all Primary Collection Centres (PCC) at least once a day. In case, if any PCC is found to be full or partial full of waste during the declared duration of Zero Waste, BNN will levy Rs. 1000/- per instance per PCC as liquidated damages.

**3. Compost Plant Operations:**

a. CONCESSIONAIRE will ensure that it processes average of minimum 80% of accepted (minus rejected) MSW per month, starting from the COD. Incase, of any deficit, BNN will levy Liquidated damages @ Rs. 50/- Per ton shortage.

CONCESSIONAIRE must ensure that these Liquidated Damages do not cumulate to more than Rs.1,00,00,000/- Per Annum. In the event cumulative Liquidated damages crosses Rs. 1,00,00,000/- within a year, this will be a fit case of termination by BNN due to non performance by the Concessionaire without prejudice to rights of the Concessionaire for repair and remedies as mentioned in other parts of contract.

**Penalties:**

BNN will levy following penalties on the Concessionaire for non adherences as follows:

a) For Dress: If any waste collector and waste handlers are found without dress or safety kit, a penalty of Rs. 50 per person per instance will be levied on the Concessionaire.

b) For waste transfer without cover: If any vehicles operated by the Concessionaires are seen plying on road full of waste without Cover, a penalty will be imposed @ Rs.50/- per instance per vehicle.

**12.0 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 Consultant (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **clause (b)** below.

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

**12.2 Arbitration**

**Procedure**

1. 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 15 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 be Bareilly.

**(c ) 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.

**12.3 Performance during Dispute**

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**

**13.0 REPRESENTATIONS AND WARRANTIES**

**13.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to BNN that:

1. it is duly organised, validly existing and in good standing under the laws of India;
2. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
3. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
4. it has the capacity to undertake the Project and organize requisite financing;
5. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
6. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
7. 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;
8. 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;
9. 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;
10. 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.
11. 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 Project Facilities, and the information provided by BNN, 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.
12. 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 BNN shall not be liable for the same in any manner whatsoever to the Concessionaire.

**13.2 Representations and Warranties of BNN**

 **BNN represents and warrants to the Concessionaire that:**

1. BNN has full power and authority to grant the Concession;
2. BNN has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

(c) This Agreement constitutes BNN’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 BNN in respect of the Project Facilities or the Project, except Arbitration Case No. 06/2014 whose pendency is acknowledged by the Concessionaire herein. BNN shall indemnify the Concessionaire in case of any loss or damage on account of the said case.

**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**

**14.0 MISCELLANEOUS**

**14.1 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 BNN.

1. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of BNN, which consent BNN shall be entitled to decline without assigning any reason whatsoever.

(c ) Restraint set forth in clauses (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.

**14.2 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 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 prevailing prime lending rate of State Bank of India per BNNum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same, however, subject to other payment clauses in this contract. 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 agreement shall neither be deemed or 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.

**14.3 Governing Law and Jurisdiction**

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

**14.4 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.

**14.5 Survival**

**Termination of this Agreement**

1. shall not relieve the Concessionaire or BNN of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
2. 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.

**14.6 Amendments**

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

**14.7 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 BNN :

Commissioner

Municipal Corporation of Bareilly

Commissioner’s Office

Bareilly

**If to the Concessionaire:**

………………………

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

…………………………..

…………..

Or such address, email id, 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 email or facsimile, when transmitted properly addressed to such email id or facsimile number.

**14.8 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.

**14.9 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.

**14.10 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/Hindi language.

**14.11 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.

**14.12 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 BNN by: For and on behalf of CONCESSIONAIRE by:**

**(Signature) (Signature)**

**(Name) (Name)**

**(Designation) (Designation)**

**In the presence of :**

**1) 1)**

**2) 2)**