

Model RFP & Concession Agreement for

# INTEGRATED SOLID WASTE MANAGEMENT PROJECT



Ministry of Housing and Urban Affairs  
Government of India

**MODEL CONCESSION AGREEMENT FOR  
INTEGRATED SOLID WASTE MANAGEMENT  
[Insert Title]**

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## **PART I – PRELIMINARY**

Recitals

## CONCESSION AGREEMENT

THIS **CONCESSION AGREEMENT** (Agreement) is made on this [XXX] day of [XXX], 2023 at [Place].

BETWEEN

The Urban Local Body (**ULB**) of [•] represented by [•], and having its offices at [•] (hereinafter referred to as the "**Authority/ULB**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

**AND**

The Department of Local Government/ Urban Development/ Municipal Administration, [Insert the name of the State] hereinafter referred to as the "**Confirming Party**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

**AND**

[XXX], a Company incorporated under the Companies Act, 1956/ 2013 and having its registered office at [XXX] (hereinafter referred to as "**Concessionaire**", which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns) of the OTHER PART

and the "Authority/ULB", "Confirming Party" and "Concessionaire" are collectively referred to as "**Parties**" and individually as a "**Party**".

WHEREAS,

- a) By Seventy Fourth Amendment to the Constitution of India (with effect from 1st June 1993), Part IXA was inserted which inter-alia introduced the concept of local self-governance by urban local bodies ("ULBs" or "Municipalities/Deemed Municipalities"). Article 243W entrusted powers and responsibilities on the municipalities for performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule of the Constitution of India. Public health, sanitation, conservancy and solid waste management have been provided as a few of the activities in Twelfth Schedule which are required to be undertaken by Municipalities.
- b) Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India (GoI) under the aegis of Government of India (GoI), has formulated the Solid Waste Management Rules, 2016 ("**SWM Rules**"), which provide that every municipal authority shall within the administrative area of municipality, be responsible for implementation of SWM Rules and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of Municipal Solid Wastes ("**SWM Services**").

Accordingly, the ULBs are required to perform obligatory duties within the provision of their respective Acts and also to provide SWM Services in accordance with SWM Rules and to protect the environment and public health of their citizens and public in general.

- c) The Project Area comprises [1]\* ULB covering a total area of [2]\* sq.km and an estimated population of [3]\* (as per Census [4]\*). In order to achieve economies of scale and for better coordination and implementation of the SWM Services, the ULB will select and appoint a Concessionaire to develop the Project (as defined hereinafter), for enabling construction of an Integrated Solid Waste Management Facility, and perform, execute and implement the Project under and in accordance with the terms and provisions of this Agreement.
- d) The objective of the Project is to develop and implement a viable & environmentally sustainable MSW management system in the ULB as a “model system”. The Project would include collection, storage, segregation, transportation, processing and, disposal of the MSW and conversion of Waste to [5] Energy on a Design, Build, Finance, Operate and Transfer (DBFOT) basis under the Public Private Partnership (PPP) model.
- e) Accordingly, ULB had initiated a competitive bidding process through issue of RFP for the Integrated Solid Waste Management Project.
- f) After evaluation of the Bids received, the Authorized Representative had accepted the Bid of the {Selected Bidder} and issued its Letter of Award No. [XXXXX] dated (herein after called the “**LOA**”) to the Selected Bidder requiring, inter-alia the formation of Concessionaire and execution of this Concession Agreement within 45 days of the date of Letter of Award.
- g) The Selected Bidder has since promoted and incorporated the Concessionaire as a Limited Liability Company (Special Purpose Vehicle) under the Companies Act, 2013 and has requested the Authority vide letter dated [\*\*] to accept the Concessionaire.
- h) By its letter dated [\*\*], the Concessionaire has also joined the said request of the {Selected Bidder} to the ULB to accept it as the entity which shall undertake and perform the obligations and exercise the rights of {Selected Bidder} under the LOA, including the obligations to enter into this Concession Agreement pursuant to LOA. The Concessionaire has further represented to the effect that it has been promoted by the {Selected Bidder} for the purposes hereof. The Authority has agreed to the said request of the Selected Bidder and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis subject to and on the terms, conditions and covenants set forth hereinafter.
- i) The ULB and the Confirming Party entered into an agreement dated [\*\*] to implement the said project as per agreed arrangement which has been approved by the Confirming Party under Resolution No. [\*\*] dated [\*\*].
- j) The obligations of the ULB and the Confirming Party of the said project are elaborated in the said agreement.



# 1. Definitions and Interpretation

## 1.1. Definitions

In this Agreement, the following words and expressions shall have the meaning hereinafter respectively ascribed to them hereunder and shall have full force and effect in respect of the rights, duties, and obligations of the parties mentioned therein; and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules:

<b>Access Road</b>	the motorable approach road for the access to the site as detailed out in the Schedule 9.
<b>Accounting Year</b>	means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year. It is clarified that first accounting year shall be the period commencing from the COD and ending on the thirty-first day of March of the next calendar year.
<b>Additional Cost</b>	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 in operation, management and implementation of the Project.

<b>Adjusted Equity</b>	<p>means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the '<b>Reference Date</b>'), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI(Wholesale Price Index) applicable to 'All commodities' announced by Government of India, and for any Reference Date occurring:</p> <p>(a) On or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;</p> <p>(b) From COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "<b>Base Adjusted Equity</b>") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation inWPI occurring between COD and the Reference Date;</p> <p>(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three per cent)<sup>1</sup> thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date.</p> <p>For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be</p>
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	<p>computed as on the Reference Date immediately preceding the Transfer Date (or Termination Date if both dates differ); provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.</p> <p>Note- <sup>1</sup> This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example , the figure for a 25 year Concession Period shall be <math>.100/25*12 = 0.333</math> rounded off to two decimal points i.e. 0.33.</p>
<b>Affected Party</b>	Shall have the meaning set forth in Clause 29.1

<b>Agreement or Concession Agreement</b>	means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement
<b>Applicable Laws</b>	means all laws, brought into force and effect by GOI or the State Government/UT including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement
<b>Applicable Permits</b>	means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement
<b>Appointed Date</b>	means the date on which Financial Close is achieved. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be
<b>Arbitration Act</b>	means the Arbitration and Conciliation Act, 1996, as amended and shall include modifications to or any re-enactment thereof, as may come in force from time to time
<b>Associate or Affiliate</b>	means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise)

<b>Assured Quantity</b>	Means [xxx] TPD of MSW as agreed between Concessionaire and ULB
<b>Bank</b>	Means a bank incorporated in India and having a
	minimum net worth of INR 1,000 Crore (Rupees one thousand crore) or any other bank acceptable to Lenders, but does not include a bank in which any Lender has an interest
<b>Bank Rate</b>	means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect
<b>Bid</b>	means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof
<b>Bid Security</b>	means the security provided by the Selected Bidder to the Authorized Representative along with the Bid as specified, in the Request for Proposals, and which is to remain in force until substituted by the Construction Performance Security
<b>Bio-medical Waste</b>	shall have the meaning as defined under the Biomedical Wastes (Management and Handling) Rules, 1998 and as amended thereto
<b>CERs</b>	Certified Emission Reduction as defined/notified by MoEFCC

<b>Change In Law</b>	<p>means the occurrence of any of the following after the date of Bid having a direct impact on the revenues or costs of the project, as compared to a situation with no such Change in Law:</p> <p>(a) the enactment of any new Indian law; or</p> <p>(b) the repeal, modification or re-enactment of any existing Indian law; or</p> <p>(c) the commencement of any Indian law which has not entered into effect until the date of Bid; or</p> <p>(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid</p> <p>(The expression “law” used in this definition shall include all the applicable acts and the rules, regulations, guidelines, circulars, notifications etc. issued thereunder.)</p>
<b>Change in Ownership</b>	<p>means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium members, together with their Associates, in the total Equity to decline below 100% (one hundred percent) thereof during Construction Period and five years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process</p>
	<p>for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be,) in the proportion of the equity holding of any Consortium member to the total Equity, if it occurs prior to completion of a period of five years after COD, shall constitute Change in Ownership;</p>
<b>Clean Development Mechanism (CDM)</b>	<p>Clean Development Mechanism as defined/notified by MoEFCC .</p> <p>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 the ULB. 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[**] percent of the revenues from carbon credits and [**] per cent of the revenues shall be retained by the ULB.</p>

	The registration of Project to claim CDM benefits is a mandatory requirement. The registration and validation cost will be shared by ULB and Concessionaire in the same proportion. Records of all transactions shall be maintained by Concessionaire and shared transparently with ULB.
<b>COD or Commercial Operation Date</b>	Shall have the meaning set forth in Clause 18.1
<b>Completion Certificate</b>	Shall have the meaning set forth in Clause 16.2
<b>Composting</b>	A controlled process involving microbial decomposition Of organic matter
<b>Confirming Party</b>	means the Party sharing some responsibilities as agreed between it and Implementing Party (ULB), financial or otherwise, to facilitate the ULB in speedy completion of the project and gives its confirmation to that effect to the Concessionaire by entering into Concession Agreement executed between ULB and the Concessionaire
<b>Concession</b>	Shall have the meaning set forth in Clause 3.1
<b>Concession Period</b>	means the period commencing from Appointed date and ending on the Transfer Date ,but not exceeding <sup>[6]</sup> years
<b>Concessionaire</b>	shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals
<b>Concessionaire Event of Default</b>	Shall have the meaning set forth in Clause 32.1
<b>Conditions</b>	Shall have the meaning set forth in Clause 4.1
<b>Precedent</b>	

<b>Construction &amp; Demolition/C &amp; D Waste</b>	means Solid Waste, resulting from construction, modelling, remodelling, repair, renovation or demolition of structures or from land clearing activities or trenching or de-silting activities. "Structures" for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. C& D debris include, but are not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing on-hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures
<b>Construction Period</b>	Shall mean the period beginning from the Appointed Date and ending on the COD
<b>Construction Plan</b>	As defined in Clause 9.3 of Schedule 9
<b>Construction Requirements</b>	Collectively construction requirements for the Processing Facility in line with minimum specifications given in the Background Documents and in the Schedule 9.
<b>Construction Works</b>	All works and things required to be constructed by the Concessionaire as part of the Project Facilities in accordance with this Agreement
<b>Contractor</b>	means the entity or entities, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto ( <i>excluding the Financing Agreements</i> ).
<b>Cure Period</b>	the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall: (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and not in anyway be extended by any period of Suspension under this Agreement; provided that if the cure of any

	breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the ULB or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the ULB or the Independent Engineer to accord their approval
<b>Daily Reports</b>	Shall constitute the reports to be submitted daily as Defined in the Schedule 15.1.1
<b>Damages</b>	Shall have the meaning set forth in Sub-clause 1.2.1(w)
<b>Debt Due</b>	Means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date: (a) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the " <b>principal</b> ") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date; (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to the ULB's Event of Default; and (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal there of shall be dealt with as if such conversion had not been undertaken
<b>Debt Service</b>	means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements
<b>Development Period</b>	Means the period from the date of this Agreement until The Appointed Date
<b>Dispute</b>	Shall have the meaning set forth in Clause 38.1
<b>Dispute Resolution Procedure</b>	Means the procedure for resolution of Disputes set forth In Article 38
<b>Divestment Requirements</b>	Means the obligations of the Concessionaire for and in Respect of Termination as set forth in Clause 32.1
<b>Document or Documentation</b>	Means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings,



	reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form
<b>Drawings</b>	Means all of the drawings, calculations and documents thereof Pertaining to the Project
<b>Encumbrances</b>	means, in relation to the Project, any encumbrances 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable here in but excluding utilities
<b>EPC Contract</b>	means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement
<b>EPC Contractor</b>	Means the entity with whom the Concessionaire Entered into an EPC Contract
<b>Equity</b>	means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component
<b>Event of Default</b>	Shall have the meaning ascribed thereto in Clause 31.1.
<b>Excluded Waste</b>	Waste material of the nature that the Project Facilities are not designed or authorized to receive, manage, process and dispose which includes Industrial Waste, Hazardous Waste, Bio-medical Waste, Treated Bio-medical waste, E-Waste, Construction & Demolition Waste
<b>Execution Date</b>	The date of signing of the Concession Agreement
<b>Financial Close</b>	means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements
<b>Financial Default</b>	Shall have the meaning set forth in Schedule 18
<b>Financial Model</b>	means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein

<b>Financial Package</b>	means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated
	Debt and Equity Support, if any
<b>Financing Agreements</b>	means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2
<b>Force Majeure or Force Majeure Event</b>	ShallhavethemeaningascribedtoitinClause28.1
<b>Good Industry Practice</b>	means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical, sustainable and efficient manner
<b>Government Agency</b>	Gol, the State Government/UT, the ULB or any governmental department, commission, board, body, bureau, agency, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over Concessionaire, the Site/Project Facilities or any portion thereof, for the performance of all or any of the services or obligations of Concessionaire under or pursuant to this Agreement.
<b>Government Instrumentality</b>	means any department, division or sub-division of the Government of India or the State Government/UT and includes any commission, board, ULB, agency or municipal or statutory body including Panchayat under the control of the Government of India or State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement
<b>Hand Over of Project Facilities</b>	ShallhavethemeaningascribedtheretoinArticle22

<b>Hazardous Waste</b>	Shall have the meaning as defined under the Hazardous Wastes(Management and Handling)Rules,1989as revised from time to time
<b>Indemnified Party</b>	Means the Party entitled to the benefit of an indemnity Pursuant to Article 36
<b>Indemnifying Party</b>	Means the Party obligated to indemnify the other Party Pursuant to Article 36
<b>Independent Engineer</b>	Shall have the meaning ascribed thereto in Article 13
<b>Indirect Political Event</b>	Shall have the meaning set forth in Clause 28.3
<b>Inspection Report</b>	As defined in the Schedule 16
<b>Insurance Cover</b>	means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event
<b>Intellectual Property</b>	shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;
<b>Land Lease Agreement</b>	Shall mean the agreement referred to in Clause 6.1.2(f) in form set out in Schedule 19.
<b>ULB</b>	As defined in the Recitals
<b>ULB Representative</b>	means such person or persons as may be authorised in writing by the ULB to act on its behalf under this Agreement and shall include any person or persons authorised by the ULB to exercise any rights or perform and fulfil any obligations of the ULB under this Agreement
<b>Lenders</b>	means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold <i>paripassu</i> charge on the assets, rights, title and interests of the Concessionaire

<b>Lenders' Representative</b>	means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes
<b>Material Adverse Effect</b>	means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any Party
<b>Material Breach</b>	a breach by any 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
<b>Minimum Assured Quantity</b>	Minimum of the two: 80% of the Assured Quantity of MSW for the ULB/Cluster to be delivered at the Project Site for that operational year or, the Obligated Quantity for the Cluster
<b>Monitoring Agency</b>	Any agency authorised by the ULB to monitor progress or adherence to construction or Operations & Maintenance requirements. This includes the Independent Engineer.
<b>Monthly Reports</b>	shall constitute the reports to be submitted monthly as defined in the Schedule 15.1.2
<b>MSW or Municipal Solid Waste or Solid Waste</b>	solid or semi-solid waste generated by households, public services, agricultural activities, commercial establishments and industries and shall include Solid Waste, and Organic Waste, but shall not include the Excluded Wastes, as defined herein above
<b>SWM Rules</b>	The Solid Waste Management Rules,2016 framed by the Government of India under the Environment (Protection) Act,1986 (Act29 of 1986),as amended from time to time.
<b>Nominated Company</b>	means a company selected by the Lenders' Representative and proposed to the ULB for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement
<b>Non-Political Event</b>	ShallhavethemeaningsetforthinClause28.2
<b>O&amp;M</b>	Means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of services and facilities in accordance with the provisions of this Agreement, setforth in Clause 14.3
<b>O&amp;M Contract</b>	Means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations

<b>O&amp;M Contractor</b>	Means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M Obligations for and on behalf of the Concessionaire
<b>O&amp;M Expenses</b>	means expenses incurred by the Concessionaire or by the ULB, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs,(f)payments
	required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement
<b>O&amp;M Inspection Report</b>	Shall have the meaning setforth in Clause19.2
<b>O&amp;M Plan</b>	shall mean the plan referred to in Schedule 10, Clause 10.2
<b>O&amp;M Requirements</b>	The requirements as to operation and maintenance of the Project Facilities set forth in the Schedule 10
<b>Obligated Quantity</b>	120% of the Assured Quantity of MSW for the ULB/Cluster in the first year of operation
<b>Operation &amp; Maintenance Manual or O&amp;M Manual</b>	Shall have the meaning ascribed to it in Clause 19.2
<b>Operation Period</b>	Means the period commencing from COD and ending on the Transfer Date
<b>Organic Waste</b>	such type of Waste that can be degraded by microorganisms
<b>Panel of Chartered Accountants</b>	Shall have the meaning setforth in Clause 25.2.1
<b>Parties</b>	Means the parties to this Agreement collectively and "Party" shall mean any of the parties to this Agreement individually
<b>Performance Security</b>	ShallhavethemeaningsetforthinClause9.1
<b>Performance Standards</b>	Standards of operations as defined in the Schedule 12, Clause 12.1
<b>Performance Standards and Damages</b>	Standards of operations as defined in the Schedule 12, Clause 12.2
<b>Plant</b>	The apparatus and machinery for carrying on the activities required for the Project, fixed or movable, but excluding consumables and premises

<b>Political Event</b>	ShallhavethemeaningsetforthinClause28.4
<b>Post Concession Period</b>	means the [7]months or years time period commencing from the expiry of the Concession Period; for taking up the Post Closure Activities.
<b>Power Plant</b>	a power generation plant that will generate electricity by processing MSW
<b>Power Purchase Agreement (PPA)</b>	Shall mean the binding agreement entered between the Concessionaire and the Power Distribution Company for Sale of power for the Contracted Capacity
<b>Preliminary Notice</b>	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
<b>Processing</b>	Processing of MSW by which it is transformed into new or recycled products by using processes such as composting, biomethanation, RDF, pelletisation or any other Proposed Technology in accordance to the standards setforth in the Background Documents, SWM Rules2016, NGT orders and Applicable Law
<b>Processing Facility</b>	the facilities established for processing of MSW in accordance with the Background Documents and this Agreement.
<b>Processing Input Weighbridge</b>	Weighbridge installed at the entrance of the Processing Facility
<b>Processing Output Weighbridge</b>	Weighbridge installed at the exit of the Processing Facility
<b>Project</b>	means the project for enabling collection, transportation, construction of Processing Facility, processing and disposal of MSW in the Scientific Landfill and for that purpose to design, develop, finance, construct, operate and maintain the Plant, under and in accordance with the terms and provisions of this Agreement.
<b>Project Agreements</b>	means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement.

<b>Project Assets</b>	means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of Lease, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, roads and pavements, drainage works, electrical systems, communication systems and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project
<b>Project Completion Schedule</b>	means the progressive Project Milestones set forth in Schedule 5 for completion of the Project on or before the Scheduled Completion Date
<b>Project Facilities</b>	Means all the amenities and facilities, (a) the Site (b) Processing Facilities and (c) Waste to Energy Plant (d) Waste to BioCNG (e) collection and transportation, inclusive of Transfer station
<b>Project Milestones</b>	Means the project milestones set forth in Schedule 5
<b>Proposed Technology</b>	Shall have the meaning set forth in Clause 2.1

<b>Provisional Certificate</b>	Shall have the meaning set forth in Clause 16.3
<b>Punch List</b>	Shall have the meaning ascribed to it in Clause 16.4
<b>RBI</b>	means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, and its successors
<b>RDF</b>	the solid fuel in the form of fluff or pellets/ briquettes that is produced by drying and separation of combustible fractions from the MSW meeting the requirements of the boiler to generate electricity through the turbine that will be part of the Power Plant
<b>Re., Rs., or Rupees or Indian Rupees or INR</b>	Means the lawful currency of the Republic of India
<b>Readiness Certificate</b>	the certificate issued by Independent Engineer certifying, inter-alia, that Concessionaire has constructed all the facilities so as to enable Integrated Solid Waste Management, and the Concessionaire has obtained all approval necessary to receive the Municipal Solid Waste supplied by the ULB
<b>Reference Exchange Rate</b>	means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted by a Scheduled Bank

<b>Request for Proposals or RFP</b>	Request for Proposal document issued by the Authorized Representative for this Project
<b>Residual Inert Matter</b>	The waste matter obtained after Processing of the MSW By each of the relevant Processing Facilities
<b>Royalty</b>	means the revenue share payable by the Concessionaire to the Authority/ ULB
<b>Safety Requirements</b>	Shall have the meaning setforth in Clause21.1
<b>Scheduled COD</b>	As defined in Schedule5
<b>Selected Bidder/Consortium</b>	Means the bidder/consortium who has been issued the Letter of Award.
<b>Scope of the Project</b>	Shall have the meaning setforth in Clause2.1
<b>Scheduled Completion Date</b>	Shall mean that date mentioned for completion of Construction Work in schedule for completion of the

	Project in accordance with the Project Completion Schedule as set forth in Schedule 5;
<b>Site or Project Site</b>	As detailed in theSchedule1
<b>SPCB/PCC</b>	State Pollution Control Board / Pollution Control Committee
<b>Specifications and Standards</b>	means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by the ULB
<b>State</b>	Means the State/Place
<b>Statutory Auditors</b>	means a chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956/ 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 25.2



<b>Subordinated Debt</b>	Means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date: (a)the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five percent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month SOFR (Secured Overnight Financing rates) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken
<b>Substitution Agreement</b>	Shall have the meaning set forth in Clause 12.3
<b>Suspension</b>	Shall have the meaning set forth in Clause 30.1
<b>Taxes</b>	Means any Indian taxes including, customs duties, Goods and Service Tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and

	other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income
<b>Termination</b>	means 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.
<b>Termination Date</b>	The date specified in the Termination Notice as the date On which Termination occurs/comes into effect
<b>Termination Notice</b>	means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement

<b>Termination Payment</b>	means the amount payable by the ULB to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 120 (one hundred and twenty) days from COD, the Concessionaire shall notify to the ULB, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the ULB, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost
<b>Tests</b>	MeansthetestssetforthinSchedule7todeterminethe Completion ofthe Project in accordance with the provisions of this Agreement
<b>Total Project Cost</b>	means the actual capital cost of the Project upon completion of the Project. In case of VGF funding, the total project cost shall include grant.
<b>Transfer Date</b>	means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice
<b>Vacant Possession</b>	delivery to Concessionaire of the Site free from all Encumbrances and the grant of all easement rights and all other rights appurtenant thereto subject to and in accordance with the Land Lease Agreement.
<b>Vesting Certificate</b>	Shall have the meaning setforth in Clause 32.4
<b>Waste generators</b>	all residential, commercial establishments, institutions and other sources located within the service area of the ULB and generating MSW as defined in SWM Rules, 2016, as amended from time to time
<b>Waste Reports</b>	Shall have the meaning ascribed in the Schedule15.

## 1.2. Interpretation

In this Agreement, unless the context otherwise requires,

- 1.2.1. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.2.2. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- 1.2.3. references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.2.4. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.2.5. the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by—without limitation or—but not limited to whether or not they are followed by such phrases;
- 1.2.6. references to—construction or—building include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and—construct or—build shall be construed accordingly;
- 1.2.7. references to—development include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and—develop shall be construed accordingly;
- 1.2.8. any reference to any period of time shall mean a

- reference to that according to Indian Standard Time;
- 1.2.9. any reference to day shall mean a reference to a calendar day;
  - 1.2.10. references to a —business day shall be construed as a reference to a day (other than a Sunday) on which banks in the state are generally open for business;
  - 1.2.11. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
  - 1.2.12. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

- 1.2.13. 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; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- 1.2.14. the words in singular shall include plural and vice versa;
- 1.2.15. references to any gender shall include the other and the neutral gender;
- 1.2.16. ~~—lakh~~ means a hundred thousand (100,000) and ~~—crore~~ means ten million (10,000,000);
- 1.2.17. ~~—indebtedness~~ shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.18. references to the ~~—winding-up~~, ~~—dissolution~~, ~~—insolvency~~, or ~~—reorganisation~~ of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.2.19. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- clause shall not operate so as to increase liabilities or obligations of the ULB hereunder or pursuant hereto in any manner whatsoever;
- 1.2.20. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- 1.2.21. the Schedules and Recitals to this Agreement form an

integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- 1.2.22. references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- 1.2.23. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by

the Party entitled to receive the same and are not by way of penalty (the

—Damages));and

- 1.2.24. time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.25. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the ULB and/or the Independent Engineer shall be provided free of cost and in three copies, and if the ULB and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.26. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.27. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3. Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### **1.4. Priority of agreements, clauses and schedules**

- 1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
  - a) This Agreement; and
  - b) All other agreements and documents forming part hereof or referred to herein; i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;



- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and between any value written in numerals and that in words, the latter shall prevail

## **PART II – THE CONCESSION**

## **2. Scope of the Project**

### **2.1. Scope of the Project**

The scope of the Project (the—Scope of the ProjectII) shall mean and include, during the Concession Period, Design, Build, Finance, Operate and Transfer (DBFOT) of facilities and infrastructure for:

- a) Door-to-door collection of MSW;
- b) Primary storage of collected MSW;  
Secondary collection, segregation, and transportation of MSW;
- c) Design, Construction and operation & maintenance of MSW processing facilities and Waste to Energy Processing Facility (Dry Waste) & Waste to Gas (Wet Waste) for the Obligated Quantity of MSW during the Concession Period; however the Concessionaire may also have provision for adding extra capacity to the WtE Plant to accommodate the growth in MSW potential in the coming years subject to mutual agreement of the ULB and the discoms.
- d) remnants and Residual Inert Matters
- e) Processing of Wet Waste through setting-up of Waste to Bio CNG Plant
- f) Collection of user charges from the households as levied by the ULB
- g) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- h) Project Facilities: The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement including the Background Documents
- i) Any other activity which the government may by Act declare/notify to be undertaken for SWM
- j) The scope of the Project shall also include any and all other activities that are ancillary to the above-mentioned scope of the Project. Background document shall form part of the Scope of the project.

### **2.2. Door-to-Door Collection**

The collection service has to start from door of the MSW producer i.e. source. The Concessionaire shall collect segregated MSW (biodegradable and non-biodegradable) in an auto tipper containing two-bins, having colour coded system as per SWM Rules 2016 and a Management Information System (MIS) for monitoring of MSW collection, aimed at 100 per cent MSW pick

up. The concessionaire shall segregate MSW while receiving from the source if it is delivered un-segregated, however the ULB shall endeavor/ enforce source segregation practices on the waste generators through IEC initiatives, incentivization, levying fines etc.

The colour coding of the bins (and also of the corresponding transporting vehicles) have to be as per the S W M Rules, 2016. Efficiency has to be achieved by deployment of mechanized system. Manual systems will be allowed only

on those roads where mechanical system may not be feasible due to lesser right of way.

*Note: Bin(s) of required size [in any number, as per their requirement] to segregate the MSW at source shall be purchased/maintained by the producer/generator him/herself.*

### **2.3. Transportation of MSW**

The waste collected from the doorsteps is brought to the transfer station if required, where it is/would be shifted to transfer trailers [no transfer of MSW at ground]. Bulk refuse carriers would be deployed to take the MSW transferred in these large bins and or transfer trailers to the site for processing and disposal. Collection vehicles operating in the areas between the disposal site and the nearest transfer station may be sent directly to the disposal site (site for processing and disposal).

Different types of waste would be transported in different vehicles which would also be colour coded as above. From the transfer stations, different types of waste would be sent to respective destinations for further processing and final disposal. The transportation vehicle shall be fixed with Geographic Positioning System (GPS) and a MIS based monitoring mechanism. All the vehicles would be fitted with GPS tracking equipment. The GPS would be accessible from the ULB control room, also. The ULB Control room shall be set up as well as operated and maintained by the Concessionaire.

The Concessionaire shall also arrange necessary infrastructure/spare parts etc. and manpower for the purpose of regular maintenance of the vehicles, machinery & equipment. Necessary infrastructure for movement of every vehicle by using Real time GPS (Global Positioning System) /GSM (Global System for Mobile Communication) shall be provided at the ULB Control Room by the Concessionaire. The Concessionaire will allow the access to monitoring system [as and when required] to independent consultant as well as to the staff of the ULB. The Concessionaire shall be obligated to collect, transport and process any MSW as instructed by the Authority/ULB within the project area (as defined in the Schedule 1) on receipt on written communication from the Authority to this effect.

### **2.4. Transfer Stations**

The operator would have to build one transfer station in each zone depending on the Project Area and volume of waste generated. Land would be provided by the ULB on lease for the duration of this concession. The transfer stations would be

designed for all weather operations and would be environmentally compatible for proximity to inhabited localities. Therefore, these would have the following components:

- a) Adequate space for all operations within the premises of the transfer station, which would have solid wall fencing of minimum 2 m height.
- b) Operations within the transfer station would be under cover, so that dust and noise could be effectively controlled. At the same time, the operation would not be hampered during precipitation as well.

- c) All internal roads, ramp and platforms at different levels would be concrete built and should withstand load of moving machineries/vehicles.
- d) The transfer station shall be maintained as per the standards set in the O&M Manual. The wash water should go through a sediment basin and then to the city sewer.
- e) The selected operator would have to make appropriate site-specific designs as per the type of vehicles and containers to be handled and the method applied for transfer of the waste.
- f) Prospective designs may be discussed with the ULB during the pre-bid meeting but detailed discussion followed by written approval would have to be taken from the Independent Engineer for their adequacy, before construction.

## 2.5. Processing Technology

The ULB desires that its MSW management system shall be a 'model system' for the Country, which would scientifically collect, transport, process and dispose of MSW, have maximum recycling and recovery, and create public awareness. Without prejudice to the generality of the foregoing, Concessionaire shall develop the Project Facilities using technology or technologies that it had proposed in its Bid to the RFP, adhering to Solid Waste Management Rules, 2016 and in accordance with terms of his Agreement and Applicable Law(the—Proposed Technology)which ensures:

- a) the bio-degradable and recyclable content of the MSW are separated through a suitable Material Recovery Facility(the—MRF);
- b) a suitable technology is used for Processing of the bio-degradable content of the MSW;
- c) a suitable technology is used for Processing of combustible content of the MSW;
- d) a suitable technology is used for recovering and processing recyclable content of the MSW,
- e) not more than 20% of the MSW received at the Processing Facility is disposed off in the Scientific Landfill
- f) minimum 98% of waste measured at Processing Output Weighbridge shall be disposed off in the Scientific Landfill. Further specifications are included in the Project Information Memorandum.

## 2.8 Waste to Energy Processing facility

The Concessionaire shall develop the Waste to Electricity processing facility with all associated project facilities to process Municipal Solid Waste (MSW) with an aggregate capacity of \_\_\_\_\_ ( $\pm 20\%$ ) TPD. The concessionaire **shall** consider following criteria for technology selection for designing of project through Combustion route:

- a) Waste to electricity processes through conversion of dry non-recyclable combustible fraction in the form of pellets or fluff produced by drying, shredding, dehydrating
- b) Chlorinated plastics shall not be incinerated
- c) The furnace must be designed in line with best available technologies to ensure stable and continuous operation and complete burnout of the waste and flue gases
- d) Minimum power generation capacity to be achieved is \_\_\_\_\_ MW at full scale operations
- e) The CO<sub>2</sub> concentration in tail gas shall not be less than 7% and CO should not be 100 mg/Nm<sup>3</sup>
- f) Minimum gas phase combustion temperature of 850°C- 950°C and a minimum residence time of the flue-gases, of two seconds after the last incineration air supply
- g) Optimum oxygen content (~lower than 6%) should be maintained in order to minimize corrosion and ensure complete combustion. The carbon monoxide content of the flue gas is a key indicator of the quality of combustion.
- h) Fly ash acts as a catalyst for de-novo synthesis (at 200-450°C) of dioxins and furans. In order to reduce formation of dioxins and furans, it is imperative that maximum fly ash is removed before gases cool down to 200-450°C.
- i) The flue gases produced in the boilers should be treated by an elaborate flue gas treatment system
- j) Incineration plants shall be operated (combustion chambers) with such temperature, retention turbulence, as to achieve total Organic Carbon (TOC) content in the slag and bottom ashes less than 3% or their loss on ignition is less than 5% of the Dry Weight
- k) Achieving >70% PLF (Plant Load Factor) for First year and thereafter >75% PLF from Second Year Onwards
- l) Commercially established technology (1 year of track record) and provide details such as capacity, feedstock, PLF, plant efficiency
- m) Allow only the non-usable, non-recyclable, non-biodegradable, non-combustible and non-reactive inert waste and pre-processing rejects and residues from Waste processing facilities to go to sanitary landfill. However, every effort shall be made to recycle or reuse the rejects to achieve the desired objective of minimizing the waste going to sanitary landfill.
- n) Ensure that all the facilities are designed and constructed to meet the present requirements. If needed, the concessionaire can go ahead to scale up/ expand the Project facility to meet the requirements of handling future increase in waste generation over the concession period with the consent of the ULB on the same project site without additional land.
- o) Obtain all the pre-project approvals, clearances for the project from various statutory bodies which may be required to establish and operate the facility with



all approvals and renewals as required during the concession period at concessionaire's own cost. ULB shall facilitate concessionaire for obtaining such approvals.

- p) Make all arrangement for all the Utilities like water, electricity etc. at his own cost. ULB will provide the location from where the same can be drawn. All applicable charges and taxes shall be paid by concessionaire.
- q) Carry out necessary activities for evacuation, selling, disposal of end products from the proposed facility.
- r) Put up Flue Gas Cleaning System (FGCS), Leachate Treatment Plant (LTP) and any other environment management facility(ies), as required as per all applicable statutory requirements.
- s) The proposed project facilities including Waste to Electricity shall meet all operating and emission standards as mentioned in SWM Rules 2016 and EU Standards.

## 2.9 Waste to CBG Processing Facility

The Concessionaire shall develop the Waste to BioCNG Processing facility with an aggregate capacity of \_\_\_\_\_ ( $\pm 20\%$ ) TPD comprising of the following basic requirements:

- a) A suitable technology to limit the emissions and discharges from the facility and limit the parameters well within the stipulated norms by Central Pollution control Committee (CPCB) or the State Pollution Control Board (SPCB)
- b) The segregated Wet Biodegradable organic fraction of the waste shall be sent as feed to the BioCNG Plant.
- c) Compost Plant of required capacity for processing of solid digestate.
- d) Obtain all the pre-project approvals, clearances for the project from various statutory bodies which may be required to establish and operate the facility with all approvals and renewals as required during the concession period at concessionaire's own cost. ULB shall facilitate concessionaire for obtaining such approvals.
- e) Compressed Bio Gas (CBG) to be supplied shall meet IS 16087:2016 specifications of BIS. The following shall also be met as per the IS 16087:2016 specifications:
- f) The CBG is to be compressed and supplied through Cascades/ Pipe to the gas distribution Company Retail Outlets. The off-take of CBG by the respective Gas Distribution Company shall be as per the demand in the market.

### **3. Grant of Concession**

#### **3.1. The Concession**

Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the ULB hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to design, build, finance, construct, operate and maintain the Project (the “**Concession**”) for a period as provided in clause 3.3 below, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

#### **3.2. Rights Associated with the Grant of Concession**

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- a) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- b) the Right of Way, access and license rights to use the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- c) to design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such person as may be selected by it;
- d) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- e) upon achieving COD of the Project Facilities, to manage, operate and maintain the same either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this agreement shall continue to vest with the Concessionaire;
- f) to transfer the Project Facilities to the ULB (in case of a cluster project) at the end of the Concession Period or on Termination, in accordance with the provisions of this Agreement;
- g) to borrow or raise money or funding required for

the due implementation of the Project and mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities except the Site;

- h) to collect, segregate and Process entire Municipal Solid Waste from the Project Area during the Concession Period
- i) to process MSW at the Plant, produce energy from Waste to Energy plant and produce BioCNG from Waste to Gas Plant and dispose the process remnants and inert waste as per provisions of this Agreement, Solid Waste Management Rules, 2016 and Applicable Law;

- j) to, in accordance with the Applicable Law, store, use appropriate, market and sell or dispose all the components/ products of the MSW, including but not limited to electricity, methane, RDF, compost and to further retain and appropriate any revenues generated from the sale of such products/ end-products;
- k) to obtain the utilities required for enabling the construction of the Project Facilities;
- l) exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement for the purposes of the due implementation of this Project;
- m) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof; without permission of the ULB

### **3.3. Concession Period**

3.3.1. The Concession hereby granted is for a period of [.....] years commencing from the Appointed Date during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services as per Scope of work in accordance with the provisions hereof.

Provided that: -

- a) in the event of the Concession being extended by the ULB beyond the said period of [.....] years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and
- b) in the event of an early termination of the Concession Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the date of termination of the Concession Agreement.

### **3.4. Extension of Concession Period**

Without prejudice to any extension of the Concession Period to which the Concessionaire might otherwise be entitled pursuant to

the terms of this Agreement, the Concession Period may be extended by mutual agreement of the parties upon such terms as may be agreed between the Authority and the Company in the light of the continuing feasibility of the Project, the rate of return to both the Authority and the Company, and the interests of the users and the Company's shareholders. Where the Concessionaire wishes to extend the Concession Period, it shall submit a request to the Authority with a prior written notice of 30 months before expiration of this Agreement and the Authority shall respond in writing at least 12 months before expiration of this Agreement. After such request by the Concessionaire, the Authority

shall establish technical, administrative, economical and financial conditions for such extension.

### **3.5. Re-bidding of the Project on Expiry of Concession Period**

- 3.5.1. The Authority reserves the right to invite bids for the Project at an appropriate time before expiry of Concession Period to enable smooth transition. The Concessionaire reserves the right to bid. The Authority reserves the right to amend the bid conditions, scope of work etc. while inviting fresh bids. The Concessionaire shall allow the core team (consisting of maximum of four persons) of such successful bidder to enter the premises 30 (thirty) days before expiry of Concession Period to monitor work and take charge at the appointed hour.
- 3.5.2. During re-bidding of the Project, the Concessionaire shall have the first right of refusal, subject to the following:
  - a) The Concessionaire shall be eligible to participate in the re-bid of the Project;
  - b) The Authority shall reserve the right to modify existing or introduce new terms and conditions and bid parameters; and
  - c) The Concessionaire shall have a right to match the lowest evaluated bid to exercise the first right of refusal if its bid is within the range of 10per cent (ten per cent) of the lowest evaluated bid received.

## 4. Conditions Precedents

### 4.1. Conditions Precedent

- 4.1.1. Save and except as expressly provided in Article 4, 9, 12, 28, 8 and 41, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4 (the **Conditions Precedent**). The obligations of a Party under this Clause 4 shall be effective from the date of execution of this Agreement.

### 4.2. Conditions Precedent for Authority/ULB

- 4.2.1. The Authority shall satisfy the Conditions Precedent set forth in this Clause 4.2 within a period of [180 (one hundred and eighty)] days, or such longer period not exceeding [210 (two hundred and ten)] days as may be specified therein, from the Execution Date and the Conditions Precedent required to be satisfied by the Authority/ULB shall be deemed to have been fulfilled when the Authority/ULB shall have:
- a) Provided the 100 per cent of the total area of the Project Site free of encumbrance to the Concessionaire within 90 days of the Execution Date, failing which the Concessionaire is entitled to recover liquidated damages from the ULB as per the provisions mentioned in Clause 4.7;
  - b) Provided to the Concessionaire the Right of Way, access, leave and license rights to the Site in accordance with the provisions of Article 10;
  - c) Facilitated the Concessionaire in terms of obtaining all Applicable Permits from the Departments concerned/Competent Authority, if requested by the Concessionaire, including permits in relation to environmental protection and conservation including but not limited to those specified in **Schedule2**;
  - d) Finalised and allocated location for setting up primary and secondary collection points, designated bins, the Plant in the Project Area, in consultation with the Concessionaire; and [Provided assistance and facilitated in execution of Power Purchase Agreement between the Concessionaire and [Name of the State] Electricity Board
  - e) Executed and procured execution of Substitution Agreement;

- f) Executed and procured execution of the Escrow Agreement with the Concessionaire, and the Escrow Bank in accordance with Article 26;

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive, any or all of the Conditions Precedent set forth in this Clause 4.2.

**4.3. Conditions Precedent to be satisfied by the Department of Local Bodies, State Government/UT**

4.3.1. The State Government/UT shall satisfy the following Conditions Precedent:

- a) Support in obtaining consent to establish/~~operate~~ (as applicable) from the State Pollution Control Board as per applicable rules and regulations including Solid Waste Management Rules, 2016;
- b) Execute the Tipping Fee Reserve Account with the Bank equivalent of three months Tipping Fee, the ULB and the Concessionaire
- c) Executed and procured execution of the Escrow Agreement with the Concessionaire, and the Escrow Bank in accordance with Article 26;

**4.4. Conditions Precedent for the Concessionaire**

4.4.1. The Conditions Precedent required to be satisfied by the Concessionaire within a period of [180 (one hundred and eighty)] days from the Execution date, and the Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) Provided Construction Performance Security to the ULB;
- b) procured all the Applicable Permits specified in Schedule 2 unconditionally and if subject to conditions, all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- c) executed the Financing Agreements and delivered to the ULB 3 (three) true copies thereof, duly attested by a Director/CFO/CS of the Concessionaire;
- d) delivered to the ULB, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director/CFO/CS of the Concessionaire, along with a soft



- copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;
- e) delivered to the ULB a confirmation from the Selected Bidder/each of the Consortium member, in original, of the correctness of their representations and Warranties set forth in Clause 7.1(m), Clause 7.1(n) and Clause 7.1(o).
  - f) Executed and procured execution of the Escrow Agreement with the Authority / ULB, and the Escrow Bank in accordance with Article 26;
  - g) Provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire
  - h) Executed and procured execution of Substitution Agreement with the Authority and the Lenders in the agreed form set out in Schedule 18;
  - i) Taken over vacant and unencumbered possession of all the Site(s). from the Authority;
  - j) Delivered to the ULB the Operations Plan as per Schedule 11;
  - k) delivered to the ULB a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire

to enter into this Agreement and the enforceability of the provisions thereof:

- l) Provided that upon request in writing by the Concessionaire, the ULB may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.4. For the avoidance of doubt, the ULB may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

#### **4.5. Satisfaction of Conditions Precedent**

- 4.5.1. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required.
- 4.5.2. The parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Parties when any Condition Precedent for which it is responsible has been satisfied. The Parties shall also immediately upon fulfillment of all the respective Conditions Precedents inform to the other Parties that all Conditions Precedent have been satisfied.
- 4.5.3.

#### **4.6. Damages for delay by the Concessionaire**

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.4 within a period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.2 or other breach of this Agreement by the ULB, or due to Force Majeure or due to delay in Applicable Permits not attributable to the Concessionaire provided all such conditions required to be fulfilled by Concessionaire for grant of the Applicable Permit(s) shall have been satisfied in full by the Concessionaire, the ULB shall encash the Construction Performance Security at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day's default until day of the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security. In case of appropriation of CPS towards aforesaid damages, the

Concessionaire shall replenish the CPS to its original value (along with corresponding validity extension) within 30 days from the date of such encashment.

#### **4.7. Damages for delay by the Authority/ULB**

In the event that: (i) the Authority/ULB does not procure fulfillment or waiver of the Condition Precedent set forth in Clause 4.2, within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure Event, the Authority/ULB shall pay Damages to the Concessionaire of an amount calculated at the rate of [0.1% (zero point one per cent)] of the Construction Performance Security for each day's default until the day of fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security.

#### **4.8. Commencement of the Concession Period**

The Concession Period will commence from the Appointed Date. The Parties agree that the Concessionaire shall, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority/ULB, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

#### **4.9. Non-Compliance with Conditions Precedent**

- 4.9.1. In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time or by the time period extended at the sole discretion of ULB for satisfaction of the Conditions Precedent for the Concessionaire and/or the Authority/ULB has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority or the State Government shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it. The days for which penalty is charged shall be excluded from calculation of stipulated time.
- 4.9.2. In the event this Agreement fails to come into effect on account of non- fulfillment of the Concessionaire's Conditions Precedent, the Authority shall be entitled to forfeit and encash the Construction Performance Security as per the terms of this Agreement;
- 4.9.3. In the event the Conditions Precedent for the Authority has not been satisfied within the stipulated time or by the time period extended at the sole discretion of Concessionaire for satisfaction of the Conditions Precedent for the ULB and/or the Concessionaire has not waived, fully or partially, such conditions relating to the Authority/ULB, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Concessionaire shall not be liable in any manner whatsoever to the Authority/ULB or Persons claiming through or under it. The days for which penalty is charged shall be excluded from calculation of stipulated time. In the event of termination, the Authority shall pay to the Concessionaire, reasonable development costs, as determined through the mechanism enumerated below. Parties hereby agree that for determination of the said development cost, the Authority may appoint a financial consultant for determining such development

cost, whose determination shall be final, conclusive and binding. The Parties shall share the cost of such financial consultant. For the purpose of this clause the term "Development Cost" shall mean the reasonable cost (if any) incurred by the Concessionaire and as determined in terms above in relation to and limited to any physical development of the Site;

- 4.9.4. In the event this Agreement fails to come into effect on account of the non- fulfillment of the Authority Conditions Precedent, the Authority shall in addition to payment of Development Cost in terms of Clause 4.9.3 above, shall return the Construction Performance Securities to the Concessionaire; provided there are no outstanding claims of the Authority on the Concessionaire.

#### **4.10. Termination upon Delay**

- 4.10.1. Without prejudice to the Damages for delay prescribed in Clause 4.6 and 4.7 above, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of [180 (one hundred and eighty)] days from the Execution Date or the extended period

provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority/ULB as Damages thereof.

Instead of terminating this Agreement as provided in Clause 4.10.1 above, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent. In the event of such extension in time for fulfilling Conditions Precedent, the Concession Period shall also be extended proportionately. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority/ULB as Damages thereof.

## **5. Obligations of the Concessionaire**

### **5.1. General Obligations of the Concessionaire**

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall be responsible to operate the Project Facilities throughout the Concession Period post COD.
- 5.1.3. The Concessionaire shall be responsible for design, engineering, procurement, construction, operation and maintenance of the infrastructure facilities such as water supply, power supply and approach road outside the boundaries of the Project Facilities and shall bear all costs and expenses of the same.
- 5.1.4. The Concessionaire shall be responsible for door-to-door collection, transportation, processing of MSW and disposal of the process remnants and Residual Inert Matters.
- 5.1.5. The Concessionaire shall be responsible for generation of power from the Waste to Energy Plant and sell the power as per the terms and conditions of the PPA.
- 5.1.6. The Concessionaire shall be responsible for generation of BioCNG from Waste to Gas Plant and sell the gas as per the terms of this agreement.
- 5.1.7. The Concessionaire shall comply with all the Applicable Laws and procure all the Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.8. Subject to the provisions of Clauses 5.1.1 and 5.1.5, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.9. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining

- Applicable Permits (other than those set forth in Clause 4.3), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - c) Procure at its own cost, water connection, power connection and other service connections to the Site;
  - d) Perform and fulfil its obligations under the Financing Agreements;
  - e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;



- f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - h) enter into power purchase agreement with the State Electricity Board/DISCOM for sale of electricity generated from the Waste-to-Energy plant;
  - i) support, cooperate with and facilitate the ULB in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - j) transfer the Project to the ULB upon expiry of Concession period/Termination of this Agreement, in accordance with the provisions thereof.

## **5.2. Obligations relating to Project Agreements**

- 5.2.1. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the ULB if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the ULB, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the ULB. For the avoidance of doubt, the ULB acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 5.2.3. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the ULB to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the—Covenant II). For the avoidance of doubt, it is expressly agreed that in the event the ULB does not exercise such rights of substitution within

a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the ULB and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the ULB an acknowledgment and undertaking, in a form acceptable to the ULB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the

Same and not to seek any relief or remedy whatsoever from the ULB in the event of Termination or Suspension.

The Concessionaire shall also procure that such Project Agreements shall also include a covenant that all disputes arising out of such Agreements shall be settled between the Concessionaire and the Counter-parties and that ULB/Authority or its advisors/contractors/consultants shall not be impleaded in such disputes whatsoever.

### **5.3. Environmental Compliance**

The Concessionaire shall, at all 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 SWM Rules 2016, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances as detailed in the Schedule 2.

### **5.4. Land Use**

The Concessionaire shall ensure optimum utilization of the Site and land available and shall not use the same for any purpose unconnected or which is not incidental to the Project or related activities. For avoidance of doubt, any land given by the ULB to the Concessionaire for this Project shall not be used for development of residential or commercial facilities or premises for rent, lease or similar purpose.

### **5.5. Processing of MSW**

The technologies adopted to process the MSW shall be complying to the Technology parameters/ standards, track record etc.as specified in the RFP/ Concession agreement. If the proposed technology is owned by another entity (either the bidder or a third party), the concessionaire should also be required to execute a technology license agreement with the selected bidder or the third party technology provider, as the case may be.

### **5.6. Measurement of MSW**

- 5.6.1. For measurement of MSW, Weighbridges will need to be constructed at the entry and the exit of the Processing Facility (the “Processing Input Weighbridge” and the “Processing Output Weighbridge” respectively) and at the entrance of the Landfilling facility (the “Landfilling

Weighbridge”) by the Concessionaire as per the Schedule 15.3.

- 5.6.2. The Concessionaire shall prepare Waste Reports as defined in Schedule 15 which shall be final and binding on the Parties.
- 5.6.3. Each consignment to Project Site shall be screened and weighed at the Weighbridge. Concessionaire shall also keep a record of weight and volume of each empty delivery truck, in order to determine the net weight of the consignment.
- 5.6.4. The ULB as and when required shall depute a responsible person from the ULB (the “ULB Representative”) to monitor the operations of the Weighbridges.
- 5.6.5. The Weighbridges shall be monitored and inspected regularly by the Concessionaire and Independent Engineer to ensure due calibration and accuracy and any errors shall be rectified immediately.

## **5.7. Maintenance of Records and Operations Plan**

The Concessionaire shall maintain records of the quantum of MSW as per the Schedule 15

## **5.8. Sale/Distribution of Compost/ Manure/Energy**

- 5.8.1. The Concessionaire may adopt such processes and methods as it considers necessary or expedient for processing of MSW at the Project Facilities, subject to complying with the provisions of the Concession Agreement, construction requirements, operation requirements and the Background Documents.
- 5.8.2. Subject to Clause 5, the Concessionaire is free to choose the processing technologies/options for Waste to Energy Plant in line with all applicable laws, including SWM Rules, 2016 as amended from time to time and Orders/ Directions of Hon'ble Courts/ NGT but not limited to the Background Documents and is entitled to receive the revenues so generated through the products produced out of such processing like energy/power as per the PPA and other by-products like RDF, Compost, biogas, metals through its own marketing tie up.

## **5.9. Penalty for O&M Breach**

The Concessionaire recognizes that the services under this Agreement constitute a public health issue and concerns the wellbeing and quality of life of the citizens. Accordingly, the Concessionaire shall perform the services with diligence and promptness and manage the MSW system of the ULB. To ensure due performance and guard against performance breaches, Schedule 12 sets out certain Damages for non-compliance to the O&M Requirements of this Agreement.

## **5.10. Equity Lock-in Requirements**

The Concessionaire acknowledges that:

- 5.10.1. In case The Selected Bidder is a sole entity, it shall hold [100% (one hundred per cent)] share holding in the paid-up Equity capital of the Concessionaire until expiration of [1 (one)] year from COD, a minimum [51% (fifty one per cent)] shareholding in the paid-up Equity capital of the Concessionaire until the expiration of [2 (two)] years from COD and thereafter a minimum [26% (twenty six per cent)] shareholding in the paid up equity capital during the remaining Concession Period.

5.10.2. In case the Selected Bidder is a Consortium of entities, then the lead member (the—“**Lead Member**”II) of such Consortium and the other member(s) together shall hold [100% (one hundred per cent)] Equity capital of the Concessionaire, until expiry of [1 (one)]year from COD, a minimum [51% (fifty one percent)] shareholding in the paid-up Equity capital of the Concessionaire until the expiration of

[2 (two)] years from COD and thereafter a minimum [26% (twenty six per cent)] shareholding in the paid-up Equity capital during the remaining Concession period. The original percentage of shareholding of each consortium member including lead member at the bidding stage as specified in Joint Bidding Agreement shall remain unchanged until expiry of 1 (one) year from COD.

5.10.3. Provided further that a member of the Consortium meeting the Technical Criteria shall hold at least 26% (Twenty-six per cent) of the paid-up and subscribed Equity of the SPV until the 2nd (second) anniversary of the COD. Provided further that Consortium meeting the Technical Criteria by two members then each such member shall hold at least 13% (Thirteen per cent) of the paid-up and subscribed Equity of the SPV until the 2nd (second) anniversary of the COD.

5.10.4. Any violation in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire Event of Default

#### **5.11. Exit from Consortium**

5.11.1. Subject to provisions of 5.10 above and approval from Authority, any Consortium member other than the Lead Member shall be allowed to exit the Consortium after completion of One Year from COD and the Lead Member will be allowed to replace/absorb the shares and responsibilities of other Consortium member(s), provided that member of the Consortium meeting the Technical Criteria shall hold at least 26% (twenty six percent) of the paid-up and subscribed equity of the SPV until 2nd (Second) anniversary of the COD, or Consortium meeting the Technical Criteria by two members then each such member shall hold at least 13% (thirteen per cent) of the paid-up and subscribed equity of the SPV until the 2nd (second) anniversary of the COD.

5.11.2. Subject to the provisions of Clause 5.10 above and approval from Authority, the Lead Member of the Consortium may be allowed to exit the Consortium after completion of two years from COD, provided that initial Consortium member(s) shall hold at least 26% of the paid-up and subscribed equity of the SPV during remaining Concession Period.

#### **5.12. Employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that

employment of foreign personnel by the Concessionaire and/or its contractors and their sub- contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

#### **5.13. Employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

#### **5.14. Branding of Project**

The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of “Integrated Municipal Solid Waste Management in<sup>[8]</sup>”. The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders save and except



as may be necessary in the normal course of business. The Concessionaire shall however, have right to utilise the name of the Project to exhibit technical and financial capability of the Concessionaire for bidding for other projects.

#### **5.15. Sole purpose of the Concessionaire**

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the ULB, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

#### **5.16. Concessionaire's Representative**

To fulfill the Concessionaire's obligations and for implementation of the Project in accordance with this Agreement, the Concessionaire shall deploy representative(s) (the "Concessionaire Representative") on its behalf including a team leader (the "Team Leader"). The Team Leader shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in-charge to ensure implementation of the project in accordance with the provisions hereof. The Team Leader shall closely co-ordinate with the Independent Engineer/Authority/ULB/State Government and shall be responsible to ensure redressal on an immediate basis, of any objections, observations, shortcomings, defects or defaults pointed out by the Independent Engineer during routine inspections and project review meetings and submit action take report to the Independent Engineer/Authority/ULB/State Government, as the case may be, within a period not later than 7 (seven) days from the date of conveying of such defect/shortcoming. The Team Leader or its nominee shall make themselves available for meetings as and when called upon by the Independent Engineer, the State Government and the Authority/ULB, as the case may be.

#### **5.17. Obligations relating to Change in Ownership**

5.17.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the ULB, except as otherwise permitted in this agreement.

5.17.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and

acknowledges that:

- a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire or
- b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him shall

constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon no later than 30 (thirty) days from the date of receipt of request for approval appended with all the necessary and required details. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.18.2:

- a. the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- b. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the
- c. direct or indirect beneficial ownership or control of any company or companies whether in India or
- d. abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- e. power to appoint, whether by contract or

by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25%(twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

#### **5.18. Obligations relating to Taxes**

The Concessionaire shall pay and comply, at all times during the subsistence of this Agreement, all Taxes (Including Goods & Service Tax), levies, duties, cess and all other statutory charges payable and fall due in respect of the Project.

#### **5.19. Obligations relating to Information**

- 5.19.1. Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority/ ULB/State Government for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information forthwith in the manner and form required by the Authority/ ULB/State Government.
- 5.19.2. After receiving a notice from the Authority/ ULB/State Government for comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority/ ULB/State Government proposes to publish, the Concessionaire shall provide such comments in the manner and form required by the Authority/ ULB/State Government.

#### **5.20. Obligations relating to Other Charges**

The Concessionaire shall make timely payments for all utility services in respect of the Sites, including water, sewerage, electricity, telecommunication, internet and cable charges, etc on its own account.

The Concessionaire shall hold the Authority/ ULB harmless and

keep the Authority/ ULB indemnified from any fine/penalty/charges/levies/damages/losses on account of any claims/suits/demands/proceedings arising out of non-payment or delayed payment of such charges or any default on the part of the Concessionaire in payment of such charges whatsoever.

## **6. Obligations of the Authority/ULB/Confirming Party**

### **6.1. Specific obligations of the ULB**

- 6.1.1. The ULB shall grant in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from the ULB under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be assisted by the ULB within 30 (Thirty) days from receipt of request from Concessionaire to make available such authorization, subject to the conditions of the applications/details submitted being complete and correct.
- a) The ULB agrees, for the purposes of the Financing Documents, to intimate to the Lenders by such notice as required under the Financing Documents:
- i. Of the happening or likely happening of an Event of Default on the part of Concessionaire;
  - ii. Of the termination of this Agreement by the ULB;
  - iii. Of the occurrence, continuance and cessation of any force majeure cause;  
or
  - iv. Other breach or default on the part of Concessionaire under this Agreement.
- b) The ULB shall declare and maintain, or cause to declare and maintain, a no- development zone of habitation around the Site in accordance with Applicable Laws.
- c) The ULB shall pay the fee to the Concessionaire, on a monthly basis, equivalent to the amount calculated as per provisions of the Article 23. The payment of tipping fee for collection and transportation services shall start Pre-COD from [\*\*] date. The ULB hereby agrees that if there are

any financial benefits or otherwise in respect or on account of the Project, they shall accrue directly and exclusively to, Concessionaire alone and not to the ULB and the ULB hereby undertakes that it shall not claim or file an application claiming such benefits to the prejudice of Concessionaire. The ULB agrees to facilitate the receipt of all such benefits by Concessionaire and for the purpose to give all needed recommendations, no-objections, authorizations, etc.

- d) The ULB shall handover land to the Concessionaire as per the requirement, upon signing of a Land Lease Agreement in the form attached herewith as Schedule 19, for development of Processing Facility as per the Schedule 9, Clause 9.4 [Schedule for Land Requirement]. Accordingly, the land at the proposed locations shall be handed over to the Concessionaire on or before the Appointed Date.
- e) If during the Concession Period, as per the Terms of the Agreement, the available Site falls short of the actual requirements, then, upon request from the Concessionaire for additional land and subject to recommendation by the Independent Engineer, the ULB shall provide additional land at the cost of ULB on mutually agreed terms and conditions within 12 months of receiving such request from the Concessionaire.

## **6.2. Confirmation by the Department of Local Bodies, State Government**

The Department of Local Bodies, State Government agrees to perform the following:

- a) The Department of Local Bodies will render the necessary technical and other assistance, if required, by ULB or Concessionaire during execution of the Integrated Solid Waste Management project without any charges whatsoever.
- b) The Department of Local Bodies shall extend all co-operation as is within its powers for providing hindrance free and obstruction free transportation of waste from ULB area to landfill sites or any other site outside the jurisdiction of the ULB to ensure smooth implementation of the project.

## **6.3. Obligations relating to Refinancing**

Without prejudice to any rights or remedies of the ULB/Authority



under this Agreement or otherwise, upon request made by the Concessionaire to this effect, the ULB/Authority shall, in conformity with any regulations or guidelines that may be notified by the Government Instrumentality, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; [provided, however, that the refinancing hereunder shall always be subject to the prior consent of the ULB/Authority, which consent shall not be unreasonably withheld. The ULB/Authority shall endeavor to convey its decision on such request of the Concessionaire within [30 (thirty)] days of receipt of the proposal by the ULB/Authority.] For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between

The Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

## **7. Representations and Warranties**

### **7.1. Representations and Warranties of Concessionaire**

Concessionaire represents and warrants to the ULB that:

- a) It is duly organized, validly existing and in good standing under the laws of India;
- b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) It has taken all necessary corporate and other actions under Applicable laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement will be legally binding, valid and enforceable obligations against it in accordance with the terms hereof;
- f) It is subject to the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this jurisdiction or matter arising thereunder, including any obligation, liability or responsibility hereunder;
- g) The information furnished in the Bid and as updated on or before the date of this Agreement is to the best of its knowledge and belief, true and accurate in all respects as on the date of this Agreement;
- h) 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 Concessionaire's Memorandum and

Articles of Association' or any of the 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;

- i) There are no actions, suits, proceedings or investigations pending, or to 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;

- j) 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;
- k) 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;
- l) All its rights and interests in the Project shall pass to and vest in the ULB on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act of deed on its part or act of the ULB and that none of the Project Assets shall be acquired by it, subject to any agreement, under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- m) It shall at no time undertake or permit any Change in Ownership except as permitted under Clause 5.19.
- n) The Consortium members and their Associates have the financial standing and the resources to fund the required Equity and to raise debt necessary for undertaking and implementing the Project in accordance with this Agreement.
- o) Each Consortium member is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the ULB to enter into this Agreement with the Concessionaire pursuant to LOA; and has agreed to unconditionally accept the terms and conditions set forth in this Agreement;
- p) No representation or warranty by it contained herein or in any other document furnished by it to ULB or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit

to state a material fact necessary to make such representation or warranty not misleading;

- q) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concessionaire entering into this Agreement or for

influencing or attempting to influence any officer or employee of the ULB in connection therewith; and

## **7.2. Representations and warranties of the ULB**

The ULB represents and warrants to Concessionaire that:

- a) That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- b) That the ULB has full power, capacity to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorize the execution, delivery and performance of this Agreement;
- c) All approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for the due execution of this Agreement have been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian law.

## **7.3. Obligation to Notify Change**

In the event that any of the representations or warranties made/given by a Party cease 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.

## 8. Disclaimer

### 8.1. Disclaimer

- 8.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil, and geology, MSW waste characteristics and all information provided by the ULB or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The ULB makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire reconfirms that it shall have no claim whatsoever against the ULB in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the ULB shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the ULB to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the ULB contained in Clause 8.1.1 and shall not in any manner shift to the ULB any risks assumed by the Concessionaire pursuant to this



Agreement.

- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the ULB shall not be liable in any manner for such risks or the consequences thereof.

## **PART III- DEVELOPMENT AND OPERATIONS**

## **9. Performance Security**

### **9.1. Performance Security for Construction Works**

- 9.1.1. The Concessionaire shall, for due and punctual performance of its obligations during the Construction Period hereunder relating to the Project, deliver to the ULB, one bank guarantee from a scheduled bank in the form as set out in Schedule 3., for a sum of INR [9]. The Construction Performance Security in the form of performance bank guarantee has to be furnished by the Concessionaire within 45 days of issuance of Letter of Award and before signing the Concession Agreement and the Construction Performance Security shall remain invalid for a period of 120 days over and above the date of COD. Until such time the Construction Performance Security is provided and comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Construction Performance Security pursuant hereto, the Authorized Representative shall release the Bid Security to the Concessionaire.
- 9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Performance Security is not provided by the Concessionaire on or before the execution of this Agreement, the ULB may direct Authorized Representative to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire.
- 9.1.3. The renewal of the Construction Performance Security, as and when required, is to be done by the Concessionaire at least one month before the date of expiry of the subsisting Construction Performance Security, failing which, the ULB shall be entitled to invoke the Construction Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Construction Performance Security, if subsisting as on the Termination Date shall, subject to rights of the ULB to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to Concessionaire within 30 days from the Termination Date.

**9.2. Appropriation of Construction Performance Security for Construction Works**

- 9.2.1. In the event the Concessionaire fails to achieve the Scheduled Commercial Operation Date in accordance with Schedule 5 due to reasons other than ULB Event of default or Force Majeure, the ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the

Construction Performance Security as Damages in the following manner:

Sr. No.	Period of Delay	Damages
a)	Beyond Scheduled COD and up to forty (40) days	0.5% of the CPS on per day of delay
b)	Beyond 40 days from Scheduled COD and up to eighty (80) days	1% of the CPS on per day of delay
c)	Delay beyond 80 days from Scheduled COD and upto one hundred(100) days	2% of the CPS on per day of delay

9.2.2. In case, the COD is delayed beyond 100 days from the Scheduled COD and encashment and appropriation of 100% of CPS, the Concessionaire shall provide a fresh CPS prior to expiry of 100 days of Scheduled COD, failing which the ULB shall be entitled to terminate this Agreement in accordance with Article 31. Upon furnishing a fresh CPS, the Concessionaire shall be entitled to an additional Cure Period of 80 (eighty) days for remedying the Concessionaire Event of Default and encash and appropriate such Construction Performance Security as Damages @1.25% of CPS per day of delay thereof, and in the event of the Concessionaire not curing its default within such Cure Period, the ULB shall be entitled to terminate this Agreement in accordance with Article 31.

### **9.3. Release of Construction Performance Security**

Notwithstanding anything mentioned in the Clause 9.1.1, the Construction Performance Security will be released by the ULB upon receipt of the Operation Performance Security as mentioned in Clause 9.4.

### **9.4. Performance Security for Operation and Maintenance Period**

9.4.1. On achieving COD, the Concessionaire, to cover its liability arising from the breach of Performance Standards leading to payment of Damages as mentioned in the Schedule 12 or any breach of this Agreement or for the liability of defects and deficiencies arising after expiry of Concession period/Termination, shall provide

to the ULB Operation Performance Security for a cumulative sum of INR<sup>[10]</sup>, in the form set forth in Schedule 4, to be modified, mutatis mutandis, for this purpose. The Operation Performance Security (“**OPS**”) in the form of performance bank guarantee has to be furnished by the Concessionaire to the ULB within 45 days of achieving COD. The Concessionaire shall keep the Operation

Performance Security valid until one year after the expiry of the Concession Period.

- 9.4.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Operation Performance Security is not provided by the Concessionaire to the ULB within 45 days of achieving COD, the ULB may encash the Construction Performance Security at a rate of 0.2% of the Construction Performance Security for every day of delay.
- 9.4.3. The renewal of the Operation Performance Security, as and when required, is to be done by the Concessionaire at least one month before the date of expiry of the subsisting Operation Performance Security, failing which, the ULB shall be entitled to invoke the Operation Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Operation Performance Security, if subsisting as on the Termination Date shall, subject to rights of the ULB to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to Concessionaire within 30 days from the Termination Date.

#### **9.5. Appropriation of Operation Performance Security during Operation and Maintenance Period**

Upon the breach of Performance Standards that leads to payment of Damages or any breach of this Agreement or upon the liability of defects and deficiencies arising after the expiry of Concession period/Termination, the ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Performance Security for meeting the Damages levied or for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of Article 32. Upon such encashment and appropriation from the Operation Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Operation Performance Security, and in case of appropriation of the entire Operation Performance Security provide a fresh Operation Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Operation Performance Security as aforesaid failing which the ULB shall be entitled to terminate this Agreement in accordance with Article 31. If there is no such encashment and appropriation from the Operation Performance

Security, the Operation Performance Security shall be renewed annually in accordance with this Agreement, at least 30 days before the start of the Accounting Year, failing which, the ULB shall be entitled to invoke the Operation Performance Security.

**9.6. Cost to be Borne by the Concessionaire**

The cost of procuring the Construction Performance Security and the Operation Performance Security shall be borne solely by the Concessionaire.

**9.7. Demand under Performance Securities**



- 9.7.1. The State Government or the ULB shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the CPS or the OPS, as the case may be. However, the State Government and the ULB shall provide the Concessionaire with a copy of any demand notice issued by them under the CPS or the OPS, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant CPS or the OPS.
- 9.7.2. If the State Government or the ULB makes a demand under any Performance Security and/or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 (fifteen) days of such demand, restore the value of such Performance Security and/or O&M Security to the amount stated in Clause 9.1.

## **10. Project Site**

### **10.1. Vesting of Site with Concessionaire**

- 10.1.1. Pursuant to grant of Concession and in consideration of grant of lease of the Site in accordance with Land Lease Agreement, the Concessionaire shall pay to the ULB by way of lease payment (the "**Lease Payment**"), as per Schedule 19 during the Concession Period. Subject to other provisions of the Concession Agreement, Concessionaire shall have the full right to regulate the entry into and use of the Site. The land constituting the Site shall be vested with Concessionaire under this Concession, for the sole purposes of performance, execution and implementation of the Project.
- 10.1.2. The ULB will hand over land to the Concessionaire in accordance with Clause 6.1.1(e).

### **10.2. Rights, Title and Use of the Site**

- 10.2.1. The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement.
- 10.2.2. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Site. Save and except as otherwise permitted under this Agreement.
- 10.2.3. It is expressly agreed that the lease rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the ULB to terminate the Land Lease Agreement, upon the expiry of Concession period/Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-leases, the lease rights in respect of the Site shall automatically terminate, without any further act of the Parties, upon expiry of Concession period/Termination of this Agreement.
- 10.2.4. The Concessionaire hereby irrevocably appoints the ULB (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the lease rights granted hereunder at any time after the Concession Period has

expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the ULB.

- 10.2.5. It is expressly agreed that trees on the Site are property of the ULB except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period. The Concessionaire shall allow access to and use of the Site for laying/installing/maintaining telegraph lines, electric lines, gas lines of the Gas Authority of India Limited or for such other public purposes as the ULB may specify, provided that such access or use shall not result in a Material Adverse Effect to the Concessionaire.

10.2.6. The Concessionaire accepts the Site on an “as is where is” basis and undertakes to bear all risk arising out of the inadequacy or physical condition of the Site.

### **10.3. Site Data and Verification**

10.3.1. The ULB has made available to the Concessionaire, the layout plans, ariel survey of the Project Site (existing facilities like collection points, processing plants,), load flow studies and all other relevant data, studies and reports in Authority's possession in connection with the Sites.

10.3.2. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Sites.

10.3.3. The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by the ULB and any other information available with respect to the Sites and to have satisfied itself as to all the relevant matters including:

- a) The nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
- b) The suitability of the Site for undertaking the construction and operation of the Project;
- c) The condition of the utilities available till the battery limits of the Sites;
- d) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
- e) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
- f) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
- g) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
- h) the suitability and adequacy of any access roads to the Sites and other utilities and facilities to be provided by the relevant Government Authority; and
- i) all other matters that may affect the performance of its obligations under this Agreement.

10.3.4. Subject to Clause 10.3, the Concessionaire

acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the ULB, then the ULB and the Concessionaire may mutually arrive at a decision regarding any extension of the Scheduled COD and/or compensation for additional costs incurred caused due to such error or discrepancy. Provided that the Concessionaire shall not be entitled to any extension as mentioned above, nor shall it be open to the Concessionaire to

justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites' conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by the ULB shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.3.3 above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

#### **10.4. Possession of the Site**

10.4.1. In order to handover the possession of the Site pursuant to Clause 4.2.1, the authorised representatives (as given in recitals) of the ULB (and the Concessionaire shall, on mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, building, structures, road network, trees, pipelines and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the —AppendixII) specifying in reasonable detail those parts of the Site to which vacant and unencumbered possession of the Site has not been granted to the Concessionaire. Signing of the memorandum, as above, by the authorised representatives of the Parties shall, subject to the provision of Clause 10.1, be deemed to constitute a valid handover of possession of the Site to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that vacant and unencumbered possession of the Site in respect of those parts of the Site which have been set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant handover of possession being provided

10.4.2. Without prejudice to the provision of Clause 10.4.1, the Parties hereto agree that on or prior to the Appointed date, the ULB has handed over vacant possession of

land to the Concessionaire such that Appendix shall not include more than 20% (twenty percent) of the total area of the Site required to be handed over in accordance with Schedule 9.

- 10.4.3. On and after signing the memorandum referred to in Clause 10.4.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the ULB and undertake its removal at its cost and expense.
- 10.4.4. The ULB to provide support on best effort basis to handover, no later than 90 (ninety) days from the date of signing the Concession Agreement, the

possession of the land included in the Appendix, and in the event of delay for reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire, Damages in the sum calculated at the rate of 0.1 per cent of the Construction Performance Security in respect of the land set forth in the Appendix, from the 91st (ninety first) day from the date of signing the Concession Agreement and until such day when land is handed over to the Concessionaire.

10.4.5. Upon receiving the possession of the land included in the Appendix, the Concessionaire shall complete the Construction Work thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Completion Certificate shall not be affected or delayed on account of vacant possession of any part of Site was not handed over to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of delay or denial of such possession thereto. For avoidance of doubt, it is expressly agreed that Construction Work on all the land which has been handed over within 60 days from the date of signing the Concession Agreement shall be completed before the Scheduled Completion Date.

10.4.6. Subject to the Sub-clauses of this Clause 10.4, the ULB hereby warrants that:

- a) The Site has been acquired through the due process of law and belongs to and is vested in the ULB and that the ULB has full powers to hold, dispose of and deal with the same; consistent and interlaid 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 person 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 Concession Period.

## **10.5. Applicable Permits**

The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements



of the Project. The ULB shall provide all necessary co-operation/ assistance for obtaining the permission. As far as possible upfront approved permits to be provided by the ULB. The Concessionaire shall be responsible to be in compliance with the terms and conditions subject to which Applicable Permits have been issued.

#### **10.6. Protection of Site from encroachments**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to

place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

#### **10.7. Access to the ULB and Independent Engineer**

The lease rights to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the ULB and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### **10.8. Unforeseen Site Conditions**

Without prejudice to Clause 10.3 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Concessionaire may seek a Variation in accordance with Article 17. Upon receipt of a request for a Variation due to unforeseen Site conditions, if, in the opinion and sole discretion of ULB/Authority, such conditions could not have been reasonably foreseen by a prudent Concessionaire acting in accordance with Good Industry Practices, then ULB/Authority shall issue a Variation Order in accordance with Article 17. Any decision of ULB/Authority regarding the existence of any unforeseen Site conditions shall be final and binding.]

#### **10.9. Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the lease rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the ULB or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the ULB forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. In case of such discovery and if the Site becomes permanently unusable, the Concessionaire and the ULB shall mutually decide whether to shift the operations to any

alternative site,

## **11. Utilities, Associated Roads and Trees**

### **11.1 Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the ULB as the controlling body of such road, right of way or utility, and the ULB shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

### **11.2 Shifting of obstructing utilities**

The ULB (depending on the respective jurisdiction) shall, subject to Applicable Laws, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the ULB.

### **11.3 New utilities and roads**

The Concessionaire shall allow, subject to such conditions as the ULB may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

### **11.4 Felling of trees**

The ULB shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the ULB, and in the event of any delay in felling there of for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if

such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the ULB and shall be disposed in such manner and subject to such conditions as the ULB may in its sole discretion deem appropriate.

## **12. Financial Close and Substitution Agreement**

## **12.1 Financial Close**

- 12.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 150 (one hundred and fifty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the ULB in a sum calculated at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day of delay, or for a further period not exceeding 100 (one hundred) days, subject to payment of Damages specified in Clause 4.2; provided that the Damages specified herein shall be payable every week and the period beyond the said 150 (one hundred and fifty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the ULB in procuring satisfaction of the Conditions Precedent specified in Clause 4.2.1 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.
- 12.1.2. The Concessionaire shall, upon occurrence of Financial Close shall have provided to the ULB, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with a soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

## **12.2 Termination due to failure to achieve Financial Close**

- 12.2.1. Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 12.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it

is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 12.2.1 shall not apply.

- 12.2.2. Upon Termination under Clause 12.2.1, the Authorized Representative shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the ULB being in default of any of its obligations, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 9. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Construction

Performance Security, the ULB shall be entitled to encash there from an amount equal to Bid Security.

### **12.3 Substitution Agreement**

- 12.3.1. This Agreement shall not be assigned by the Concessionaire. Provided, however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Schedule 18.
- 12.3.2. The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/fulfilling all obligations of the Concessionaire under this Agreement. Provided that in the event the Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement, the ULB/Authority shall proceed to terminate the Agreement.

## **13. Independent Engineer**

### **13.1 Procedure for Appointment & Duties and Functions of Independent Engineer**

- 13.1.1. Independent Engineer shall be a third-party agency, appointed within 3 (Three) months of this Agreement. The broad scope of nature of work of the Independent Engineer is set out in Schedule 16, but shall be refined after discussions between the ULB and the Concessionaire.
- 13.1.2. The ULB shall invite expressions of interest from consulting engineering firms or bodies corporate or individuals or partnership firms and thereupon shortlist 5 (five) qualified firms in accordance with pre-determined criteria. The ULB shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the ULB to ascertain whether the shortlisting of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the ULB within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt



of such comments, if any, the ULB shall, after considering all relevant factors, finalise and constitute a panel of 5 (five) firms and convey its decision to the Concessionaire. The Selection Committee comprising 2/3rd representation of ULB and 1/3rd representation of the Concessionaire will select one firm as Independent Engineer from the above list, based on a transparent competitive bid process and a Quality and Cost based approach shall be adopted for the same.

- 13.1.3. The Independent Engineer shall be appointed for the entire Concession Period including the Construction period and the O&M period. The initial term of the Independent Engineer shall extend up to 3 (three) years. On expiry of the aforesaid period, the Selection Committee will renew the appointment, or

appoint another firm from a fresh panel to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

- 13.1.4. The Independent Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure:
  - 13.1.4.1. the timely completion of construction of the Project Facilities on or before the Scheduled Construction Completion Date; and
  - 13.1.4.2. compliance with the KPI s during the O&M Period.
- 13.1.5. The Independent Engineer shall at all times during the Concession Period have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany the Independent Engineer during its inspection of the Project Facilities.
- 13.1.6. During the Construction Period, the Independent Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Specifications and Standards, and Designs and Drawings. The Independent Engineer shall send the report to ULB/Authority and the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Independent Engineer.
- 13.1.7. During the O&M Period, the Independent Engineer shall inspect the Project Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs. The Independent Engineer shall send the report to ULB/Authority and the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Independent Engineer. The Independent Engineer shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period of the quality of the compost or any other by-products created during waste management processes which are

intended to be sold in the market

- 13.1.8. The Independent Engineer shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or O&M of the Project Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works, or O&M services is being undertaken. Neither any comments/suggestions provided by the Independent Engineer nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.

- 13.1.9. Except as specifically provided in this Agreement, the Independent Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 13.1.10. The Concessionaire agrees that notwithstanding any review by the Independent Engineer of any or all of the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Facilities.

### **13.2 Payments to Independent Engineer**

The ULB shall pay the Independent Engineer all fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively the —Remuneration"). However, the ULB and Concessionaire shall share this expense equally on a 50:50 basis. The ULB shall recover the pro-rated costs payable to the Independent Engineer as Remuneration from amounts payable to the Concessionaire.

### **13.3 Replacement of the Independent Engineer**

- 13.3.1. The ULB may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 13.1.
- 13.3.2. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the ULB and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the ULB shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the ULB and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the provisions of the Dispute Resolution setout in Clause 39.1. In the event that the appointment of the Independent Engineer is terminated hereunder, the ULB shall appoint forthwith another Independent Engineer in accordance with Clause 13.1.

### **13.4 Authorised signatories**

The ULB shall require the Independent Engineer to designate and notify to the ULB and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

## **14. Development and Operations of the Project**

### **14.1 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

- a) submit to the ULB and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule 5;
- b) appoint its representative duly authorised to deal with the ULB in respect of all matters under or arising out of or relating to this Agreement;
- c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- d) make its own arrangements for procuring materials needed for the Construction Works and in accordance with the Applicable Laws and Applicable Permits.

#### **14.2 Project Implementation: Construction of Project Facilities**

- 14.2.1. Unless otherwise permitted by the ULB, no Construction Works shall begin until the Independent Engineer is in place and has assumed charge.
- 14.2.2. The Concessionaire shall adhere to the Construction Requirements and the Project Completion Schedule and achieve COD on or before the dates specified in this Schedule 5.
- 14.2.3. The Concessionaire shall adhere to all the Construction Requirements as per Schedule 9 and the Background Documents and shall adhere to the standards/guidelines for construction as per BIS, Solid Waste Management Rules, 2016 and other applicable standards / guidelines.
- 14.2.4. The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall solely responsible to meet the Construction Requirements.

- 14.2.5. The Concessionaire shall, before commencement of construction of Project Facilities;
- a) Have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Construction Works of Project, to interact with the Independent Engineer/the ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - b) Construct, provide, incur day to day office running expenditure and maintain a reasonably furnished site office accommodation for the Independent Engineer/the ULB personnel, at the Project Site.
- 14.2.6. For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance

intimation to the Independent Engineer/ ULB who either in person or through his representative may choose to be present during the conduct of such tests. 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 and keep the Independent Engineer / ULB informed.

- 14.2.7. If the Tests are successful and the Project Facilities can be safely and reliably opened for trial runs, the Independent Engineer/ ULB shall issue Readiness Certificate.
- 14.2.8. The Independent Engineer/ ULB, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements, in case the same is not responded to within 7 (seven) days of such notice.
- 14.2.9. The Concessionaire shall construct the Project Facilities in accordance with the Project Completion Schedule set out in the Schedule 5. In the event that the Concessionaire fails to complete any of the activities/milestones (the —Project Milestones) which would result in delayed commissioning, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the ULB, the ULB shall encash the Construction Performance Security for construction works as per Clause 9.1.
- 14.2.10. For the Waste to Energy plant, Completion of successful trial operation for a continuous period of 72 hours for demonstrating compliance of installed capacity of the project to be witnessed by representatives of ULB and SEB/ DISCOMs.

### **14.3 Project Implementation: Operation and Maintenance**

- 14.3.1. The Concessionaire shall operate and maintain the Project Facilities in accordance with the O&M Requirements.
- 14.3.2. The Concessionaire may undertake operations and maintenance of the Project Facilities by itself or after



prior written consent of the ULB, through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.

14.3.3. The Concessionaire shall, for Operations and Maintenance;

- a) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/ ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- b) construct, provide, incur day to day office running expenditure and maintain a reasonably furnished site office accommodation for the Independent Engineer/ ULB, at the Project Site.

14.3.4. For the purposes of determining that the Construction Works and 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 Engineer/ ULB. 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.

- 14.3.5. Conduct all Tests to ascertain compliance with Construction Requirements and O&M Requirements.
- 14.3.6. Suspend forthwith the whole or any part of the Operation and Maintenance activities upon receiving a written notice from the Independent Engineer/ULB, who may require the Concessionaire to suspend the activities in whole or part if in the reasonable opinion of the Independent Engineer, the operations are being carried on in a manner that is not in conformity with the O&M Requirements.
- 14.3.7. In the event the Concessionaire has failed to operate and maintain the Project in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the ULB (the —Notice to Remedyll), the ULB may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facilities, under the supervision of Independent Engineer, at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the ULB on account of such operation and maintenance or repair and maintenance, and as certified by Independent Engineer, within 7 days of receipt of the ULB claim therefore.
- 14.3.8. The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:
  - a) There has been failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
  - b) The maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
  - c) There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part

- thereof is not safe for operations;
- d) There has been persistent breach of O&M Requirements. For avoidance of doubt, persistent breach shall mean:
- i. Any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer/ ULB;
  - ii. Recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer/ULB requiring the Concessionaire to remedy a breach, and

- iii. Repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise
- iv. Upon occurrence of any breach of O&M Requirements, the ULB shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

## **14.4 Drawings**

### **14.4.1. Preparation of Drawings**

- a) The Concessionaire may, subject to the Construction Requirements, adopt with or without modifications the drawings made available by the ULB, if any, or adopt its own drawings, provided that the Concessionaire shall in any event be solely responsible for the adequacy of the drawings.
- b) If the Concessionaire proposes any modifications to the drawings made available by the ULB, if any, or submits alternate drawings or drawings in respect of any item for which no drawings are made available by the ULB, the same shall be subject to review by the Independent Engineer as hereinafter provided in Clause 14.4.2.

### **14.4.2. Review of Drawings**

- a) The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the drawings as mentioned in the Schedule 6 to the Independent Engineer and the ULB.
- b) By forwarding the drawings to the Independent Engineer and the ULB pursuant to the preceding Clause 14.4.2.1 the Concessionaire shall be deemed to have represented that it has verified and determined that the drawings forwarded are in conformity with the Construction Requirements.
- c) Within 15 days of receipt of the drawings, Independent Engineer shall review the same taking into account, inter-alia, comments of the ULB, if any, thereon, and convey its

comments/ observations to the Concessionaire on the conformity of drawings with Construction Requirements. If the comments/observations of the Independent Engineer indicate that the drawings are not in conformity with the Construction Requirements, such drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised drawings, which shall be taken into account by the Concessionaire while finalising the drawings.

- d) If, within the period stipulated in the preceding Clause 14.4.2 (c), the Independent Engineer does not respond to the drawings submitted to it by the Concessionaire shall be entitled to proceed with the Construction Works on the basis of such drawings

submitted by it to the Independent Engineer, and intimate the same to the ULB. The same should be highlighted in the periodic reporting by the Concessionaire.

- e) Notwithstanding any review or failure to review by or the comments/observations of the Independent Engineer or the ULB, the Concessionaire shall be solely responsible for the adequacy of the drawings and their conformity with the Construction Requirements and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- f) The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any drawings not being in conformity with the Construction Requirements and shall not be entitled to seek any relief in that regard from the ULB.
- g) Within 90 (ninety) days of issue of Readiness Certificate, the Concessionaire shall furnish to the ULB three set of —as built" Drawings, 2 (two) hard copies and 1(one) soft copy, reflecting the Construction Works which have been completed as on COD, in a manner as set out in Construction Requirements. The Concessionaire shall also submit an as built survey illustrating the layout of the Project Facilities and setback lines, if any, of the building and structures forming part of Project Facilities.

## **15. Monitoring of Construction**

### **15.1 Monthly progress reports**

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the ULB and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

### **15.2 Inspection**

During the Construction Period, the Independent Engineer shall

inspect the construction of the Project Facilities at least once a month and make a report of such inspection (the —Inspection Report) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the ULB and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

### **15.3 Tests**

- 15.3.1. For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to

carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The costs incurred on the Tests shall be borne solely by the Concessionaire.

- 15.3.2. In the event that results of any tests conducted under this Clause 15.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 15.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 15.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

#### **15.4 Delays during construction**

If the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project Milestone is not likely to be achieved, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Scheduled Completion Date indicated in Project Completion Schedule.

#### **15.5 Suspension of unsafe Construction Works**

- 15.5.1. Upon recommendation of the Independent Engineer to this effect, the ULB may, by notice, require the Concessionaire to suspend forthwith the whole or any



part of the Construction Work if, in the reasonable opinion of the ULB, such work is unsafe and potential safety hazard.

- 15.5.2. The Concessionaire shall, pursuant to notice under Clause 15.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the ULB and thereupon carry out remedial measure to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measure forthwith and make a report to the ULB recommending whether or not such suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the ULB shall either revoke such suspension or instruct the Concessionaire to carry out such other and

further remedial measures as may be necessary in the reasonable opinion of the ULB, and the procedure set forth in Clause 15.5.1 shall be repeated until the suspension hereunder is revoked.

## **15.6 Video recording**

During the Construction Period, the Concessionaire shall provide to the ULB for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the ULB within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

## **16. Completion Certificate**

### **16.1 Tests**

- 16.1.1. At least 30 (thirty) days prior to the likely completion of the construction of Project Facilities, the Concessionaire shall notify the Independent Engineer of its intent to subject the Construction Works to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the ULB who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer.
- 16.1.2. All Tests shall be conducted in accordance with Schedule 7. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Construction Works with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the

Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the ULB copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Construction Works with Specifications and Standards.

## **16.2 Completion Certificate**

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the ULB a certificate substantially in the form set forth in Schedule 8 (the—Completion Certificate).

### **16.3 Provisional Certificate**

The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule 8 (the—Provisional Certificate) if the Tests are successful and the Project Facilities can be safely and reliably placed in commercial operation though certain works or things of a minor or snagging nature forming part thereof are outstanding and not yet complete, but do not affect commercial operation of the Project. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the —Punch List); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the ULB.

### **16.4 Completion of Punch List items**

- 16.4.1. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the ULB or due to Force Majeure, which would result in delayed commissioning, the ULB shall encash the Construction Performance Security for construction works as per Clause 9.2.
- 16.4.2. Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 16.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the ULB, shall entitle the ULB to terminate this Agreement.
- 16.4.3. If the Concessionaire fails to complete the Punch List items within said period of 90 days, the ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost

incurred by the ULB in completing the Punch List items, as certified by the Independent Engineer/ ULB, shall be reimbursed by the Concessionaire to the ULB within 7 days from the date of receipt of a claim in respect thereof from the ULB.

## **16.5 Withholding of Provisional Certificate**

16.5.1. If the Independent Engineer determines that the Construction Works or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the ULB and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the ULB is of the opinion

That the Construction Works is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Construction Works and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 16. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

- 16.5.2. Notwithstanding anything to the contrary contained in Clause 16.5.1, the ULB may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 16.3, and such direction shall be complied forthwith.

## **16.6 Rescheduling of Tests**

If the Independent Engineer certifies to the ULB and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## **17. Variation**

### **17.1 Variation in Scope of the Project**

The State Government, ULB/ Authority and the Concessionaire may, at any time during the Concession Period, propose a Variation to the Scope of Work, Technical Specifications, and/or the Designs and Drawings.

### **17.2 State Government/ Authority Proposed Variation**

- 17.2.1. State Government/ ULB/Authority may propose a Variation in the Scope of Work, Technical Specifications or the approved Designs and Drawings. Provided that, State Government/Authority shall not propose a Variation, which: (i) is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permit

- 17.2.2. Within 15 (fifteen) days of receipt of a request for

Variation from State Government/ ULB/Authority, the Concessionaire shall submit a proposal to State Government/ULB/Authority(with a copy to the Project Engineer) setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, the Scheduled Milestone Completion Date, the Scheduled Construction Completion Date and Scope of Work and additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation. It is clarified that the additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation will be determined on the basis of State Government/ ULB/Authority's schedule of rates for similar works.

- 17.2.3. Notwithstanding anything to the contrary in this Clause 17.2, the Concessionaire shall have the right to reject a Variation proposed by State Government/ULB/Authority if, in the Concessionaire's view, the proposed variation will result in: (i) the Concessionaire incurring additional Costs, of more than 25% (twenty five per cent) of the Bid Project Cost; (ii) reduction in the Bid Project Cost by more than 25% (twenty five per cent); or (iii) a delay of more than 120 (one hundred and twenty) days in a Scheduled Milestone Completion Date or the Scheduled Construction Completion Date.
- 17.2.4. Based on its review of the proposal submitted by the Concessionaire, State Government/ULB/Authority may, at its sole discretion: (i) accept the proposal and the corresponding adjustment to the Construction Plan and/or the additional Costs or reduction in the Bid Project Cost for undertaking the Variation; (ii) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the proposal submitted by the Concessionaire and withdraw the proposed Variation, within 15 (fifteen) days from the date of receipt of the Concessionaire's proposal under Sub-Clause 28.2(b) above.
- 17.2.5. To the extent State Government/ULB/Authority seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, State Government/ULB/Authority's comments and submit a revised proposal
- 17.2.6. On approval of the proposal or the revised proposal, as the case may be, State Government/ULB/Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- 17.2.7. If the Parties are unable to agree on the implications of a Variation proposed by State Government/ULB/Authority, which in State Government/ ULB/Authority's view is necessary or desirable for the Project, State Government/ULB/Authority shall have the right to require the Concessionaire to carry out the proposed variation at the cost determined in accordance with



State Government/ULB/Authority's schedule of rates for similar works. Where State Government/ULB/Authority's schedule of rates do not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be determined by State Government/ULB/Authority, in consultation with the Independent Engineer. Any dispute on the terms of the Variation will be resolved in accordance with Article 29.

- 17.2.8. On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the Construction Plan, Scheduled Milestone Completion Date, Scheduled Construction Completion Date and/or payment of additional amounts, if any, set out in the Variation Order.

### **17.3 Concessionaire Proposed Variation**

- 17.3.1. The Concessionaire may propose a Variation if it considers such Variation necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the Project Facilities.
- 17.3.2. To propose a Variation, the Concessionaire shall submit a proposal to ULB/Authority (with a copy to the Independent Engineer and the State Government), with a statement setting out:
- a) The need for a Variation;
  - b) The additional work required; and
  - c) adjustment to the Appointed Date, Construction Plan, Scheduled Milestone Completion Date and Scheduled Construction Completion Date;
- 17.3.3. Based on its review of the proposal submitted by the Concessionaire, if State Government/ULB/Authority is of the view that the proposed Variation is justified, then it will determine the cost of the proposed Variation using State Government/ULB/Authority's schedule of rates for similar works and where State Government/Authority's schedule of rates do not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be determined by State Government/ ULB/Authority, in consultation with the Independent Engineer. Thereafter, State Government/ULB/Authority shall notify the Concessionaire of the additional cost determined by State Government/ULB/Authority for the proposed Variation and any other comments that State Government/ ULB/Authority may have on the implications of the proposed Variation. To the extent State Government/ULB/Authority seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, State Government/ULB/Authority's comments
- 17.3.4. On the Concessionaire's acceptance of the costs determined by State Government/ULB/Authority for the proposed Variation and any other amendments sought by State Government/Authority/ULB to the Concessionaire's proposal, State Government/ULB/Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.

- 17.3.5. Notwithstanding anything to the contrary in this Article 17, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the Construction Plan and additional Costs shall be determined in accordance with Article 34.
- 17.3.6. Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Sub-Contractor in the performance of the Concessionaire's obligations under this Agreement shall not entitle the Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.
- 17.3.7. No Variation shall invalidate this Agreement.

## **18. Entry into Commercial Service**

### **18.1 Commercial Operations Date (COD)**

The Construction Works of the Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 16, and accordingly the commercial operation date of the Project shall be the date which is notified on such Completion Certificate or the Provisional Certificate is issued by the Independent Engineer (the—CODII). The Project shall enter into commercial service on COD, whereupon the Concessionaire shall be entitled to receive the Obligated Quantity of MSW from the ULB.

## **19. Operation and Maintenance**

### **19.1 Operation & Maintenance Requirements**

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the operation & maintenance requirements set forth in Schedule10(the—Operation & Maintenance RequirementsII).

### **19.2 Operation & Maintenance Manual**

19.2.1. No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve an operation and maintenance manual (the—Operation & Maintenance ManuallI) for the Operation & Maintenance Requirements (Schedule 10), Safety Requirements (Schedule 13) and Good Industry Practice, and shall provide 5 (five) copies thereof to the ULB and 2 (two) copies to the Independent Engineer. The Operation & Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 19.2 shall apply, mutatis mutandis, to such revision.

19.2.2. The Operation & Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

### **19.3 Damages for breach of operation & maintenance obligations**

19.3.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Operation & Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the ULB shall be entitled to recover, in addition to the specific Damages provided in Schedule 12, Damages, to be calculated and paid for each day of delay until the breach is cured at a rate of 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent

Engineer. Recovery of such Damages shall be without prejudice to the rights of the ULB under this Agreement, including the right of Termination thereof.

- 19.3.2. The Damages set forth in Clause 19.3 may be assessed and specified forthwith by the Independent Engineer; provided that the ULB may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

#### **19.4 ULB's right to take remedial measures**

- 19.4.1. In the event the Concessionaire does not maintain and /or repair the Project Facilities or part thereof in conformity with the Operation & Maintenance Requirements or the Maintenance Manual, as the case may be, and fails to commence the remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or notice on this behalf from the ULB or the Independent Engineer, as the case may be, the ULB shall, without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measure at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery as aforesaid, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the ULB as Damages. For avoidance of doubt, the right of the ULB under this Clause 19.4, shall be without prejudice to its rights and remedies provided under Clause 19.3
- 19.4.2. The ULB shall have right, and the Concessionaire hereby expressly grants to the ULB the right, to deduct and recover the costs and Damages specified in Clause 19.4.1, directly from the C Operation Performance Security deposited with the ULB.

#### **19.5 Overriding powers of the ULB**

- 19.5.1. If in the reasonable opinion of the ULB, the Concessionaire is in material breach of its obligations under this Agreement, and such breach is causing or likely to cause the Project to violate environmental

norms or cause nuisance to the surrounding areas, the ULB may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

- 19.5.2. If the Concessionaire fails to rectify or remove such hardship or danger, the ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such remove such hardship at the risk and costs of the Concessionaire. The cost incurred by the ULB in rectifying such default of the Concessionaire, as certified by the Independent Engineer/ ULB, shall be reimbursed by the Concessionaire to the ULB within 7 days from the date of

receipt of a claim in respect thereof from the ULB, failing which the ULB shall have right to adjust and recover such cost against the Operation Performance Security deposited with the ULB.

19.5.3. In the event of national emergency, civil commotion or any other Indirect Political Event specified in Clause 26.3, the ULB may take over the performance of any or all of the obligations of the Concessionaire to the extent deemed necessary by it and exercise such control over the Project and give such direction to the Concessionaire as maybe deemed necessary. It is agreed that the Concessionaire shall comply with such directions issued by the ULB and shall provide necessary assistance and cooperation to the ULB, on best effort basis, for performance of its obligations hereunder.

## **20. Safety Requirements**

### **20.1 Safety Requirements**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the personnel at the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule 13 (the—Safety Requirements II).

### **20.2 Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the scope of the Project.

## **21. Monitoring of Operation and Maintenance**

### **21.1 Monthly status reports**

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the ULB and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the Operation & Maintenance Requirements, Operation & Maintenance Manual, and Safety Requirements, and shall promptly give such other relevant



information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

## **21.2 Inspection**

The Independent Engineer shall inspect the Project Facilities at least once a month. It shall make a report of such inspection (the —O&M Inspection Reportll) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Operation & Maintenance Requirements, Operation & Maintenance Manual, and

Safety Requirements, and send a copy thereof to the ULB and the Concessionaire within 7 (seven) days of such inspection.

### **21.3 Tests**

For determining that the Project Facilities conforms to the Operation & Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. The costs incurred on the Tests shall be borne solely by the Concessionaire.

### **21.4 Remedial measures**

21.4.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 21.3 and furnish a report in respect thereof to the Independent Engineer and the ULB within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

21.4.2. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Facilities into compliance with the Operation & Maintenance Requirements and the procedure set forth in this Clause 21.4 shall be repeated until the Project Facilities conforms to the Operation & Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the ULB shall be entitled to recover Damages from the Concessionaire in accordance with Clause 16.3 of this Agreement. For avoidance of doubts, levy and recovery of Damages by the ULB from the Concessionaire shall not absolve the Concessionaire for its obligation and the ULB shall be entitled to seek specific performance by the Concessionaire of its obligations under this Agreement.

## **22. Handover of Project Facilities**

### **22.1 Ownership during the Concession Period**

Without prejudice and subject to the Concession, the ownership of the Project Facilities, including all improvements made therein by Concessionaire, during the Concession Period shall at all times remain as mentioned below:

- 22.1.1. That of all immovable assets including site and civil structures created for Collection, Transportation, Processing, Disposal and Waste-to-

Energy shall remain with the Concessionaire till expiry of Concession Agreement or termination as permitted by the agreement.

22.1.2. That of all movable assets including equipment & machinery and vehicles shall remain with Concessionaire and in accordance with the Financing Documents and first prior charge to Lenders privileges.

## **22.2 Concessionaire's Obligations**

22.2.1. Project Facilities: Transfer Stations, MRF, Processing Facility Concessionaire shall on the date of expiry of the Concession Period, hand back peaceful possession of the Project facilities to the ULB free of cost and free from all encumbrances and in good operational condition.

Upon service of the Termination Notice or at least 12 months before the expiry of the term of agreement, a joint inspection of the Project Facilities shall be undertaken by Independent Engineer/ the ULB and Concessionaire. Concessionaire shall promptly undertake and complete such works/jobs on its own cost and expense, as may be required by the ULB at least three months prior to the expiry of Concession Period and ensure that the Project Facilities may continue to meet such requirements even after the same are handed back to the ULB.

22.2.2. The Concessionaire shall provide training to the selected team comprising ULB's staff appointed by the ULB for taking over the Project Facilities from the Concessionaire for at least 3 (three) months.

22.2.3. On completion of the Concession Period, the Concessionaire shall transfer all movable infrastructure and facilities including vehicles, equipment, workshop, offices, communication arrangements etc. and immovable infrastructure/ facilities to the ULB, in working condition and certified by Independent Engineer, free of cost.

## **22.3 The ULB's obligations**

The ULB shall, subject to the ULB's right to encash Operation Performance Security for getting executed the works / jobs listed under Clause 23.2 at Concessionaire cost and risk, and which have not been carried out by Concessionaire, or any outstanding

dues, which may have accrued in respect of the Project during the Concession Period, duly discharge and release to Concessionaire bank Guarantees of the Concessionaire.

## **PART IV– FINANCIAL COVENANTS**

## **23. Payments to Concessionaire**

### **23.1 Payment of User Charges**

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 ULB agrees and undertakes to allow the Concessionaire to collect user charges for door-to-door collection services as notified by the ULB from time to time. The PSA/ULB will incorporate the notified user charges and the escalation matrix as part of the Annexure to the RFP.

### **23.2 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 ULB agrees and undertakes to pay Tipping Fee [in case of cluster project, in their respective proportion as per the proportion of MSW tonnage collected and Transported from their respective jurisdiction] to Concessionaire as per this Article.

### **23.3 Payment of Tipping Fee**

23.3.1. The Concessionaire shall, on the 5th day of every Month or in case the 5th day of a Month is a holiday then on the following working day of such Month, submit to the Independent Engineer a statement (–Tipping Fee Statement) providing the following details, in the manner as set out in the O&M Requirements:

- i. Separate Statement of total quantity/weight of Municipal Solid Waste collected and transported to processing site by the concessionaire along with the corresponding weigh bridge slips in the previous Month from the ULBs/Authority's Jurisdiction Area including other such areas as directed by the Authority from time to time
- ii. Amount payable, if any, to the Concessionaire by the ULBs in accordance with Clause 23.3
- iii. Quantity of Landfill Waste on each day of the previous Month along with Weigh Bridge slips.
- iv. Aggregate quantity of Landfill Waste for the previous Month, and

23.3.2. The Concessionaire shall quote a combined tipping fee

for all activities covered under the integrated solid waste management project including door- to-door collection, segregation, transportation, processing and disposal.. In case the ULB wants the Concessionaire to commence Collection and Transportation services before COD, then the ULB will determine the proportion of the total tipping fee bid by the Concessionaire to be paid for the Collection and Transportation services.



- 23.3.3. The Concessionaire will produce his bill to the Independent Engineer in first week of each month of the preceding month along with the required support documents, weigh bridge slips etc. as provided in Clause 23.3.1. The Independent Engineer shall review and certify the Monthly bill, the statement of MSW quantum handled from the ULB jurisdiction area and support documents submitted by the concessionaire. The Independent Engineer shall prepare a statement of the share of the ULB [in case of a cluster project] in the Monthly bill of the concessionaire according to the quantity of Waste collected and Transported from their respective areas. Within 3 working days of the receipt of the Monthly bill from the concessionaire the Independent Engineer shall submit to the Authority the statement of shares payable in the monthly tipping fees by the ULB along with the original monthly bill and all the supporting documents submitted by the concessionaire. The Independent Engineer shall also calculate the amount of tipping fees to be withheld in the payable Tipping fees as per provision of Clause 23.4.
- 23.3.4. The ULB, within 15 working days of the receipt of statements of Tipping fees and supporting documents from the Independent Engineer, shall raise the statement of waste collected from the ULB area and the amount payable to the concessionaire. The ULB/Authority shall release their respective share of amount payable in the monthly bill amount claimed by the concessionaire as per the payment mechanism set-out in Clause 23.4.

#### **23.4 Mechanism of Payment**

- 23.4.1. The Confirming Party shall maintain a separate Special Account (Tipping fees reserve account) for the disbursement of the monthly tipping fees payable to the concessionaire. The ULB shall maintain a minimum amount of 3 months' estimated payment advance of the prevailing tipping fees considering the inflation adjustments at all times, during the entire concession period.
- 23.4.2. The ULB shall, within 25 days from the date of receipt of the Tipping Fee Statement from the Independent Engineer as per the provision of Clause

24.2.2 deposit its share of tipping fees payable to the Special Account

23.4.3. Mechanism for Disbursement of Payment to the Concessionaire

- i. All Amount payable to the Concessionaire shall be disbursed through the Special account only subject to the fulfillment of the conditions of the concession agreement.
- ii. Within 30 days of receipt of Tipping Fees Statement by the ULB as per the provisions of Clause 23.2 an amount equal to 80% of the total amounts payable to as stated in such Tipping Fee Statement shall be disbursed to the concessionaire through the Special account.
- iii. 20% payment will be made based on the performance criteria set out in the concession agreement. For each instance of default on account of penalty parameters set out in Clause 23.8 or any other

criteria in the concession agreement or Tender document the ULB shall issue a show cause notice to the concessionaire. Only the amount of the tipping fees for which the show-cause notice has been issued shall be withheld. The balance of the 20% of the tipping fees shall be disbursed along with the payment of tipping fees in sub-clause 23.4.3 above.

23.4.4. The withheld amount as in Clause 23.4.3 (iii) shall be disbursed and settled in the next bill payable to the concessionaire subject to the satisfactorily submission of the response of the show-cause notice issued to it within such time as directed in the show-cause notice along with sufficient documentary evidence and acceptance by the ULB as the case may be at its sole discretion. If the concessionaire does not respond to the show-cause notice within the directed time schedule or the ULB is not satisfied with the response submitted by the Concessionaire, it will forfeit the withheld amount. The right and decision of the acceptance or rejection of the response of the show-cause notice submitted by the concessionaire duly reviewed by Independent Engineer lies only with the ULB and in all cases shall be acceptable by the concessionaire. The withheld amount forfeited by the ULB shall remain deposited in the Special account and after yearly re-conciliation shall be utilized in Information, Education & Communication (IEC) or any other such activity as decided by the ULB.

23.4.5. Escalation/Revision in Tipping Fee

The Concession Agreement shall have a Clause for revision/escalation in Tipping Fee at the rate of 5 per cent every year or as per the inflation adjustment procedure explained in the Clause 23.4.6, whichever is less. The ULB shall place a cap on the quantum of revisions in the tipping fee during the Concession Period.

23.4.6. Inflation Adjustment

To give effect to inflation/deflation in the quoted tipping fees following procedure shall be adopted.

i. Various cost components in quoted tipping fees are assumed as follows:

- 15% of Tipping Fee towards Fuel component (—W1—)
- 40% of Tipping Fee towards Labour component (—W2—)
- 25% of Tipping fee towards rest of component (—W3—)

- ii. Following Formula shall be used for the revision of Tipping Fees:

$$T_n = ((T_0 * W_1 * D_1 / D_0) + (T_0 * W_2 * L_1 / L_0) + (T_0 * W_3 * WPI_{11} / WPI_0)) + (0.20 * T_0)$$

Wherein:

**T<sub>n</sub>**=

Revised

Tipping

Fees

**T<sub>0</sub>**=

Base

Tipping

Fees

**D<sub>0</sub>**=

Base

Diesel

price

**D<sub>1</sub>**= Revised Diesel price as notified by the Ministry of Petroleum and Natural Gas or Indian Oil Corporation (Whichever is lower) as on day of revision

**L0** = Base Unskilled Adult Male Wages (in line of Minimum Wage Act. notified by Government)

**L1** = Revised Unskilled Adult Male Wages (In line of Minimum Wage Act, notified by Government as on day of revision)

**WPI0** = Base Monthly Wholesale Price Index (All Commodities) Rate published by Office of the Economic Advisor, Government of India on Monthly basis

**WPI1** =Monthly Wholesale Price Index(All Commodities)published by Office of the Economic Advisor, Government of India on 15thDay of previous month of Revision Date

**W1**=TippingFeeswhichis0.15;

**W2** = Weightage of Labor component in the overall Tipping Fees which is 0.40;

**W3** = Weightage of Rest of the components in the overall CTC which is 0.25

iii. Base Values Shall be the corresponding values in the previous year of revision year

— Base Diesel Price (D0) – Diesel price as notified by the Ministry of Petroleum and Natural Gas or Indian Oil Corporation (Whichever is lower) on the same day as of D1 in previous year

— Base Unskilled Adult Male Wages(in line of Minimum Wage Act. notified by Government) (L0) - Revised Unskilled Adult Male Wages (In line of Minimum Wage Act, notified by Government on the same day as of L1 in previous year

— Base Monthly Wholesale Price Index (All Commodities) Rate published by office of the Economic Advisor, Government of India on Monthly basis (WPI0) - Monthly Wholesale Price Index (All Commodities) published by Office of the Economic Advisor, Government of India on the same day as of WPI1 in the previous year

iv. Illustration for understanding Base Values: If Revision Date = 01.06.2023

— D0=CorrespondingValueondate01.06.2022

— D1=CorrespondingValueondate01.06.2023

— L0=CorrespondingValueondate01.06.2022

- L1=CorrespondingValueondate01.06.2023
  - WPI0=CorrespondingValueon15.05.2022
  - WPI1=CorrespondingValueon15.05.2023
- v. Note: Figures indicated here above are hypothetical figures and for illustration purpose only
- Revision in Tipping Fees shall be done on 01st June of every year. The Independent Engineer before one month in advance of every revision in tipping fees shall intimate the ULB about the estimated revised Tipping Fees backed with the calculation of such revision.

—First revision shall be applicable after at least 6 months from the commencement of processing the MSW at the processing plant.

**23.5 Grant / Viability Gapp Funding (VGF)**

23.5.1. In case of projects being bid on VGF/grant, tipping fee along with its escalation and the user charges along with its escalation matrix will be defined upfront. The Authority/ ULB will agree to provide to the Concessionaire cash support by way of a grant equal to the sum set forth in  
The Bid, namely, INR[\*\*] (Rupees\_\_\_\_\_ only)in  
\_\_\_\_\_

Accordance with the provisions of this Clause 23.5.

23.5.2. Subject to the conditions specified in the Clause 23.5.1, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the

Total Project Cost.

- 23.5.3. Grant shall be due and payable to the Concessionaire after it has expended the Equity and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The ULB/Authority shall disburse each tranche of the Grant as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.
- 23.5.4. In the event of occurrence of a Concessionaire Default, disbursement of Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

## **23.6 Other revenue sources for the Concessionaire**

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 ULB agrees to provide the Concessionaire with the ownership of the material extracted from solid waste and retain all the revenue earned from the sale of these materials if any. Also, the ULB agrees to allow the Concessionaire to retain the revenue resulting sale of by-products from Composting and Waste-to-energy. The ULB could also explore the possibility of providing the Concessionaire with the opportunity to earn



Revenue from non-farebox revenue sources such as providing well-defined advertising rights to a defined area of [\*\*] sq metre or any other innovative revenue stream as deemed fit by the ULB.

### **23.7 Penalties**

- 23.7.1. From the date of start of actual operation i.e. daily door-to-door collection, secondary collection and transportation of MSW the Concessionaire shall be subject to the following service level penalties for his failure to carry out operations and providing services properly.
- 23.7.2. For collection and transportation, the penalties shall be operational from 120 day of signing of the Concession Agreement. For the processing and disposal facility, the penalties will be applicable from the date of issue of readiness certificate from the ULB. Total penalties shall not exceed 20% of the total dues of the concessionaire for any given month. In other words, the dues as well as the penalties of the concessionaire shall be calculated on a monthly basis.
- 23.7.3. Penalties shall be applied in case of defaults as indicated below. The Independent Engineer and till the time no Independent Engineer is appointed the designated officer from the ULB in the role of Independent Engineer shall certify the work done by the Concessionaire and shall have the responsibility to notify to the ULB any such default in the functions of the Concessionaire. In case the Independent Engineer/the designated officer in role of Independent Engineer finds any default on the part of concessionaire which can be attributed directly to the actions or no action of the concessionaire or to his negligence, the act or abstinence shall be brought to the notice of the ULB. The Independent Engineer shall prepare a list of such defaults in a month or to every event of such default and a show-cause notice shall be issued to the Concessionaire by the ULB for such defaults. The Concessionaire is free to agitate against the show-cause issued to him within the time stipulated in the show-cause notice by presenting response of the same to the ULB along with sufficient documentary proof. If the ULB finds the response of the concessionaire satisfactory and decides that any penalty was imposed

without just reasons it shall nullify such show-cause notice issued and corresponding penalty imposed. The right to accept or reject the response to the show-cause notice presented by the concessionaire lies with the ULB and shall be binding on the concessionaire. If the ULB is of the view to sustain the default to be valid even after the response to the show-cause notice the same shall lead to deduction of Penalty as per table below or as per provision of this agreement.

<b>Deduction of Penalty for Various Functions/Activities</b>	<b>Penalty (in INR)</b>
Daily Collection of MSW	
Failure to collect waste from any house, shop, market, open space etc. within time stipulated for such collection	1,000perdefault
Failure to collect waste from an administrative geography such as from any municipal ward	25,000 per day per administrative Geography area
Failure to collect waste from an Entire District/Project Area	150,000perday
Failure to ensure clearing of secondary collection points within time stipulated for the same	2,000percase
Failure to clean Markets and Public Gardens within time stipulated or timeframe given by the Authority	5,000percase
Failure to Transport collected waste to designated processing facility	5,000percase
Dumping waste at any place other than Designated facility or spots	25,000percase
Littering of roads during transportation. Every incidence of litter on road will be treated as separate case	1,000percase
Workers found without proper protective gears, Dress or Identity Card during activity	1,000percase
Not using proper maintained vehicles, during sanitation activities	1,000/vehicle/day
Non-compliance of complaint in same session or same day as per provision of this agreement	5,000percase
If the waste is burned at any stage of management	5,000percase
If the quantity of rejects disposed in sanitary Landfill is more than 20%oftheincoming waste	25,000perday
Failure to upkeep and maintain records	5,000percase
Failure to ensure proper Safety in Operations	10,000percase

Submission of Statutory documents	5,000percase
If the workers/staff of agency found involved in any illegal activity like damaging dustbin going on strike, creating nuisance creating hurdles in Solid Waste management	25,000perday
Penalty arises due to non-compliance to the statutory norms, guidelines, regulation, SWM-Rules 2016 and their amendment from time to time As per statutory authority norms. In case statutory norms are silent	2,000percase
Utilization of Authority Provided Vehicle other than for the waste management within the Project Area or for any other ancillary purposes connected therewith after obtaining written approval from the Authority	10,000perinstance
Not conducting Information, Education &	5,000perday
Communication activities or other programmes as per the Contract requirement	

## 24. Key Performance Indicators

### 24.1 Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall develop, operate and maintain the Project Facilities, machinery, and vehicles such that it achieves the performance indicators comprising Availability, Reliability, Operation, Punctuality, Frequency, Safety, upkeep and conformity with ISO certification, as specified in this Article, Good Industry Practice and Applicable Laws (the—Key Performance Indicatorsll).

### 24.2 Collection and Transportation

#### 24.2.1. Availability

The Concessionaire shall ensure that the Availability of the collection and transportation vehicles on every day during the O&M Period shall be 100% (one hundred percent)(the—Guaranteed Availabilityl).

24.2.2. Collection Coverage Household level coverage of solid waste management services through door- to-door collection of domestic waste (the—Collection Coveragell)shall be the percentage of households and establishments that are covered by a daily doorstep collection system, measured on a monthly basis. The Collection Coverage shall be no less than [95% (ninety-five per cent)] in a month.

### 24.2.3. Reliability

- i. The Parties agree that the average reliability of the collection and transportation vehicles shall be measured on a monthly basis in terms of the number of Breakdowns per [100 (one hundred)] kilometres travelled each by all collection vehicles and all transportation vehicles, separately (the –ReliabilityI). For this purpose, Breakdown shall mean mechanical failure of a vehicle that prevents it from being operational or impedes the operation so much that it is impossible or dangerous to operate
- ii. The Reliability hereunder shall be equal to the quotient of the cumulative distance travelled by all collection vehicles and all transportation vehicles, separately, divided by the aggregate number of Breakdown of all such collection vehicles and all such transportation vehicles multiplied by [100 (one hundred)].
- iii. The Concessionaire agrees that the Reliability for the collection vehicles and transportation vehicles each in accordance with Clause 24.2 (c) shall be equal to or more than [1 (one)].

- iv. The Reliability requirement shall be separately achieved for collection vehicles and the transportation vehicles.

#### 24.2.4. Operation

The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:

- i. there are adequate arrangements for collection and transportation of household waste in segregated form as per Specifications and Standards;
- ii. the collection and transportation vehicles are maintained in accordance with Maintenance Requirements;
- iii. the collection and transportation vehicles are operational, clean, and hygienic;
- iv. the Waste Collection Information Systems [Waste Collection Information System shall mean and include (but not limited to) the timings of collection of waste from different localities for purpose of information of Users/households] in the Project Area function efficiently;
- v. the Waste collection and transportation vehicles and machinery and facilities for processing of fresh waste function efficiently, and their availability is no less than [98% (ninety eight per cent)] in a month.

#### 24.2.5. Punctuality

- i. Punctuality shall be measured on a monthly basis in terms of the percentage of on-time start of trips of the collection vehicles to the total number of trips operated on a daily basis (–Start PunctualityII). The total number of trips starting/arriving late during the month will be recorded and subtracted from the number of trips operated to arrive at the on-time trips operated figures separately in each case.
- ii. The Concessionaire agrees that the Punctuality for arrival at the respective destination shall be measured on a monthly basis in terms of the percentage of trips with on-time arrival at destination to the total number of trips operated on a daily basis

(–Arrival PunctualityII).

- iii. The Parties agree that the Concessionaire may exercise a relaxation equivalent to [5(five)]minutes, for start of the schedule of the collection vehicles, and [10% (ten percent)] of the subsequent scheduled trip time (subject to a maximum of [15 (fifteen) minutes]) for start of subsequent schedules and arrival of trips.
- iv. Subject to the provisions of Clause 24.2.5, the Concessionaire agrees that the Start Punctuality determined in accordance with Clause 24.2.5 shall be equal to or more than [90% (ninety percent)] and the Arrival Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

24.2.6. Frequency of collection vehicles

- i. The frequency of operation of collection vehicles shall be measured on a monthly basis in terms of percentage of the cumulative trips travelled by all collection vehicles to the aggregate number of scheduled trips (–Trip Frequency) and a percentage of the cumulative kilometres of collection vehicles operated to the aggregate scheduled kilometres of collection vehicles (–Collection Vehicles Kms Frequency), respectively.
- ii. The Concessionaire agrees that the Trip Frequency and the Collection Vehicles Kms Frequency, as the case may be, determined in accordance with Clause 24.2.5 shall be equal to or more than [94% (ninety four percent)].
- iii. The collection vehicles shall be operated continuously such that the first collection vehicle in each direction shall depart no later than [0800 hours] and the last collection vehicle shall reach the secondary waste site or processing facility not later than [1300 hours] at the frequency specified in the Deployment Plan of collection vehicles and this Agreement; provided that on [Sunday/ any one day of the week] the collection services may not operate.
- iv. The collection vehicles in each direction shall be operated such that the [each household] of the Project Area is covered once a day for [6 (six)] days of the week within the time range allotted to each household as per the Waste collection information system of the Project Area;
- v. The average duration of stops at the designated points as per the Deployment Plan shall not be more than [15 (fifteen)] minutes each, save and except Breakdown of the vehicle or event of Force Majeure.

#### 24.2.7. Safety of Operations

- i. The Parties agree that the Safety of collection vehicles shall be measured in terms of inverse of number of accidents per [1,000 Kms (One Thousand kilometres)] (the —General Safety) and the number of fatalities per [10,000 Kms (Ten Thousand kilometres)] (the—Severe Safety),respectively. The

General Safety and Severe Safety shall be calculated in terms of cumulative Collection Vehicles Kms operated divided by number of accidents multiplied by [1,000 (One Thousand)] and cumulative Collection Vehicles Kms operated divided by number of fatalities multiplied by [10,000 (Ten Thousand)], respectively

- ii. The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Clause 24.2.7 shall be equal to or more than [1 (one)].

### **24.3 Facilities at Project Facilities**

#### **24.3.1. Availability**



The Concessionaire shall ensure that the Availability of the Project Facilities at the processing and disposal facilities on everyday during the Post- COD period shall be [100%(one hundred percent)](the—Guaranteed AvailabilityII).

24.3.2. **Operation**

- i. The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:
  - there are adequate arrangements of Project Facilities as per Specifications and Standards;
  - all machinery, equipment and facilities are operational, function efficiently, and their availability is no less than [98%(ninety-eight per cent)] in a month;
  - the Project Facilities are maintained in accordance with Maintenance **Requirements**;

24.3.3. **Punctuality and duration of work**

- i. The Concessionaire agrees that the Punctuality as to the duration of work of the Project Facilities shall be measured on a monthly basis in terms of the percentage of days with minimum [8 (eight)] hours of operation to the total number of working days (–Duration PunctualityII).
- ii.
- iii. The Concessionaire agrees that the Duration Punctuality shall be equal to or more than [80% (eighty percent)] respectively.

24.3.4. **Safety of Operations**

- i. The Parties agree that the Safety of operation of the Project Facilities shall be measured in terms of inverse of number of accidents per[1,00,000MT(One Lakh Metric Tonnes)](the—General SafetyII) and the number of fatalities per [10,00,000 MT (Ten Lakh Metric Tonnes)](the—Severe SafetyII),respectively. The General Safety and Severe Safety shall be calculated in terms of total quantum of Waste cleared divided by number of accidents multiplied by [1,00,000 (One Lakh)] and total

quantum of Waste cleared divided by number of fatalities multiplied by [10,00,000 (Ten Lakh)], respectively.

- ii. The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Clause 24.2.7 shall be equal to or more than [1(one)].

#### **24.4 Miscellaneous**

24.6.1. Extent of recovery of waste collected

The quantum of waste/ collected, which is either recycled or processed shall be expressed in terms of percentage of waste collected (the —Extent of RecoveryII). The Extent of Recovery shall be annually increased by the Concessionaire up to[95% (ninety-five percent)] or above, with the minimum recovery not being less than [70% (seventy per cent)] during any year of operation. All rights and interest in the [residual inert waste, recyclables, fertilizers etc.], shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to a third-party buyer/off- taker in accordance with this Agreement.

#### 24.6.2. Quantum of inert/residual waste undisposed

The Concessionaire shall make reasonable endeavours to ensure sale of most of the recovered waste products, materials, etc., so as to limit the quantum of waste which remains undisposed to maximum of [20% (twenty per cent)] in a [year].

By way of illustration, assuming that the total quantum of waste collected by the Concessionaire in a year is 1000 (one thousand) tons, the Concessionaire, in compliance of Clause 8.1.4 (a), would have recycle/process at least 800 (eight hundred) tons. The remaining 200 (two hundred) tons would constitute of the undisposed waste. If 100 (onehundred) tons out of the 800 (eight hundred) tons of processed waste are not sold by the Concessionaire, the 100 (one hundred) tons would also constitute of undisposed waste. Hence, the total quantum of undisposed waste for the year would be equal to 300 (three hundred) tons which exceeds the limit of 20% (twenty per cent) on disposed waste. Hence, the Concessionaire may be liable to pay Performance Liquidated Damages.

#### 24.6.3. Efficiency in redressal of customer complaint

The total number of Project related complaints redressed within 24 (twenty- four) hours of the receipt of complaint, as a percentage of the total number of Project related complaints received in the given time period (the “Efficiency in Redressal of Customer Complaint”)shall be increased by the Concessionaire annually up to 100% (one hundred per cent), with the efficiency not beingless than 50% (fifty per cent) during

any year of operation.

#### 24.6.4. Certification

- i. The Concessionaire shall, prior to 1st (first) Anniversary of the COD, achieve and thereafter maintain throughout the Concession Period, [ISO standards] certification or a substitute thereof for the Project Facilities including Collection vehicles and Transportation vehicles, and shall provide certified copies thereof to the ULB, with a copy to the State Government, forthwith.
- ii. In the event of default in obtaining the certification specified in Article 25.1.3 (d), the Concessionaire shall, within [15 (fifteen)] days thereof, submit to the ULB, with a copy to the State Government, an action plan that sets out the actions proposed to be taken by the

Concessionaire for rectifying its deficiencies and obtaining such certification for the Project Facilities.

- iii. If the period of default in obtaining the ISO certification under this Article shall exceed a continuous period of [15 (fifteen)] months, the Concessionaire shall pay Damages to the ULB in an amount equal to [5% (five per cent)] of the Performance Security.

#### 24.6.5. Monthly Report

The Concessionaire shall, no later than [7(seven)] days after the end of each month, furnish to the ULB, with a copy to the State Government, a report stating the KPI achievement of the Project Facility as measured on a daily basis. The Concessionaire shall promptly give such other relevant information as may be required by the Authority/ ULB/State Government

### **24.5 Availability of Project Facilities**

24.8.1. The 'Availability' of each Project Facilities will be determined as a ratio of the number of hours in a day during which such Project Facility was available to carry out operations up to its design capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.

24.8.2. In computing the Availability of each Project Facilities, the Concessionaire agrees that the Project Facilities will be deemed to be Available at all times, other than during the period of:

- An Unscheduled Outage affecting such Project Facility;
- A Power Outage affecting such Project Facility;
- suspension of the O&M services for such Project Facility, for reasons attributable to the Concessionaire; or
- an Emergency affecting such Project Facility, attributable to the Concessionaire, during which the Project Facility will be deemed to be not Available.
- Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the Project Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.
- If the Availability for a Project Facility on any given day is less than the Guaranteed Availability, the ULB shall issue a notice to the Concessionaire requiring

the Concessionaire to cure the default causing the reduction in Availability in [3 (three)] days. Any failure to cure the default and achieve the Guaranteed Availability within [3 (three)] days of receipt of the notice from the Authority shall constitute a Concessionaire Event of Default. The ULB may claim Availability Liquidated Damages would be available till the default is cured or the Agreement is terminated.

## **24.6 Damages for Failure to Achieve Key Performance Indicators**

### 24.10.1. Availability Liquidity Damages

- a) If the Availability on any given day in a [month/quarter] is less than the Guaranteed Availability then the Concessionaire shall pay the liquidated

damages (the —Availability Liquidated DamagesII) equal to [0.1% (zero point one per cent)] of the O&M Security or Performance Security (as per the assured quantity agreed by the two parties) for each such day.

- b) The aggregate Availability Liquidated Damages payable by the Concessionaire in any [month/quarter] of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such [month/quarter]. If the Availability Liquidated Damages for a [month/quarter] exceed the O&M Payments for such [month/quarter], then the excess amounts shall, at the discretion of the ULB or the State Government, either be adjusted against the O&M Payments for the subsequent [month/quarter] or recovered from the O&M Securities.

#### 24.10.2. Performance Liquidated Damages

- a) If the compliance of KPIs (other than Availability of Project Facilities) on any given day(s) in a [month/quarter] is less than the benchmarks then the Concessionaire shall pay the liquidated damages (the —Performance Liquidated DamagesII) equal to [0.1% (zero point one per cent)] of the O&M Security for each such day

- i. Based on the KPI Adherence Report, if the Project Facility(ies) does not comply with the KPIs, then the process set out below shall follow:

- In the first instance of non-compliance (the —First BreachII), the ULB shall issue a notice to the Concessionaire on the first day of such non-compliance (the —First Breach Noticell) requiring the Concessionaire to cure the First Breach within [20 (twenty)] days from the date of the First Breach Notice. If the First Breach is cured within [2 (two)] days of the First Breach Notice, then the Concessionaire shall not be liable to pay any Performance Liquidated Damages. If, however, the First Breach continues beyond [2 (two)] days of the First Breach Notice, then, the Concessionaire shall be liable to pay the Performance Liquidated Damages

as pre-decided by the Parties, from the [3rd (third)] day of the First Breach.

- If: (I) the First Breach continues for [20 (twenty)] days from the date of the First Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the First Breach, then such breach shall constitute the Second Breach. Upon occurrence of the Second Breach, the ULB shall issue a notice to the Concessionaire on the first day of the Second Breach (the —Second Breach Noticell) requiring the Concessionaire to cure the Second Breach within [20 (twenty)] days from the date of the Second Breach Notice. If the Second Breach continues beyond [2 (two)] days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the amount of the Performance Liquidated Damages, as pre-decided by the Parties, from the[1st(first)] day of the Second Breach. In case of (I)above,



it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified for the First Breach, for the first [2(two)] days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the [3rd(third)] day of a continuing Second Breach.

- If: (I) the Second Breach continues for [20 (twenty)] days from the date of the Second Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the Second Breach, then such breach shall constitute the Third Breach. Upon occurrence of the Third Breach, the ULB shall issue a notice to the Concessionaire on the first day of the Third Breach (the Third Breach Notice) requiring the Concessionaire to cure the Third Breach within [20 (twenty)] days from the date of the Third Breach Notice. If the Third Breach continues beyond [2 (two)] days of the Third Breach Notice, then: (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages applicable to the First Breach, from the [1st (first)] day of the Third Breach
- If: (I) the Third Breach is not cured within [20 (twenty)] days from the Third Breach Notice; or (II) a failure to comply with the KPIs results in occurrence of a Third Breach more than 3 (three) times in a continuous [12 (twelve)] month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 23 shall apply.
- The Parties acknowledge that the Performance Liquidated Damages (including any escalation contemplated in this Clause 24.10.2 are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused by the Concessionaire's continuing failure to comply with the KPIs, and not as penalty.

The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to comply with the Discharge Standards and/or Applicable Law.

- -The Performance Liquidated Damages payable by the Concessionaire in any [month/quarter] of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such [month/quarter]. If the Performance Liquidated Damages for a [month/quarter] exceed the O&M Payments for such [month/quarter], then the excess amounts shall, at the discretion of the ULB or the State Government, either be adjusted against the O&M Payments for the subsequent [month/quarter] or recovered from the O&M Security.
- Within [7 (seven)] days from the end of each month, the Concessionaire shall be required to provide the monthly progress

report for each of the Project Facilities (prepared in accordance with Schedule 15 on compliance of such Project Facilities with the KPIs and the reasons for such failure, if any. The Project Engineer shall be required to certify each such monthly report before it is provided to the ULB and the State Government. Such certified report on compliance with KPIs shall be referred to as the KPI Adherence Report and shall form the basis for O&M Payments being made to the Concessionaire during the O&M Period.

- ii. Notwithstanding anything to the contrary contained herein, in the event in any [month/quarter] the aggregate of Availability Liquidated Damages and Performance Liquidated Damages levied by the ULB on account of non-performance exceeds INR[•](Rupees[•]), then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination.

**24.7 Incentive for exceeding to achieve Key Performance Indicators**  
*(Note- to be provisioned as per discretion of the Authority)*

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article and for repeated increase in performance during a [month/quarter], as may be determined by the ULB for reasons to be recorded in writing based on report of the Independent Engineer [and inspections by the ULB], it shall pay incentive equal to [0.05% (zero point zero five per cent)] of the O&M Security for achievement in any such KPI.

## **25. Accounts and Audit**

### **25.1 Audited accounts**

- 25.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including revenue from power sale and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance

Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (One Hundred and Eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The ULB shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the ULB for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

- 25.1.2. The Concessionaire shall, within 45 (Forty Five) days of the close of each quarter of an Accounting Year, furnish to the ULB its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the

Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

## **25.2 Appointment of auditors**

- 25.2.1. The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the —Panel of Chartered AccountantsII). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 25.2.2. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the ULB, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 25.2.3. Notwithstanding anything to the contrary contained in this Agreement, the ULB shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the—Additional AuditorsII) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

## **25.3 Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the ULB in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

## **25.4 Set-off**

In the event any amount is due and payable by the ULB to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the ULB of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise. However, the concessionaire shall not be entitled to set off any amount due to the authority .

## **26. Escrow Account**

### **26.1 Escrow Account**

- 26.1.1. The state Government shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the —Escrow BankII) in accordance with the terms and conditions of this Agreement and the Escrow Agreement;
- 26.1.2. The nature and scope of the Escrow Account as fully described in the Agreement to be entered into amongst the Concessionaire, the ULB, the State Government, the Escrow Bank and the Senior Lenders (if any) through the Lenders' Representative, shall be substantially in the form set forth in Schedule(the—Escrow AgreementII)

## **26.2 Deposits into Escrow Account**

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- a) All funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;
- b) Proceeds of any rentals, deposits, capital receipts or insurance claims; and;
- c) All payments by the ULB and the State Government, after deduction of any outstanding payments

The ULB and the State Government shall at all times and in any month of the Concession Period, ensure that in the Reserve Sub-Account(-Reserve Fund) under the Escrow Account, an amount equivalent to next [90 (ninety)] days payable to Concessionaire, in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and the ULB does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow Bank to stop any appropriation from Reserve Fund; in case of any delay by the Authority/ULB/State Government in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the ULB/Authority and the State Government shall forthwith top up and maintain the required reserve in the Reserve Fund.

### **26.3 Withdrawals during the Concession Period**

26.3.1. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions by way of an Escrow Agreement, to the Escrow Bank instructing, inter-alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

- i. All taxes due and payable by the Concessionaire for and in respect of the Project;
- ii. All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- iii. O&M Expenses, subject to the ceiling, if any, setforth in the Financing Agreements;
- iv. O&M Expenses and other costs and expenses incurred by the ULB/State Government in accordance with the provisions of this Agreement, and certified by the ULB as due and payable to it;
- v. Any amounts due and payable to the ULB/StateGovernment;
- vi. Monthly proportionate provision of Debt Service due in a Financial Year;
- vii. All payments and Damages certified by the Authority/ULB/State Government as due and payable to it by the Concessionaire;



- viii. Monthly proportionate provision of Debt Service payments due in a Financial Year in respect of Subordinated Debt;
  - ix. Any reserve requirements set forth in the Financing Agreements; and
  - x. Balance, if any, in accordance with the instructions of the Concessionaire.
- 26.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 26.3.1 above, except with the prior written approval of the ULB/State Government.
- 26.3.3. The ULB/State Government shall have the right, and the Concessionaire hereby expressly grants to the ULB/State Government the right, to recover the costs and Damages directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the ULB/State Government. Any demand from the ULB/State Government stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank, and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

#### **26.4 Withdrawals upon expiry of Concession period/Termination**

- 26.4.1. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon expiry of Concession period/Termination, be appropriated in the following order:
- i. All taxes due and payable by the Concessionaire for and in respect of the Project;
  - ii. Percentage of Debt Due excluding Subordinated Debt if required to be as per the terms of this Agreement;
  - iii. Outstanding payments due to the Authority/State Government;
  - iv. All payments and Damages certified by the Authority State Government as due and payable to it by the Concessionaire;

- v. Retention and payments relating to the liability for defects and deficiencies
- vi. Outstanding Debt Service including the balance of Debt Due;
- vii. Outstanding Subordinated Debt;
- viii. Incurred or accrued O&M Expenses;
- ix. Any other payments required to be made under this Agreement; and
- x. Balance, if any, in accordance with the instructions of the Concessionaire Provided that no appropriations shall be made under Sub-clause(x) of this Clause 26.4.1 until a vesting certificate has been issued by the ULB/State Government.

26.4.2. The provisions of this Article 26 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 26.4.1 have been fully discharged.

## **27. Insurance**

### **27.1 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 the Project Facilities in accordance with the Good Industry Practices. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the ULB as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the ULB shall be a co-insured and that the insurer shall pay the proceeds to insurance. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

### **27.2 Notice of the ULB**

No later than 45 (forty-five) days prior to commencement of the Construction Period and the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the ULB, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the ULB may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **27.3 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Clause 27.3 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the ULB, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the ULB. The Concessionaire shall maintain a register of entry in order of premiums paid towards Insurance of the Project Facilities.

#### **27.4 Remedy for failure to insure**

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the ULB shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

## **27.5 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 27 shall include a waiver of any and all right of subrogation or recovery of the insurers thereunder against, inter alia, the ULB, and its assigns, successor, underrating and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

## **27.6 Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the ULB, and its assigns, undertaking, and their affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligations covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance.

## **27.7 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 Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire shall designate the ULB as the beneficiary for the assets under ownership of the ULB as per Clause 27.1 and may designate the Lenders as the beneficiaries for the assets under the Concessionaire ownership as per Clause 27.1 or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry 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 to the extent possible in the same condition as it were prior to such damage or destruction, normal wear and tear accepted.

## **27.8 No Breach of Insurance Obligation**

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

## **PARTV – FORCE MAJEURE AND TERMINATION**

## **28. Force Majeure**

### **28.1 Force Majeure**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### **28.2 Non-Political Event**

A Non-Political Event shall mean one or more of the following acts or events:

- a) act of God, epidemic, pandemic, quarantine restrictions, extremely adverse weather conditions, lightening, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving contractors, or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 28.3;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to Concessionaire, by, or on behalf of such Contractor;
- d) any judgment or order of any court competent jurisdiction or statutory ULB [The ULB] made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the ULB;
- e) the discovery of geological conditions, toxic contamination



or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

### **28.3 Indirect Political Event**

An Indirect Political Event shall mean one or more of the following acts or events:

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days and exceeding an aggregate period of 14 (fourteen) days in an accounting Year;
- c) any civil commotion, boycott or political agitation which prevents delivery of MSW at the Project Site for an aggregate period exceeding 7 (seven) days in an accounting Year;
- d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to Concessionaire by or on behalf of such Contractor; and
- e) any Indirect Political Event that causes a Non-Political Event;

#### **28.4 Political Event**

A Political Event shall mean one or more of the following acts or events, in whole or in part, on account of any Government Instrumentality:

- a) change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 31 and its effect, in financial terms, exceeds the sum specified in Clause 31.1;
- b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of Concessionaire or of the Contractors;
- c) unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from Concessionaire or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to Concessionaire by or on behalf of such Contractor; or

## **28.5 Duty to report Force Majeure Event**

28.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;

- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
  - d) any other information relevant to the Affected Party's claim.
- 28.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 30 (thirty) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 28.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.2, and, such other information as the other Party may reasonably request the Affected Party to provide.

## **28.6 Effect of Force Majeure Event on the Concession**

- 28.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 28.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:
- a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
  - b) after COD, if the delivery of the MSW is suspended, the Concession Period shall be extended by a period equal in length to the period during which the collection of the delivery of the MSW is suspended.

## **28.7 Allocation of costs arising out of Force Majeure**

- 28.7.1. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 28.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the; "Force Majeure Costs") shall be allocated and paid as follows:
- a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
  - b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the insurance cover for such Indirect Political Event, shall be borne by the concessionaire, and to

the extent Force Majeure costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the ULB to Concessionaire; and

- c) Upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the ULB to Concessionaire.
- d) For the avoidance of doubt, Force Majeure costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, and for determining such costs, information contained in the Financing Documents may be relied upon to the extent that such information is relevant.

28.7.3. Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereto.

## **28.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **28.9 Termination Payment for Force Majeure Event**

28.9.1. If Termination is on account of a Non-Political Event, the ULB shall make a Termination Payment to Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover for assets

under Concessionaire ownership. The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting.

- a) If Termination is on account of an Indirect Political Event, the ULB shall make a Termination Payment to Concessionaire in an amount equal to:
- b) Debt Due less Insurance Cover for assets under Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and 110% (one hundred and ten percent) of the Adjusted Equity. The

Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting.

28.9.2. If Termination is on account of a Political Event, the ULB shall make a Termination Payment to Concessionaire in an amount that would be payable as if it were a ULB's Default.

### **28.10 Dispute Resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

### **28.11 Excuse from Performance of Obligations**

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

- a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations as per this Agreement.

## **29. Compensation for Breach of Agreement**

### **29.1 Compensation for default by the Concessionaire**

Subject to the provisions of Clause 29.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the ULB by way of compensation, all direct costs suffered or incurred by the ULB as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided



that no compensation shall be payable under this Clause 30.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the ULB.

## **29.2 Extension of Concession Period**

Subject to the provisions of Clause 29.4, in the event that a material default or breach of this Agreement set forth in Clause 29.1 causes delay in achieving COD or leads to suspension, as the case may be, the ULB shall, in addition to payment of

compensation under Clause 29.1 and damages for delay under clause 4.6., extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

### **29.3 Compensation to be in addition**

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

### **29.4 Mitigation of costs and damage**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## **30. Suspension of Concessionaire's Rights**

### **30.1 Suspension upon Concessionaire Event of Default**

Upon occurrence of a Concessionaire Event of Default, the ULB shall, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to be entitled to exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the ULB to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

### **30.2 ULB to act on behalf of Concessionaire**

- 30.2.1. During the period of Suspension, the ULB shall be entitled to encash the Operation Performance Security for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.
- 30.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the ULB for discharging the obligations of the Concessionaire under and in accordance with this Agreement

entandtheProject Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the ULB for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the ULB or any other person authorised by it under Clause 30.2 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **30.3 Revocation of Suspension**

- 30.3.1. In the event that the ULB shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the ULB may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 30.3.2. Upon the Concessionaire having cured the Concessionaire Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the ULB shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

### **30.4 Substitution of Concessionaire**

At anytime during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the ULB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

### **30.5 Termination**

- 30.5.1. At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the ULB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4, the ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30.
- 30.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the

extended period, if any, set forth in Clause 30.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the ULB upon occurrence of a Concessionaire Event of Default.

## **31. Events of Default and Termination**

### **31.1 Events of Default**

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

### **31.2 Concessionaire Event of Default**

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period and where no cure period is specified, within the Cure Period of 30(thirty)days, the Concessionaire shall be deemed to be in default of this Agreement (the —Concessionaire Event of Defaultll), unless the default has occurred solely as a result of any breach of this Agreement by theULB or due to Force Majeure. The defaults referred to herein shall include:

- a) The Construction Performance Security and/or Operation Performance Security has been encashed and appropriated in accordance with Clause 9.1 & 9.4 respectively and the Concessionaire fails to replenish or provide fresh Construction / Operation Performance Security within 30 (thirty) days;
- b) subsequent to the replenishment or furnishing of fresh Construction /Operation Performance Security in accordance with Clause 9.4, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Event of Default for which whole or part of the Construction Performance Security and/or Operation Performance Security was appropriated;
- c) the Concessionaire fails to achieve any of the Project Milestones due in accordance with respective Scheduled Project Milestone Date, as set in the Schedule 5 and continues in default for 180 days (one hundred and eighty) resulting in delayed commissioning;
- d) the Concessionaire has failed to achieve Scheduled COD as specified in Schedule5 and has failed to comply with the provisions specified in Clause no. 9.2.2;
- e) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the ULB;
- f) the Punch List items have not been completed within the period set forth in Clause 16.4;
- g) the Concessionaire fails to process the Obligated

Quantity of MSW after COD for a period of 7 days consecutively provided neither the Plant is under maintenance nor Event of Default by Discom has occurred as per terms and conditions of PPA

- h) the Concessionaire is non-compliant to the Performance Standards as specified in the Schedule 12, Clause 12.1 and remains non-compliant such that it becomes an Event of Default;
- i) the Concessionaire is in breach of the Operation and Maintenance Requirements or the Safety Requirements, as the case may be;
- j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the ULB to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
  - l) the Concessionaire creates any Encumbrance in breach of this Agreement;
  - m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
  - n) a Change in Ownership has occurred in breach of the provisions of Clause 5.17;
  - o) the Equity holding of the Concessionaire is not in line with Clause 5.11.
  - p) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
  - q) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- “the Concessionaire has been admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016, or entered into liquidation or similar state or any order is made for the voluntary or compulsory winding up or dissolution of the Concessionaire or the Concessionaire has become unable to pay its debts or the appointment of a receiver or administrator or any such person in respect of the Concessionaire, or its business and assets has taken place or any re-structuring, re-organisation, amalgamation, arrangement or compromise has taken place which is affecting the Concessionaire's ability to fulfil its obligations under this Agreement or which otherwise has or may have a Material Adverse Effect”.
- r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;



- s) the Concessionaire submits to the ULB any statement, notice or other document, in written or electronic form, which has a material effect on the ULB's rights, obligations or interests and which is false in material particulars;
- t) the Concessionaire has failed to make any payment to the ULB within period specified in this Agreement
  - i. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
  - ii. the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the ULB.
- u) in the event the Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement.

### **31.3 ULB Event of Default**

In the event that any of the defaults specified below shall have occurred, and the ULB fails to cure such default within a Cure Period of 90 (ninety)days or such longer period as has been expressly provided in this Agreement, theULB shall be deemed to be in default of this Agreement (the—ULBEvent of DefaultII) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- a) The ULB is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire.
- b) any representation or warranty of the ULB herein contained which is, as of the date hereof, found to be materially false or the ULB is at any time hereafter found to be in breach thereof;
- c) The ULB is in breach of applicable laws or permits

### **31.4 State Govt event of Default**

In the event that any of the defaults specified below shall have occurred, and the State Govt fails to cure such default within a Cure Period of 90 (ninety)days or such longer period as has been expressly provided in this Agreement, the State Govt shall be deemed to be in default of this Agreement (the— State Govt Event of DefaultII)unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to

Force Majeure. The defaults referred to herein shall include:

- a) The State Govt is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire.
- b) any representation or warranty of the State Govt herein contained which is, as of the date hereof, found to be materially false or the State Govt is at any time hereafter found to be in breach thereof;

The State Govt is in breach of applicable laws or permits

### **31.5 Termination due to Event of Default**

#### **31.5.1. Termination for Concessionaire Event of Default**

- a) Without prejudice to any other right or remedy which the ULB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the ULB shall, subject to the provisions of the —Substitution Agreementll (if any, with the Lenders, pursuant to which, in case of Default by Concessionaire, Lenders shall be allowed to take charge of Concessionaire's roles and responsibilities under this Agreement), be entitled to terminate this Agreement in the manner as set out under Clause 31. Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Clause 31.2 , the ULB may terminate this Agreement by issue of Termination Notice in the manner set out under Clause 31.5.
- b) If the ULB decide to terminate this Agreement pursuant to preceding Clause 31.2, it shall in the first instance issue Preliminary Notice to Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, Concessionaire shall submit to the ULB in sufficient detail and if applicable the manner in which inter-alia it proposes to cure the underlying Event of Default or prevent the Event of Default from reoccurring(the "Concessionaire Proposal to Rectify").The same shall be reasonably considered by the ULB. In case of non-submission of Concessionaire Proposal to Rectify within the said period of 30 days, the

ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting. In case Concessionaire has made a Proposal to Rectify within the period stipulated therefore, and the same is accepted by the ULB as reasonable, the Concessionaire shall be allowed a Cure Period of 60 (sixty) days. If, however the Concessionaire fails to remedy/cure the underlying Event of Default or the factors causing the Event of Default within such further period allowed, the ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security, if subsisting. For the avoidance of doubt, the ULB, at its sole discretion, can reject the Concessionaire Proposal to Rectify if it feels that it is not adequate to cure the Event of Default or prevent the Event of Default from reoccurring.

31.5.2. Termination for the ULB Event of Default

- a) Without prejudice to any other right or remedy which Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the ULB Event of Default, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- b) If Concessionaire decides to terminate this Agreement pursuant to preceding Sub-clause (a) it shall in the first instance issue Preliminary Notice to the ULB. Within 30 days of receipt of Preliminary Notice, if applicable, the ULB shall forward to Concessionaire its proposal to remedy / cure the underlying Event of Default (the " ULB Proposal to Rectify"). In case of non-submission of the ULB Proposal to Rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- c) In case ULB Proposal to Rectify is forwarded to Concessionaire within the period stipulated therefore, the ULB shall have further period of 60 days to remedy/ cure the underlying Event of Default. If, however the ULB fails to remedy/ cure the underlying Event of Default within such further period allowed, Concessionaire shall be entitled to terminate this Agreement by issuing Termination

Notice.

### **31.6 Termination Notice**

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Clause 31.2 or Clause 31.2, it shall issue Termination Notice setting out:

- a) Insufficient detail the underlying Event of Default;
- b) the Termination Date which shall be a date occurring not earlier than 90 days from the date of Termination Notice;
- c) the estimated termination payment including the details of computation thereof; and,
- d) any other relevant information.

The Parties hereby agree that any Termination Notice shall also be sent to all Lenders, by registered post/courier and a public notice of default of the Concessionaire in leading daily newspaper (of both English and the prevalent local language) of the state.

### **31.7 Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall, subject to the provision of the Financing Documents and the rights of the Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

- a) 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.
- b) The Termination Payment, if any, payable by the ULB in accordance with the Clause 31.2 is paid to Concessionaire on the Termination Date and
- c) The Project Facilities are handed back to the ULB by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to the ULB

### **31.8 Withdrawal of Termination Notice**

Notwithstanding anything inconsistency 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 anytime before the actual 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 or as mutually agreed upon by both parties.

### **31.9 Termination Payments**

Upon Termination of this Agreement on account of ULB Event of Default, the Concessionaire shall be entitled to the following termination payments in addition to payment from the ULB that may have accrued to Concessionaire prior to the Termination:

#### **31.9.1. ULB Event of Default:**

Upon Termination of this Agreement on account of the ULB Event of Default, the Concessionaire is entitled from the ULB to the following termination payment,

Termination payment = Debt Due + 110%\* of Adjusted Value of the equity on Termination Date.

\*( This % may vary upon discretion of the authority)

The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting, provided that the Operation Performance Security shall be withdrawn only after substitution of the Concessionaire in accordance with the provisions of Substitution Agreement, if any.

31.9.2. Concessionaire  
Event of Default:

Upon Termination on account of a Concessionaire Event of Default after COD, the ULB shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall also be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Event of Default occurring prior to COD.

Upon Termination of this Agreement on account of Concessionaire Event of Default the Operation Performance Security, if subsisting, shall be invoked by the ULB. The Concessionaire expressly agrees that Termination Payment under this Clause 31.2 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

**31.10 Rights of the ULB on  
Termination**

- a) Upon Termination of this Agreement for any reason whatsoever, the ULB shall have the power to:
- b) Enter upon and take possession and control of the Project Facilities, Plant, and Site, forthwith free from any encumbrances;
- c) Prohibit Concessionaire and any person claiming through or under Concessionaire from entering upon dealing with the Project Facilities,
- d) Plant, and Site or permit as required for pending resolution of any issues to a limited number of representatives of Concessionaire.
- e) Notwithstanding anything contained in this Agreement, the ULB shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment,

continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by Concessionaire in connection with the Project directly or under any of the Project Agreements, and the handover of the Project Facilities by Concessionaire to the ULB shall be free from any such obligation.

### **31.11 Survival of 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 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.



## 32. Divestment of Rights and Interest

### 32.1 Divestment Requirements

- 32.1.1. Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:
- a) notify to the ULB forthwith the location and particulars of all Project Assets;
  - b) deliver forthwith the actual or constructive possession of the Project and Project Facilities as specified in the Article 22, save and except to the extent set forth in the Substitution Agreement;
  - c) cure all Project Assets, including structures and equipment, of all defects and deficiencies so that the Project is compliant with the Operation and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on as is whereis' basis after bringing them to a safe condition;
  - d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the ULB free of any encumbrance;
  - e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
  - f) execute such deeds of conveyance, documents and other writings as the ULB may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the ULB, absolutely unto the ULB or its nominee; and
  - g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all

rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the ULB or to its nominee.

- 32.1.2. Upon the expiry or earlier termination of the Concession Period, the Concessionaire shall handover to the Authority/ULB the peaceful and vacant possession of the Site including the structure/installations/ fixtures erected or installed on the same. Failure to handover the same within a period of 7 (seven) days of the expiry or earlier termination of the Concession Period would make the Concessionaire liable for payment of penalty equivalent to 1% (one per cent) of the last annual Tipping Fee including Revenue Share per day up-to a maximum of 15 (fifteen) days, after which the Authority/ULB shall be entitled to enter upon and take possession of the Site including the Project on as-is- where-is basis.
- 32.1.3. Subject to the exercise by the ULB of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

## **32.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Operation and Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Operation and Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

### **32.3 Cooperation and assistance on transfer of Project**

- 32.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience, other members of the public or the lawful occupiers of any part of the Site.
- 32.3.2. The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the ULB, its other concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 32.3.3. The ULB shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 32.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

### **32.4 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the ULB shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 17 (the—Vesting Certificate), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the ULB pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the ULB or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

### **32.5 Divestment costs etc.**

- 32.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the ULB upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the ULB.
- 32.5.2. In the event of any dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

would make the Concessionaire liable for payment of penalty equivalent to 1% (one per cent) of the last annual Tipping Fee including Revenue Share per day up-to a maximum of 15 (fifteen) days, after which the Authority/ULB shall be entitled to enter upon and take possession of the Site including the Project on as-is-where-is basis.

### **33. Defects Liability after expiry of Concession period/Termination**

#### **33.1 Liability for defects after expiry of Concession period/Termination**

- 33.1.1. The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after expiry of Concession period/Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the ULB in this behalf, the ULB shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Operation and Maintenance Requirements. All costs incurred by the ULB hereunder shall be reimbursed by the Concessionaire to the ULB within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the ULB shall be entitled to recover the same from the Operation Performance Security in accordance with Article 9.

## **PART VI - OTHER PROVISIONS**

## **34. Assignment and Charges**

### **34.1 Restrictions on assignment and charges**

- 34.1.1. Subject to Clauses 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the ULB, which consent the ULB shall not unreasonably withhold.
- 34.1.2. Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the ULB, which consent the ULB shall not unreasonably withhold.

### **34.2 Permitted assignment and charges/**

The restraints set forth in Clause 34.1 shall not apply to:

- a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, and as security only for indebtedness to the Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Lenders under the Financing Agreements; and
- d) liens or encumbrances required by any Applicable Law.

### **34.3 Substitution Agreement**

- 34.3.1. The Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the —Substitution Agreement) to be entered into amongst the Concessionaire, the ULB and the Lenders' Representative, on behalf of Lenders, substantially in the form set forth in Schedule 18.



34.3.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the ULB shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

#### **34.4 Assignment by the ULB**

Notwithstanding anything to the contrary contained in this Agreement, the ULB may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the ULB, capable of fulfilling all of the ULB's then outstanding obligations under this Agreement.

## **35. Change in Law**

### **35.1 Increase in costs**

35.1.1. If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds **INR ..... (Rupees .....)** in any Accounting Year, the Concessionaire may so notify the ULB and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

35.1.2. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the ULB to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the ULB shall pay the amount specified therein; provided that if the ULB shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **35.2 Reduction in costs**

35.2.1. If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds INR ..... (Rupees ..... ) in any Accounting Year, the ULB may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the ULB, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

35.2.2. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the ULB may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the ULB; provided that if the Concessionaire shall dispute such claim of the ULB, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **35.3 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

## **36. Liability and Indemnity**

### **36.1 General indemnity**

36.1.1. The Concessionaire will indemnify, defend, save and hold harmless the ULB and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the —The ULB Indemnified Persons) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort

or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the ULB Indemnified Persons.

36.1.2. The ULB will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the ULB in the land comprised in the Site, and/or (ii) breach by the ULB of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations

under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

36.1.3. The Authority shall be responsible for, release, hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) any other liability incurred or suffered by the Concessionaire under Applicable Laws, or pursuant to the law of torts, principles of absolute liability or strict liability or polluter pays principle, as a result of:

- a. any environmental pollution, contamination or health hazard at or below the Site (including contamination of the land, water, environment and air quality and/or any findings of pollutants, chemical waste, hazardous waste, minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest) that existed at the Site prior to handover of the Site to the Concessionaire, provided that, such environmental pollution, contamination or health hazard is not identified in the Site Contamination Report and is not attributable to any act or omission of the Concessionaire; or
- b. any environmental pollution, contamination or health hazard caused by the delivery of any Prohibited Waste to the Site after the handover of the Site to the Concessionaire.

## **36.2 Indemnity by the Concessionaire**

36.2.1. Without limiting the generality of Clause 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the ULB and the ULB Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers

- and representatives; or
- c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.
  - d) Death or injury to any person(s) deployed by the Concessionaire either directly or indirectly for the subject project or loss or damage to any property of the Concessionaire for any reasons whatsoever.

36.2.2. Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the ULB Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the ULB Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the ULB a licence, at no cost to the ULB, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

36.2.3. Concessionaire agrees to indemnify and hold

indemnified the ULB against all cost, expenses, and penalties arising out of:

- a) Operations of the Project Facilities under this Agreement.
- b) Compliance with all labour laws and all possible claims and employment related liabilities of its staff employed in relation with the Project.



### 36.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the

Indemnified Party) it shall notify the other Party (the Indemnifying Party) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 36.4 Defence of claims

36.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent

so compromised or settled.

- 36.4.2. If the Indemnifying Party has exercised its rights under Clause 36.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 36.4.3. If the Indemnifying Party exercises its rights under Clause 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
  - a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

- b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - e) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - f) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement: Provided that if sub-clauses a, b and c of this Clause 36.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **36.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **36.6 Survival on expiry of Concession period/Termination**

The provisions of this Article 36 shall survive expiry of Concession period/Termination.

## **37. Rights and Title over the Site**

### **37.1 Lessee rights**

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole Lessee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

## **37.2 Access rights of the ULB and others**

37.2.1. The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the ULB, Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their Project Area, and upon reasonable notice ,the

Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

37.2.2. The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

### **37.3 Property taxes**

All property taxes related to the Land given on lease to the Project Developer shall be payable by the ULB.

### **37.4 Restriction on sub-letting**

The Concessionaire shall not sub-lease or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

## **38. Dispute Resolution**

### **38.1 Dispute resolution**

Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising of one nominee each of the State Government, the Authority ULB, the Concessionaire and the Lenders' Representative and a Presiding Arbitrator appointed by all the nominees. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [•] and the language of arbitration shall be English.

## **38.2 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Municipal Commissioner of the ULB and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within

30 (Thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (Sixty) days of the notice in writing referred to in Clause 38.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.

## **38.3 Arbitration**

38.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising of one nominee each of the ULB, the Concessionaire and the Lenders' Representative and a Presiding Arbitrator appointed by all the nominees. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [•] and the language of arbitration shall be English.

38.3.1. The arbitrators shall make a reasoned award (the—Award II). Any Award made in any arbitration held pursuant to this Article 38 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the ULB agree and undertake to carry out such Award without delay.

38.3.2. The Concessionaire and the ULB agree that an Award may be enforced against the Concessionaire and/or the

ULB, as the case may be, and their respective assets wherever situated.

38.3.3. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### **38.4 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.

#### **38.5 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.

### **39. Disclosure**

#### **39.1 Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Operation & Maintenance Manual, and the Operation and Maintenance Requirements (hereinafter collectively referred to as the —Specified Documents), free of charge, during normal business hours on all working days at the Project Site and at the Concessionaire's Registered Office.

#### **39.2 Disclosure of Documents relating to safety**

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a no profit no loss basis.

Notwithstanding the provisions of Clauses 39.1 and 39.2, the ULB shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

### **39.3 Explanation:**

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 39.1 and 39.2, or portions thereof, the disclosure of which the ULB is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **40. Redressal of Public Grievances**

### **40.1 Complaint Redressal Cell & Mobile Application**

- 40.1.1. The Concessionaire will set up a Complaint Redressal Cell with a tollfree number. The tollfree number should be communicated to all the user 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 INR [\*\*] per offence shall be imposed on the Concessionaire.
- 40.1.2. All complaints will be registered on phone calls, SMSs and e-mails. The Concessionaire has to ensure that there is dedicated staff and phone lines to receive complaints. All calls shall be recorded and shall be reviewed for the quality of interaction of their staff with the customers. This recording shall be made available to the Authority/ULB, any or all the agency designated by the Authority for auditing purpose.
- 40.1.3. Report received from customer shall be stored online directly. Unique ticket number shall be generated and communicated to caller along with expected time for



correcting the issue.

40.1.4. Control Room shall be staffed adequately to receive and process the complaints. Control room shall be operational from 7 am till 10 pm on alldays.

40.1.5. The Concessionaire will also integrate its IT system with the existing Mobile Application or web-based portal application of the ULB to add specific features on Registration of complaints related to door-to-door collection pertaining to waste not collected from source; Concessionaire staff not carrying equipment to segregate waste; spilling of garbage at Secondary Collection Points; trucks carrying garbage spilling garbage on the road,etc. A

unique tracking code along with the time allocated to address the grievance will be given to the customer.

## **40.2 Redressal of complaints**

- 40.2.1. The Concessionaire shall deploy adequate staff at the Complaint Redressal Cell to take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the reports maintained on complaint redressal and a reply stating the particulars thereof shall be sent by the Concessionaire to the registered mobile number of the Complainant.
- 40.2.2. Within 7 (seven) days of the close of each month, the Concessionaire shall send to the ULB and to the Independent Engineer an online copy of the complaints registered, and the action taken to address them. The ULB may, in its discretion, advise the Concessionaire to take such further action as the ULB may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the ULB of its decision thereon, and if the ULB is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

## **41. Miscellaneous**

### **41.1 Confidentiality**

- (a) The Concessionaire and the Authority shall not at any time divulge or disclose or suffer or permit their servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project, Project, the Concessionaire and the Authority (including any information concerning the contents of this Agreement) except to their directors, officials, employees, Contractors, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.
- (b) The Concessionaire and the Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.
- (c) The Concessionaire shall ensure that all its directors, employees,

Subcontractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non-disclosure agreements reasonably required by the Authority, which have been duly approved by the Authority, with respect to the Project.

(d) The aforesaid provisions shall not apply to the following information:

(i) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or

(ii) already in the public domain otherwise than by breach of this Agreement;

(iii) disclosed due to a court order or under any Act of Gov/State Governments/UT

#### **41.2 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 owned 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 annum from the due date for payment hereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under Law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 41.1 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a party nor be deemed or construed to be a waiver of the underlying breach of payment obligation.

#### **41.3 Governing Law and Jurisdiction**

This agreement shall be governed by the laws of India. The Courts in the city of execution of Agreement shall have exclusive jurisdiction over all matter arising out of or relating to this Agreement.

#### **41.4 Waiver**

Waiver by either party of any default by the other party in the observation and performance of any provision of or obligation

under this Agreement:

- a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligation under this agreement;
- b) Shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- c) Shall not affect the validity or enforceability of this agreement in any manner.

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.

#### **41.5 Survival**

Expiry of Concession period/Termination of this agreement shall not relieve the either party of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and 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 expiry of Concession period/effectiveness of such termination or arising out of such expiry of Concession period/termination. Further, the provisions of indemnity, confidentiality and dispute resolution shall survive expiry of Concession period/termination of this Agreement.

#### **41.6 Amendments**

This Agreement and the Schedules/Annexures 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.

#### **41.7 Notice**

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, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their

respective addresses set forth below;

If to ULB:

Office of the Principal Advisor, [A

ddress of the ULB] If to

Concessionaire:

[XXXXXXXXXX]

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

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

- b) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

#### **41.8 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 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.

#### **41.9 No Partnership**

Nothing contained in this agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall bind the other in any manner whatsoever.

#### **41.10 Waiver of immunity**

Each Party unconditionally and irrevocably:

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

therewith).

#### **41.11 Depreciation and Interest**

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

#### **41.12 Delayed payments**



The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars.

#### **41.13 Exclusion of implied warranties etc.**

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

#### **41.14 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### **41.15 Third Parties**

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

#### **41.16 Successors and Assigns**

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

#### **41.17 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

#### **41.18 Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

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

SIGNEDSEALEDANDDELIVERED

Forandonbehalfof ULBby:

(Signature)

(Name)(Designation)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held onthe.....dayof20.....hereuntoaffixedinthepresenceof

.....  
,  
Director,whohas signedthesepresents in token thereof and company Secretary / Authorised Officer who has countersigned the same in token thereof:

Inthepresenceof:

1.

2.

## SCHEDULES

## 1. Site of the Project

### 1.1. The Site

1.1.1 Site of the Project shall include the land, buildings, structures and road works as described in this Schedule.

1.1.2 An inventory of the Site including the land, buildings, structures, roadworks, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by ULB Representative and the Concessionaire, and such inventory shall form part of this Schedule1

### 1.2. Sites for Waste to Energy Processing Facilities in the State

1.2.1 Map of the Land for Waste to Energy Processing Facility is as shown below: [map to be inserted]

### 1.3. Inventory of the Site

1.3.1 [to be filled at the time of granting concession]

1.4. The Door to Door collection and Transportation of MSW shall be carried out for the Wards (1,2,3,....) and Zones (1,2,3,....) with in the jurisdiction of ULB [Name].

## 2. Applicable Permits (Refer Clause 4.1.3)

### 2.1 Applicable Permits

2.1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the ULB/Authority in accordance with Clause 4.1.3 of the Agreement.

<b>S.No.</b>	<b>Approval/Clearance</b>	<b>Concerned Agency</b>	<b>Responsibility</b>
1.	Prior environmental clearance	State Pollution Control Board	Concessionaire
2.	Site authorization under MSW Rules	State Pollution Control Board	The ULB/Authority
3.	License in accordance with the rules and provisions of Labour (Regulation and Abolition) Act, 1970	Ministry of Labour & Employment	Concessionaire
4.	Consent to establish under Air and Water Act	State Pollution Control Board	Concessionaire
6.	NOC from State Fire Services	Directorate of Fire Services	Concessionaire
7.	Disaster Management Plan	State Disaster Management Authority	Concessionaire
8.	Vehicle Registration	Road Transport Office	The ULB / Concessionaire
9.	Electricity Approval	Discom	Concessionaire
10.	Power Purchase Agreement	State Electricity Regulatory Commission	Discom/Concessionaire
11.	Airport Authority Clearance	Air Traffic Control/Airport Authority of India	Concessionaire
12.	Industrial Setup Approval	Department of Industries	Concessionaire
13.	All drawings and document approval	The ULB /Authority	Concessionaire
14.	Water Supply	Municipal Authority	Concessionaire

### 3. Performance Security for Construction Requirements (Refer Clause 9.1)

The Commissioner, ULB WHEREAS:

- 1 (the ~~Concessionaire~~) the ~~the ULB~~ have entered into a Concession Agreement dated (the ~~Agreement~~) whereby the ULB has agreed to the Concessionaire undertaking Integrated Solid Waste Management at [Place] on design, build, finance, operate and transfer (~~DBFOT~~) basis, subject to and in accordance with the provisions of the Agreement.
- 2 The Agreement requires the Concessionaire to furnish a Construction Performance Security to the ULB, for an amount of INR. \_\_\_\_\_ (the ~~Guarantee Amount~~) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- 3 We, ..... through our Branch at ..... (the ~~Bank~~) have agreed to furnish these Bank Guarantees by way of Construction Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally, and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the ULB, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the ULB shall claim, without the ULB being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the ULB, under the hand of the Municipal Commissioner, the ULB that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the ULB shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default

shall be final, and binding on the Bank, notwithstanding any differences between the ULB and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other ULB or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the ULB shall be titled to act as if the Bank were the principal debt or and any change in the constitution of the Concessionaire and/or the



Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Not with standing anything contained here in before, the liability of the Bank under this Guarantee will remain in force until compliance of the conditions specified in Paragraph 8 below and unless a demand or claim in writing is made by the ULB on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Construction Performance Security will be valid for 120 days after COD.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the ULB in

writing and declares and warrants that it has the power to issue this Guarantee and the under signed has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be

Sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the ULB that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period specified in Paragraph 8 above.

Signed and sealed this.....day of.....,20.....at.....

SIGNED, SEALED AND s DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)(Designation)(C

ode Number) (Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

#### 4. Performance Security for Operation & Maintenance Requirements (Refer Clause 9.4)

The Commissioner, ULB, WHEREAS:

- 1 (the ~~Concessionaire~~) and the ~~the ULB~~) have entered into a Concession Agreement dated ..... (the ~~Agreement~~) where by The ULB has agreed to the Concessionaire undertaking Integrated Solid Waste Management at [Place] on design, build, finance, operate and transfer (~~DBFOT~~) basis, subject to and in accordance with the provisions of the Agreement.
- 2 The Agreement requires the Concessionaire to furnish an Operation Performance Security to the ULB, the cumulative amount of which is INR ..... (the **Guarantee Amount**) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operation Period (as defined in the Agreement).
- 3 We, ..... through our Branch at ..... (the **Bank**) have agreed to furnish this Bank Guarantees by way of Operation Performance Security.

NOW, THEREFORE, the Bank here by, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Operation Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the ULB, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the ULB shall claim, without the ULB being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the ULB, under the hand of the Municipal Commissioner, the ULB that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the ULB shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under

the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the ULB and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other ULB or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the ULB shall be titled to act as if the Bank were the principal debt or and any change in the constitution of the Concessionaire and/or the

Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the ULB against the Concessionaire, and either to enforce or for bear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Not with standing anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force in compliance of the conditions specified in Paragraph 8 below and unless a demand or claim in writing is made by the ULB on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Operation Performance Security will be valid from the Scheduled COD till one year after the expiry of the Concession Period.
9. The Bank undertakes not to revoke this Guarantee during its

currency, except with the previous express consent of the ULB in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when It ought to have been

delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the ULB that the envelope was so posted shall be conclusive.

11. This Guarantee shall remain in force till the period mentioned in Paragraph 8 above.

Signed and sealed this.....days of.....,20.....at.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)(Designation)

(Code Number)

(Address)

NOTES:

i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee

ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



## 5. Project Completion Schedule

*(Refer Clause 14.2.8)*

### 5.1 Project Completion Schedule

The milestones stated in the table below are tentative and Concessionaire can start some of the activities simultaneously to meet the Project Completion Schedule and achieve COD on or before the dates specified in this agreement.

Scheduled COD would be 24 months from the Appointed date.

S I. N o	Description	Months																							
		Financial Close					Construction Period																		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1	Preparation of all Project drawings & approval from the required approval authority or the ULB appointed Agency from Letter of Award (LoA)																								
2	Obtain all applicable permits such as licenses, consents, permissions, NOCs & approvals from the concerned and Govt. agencies from Letter of Award (LoA)																								
3	Complete provision of all the utilities such as water, power, internal roads, boundary wall, lighting facility, storm water drain at Processing Facility as per Manual of Design Input from Letter of Award (LoA)																								
4	Complete construction of Transfer Stations, Processing facilities at the site after completion of Sr.No.1, 2 and 3																								

5	<p>a) Plant installation, machinery including electrical, mechanical and instrumentation facilities/utilities at Processing Facility</p> <p>b) Completion of construction works for power evacuation facilities.</p> <p>c) Completion of construction works for collection, storage And treatment of leachate, etc. after completion of Sr.No.1 and 2.</p>																																					
6	<p>Testing period to monitor the plant, machinery and equipment and processing facility after the completion certificate received from Independent Engineer.</p>																																					
7	<p>Final commissioning with full load capacity after completion of Sr.No.6</p>																																					

**6. Drawings**  
(Refer Clause 14.4)

Sr. No.	Description
<b>1.</b>	<b>Processing and Treatment Facility</b>
a)	General layout and construction details such as fencing /boundarywall, building sectional view, etc
b)	Plantation and green belt area with species details
c)	Facilities drawing like internal roads, machinery, weighbridges, maneuvering of vehicles, MRF, processing/ treatment, Waste to Energy Plant, Waste to BioCNG Plant recycling, etc
d)	Utilities drawing such as security arrangement, restroom, etc
e)	Electric supply, water supply, storm water drainage, leachate treatment, etc
f)	Any additional facilities drawing provided by Concessionaire such as rain water harvesting, solar power or/wind power, etc

**Note:** Drawing - mean all of the drawings including working drawings for the Project Facilities, designs, calculations and documents pertaining to the Project in accordance with the Construction and O&M Requirements based on the Manual of Design Input.

## 7. Tests

*(Refer Clause 16.1.2)*

### 7.1 Tests

- 7.1.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance.
- 7.1.2 In the event that results of any tests conducted, any defects or deficiencies in the Construction Works observed, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer on this behalf.
- 7.1.3 During the Construction Period, Independent Engineer to carry tests to determine whether the Construction is being carried out in conformance with the Construction Requirements given in the Schedules to this Agreement and whether the Construction Milestones of the Project have been achieved.
- 7.1.4 At least 90 (ninety) days prior to the likely completion of the Project Facilities, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Facilities to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to ULB who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests.
- 7.1.5 Before the civil construction starts, the Concessionaire shall need to follow the entire standard tests such as soil investigations, ground water levels, hydro-geological tests, concrete grades tests, etc.
- 7.1.6 The Concessionaire shall arrange the tests as per recommendations of the manufacturer of all electrical and mechanical machinery and equipment, and the test results shall be recorded in the presence of the Independent Engineer.
- 7.1.7 The Concessionaire shall arrange the tests of electrical equipment as per the requirement of the supply company and the test reports shall be

furnished to them to get the electric supply. Similarly, any test required to be carried out as per Supply Company requirements shall be carried out in presence of the Independent Engineer.

- 7.1.8 All tests in relation to the electrical equipment shall be conducted by the licensed electrical contractors only.

7.1.9 The relevant tests to be conducted shall be finalized by the Concessionaire in consultation with the Independent Engineer from time to time.

**8. Completion Certificate**  
*(Refer Clauses 16.2 and 16.3)*

8.1 Completion Certificate

1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated.....(the **Agreement**), for Integrated Solid Waste Management in [Place] on design, build, finance, operate and transfer (DBFOT) basis, through .....(Name of Concessionaire), hereby certify that the Tests specified in Article 16 and Schedule 7 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the .....  
Day of..... 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the INDEPENDENT ENGINEER by:

(Signature)

(Name)(Designation)(Address)



8.2 Provisional Certificate

1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated.....(the **Agreement**), for Integrated Solid Waste Management in [Place] on design, build, finance, operate and transfer (DBFOT) basis, through.....(Name of Concessionaire), hereby certify That the Tests specified in Article 16 and Schedule 7 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the ULB [The ULB in case of a Cluster Project] or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3 In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the .....day of .....20.....

ACCEPTED, SIGNED, SEALED AND DELIVERED  
For and on behalf of CONCESSIONAIRE

by: (Signature)

(Name)(Designation)(Address)

SIGNED, SEALED AND DELIVERED  
For and on behalf of the

INDEPENDENT ENGINEER by: (Signature)

(Name)(Designation)(Address)

## 9. Construction Requirements

### 9.1. General

9.1.1. The facilities to be provided in the Integrated Municipal Solid Waste (MSW) and Waste to Energy Processing Facility, which is to be implemented by the Concessionaire as part of the Project, have been highlighted in this Schedule and as given in the Background Documents.

9.1.2. The Concessionaire shall adhere to all applicable rules, regulations, acts, guidelines, standards and laws which are applicable for this Project. Some of these important rules, regulations, acts, guidelines, standards, etc are as follows:

9.1.2.1. All applicable rules, regulations, acts, guidelines, standards and laws of Government of India and the State Government

9.1.2.2. All applicable Indian Standards (IS)

9.1.2.3. All applicable standards by the Bureau of Indian Standard(BIS)

9.1.2.4. All norms of the Indian Road Congress (IRC)

9.1.2.5. All norms of the National Building Code (NBC)

9.1.2.6. SWMRules,2016

9.1.2.7. Environment (Protection)Act,1986

9.1.2.8. Environment (Protection)Rules,1986

9.1.2.9. EIANotification,2006andamendments

9.1.2.10. Guidelines and recommendation of Central Public Health & Environmental Engineering Organisation (CPHEEO), MoUD, Gol

9.1.2.11. Electricity Rules,2005

9.1.2.12. Electricity Act, 2003

9.1.2.13. Guidelines of the State Electricity Regulatory Commission

9.1.2.14. All applicable norms of the Central Electricity Authority(CEA)

9.1.2.15. All applicable rules, regulations, acts, guidelines, standards of Central Pollution Control Board (CPCB) and State Pollution

Control Board (SPCB)

9.1.2.16. Motor Vehicle Act and Vehicle Emission Control

9.1.2.17. Labour Laws–Minimum Wages, Contract Labour Abolition and Regulations

9.1.2.18. Construction standards by State Public Works Department and [ULB]and any other state government departments

## 9.2. Processing facility

9.2.1. The Concessionaire shall prepare the design and engineering drawings during the preparation period. At a minimum, it is required that the Concessionaire provide the following engineering drawings as follows:

9.2.1.1. Location and Vicinity Maps: These shall show the site location and vicinity. The vicinity map should include the site boundary and all major roads, structures, industries, commercial and residential areas within a 2 km radius of the site.

9.2.1.2. Site Layout: These shall show locations and dimensions of all proposed site structures including roads, buildings, fencing, amenities, utilities, etc.

9.2.1.3. Construction Phasing Plan: These shall provide the ultimate use of the site in a planned phasing approach. Interfacing of construction and operation shall be noted. At a minimum, it shall require an overall drawing (recommended scale 1:100) as well as construction phase drawings (recommended scale 1:100) showing the construction phasing details. The construction phasing details shall include details on processing facility development, phasing of cells, leachate collection system, roads, and all other components of the processing facility.

9.2.1.4. Layout Plans and Structural drawings: These shall be the layout plan and structural drawings for all the components of processing facility.

9.2.1.5. Leachate Management Plan: The Concessionaires shall provide a drawing (recommended scale 1:100) that shows the leachate collection, transport, and treatment system. This plan shall include all inverts of the collector pipes,

transport pipes, manholes, tanks, etc. The Concessionaire shall be responsible for meeting all permitting requirements for leachate treatment.

9.2.1.6. Odour Control Management Plan: This plan shall show odour control mechanism and management plan (recommended scale 1:100).

9.2.1.7. Construction Details: These shall show liner anchorage details, leachate management and treatment system, roadways, other infrastructure, etc. (recommended scale 1:100).

#### 9.2.2. Quality Control

During all construction of Processing Facility activities, the Concessionaire shall be responsible for maintaining quality control over all suppliers, services, site conditions, and workmanship. The Concessionaire shall prepare a construction and quality control plan that describes the QA/QC measures that will be employed during construction. Require that the Concessionaire should submit the plan to the ULB for approval. QA/QC plan procedures and requirements should include the following:

9.2.2.1. Continuous inspection and field supervision by qualified personnel provided by the Concessionaire.

9.2.2.2. Laboratory testing of construction materials.

9.2.2.3. Utilizing experienced Concessionaires and workers having a minimum of 5 years of experience in their profession or trades.

9.2.2.4. Conformance to manufacturer's installation QC procedures.

Facility Construction: The Concessionaire must construct the facilities in strict accordance with the approved design drawings by the Independent Engineer. They shall also be advised that any changes of the approved design would require approvals.

### 9.2.3. Construction Phasing Plan

- 9.2.3.1. For each phase, the Concessionaire shall prepare engineering drawings that will be presented to Independent Engineer for review and approvals.
- 9.2.3.2. The construction phasing plan shall demonstrate that the site has sufficient disposal capacity. The phasing plan shall show how interfacing of the construction and operation would take place.
- 9.2.3.3. Concessionaire is responsible for providing appropriate engineering drawings (recommended scale 1:100) showing cell construction details including profile of the cell leachate collection pipes, lateral drawings layers, perimeter roads, and access roads and other important details. The final cover system shall be based on the recommendations of MoEF and CPHHEO Manual.
- 9.2.3.4. The office building shall be a permanent structure and shall be equipped with an office area for facility management and supervisory control as mentioned in the Background Documents.
- 9.2.3.5. The Concessionaire is responsible for design and construction of on-site utilities and facilities as given in Background Documents.

### 9.2.4. On-Site Access Road

It is also required that the design include an appropriate access road from the site entrance to the various units / facilities within the premises. This access road shall be designed to accommodate vehicles having a minimum 40 tonne gross weight. The access road shall be at a minimum of 15m wide to handle two- way transfer trailer traffic from the scale house to the various units / facilities. The access road shall be designed and constructed to include ditching and drainage.

#### 9.2.5. Site Access Road

Through the service specification, it shall require that the access road design allow for two-way traffic to and from the facilities and shall be designed to accommodate vehicles having a minimum 40- tonne gross weight.

#### 9.2.6. Site Fencing

The processing facility shall be fully secured by boundary wall and wire mesh fencing having a height of at least 2.4m above plinth area with top 0.6 m being barbed wire fencing with mild steel angles.

#### 9.2.7. Storm Water Drainage and Rainwater Harvesting System

The Concessionaire shall design and implement a storm water drainage and rainwater harvesting system within the processing facility as per the Background Documents.

#### 9.2.8. Lighting

The Concessionaire shall provide adequate lighting system to achieve the lux levels, specified in the Indian Standard Codes (latest versions) of SP-30 and IS 6665-1972 for the different working areas, achieve a minimum lux level of 20 for the working area and street lighting with permanent steel light posts for internal roads and access roads.

#### 9.2.9. Green Belt

The species of the trees for providing vegetative cover shall be approved by the Independent Engineer and as listed in Background documents/EIA Report. The green cover requirements within the processing facility shall be minimum of 3 m wide along the site boundary. Garden/lawns wherever possible shall be created to improve the aesthetics.

### 9.3. Procedure

9.3.1. Before commencement of any construction activity, the Concessionaire shall finalize a construction plan for the Project (the **-Construction PlanII**) in consultation with the Independent Engineer. The Construction Plan shall, inter alia, include:

A detailed plan of implementation for putting up and operationalizing the Project, which shall specify at least four major milestones

9.3.1.1. Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project-related activities. (This would



include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, safety, environmental management, plant and equipment maintenance, procurement, materials management and quality control),

9.3.1.2. A broad method statement for key items (including earth works, concrete works, structural concrete work, and road works) setting out the methodology of construction, materials and construction equipment mobilization/ utilization plans;

9.3.1.3. Details of the quality assurance and quality control procedures and

9.3.1.4. Format of the Monthly Project Progress Report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly Project Progress Report).

Prior to commencement of any implementation/construction, the Concessionaire shall also finalise in consultation with the Independent Engineer an appropriate schedule for submission of all the documents for review.

### 9.3.2. During Construction

The Concessionaire shall:

9.3.2.1. ensure that the construction of the Project is undertaken with no inconvenience to the traffic;

9.3.2.2. take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third party rights and properties;

9.3.2.3. ensure adequate safety of the personnel deployed which would include measures such as the provision and maintenance of barricades, and illumination during night in consultation with the Independent Engineer;

9.3.2.4. adhere to the Construction Plan and O&M Plan

9.3.2.5. Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Independent Engineer / The ULB.

### 9.3.3. Positions and Levels

The Concessionaire shall be responsible for:

- a) The accurate setting-out survey control points, lines and levels of reference,
- b) The correctness of the positions, levels, dimensions and alignment of all

#### Components of the Project,

- c) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities,
- d) At any time during execution of the works, any error is noticed in the position, levels, dimensions or alignment of any component of the Project, the Concessionaire, on being asked to do so by the Independent Engineer, shall at his own cost, rectify such errors to the satisfaction of the Independent Engineer
- e) The checking of any setting-out or of any line or level by the Independent Engineer shall not in any way relieve the Concessionaire of his responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the works.

#### 9.3.4. Tests

Various tests (–TestsII) would be undertaken for the Project as per the standards prescribed under Applicable Laws. Where no testing methods are specified by the said standards, details of the Tests to be carried out and specifications to be achieved for the respective works or part thereof shall be agreed upon with the Independent Engineer prior to implementation/construction.

#### 9.3.5. Reporting Requirements and Documents to be provided

9.3.5.1. During the Construction Period, the Concessionaire shall submit to the Independent Engineer/the ULB, Monthly Project Progress Reports (for each calendar month or part thereof) within 5 working days of the last day of the month.

9.3.5.2. The report shall review the progress made, identify slippages, if any, and Project the future activities to be undertaken (including rectifications), construction activities undertaken and would, inter alia, include all studies, surveys, investigations and test carried out.

9.3.5.3. The Concessionaire shall submit the copies of documents in the form of three hardcopies (printed) and two in electronic form.

#### 9.4. Schedule for Land Requirement at the Proposed Site

<b>Purpose of land hand over</b>	<b>Milestone for land transfer</b>	<b>Land (Hectare)</b>
Construction of the Processing Facility and	Appointed Date	_____
<b>Purpose of land handover</b>	<b>Milestone for land transfer</b>	<b>Land(Hectare)</b>
Green Belt		
Construction of Waste-to-Energy Facility	Appointed Date	----

## 10. Operation and Maintenance Requirements

### 10.1. General

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

In the design, planning and implementation of all works and functions associated with the operation and maintenance of the Project, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors, if any, agents and employees) in such manner, as will:

- 10.1.1. Ensure the safety of personnel deployed on and users of the Project or part thereof;
- 10.1.2. Keep the equipment and machinery employed for the Project from undue deterioration and wear
- 10.1.3. Permit unimpaired performance of statutory duties and functions of any Party in relation to the Project;
  - 1.1.3.1.1. During the Concession Period, the Concessionaire shall, in respect of the Project, ensure that:
    - 10.1.4. Applicable and adequate safety measures are taken
    - 10.1.5. Adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project components, due to any of its actions, is minimised
    - 10.1.6. Any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
    - 10.1.7. Disturbance or damage or destruction to property of third party by operations of the Project or Project components is controlled/minimised
    - 10.1.8. Data relating to the operation and maintenance of the Project is collected
    - 10.1.9. All materials used in the operation, maintenance of any of the Project

component shall meet the Construction Requirements;

- 10.1.10. The personnel assigned by the Concessionaire have the requisite qualifications

and experience and are given the training necessary to enable the Concessionaire meet the O&M Requirements.

## 10.2. Operations & Maintenance Manual and Plans

The Concessionaire shall finalise the O&M Plan and the O&M Manual for the Project in the manner as set out below:

10.2.1. Prior to making application for the Readiness Certificate for the Project the Concessionaire shall finalise in consultation with the Independent Engineer:

- a) The O&M Manual(including the formats for the reports to be submitted during the Operations Period and the Post Closure Period)
- b) The O&M Plan for the first five years of operations and shall be modified for subsequent years
- c) If applicable, the month-on-month maintenance schedule for each module of Waste to Energy plants for the first five years of the Concession Period.

10.2.1. Six weeks prior to the anniversary of COD each year, the Concessionaire shall submit to the Independent Engineer and The ULB an annual O&M Plan for the next year of operations.

## 10.3. General Requirements

### 10.3.1 Installation of Closed-Circuit Television Cameras

The Concessionaire shall install a closed-circuit television camera at Processing Facility Input and Output Weighbridges to record the vehicles being weighed. The camera shall record clearly the registration details of the vehicle and face of the vehicle driver along with time. At the end of each day, a back-up copy of the closed- circuit television camera recording of the day shall be produced on compact disc(CD).

10.3.1 Weighing of Vehicles at the Processing Facility –All incoming and outgoing vehicles to the Processing Facility shall be weighed, inspected and cleaned regularly.

### 10.3.1 Maintenance of Structures

- (a) The CC, RCC, Masonry, Steel and other structures with the

Processing Facility shall be reported to the Independent Engineer and shall be maintained in good conditions.

- (b) The CC, RCC, Masonry and other structures shall be checked for cracks and other deformations and shall be attended immediately



- (c) Periodic maintenance including plastering, cementing, painting, etc. shall be done for CC, RCC, Masonry and other structures periodically (atleast once in two years)
- (d) Periodic maintenance including welding, riveting, painting, etc. shall be done for steel structures periodically (atleast once in two years)

#### 10.3.1 Maintenance of Utilities and Services

The utilities and services like water supply, wastewater collection and treatment, lighting, green belt, etc. within the Processing facility shall be attended immediately for any repairs and shall be maintained in good conditions.

#### 10.3.1 Maintain Hygienic and Aesthetic Conditions

The MRF, Processing Facility shall be maintained hygienic and aesthetic conditions by taking proper measures as suggested by the Independent Engineer.

#### 10.3.1 Hazardous Waste Disposal

The Concessionaire shall dispose of the Hazardous Waste generated by the processing units of MSW and/or any other waste such as batteries, used oil in machineries, etc, under the Hazardous Waste (Management and Handling) Rules, 1989.

#### 10.4. Cleaning and Maintenance Requirements

The Concessionaire shall plan and execute cleaning and maintenance procedures ensuring, that

- 10.4.1 The buildings, structures, seeded and planted areas, paved and unpaved traffic areas etc. are maintained clean and proper without damages, that may impede their functionality or appearance.
- 10.4.2 All moving or fixed equipment and machinery are maintained clean and in good working condition.
- 10.4.3 All service facilities, e.g. outdoor sewage system, leachate management system, etc., are inspected regularly, cleaned and maintained.
- 10.4.4 Every day at closing time the internal roads and other paved areas shall be inspected, and any spillage of MSW shall be collected and disposed properly..

## 10.5. Monitoring Procedures

The monitoring at integrated facility shall be carried out during implementation/ Construction Period, Operation Period and Post Closure Period. The monitoring plan shall be prepared in accordance to the applicable the State Pollution control Board requirements and as described in the Background Documents.

## 10.6. Management of Labour and Prevention of Accidents

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 Rules 2016.

It shall be the liability and responsibility of the Concessionaire to implement the provisions of these acts. In addition to;

- (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 ULB; 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 ULB in respect of all claims that may be raised against ULB for non-compliance thereof by the Concessionaire.

The Concessionaire shall report and register all occurrences of;

- (e) Accidents involving risks for human health and security;
- (f) Other incidents connected with occupational health and security; and
- (g) Unscheduled interruptions to the planned operations including fires, explosions, break- down of vehicles, break-down of essential machinery & equipment, etc.

The reports shall be forwarded to the ULB & relevant authorities. The registered

information shall be kept in the "Report Book". The accident and other incident record formats and record keeping procedure shall be approved by the ULB.

## 10.7. Facilities and Benefits for the Work Force Employed

The Concessionaire shall furnish the details of the work force employed for the work defined in this document – details of the workers including those for supervision before commencing the work.

Each person (including Supervisor) deployed on this work shall be provided the following facilities.

- (a) Uniform with ID approved by the ULB (visible distinctly at night)
- (b) Safety and protective gears

## 10.8. Training, Social Programmes and Public Grievances

- (a) Fortnightly/Monthly public awareness program details to be provided to the ULB by the Concessionaire one month prior to such program throughout the Concession Period
- (b) The Concessionaire shall provide community and training center within the Project Site wherein multiple employments related capacity building and training activities shall be undertaken and necessary skills shall be imparted.
- (c) The Concessionaire shall provide an employment opportunity based on training and skill assessment. The secondary employment and/or business opportunity shall be created through the facility operator or support services.
- (d) The Concessionaire shall provide training and awareness to labours at plant, which should be a continuous activity and maintain the records.
- (e) The Concessionaire shall setup MSW management and innovation center for every-one which will be useful to locals, students and others who would wish to work in this field.
- (f) The Concessionaire shall give prior importance to near by population to get involved in the activities of horticulture, garden maintenance, energy management, etc at the Project Facilities.
- (g) The Concessionaire shall involve the NGOs, Govt. organizations, representative of local gram panchayats, Dist. Collector Officers, etc in consultation with the ULB for training and public awareness

program.

- (h) The Concessionaire shall maintain health records of all the artisans and labour staff. The health record formats and record keeping procedure shall be approved by ULB/concerned medical representative.

- (i) The Concessionaire should create a system to register public grievances and redressal system.

## 11. Operational Plan

(To be submitted by the Concessionaire) The operational plans should include the following key points:

- a) Collection and Transportation Facility
  - Daily Operational Plan for door-to-door collection
  - Machineries/equipment operational plan
  
- b) Processing Facility
  - Number of processing lines and their operational plan for MRF
  - Number of processing lines and their operational plan for processing (Waste to Energy and Waste to BioCNG and )
  - Machineries/equipment operational plan
  - Routine and break down maintenance plan
  
- c) Environmental Management Plans
  - Monitoring plan
  - Quick response mechanism
  - Maintenance plan for plantation and greenbelt
  - Health and safety plan
  - Pollution control units and their operational plan
  
- d) Disaster Management Plan
  
- e) Month-on-month maintenance schedule of Waste-to-Energy plants, if applicable

## 12. Performance Standards and Damages

### 12.1 Performance Standards

- 12.1.1. The Concessionaire shall have the following requirements related to Operations and Maintenance of the Transfer Stations
- (a) The Concessionaire shall ensure that a calibration test of the weigh bridges at the Processing Facility are carried out twice in a year starting from the appointed date and a copy of the calibration test result is submitted to authorize representative immediately after the test. Stamping of weighbridge shall be done through Weights and Measures Department (WMD), State Government
  - (b) Appointed agency/ project monitoring agency shall carry out an audit of the weigh bridge data maintained and made available by the Concessionaire at least once in every month starting from the appointed date and submit the result of such audit to ULB.
- 12.1.2. The Concessionaire shall have the following specific requirements related to Operations and Maintenance of the Processing Facility:
- (a) The Concessionaire shall ensure that the MSW Processing is in compliance with Solid Waste Management Rules, 2016 and the terms and conditions of this Agreement
  - (b) The Concessionaire shall ensure MSW is processed and power is generated from Waste to Energy Plant subject to no Event of Default by the discom's side as per terms and conditions of PPA
  - (c) The Concessionaire shall ensure that the process of MSW should be continuous and will not emit smell, odour, and all precautionary measure shall be taken to ensure that such nuisance will not be created
  - (d) The process remnants shall not be stored and shall be disposed off at Scientific Landfill immediately
  - (e) The Concessionaire shall ensure that the quality of compost shall conform to compost quality standards and shall not be stored more than the shelf life. The Concessionaire shall ensure that the off-take arrangement of the produced compost is in place (in case composting



is being adopted for processing)

- (f) The Concessionaire shall ensure that the Waste to Energy Plant is in compliance with the guidelines of Ministry of New and Renewable Energy, Government of India (in case waste to energy approach is being adopted for processing)

- (g) The Concessionaire shall ensure that proper pollution control measures are installed and operated for Proposed Technology used as per Background Documents
- (h) The Concessionaire shall free to sell products such as compost, organic manure, energy(power)and/ or other material recovered after processing the MSW, at the Project Facilities at such price and to such persons/organizations and using such marketing and selling arrangements and strategies as it may deem appropriate.
- (i) The Concessionaire shall process the recyclables materials such as plastics, paper, or other materials with as environmentally sound processing at the plant site.
- (j) The Concessionaire shall ensure that a calibration test of the weigh bridge is carried out twice in a year starting from the Appointed Date and a copy of the calibration test result is submitted to authorize representative immediately after the test. Stamping of weighbridge shall be done through Weights and Measures Department (WMD), State Government
- (k) Appointed agency/ project monitoring agency shall carry out an audit of the weigh bridge data maintained and made available by the Concessionaire at least once in every month starting from the appointed date and submit the result of such audit to the ULB.
- (l) The Concessionaire shall undertake to ensure that the remnant disposed in the Landfill does not exceed 20% of the total MSW received at the Processing Facility and also the quantity of MSW measured at the Landfilling Weighbridge shall not be less than 2% of the MSW quantity measured at the Processing Output Weighbridge
- (m) The Concessionaire shall be liable to Damages if it exceeds more than 20%.
- (n) The Concessionaire shall ensure that it maintains daily records of the quantities of MSW and submit the same to the Appointed agency/ project monitoring agency on a Monthly Basis, before the expiry of 2 (Two)working days from the end of the Month:
- (o) Quantity of MSW at the input of Processing Plant
- (p) Quantity of MSW received at the Scientific Landfill facility
- (q) The daily records of receipt of the MSW at Processing Facility shall

be maintained shift-wise by preparing respective data sheets

- (r) Appointed agency/ project monitoring agency shall review the records and certify

The same within 3(Three) working days of submission.

- (s) With effect from the COD, the Concessionaire shall not suspend at any time receiving of MSW at the Processing Facility on any day during the Concession Period

## 12.2 Damages

A key objective of the facility is to reduce the environmental impact of Municipal Solid Waste. The Performance Standards for which the ULB has zero tolerance and violation of which could lead to termination are as described in the table below

Performance Standards	Acceptable Level	Cure Period	Penalty	Tracking mechanism	Event of Default
<b>Processing Plant</b>					
1) Suspension of MSW Processing	Incidence in ≤ 16 Shifts per Year and  ≤6 continuous shifts		Operation Performance Security at the Rate of 0.2% Each day's default subject to a maximum of 5%..	Daily Report	Event of Default in case >20 shifts per Year or >8 Continuous Shifts
2) Total quantity of unprocessed MSW stored at the Processing Plant	≤20 days of MSW quantity (calculated from the 15 days trailing average)	7days	Operation Performance Security at the Rate of 0.2% Each day's default	Daily Report	Event of Default in case not cured in the cure Period
3) Noncompliance to compost quality standards, if applicable	No variation	180 days	Operation Performance Security at the Rate of 0.1%  Eachday's default	Checks conducted by Independent Engineer And other agencies	Event of Default in case not cured in the cure Period

					quantity received*
<b>Environmental Compliance and Other Compliance</b>					
6) Noncompliance to air quality standards as mentioned in the Background Documents	No variation	30days	Operation Performance Security at the rate of 0.2% eachday's default	Checks conducted by Independent Engineer and other agencies	Event of Default in Case not cured in the cure period
7) Noncompliance to ground water quality standards as mentioned in the Background Documents	No variation	30days	Operation Performance Security at the rate of 0.2% eachday's default	Checks conducted by Independent Engineer and other agencies	Event of Default in Case not cured in the cure period
8) Noncompliance to any other applicable standards as mentioned in the Background Documents	No variation	30days	Operation Performance Security at the rate of 0.2% Each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in Case not cured in the cure period

\*Unless the 7-day trailing average of MSW quantity received at the Processing Input Weighbridge is greater than the Obligated Quantity

Additional Performance Standards and the associated penalty are described in the table below

<b>Performance Standards</b>	<b>Acceptable Level</b>	<b>Penalty</b>	<b>Tracking mechanism</b>
<b>MSW Processing Plant</b>			
1) Instances of downtime of weighbridges (at the Processing Plant) when standby arrangements are also not Operational	Nil	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
2) Downtime of MRF	≤15 shifts	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
3) Downtime of any module of the Processing Plant	≤90 days	Operation Performance Security at the rate of 0.1% each day's default	Daily Report

4) Instances when recyclables are sold in loose form	Nil	Operation Performance Security at the rate of 0.1% each day's default	Random checks
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Note:

1. Duration of one shift is considered to be 8 hours

## 13. Safety Requirements

### 13.1. Safety Requirements

Concessionaire is responsible for maintaining an incident/hazard free work environment. In compliance with these provisions, the Concessionaire shall comply with the latest edition of the Contractor Safety Requirements and perform the following:

- 13.1.1 Concessionaire is expected to pre-plan all work to minimize the potential for personal injury and property damage.
- 13.1.2 Develop the plan in a Project specific nature, which is designed to anticipate and identify hazards before work begins. Know in advance what measures will be taken to eliminate hazards or adequately control the anticipated risks for each scope of work. This information shall include, but is not limited to: scope of work, sequence of activities, site specific fall protection, high angle rescue procedures, safety control methods, training records, competent persons, lead abatement, asbestos abatement and excavations. The planning does not stop at the pre- planning stage, but is a continuous process of assessment and evaluation. When changes occur or new hazards are identified during the course of the Project, the work should be suspended while the plan is revised.
- 13.1.3 Ensure all subcontractors, suppliers and vendors are informed of their obligations with regard to safety and of the Contractor Safety Requirements.
- 13.1.4 Plan and execute all work to comply with the stated objectives and safety requirements contained in the Contractor Safety Requirements, contract provisions, federal, state, and local laws and regulations, and standards.
- 13.1.5 Concessionaire or their contractors/subcontractors with 25 or more employees on a single shift will establish a fulltime position of a Contractor Safety Manager to perform safety inspections and training services. In addition, for every additional 100-job site employees added, an additional Safety Management Representative shall be required. In the event that the Contractor has less than 25 employees, the contractor shall appoint an onsite



person who along with other concurrent duties shall serve as the Contractor's Safety Representative.

- 13.1.6 Concessionaire shall maintain its own orientation program for its employees that shall include as a minimum a review of (1) hazards present in the area in which they will be working and (2) the personal protective equipment and apparel the workers will be required to use or wear as specified under Occupational Safety and Health Administration (OSHA).

- 13.1.7 Concessionaire shall provide and maintain a chemical and flammable material storage area as described in the Contractor Safety Requirements. Be responsible for the control, availability and use of necessary safety equipment, including personal Protective equipment (PPE) and apparels for the Concessionaire employees.
- 13.1.8 Take an active part in all supervisory safety meetings, including the discussion of observed unsafe work practices or conditions and a review of any incidents and corrective actions. Additionally, encourage, solicit and follow up on safety related suggestions from Concessionaire employees.
- 13.1.9 Report all injuries and incidents in a timely manner in accordance with federal and/or state laws and regulations and the Contractor Safety Requirements.
- 13.1.10 Analyze all incidents and implement immediate corrective action.
- 13.1.11 Provide job supervisors with appropriate training materials to conduct weekly safety meetings and attend said meetings to evaluate their effectiveness.
- 13.1.12 Review safety meeting reports submitted by job supervisors and take necessary action to ensure that the job supervisors hold meaningful weekly safety meetings.
- 13.1.13 Implement safety-training programs for Contractor supervisors and employees applicable to their specific responsibilities.
- 13.1.14 Maintain list on-site of personnel available for first aid and emergency treatment for injured Contractor employees.
- 13.1.15 Concessionaire will be responsible for providing a safety orientation training session for all workers before they are allowed to begin work. The orientation safety training will be conducted by the authorized representative as suggested by the ULB and will include a summary of the Contractor Safety requirements/ Heads-Up Safety Training and awareness.
- 13.1.16 At a minimum Contractor representative to adequately train its employees according to applicable safety standards. This training may include but is not limited to: fall protection, fire watch, scaffolds,

forklifts, excavation, ladders, confined space entry, respiratory protection, OSHA-PSM (Process Safety Management), grounding, shoring and traffic control etc.

13.1.17 In the event of a work-related incident resulting in a Contractor employee injury or near miss, Contractors shall notify their Appointed Representative immediately.

- 13.1.18 Contractors shall provide the appointed representative with an initial report of incident, in writing, within 24 hours of the accident. Hard copy or electronic formats are acceptable.
- 13.1.19 Contractors shall provide a completed accident investigation report within three  
(3) working days of the incident. In the event, their investigation requires more time to investigate due to the complexity of the incident, Contractors shall communicate to the appointed Representative in writing including intimation to higher authorities of ULB. This communication shall include the issues causing the delay and an estimated investigation completion date.
- 13.1.20 All first aid injuries shall be documented for record keeping purposes. In the event a first aid case develops into a Contractor employee injury, accident reporting and investigation procedure be initiated as outlined previously.
- 13.1.21 In order to maintain a safe and healthy work environment in emergency situations, Concessionaire has developed this emergency action plan to help safeguard Contractor employees while working on ULB Sites. All Contractor employees will be trained in the use of this plan and informed of their role in implementing it during their required safety orientation training. This policy is mandatory and must be strictly followed by all Contractors and their personnel while working on Sites.
- 13.1.22 When notified of an emergency evacuation (an audible alarm/verbal announcement will be used by Concessionaire to alert employees of an evacuation), Contractors must immediately evacuate their personnel from the Project Site, perform a head count and report missing personnel to concerned in-charge of the facility and take appropriate steps for investigation. When evacuating any building, structure or job site, employees should utilize the nearest exit to them. Personnel will remain at the designated site until an all-clear is announced or further evacuation steps are ordered.
- 13.1.23 Concessionaire shall comply with the latest revision Safety Rules & Procedures Permit. Contractors shall provide adequate fire protection equipment in each of their storage areas, offices and

other temporary structures.

13.1.24 Concessionaire is responsible for orienting employees on the specific safety rules that must be followed by all persons working on Project Facilities. Other personal protective equipment (PPE) is also required in accordance with the appropriate safety standards and equipment as set by the manufacture's specifications. A list of the minimum personal protective requirements is as follows:

13.1.25 The Contractor shall be responsible for providing and ensuring the use of required personal protective equipment for its employees.

- 13.1.25.1. Approved hard hats, shall be worn at all times while on the Site. It is required that each Contractor use an American National Standards Institute (ANSI) approved hardhat.
  - 13.1.25.2. Safety glasses, which meet applicable ANSI standards, are required at all times while on the Site and should include approved side shields. Only clear safety glasses are allowed to be used inside buildings or enclosed structures. Shaded goggles or hoods may be used while welding or cutting requires. Prescription safety glasses with self-tinting capabilities may be worn on-site.
  - 13.1.25.3. PPE shall be worn while travelling from the security gate, while travelling through the plants, working outside or otherwise engaged in work at each station, except in areas specifically designated as PPE not required.
  - 13.1.25.4. Contractor's vendors and visitors will be required to meet these same standards.
  - 13.1.25.5. Good housekeeping affects safety, quality and production. It is the responsibility of Concessionaire onsite to keep their work area clean. Concessionaire are responsible or trash and debris that is generated by their work. Trash and debris must be collected and placed in proper containers on a daily basis.
- 13.1.26 Trash shall not be randomly thrown off a floor or through openings in the floor. Trash chutes, trash boxes, or other approved means such as barricading and/or flagging shall be utilized.
- 13.1.27 Safety requirement mentioned in the Environment Impact Assessment (EIA) Report shall be compliance.

## 14. Environmental and Social Standards

### 14.1. Environmental Standards

- 14.1.1. The Concessionaire shall follow all the environmental standards for processing facility as per Solid Wastes Management Rules, 2016 and any amendments thereto till date. It shall also follow all those additional or stricter standards as defined in the Background Documents.
- 14.1.2. The Concessionaire shall meet the standards during the construction period as per the instruction or suggestion by the Independent Engineer from time to time based on the environmental standards applicable.
- 14.1.3. The Concessionaire shall meet the standards during the operation period as per the instruction or suggestion by the Appointed Agency/ Project Monitoring Agency from time to time as per the design requirement and applicable standards.
- 14.1.4. The Concessionaire shall form the Environmental Monitoring Cell (EMC) to review the effectiveness of environment management system during construction and operation phase of the Project Facilities. Independent Engineer shall be the Governing The ULB over the EMC functions.
- 14.1.5. EMC shall follow the schedule for monitoring as given in Background Documents and shall meet regularly to review the effectiveness of the EMP (Environmental Monitoring Programme) implementation. The data collected on various EMP measures would be reviewed by EMC and if needed corrective action will be formulated for implementation purposes.
- 14.1.6. The Concessionaire through EMC shall co-ordinate all monitoring programmes at Project Site and data thus generated shall be regularly furnished to the state regulatory agencies. The Environmental Audit reports and review shall be prepared for the entire year of operations and shall be regularly submitted to regulatory authorities.
- 14.1.7. The Concessionaire shall setup a well-equipped laboratory for

monitoring and analysis of environmental parameters for air quality , meteorology, water, wastewater, noise, groundwater, etc based on the overall monitoring requirement as given in Background Documents.

14.1.8. The Concessionaire shall follow the QA/QC procedures for all laboratory services and strive to get the certified laboratory status from quality point of view such as ISO 9000 and other similar standards. The overall goal should also be to acquire the status of certified and recognized laboratory under MOEF, Government of India. The



Concessionaire shall strive to get ISO14001 certification for the entire facility.

14.1.9. The Concessionaire shall follow the environmental issues with management along with responsibilities as mentioned in the following table.

Environmental Issues	Management Action	Implementation Responsibilities
<b>Project Location</b>		
Tree Clearance	<ul style="list-style-type: none"> <li>▪ EMC will prepare a detailed Transplantation and Plantation plan and monitoring the implementation</li> </ul>	Concessionaire
Energy Conservation Plan	<ul style="list-style-type: none"> <li>▪ EMC will prepare a detailed Energy Conservation plan and monitoring the implementation</li> </ul>	Concessionaire
Loss of local fauna	<ul style="list-style-type: none"> <li>▪ EMC to create plan as per EIA report and implement the same</li> </ul>	Concessionaire
Loss of trees & vegetation in the Project area	<ul style="list-style-type: none"> <li>▪ EMC will prepare a detailed plantation plan and monitoring the implementation</li> <li>▪ the ULB to closely oversee the work of trees and vegetation removal or plantation</li> </ul>	The ULB / Concessionaire
Increase in the water requirement for domestic purpose	<ul style="list-style-type: none"> <li>▪ EMC to monitor and prevent the excess water consumption</li> </ul>	Concessionaire
Stress on the surrounding marine ecosystem	<ul style="list-style-type: none"> <li>▪ EMC will plan the earth movement in consultation with the Concessionaire and see to it that the mitigation measures are implemented by the contractor/ operator</li> </ul>	Concessionaire
Change in land use pattern	<ul style="list-style-type: none"> <li>▪ Preparation the landscaping and greenery plan</li> </ul>	Concessionaire

Loss of any archeological/ cultural /historic site	<ul style="list-style-type: none"> <li>The operator of the facility will be planned to eliminate any odour or pollution</li> </ul>	Concessionaire
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<b>Processing/Implementation</b>		
Air Pollution	<ul style="list-style-type: none"> <li>The EMC would look into the Action of the operator on regular basis</li> </ul>	Concessionaire
High dust level	<ul style="list-style-type: none"> <li>The EMC would look into the action of the contractor on a regular basis</li> <li>the ULB through its monitoring agency can receive a feedback and direct the agency for corrective measures</li> </ul>	The ULB /Concessionaire
Sediment runoff	<ul style="list-style-type: none"> <li>EMC will plan the excavation, etc in consultation with the contractor and see to it that the mitigation measures are Implemented by the contractor</li> </ul>	Concessionaire
Safety of workers	<ul style="list-style-type: none"> <li>EMC to monitor and ensure the security and safety of workers</li> </ul>	Concessionaire
Interference with the natural drainage of the local ecosystem	<ul style="list-style-type: none"> <li>Possible changes in natural drainage system to be avoided</li> <li>ULB to closely oversee any changes in natural drainage system</li> </ul>	The ULB /Concessionaire
Flooding in other low lying areas	<ul style="list-style-type: none"> <li>EMC to monitor the construction and layout plan</li> </ul>	Concessionaire
Noise Pollution	<ul style="list-style-type: none"> <li>Make provision in the contract to limit the noise pollution</li> <li>EMC will monitor noise</li> <li>Low noise vehicles with proper maintenance and monitoring</li> </ul>	Concessionaire
Disposal of excavated material	<ul style="list-style-type: none"> <li>EMC to monitor the quantity and disposal</li> </ul>	Concessionaire

Safety hazard during the erection and operation	<ul style="list-style-type: none"> <li>Regular monitoring and reporting</li> </ul>	Concessionaire
<b>Operation Phase</b>		

Air pollution due to the MSW vehicles and processing plants	<ul style="list-style-type: none"> <li>EMC to ensure the air pollution of facility meets the norms</li> <li>Regular noise monitoring and reporting</li> </ul>	Concessionaire
Increase in power consumption	<ul style="list-style-type: none"> <li>EMC will prepare a detailed Energy Conservation plan and monitor the implementation with The operator of the facility</li> </ul>	Concessionaire
High air pollution along the various transport corridors leading to and away from The site	<ul style="list-style-type: none"> <li>EMC will monitor pollution and inspection log of vehicles</li> </ul>	Concessionaire
Noise pollution due to the operational activities	<ul style="list-style-type: none"> <li>EMC to monitor noise and give feedback for control</li> </ul>	Concessionaire
Noise pollution along the various transport corridors leading to and away from site	<ul style="list-style-type: none"> <li>EMC to monitor the noise pollution</li> </ul>	Concessionaire
Solid waste management issues	<ul style="list-style-type: none"> <li>EMC to monitor and report</li> </ul>	Concessionaire
Sewage/leachate treatment issues	<ul style="list-style-type: none"> <li>to maintain the STP as per the standard prescribed norms.</li> <li>EMC to monitor the same</li> </ul>	Concessionaire
Periphery Development	<ul style="list-style-type: none"> <li>The ULB initiatives to be Communicated to Concessionaire for its implementation</li> </ul>	Concessionaire

## 14.2. Social Standards

14.2.1. The Concessionaire shall provide a separate clinic at

the Project Site where people can approach for primary health advice

- 14.2.2. The Concessionaire shall provide community and training center within the Project Site wherein multiple employments related capacity building and training activities shall be undertaken and necessary skills shall be imparted.

- 14.2.3. The Concessionaire shall provide an employment opportunity based on training and skill assessment. The secondary employment and/or business opportunity shall be created through the facility operator or support services.
- 14.2.4. The Concessionaire shall provide training and awareness to labours at plant, which should be a continuous activity.
- 14.2.5. The Concessionaire shall setup MSW management and innovation center for every-one which will be useful to locals, students and others who would wish to work in this field.
- 14.2.6. The Concessionaire shall give prior importance to nearby population to get involved in the activities of horticulture, garden maintenance, energy management, etc at the Project Facilities.

## 15. Waste Reports

(Refer Clause 5.7)

### 15.1. Report for Processing Plant

#### 15.1.1 Daily Report for other details of the Processing Facility

<b>Date:</b>			
Downtime of weighbridges (hrs):			
		Downtime of MRF (hrs):	
Downtime of Processing Plant module (hrs):		Description of the module:	
Total quantity of MSW received:		100%	(tonnes)
Quantity of recyclable MSW recovered:		%	(tonnes)
Quantity of biodegradable and combustible MSW:		%	(tonnes)
Quantity of waste landfilled	Inert waste:	%	(tonnes)
	Process remnants:	%	(tonnes)
	Total(b):	%	(tonnes)
Quantity of unprocessed MSW at the Processing Plant			(tonnes)
Quantity of MSW rejected:	(tonnes)	Reasons for the rejection:	
Amount of energy sold to discom		-----MU	

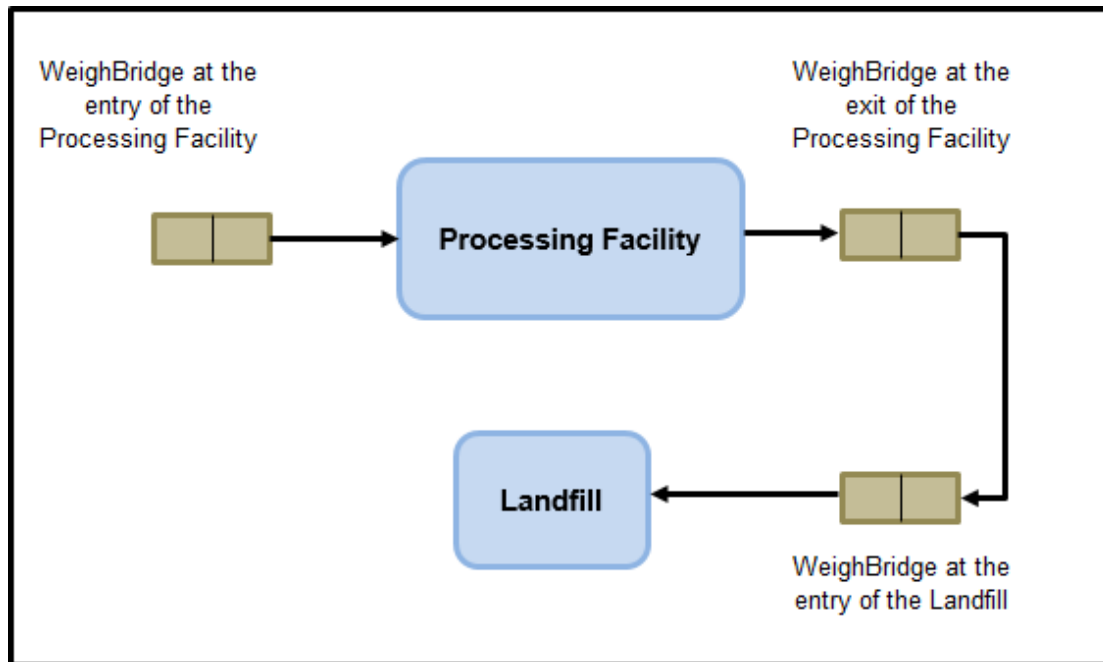
15.1.2 Monthly Report

Date from:		Date to:	
Total downtime of weighbridges(no of shifts):			
Total downtime of MRF(no of shifts):			
Downtime of each Processing Plant module (no of shifts):	S. No.	Module Description	Downtime
Total quantity of MSW received:			
		100%	(tonnes)
Total quantity of recyclable MSW recovered:			
		%	(tonnes)
Total quantity of biodegradable and combustible MSW:			
		%	(tonnes)
Total quantity of waste landfilled	Inert waste:		(tonnes)
	Process remnants:		(tonnes)
	Total:		(tonnes)
Total quantity of unprocessed MSW at the Processing Plant			
			(tonnes)
Monthly Average quantity of MSW delivered at the Processing Plant			
			(tonnes)
Total quantity of MSW rejected:	(tonnes)	Reasons	
		for the rejection:	
Note on compliance to applicable standards			

15.2. Consolidated Monthly Report

Monthly Waste Report		
Date from:		Date to:
Total quantity of MSW received at the Processing Facility	100%	____(tonnes)
Total quantity of waste landfilled	%	(tonnes)
Total energy sold to the discom		----- MU

### 15.3. Schematic Drawing of Weigh Bridges Locations





## 16. Independent Engineer (Refer Clause 13.1)

### A. Selection of Independent Engineer

#### 16.1. Selection of Independent Engineer

- 16.1.1. The provisions of Part 11 of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 16.1.2. The ULB shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule 16 B and thereupon shortlist 10 (ten) qualified firms in accordance with pre-determined criteria. The ULB shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the ULB to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the ULB within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the ULB shall, after considering all relevant factors, finalize and constitute a panel of 10 (ten) firms (the "Panel of Firms") and convey its decision to the Concessionaire.
- 16.1.3. The ULB shall invite the aforesaid firms in the Panel of Firms 10 submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the ULB shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 16.1.4. In the event that the ULB shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule 16 A shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinize the relevant records forming part of such selection process.

#### 16.2. Fee and expenses

- 16.2.1. In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the ULB shall endeavor that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the Total Project Cost. Payments not exceeding such 2% (two per cent) shall be borne equally by the ULB and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the ULB.
- 16.2.2. The nature and quantum of duties and services to be performed by the independent Engineer during the Operation Period shall be determined ULB in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the ULB and the Concessionaire.

#### 16.3. Constitution of fresh panel

No later than three years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule

16 A; provided that the ULB may, at anytime, prepare fresh panel with prior written consent of the Concessionaire.

**16.4. Appointment of government entity as Independent Engineer**

Notwithstanding anything to the contrary contained in this Schedule, the ULB may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the ULB and/or MORTH shall not be eligible for appointment as Independent Engineer.

**B. Scope of Work of Independent Engineer**

**16.5. Scope**

These Terms of Reference for the Independent Engineer (the "TOR") are being specified pursuant to the Concession Agreement dated..... (the "Agreement"), which has been entered into between the ULB and ..... (the "Concessionaire") for [Project name]. \*\* in the State on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR

**16.6. Definitions and Interpretation**

- 16.6.1. The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement
- 16.6.2. References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 16.6.3. The rules of interpretation stated in clause 1.2, 1.3, 1.4 of the agreement shall apply, mutatis mutandis, to this TOR

**16.7. Role of the Independent Engineer**

- 16.7.1. Review of Project drawings and milestones submitted by the Concessionaire in conformance with Schedule 5 and 6.
- 16.7.2. Review, inspection and monitoring of construction works as set out in Schedule 9.
- 16.7.3. Conducting tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Schedule 8.
- 16.7.4. Review, inspection and monitoring of operations and maintenance of the project through ICT base Monitoring toolkit or IT mechanism for checking waste collection in ULBs as set out in Schedule 10.
- 16.7.5. Determining as required under the Agreement the cost of any works or services or their reasonableness
- 16.7.6. Determining as required under the Agreement, the period or any extension thereof, for performing any duty or obligations
- 16.7.7. Assisting the parties in case of any dispute
- 16.7.8. Undertaking all other duties and functions in accordance with the Agreement
- 16.7.9. The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 16.7.10. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its

- comments/observations to the ULB and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 16.7.11. The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
  - 16.7.12. The Independent Engineer shall undertake a detailed review of the Construction Milestones defined and submitted by the Concessionaire and send its comments/ observations to the ULB and the Concessionaire within 15 days of receipt.
  - 16.7.13. Upon reference by the ULB, the Independent Engineer shall review and comment on the contracts entered into by the Concessionaire for the purpose of execution of this Agreement.
  - 16.7.14. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 7 days of receipt.
  - 16.7.15. The Independent Engineer shall inspect Project Facilities twice in a month, preferably after receipt of the monthly progress report from the Concessionaire, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the Scope of the Project and the Specifications and Standards.
  - 16.7.16. The Independent Engineer may inspect the Project Facilities more than 2 times in a month if any lapses, defects or deficiencies require such inspections.
  - 16.7.17. For determining that the construction conforms to construction requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance.
  - 16.7.18. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 10 (ten) days the steps proposed to be taken to expedite progress, and the period within which the Project construction would be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the ULB and the Concessionaire forthwith.
  - 16.7.19. The Monitoring Agency during operation period shall review the monthly report furnished by the Concessionaire, and shall submit its comments on the same to the ULB and to the Concessionaire within 7 days of the receipt of the report.
  - 16.7.20. The Monitoring Agency during operation period shall inspect the Project Facilities and processes at least twice in a month and carry out tests as might be deemed necessary and furnish the observations of the inspection to the Concessionaire and to the ULB within 7 days of such Inspection.
  - 16.7.21. The Monitoring Agency during operation period is authorized to conduct surprise checks on the Project Facilities and processes to ensure that they comply with the Project specifications.

- 16.7.22. The Monitoring Agency during operation period shall report the results of surprise checks to the ULB within 7 days of such checks.
- 16.7.23. The Monitoring Agency during operation period is authorized to require the Concessionaire to carry out such tests/ arrange to carry out such tests as it deems necessary and present the result and inferences of the same to the ULB.
- 16.7.24. In case any deficiency or maintenance requirement is observed by the Monitoring Agency during operation period during the inspection or tests, it shall report the same to the ULB along with the possible impact on the Project Facilities and the cost of rectification of the same.
- 16.7.25. The Monitoring Agency during operation period shall inspect the Project Facilities once the Concessionaire rectifies the defect and report the results of such inspection to the ULB.
- 16.7.26. The Monitoring Agency during operation period shall audit and certify the weighbridges located at the Processing Facility at least once a month and submit the results of such review to the ULB and the Concessionaire.
- 16.7.27. The Monitoring Agency during operation period shall audit the SWM quantity supply data recorded at Processing Facility site to ensure that the data reported by the Concessionaire is accurate and that the provisions of this agreement are conformed with. The Monitoring Agency during operation period is authorized to conduct surprise checks and tests for this purpose.

**16.8. Development Period**

- 16.8.1. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the ULB and the Concessionaire within 30 (thirty) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 16.8.2. The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receiving such Drawings or Documents.
- 16.8.3. The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the ULB and the Concessionaire within 15 (fifteen) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the ULB within 30 (thirty) days of receiving such report.
- 16.8.4. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 30 (thirty) days of receipt thereof.
- 16.8.5. Upon reference by the ULB, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the project, and furnish its comments within 15 (fifteen) days from receipt of such reference from the ULB.

## 16.9. Construction Period

- 16.9.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 16.9.2. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 7 (seven) days of receipt of such report.
- 16.9.3. The Independent Engineer shall inspect the Construction Works and the Project Highway once very month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Highway. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the ULB and the Concessionaire within 7 (seven) days of the inspection.
- 16.9.4. The Independent Engineer may inspect the Project Highway more than once in a month if any lapses, defects or deficiencies require such inspections.
- 16.9.5. For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-I I (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MORTH (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 16.9.6. The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 16.9.7. The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 16.9.8. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such

remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

- 16.9.9. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Highway is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the ULB and the Concessionaire forthwith.
- 16.9.10. If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the users, it shall make a recommendation to the ULB forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 16.9.11. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the ULB forthwith, recommending whether or not such suspension may be revoked by the ULB.
- 16.9.12. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the ULB and the Concessionaire of the same. T
- 16.9.13. The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article I4 and Schedule-I.
- 16.9.14. Upon reference from the ULB, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information works and services as set forth in Article 13 and certify the reasonableness of such costs for payment by the ULB to the concessionaire
- 16.9.15. The Independent engineer shall aid and advise the concessionaire in preparing the maintenance manual.

#### 16.10. **Operation Period**

- 16.10.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 16.10.2. The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 16.10.3. The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 7 (seven) days of receipt of such report.

- 16.10.4. The Independent Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire. but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the ULB and the Concessionaire within 7 (seven) days of the inspection.
- 16.10.5. The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 16.10.6. The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. it shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 16.10.7. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 16.10.8. The independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the ULB for such delay.
- 16.10.9. Deleted
- 16.10.10. The Independent Engineer shall monitor and review the curing or defects and deficiencies by the Concessionaire as set forth in Clause 21.4.
- 16.10.11. In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the ULB and the Concessionaire within 15 (fifteen) days of receiving the proposal.

#### 16.11. Termination

- 16.11.1. At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Highway for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. if the Independent Engineer determines that the status of the Project Highway is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 16.11.2. The Independent Engineer shall inspect the Project Highway once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the ULB and the Concessionaire.

**16.12. Determination of costs and time**

- 16.12.1. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 16.12.2. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

**16.13. Assistance in Dispute resolution**

- 16.13.1. When called upon by either Party in the event of any Dispute. the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 16.13.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

**16.14. Other duties and functions**

- 16.14.1. The Independent Engineer shall perform all other duties and functions specified in the Agreement.

**16.15. Miscellaneous**

- 16.14.2. The Independent Engineer shall notify its programme of inspection to the ULB and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection
- 16.14.3. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the ULB forthwith
- 16.14.4. The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer. whereupon the Independent Engineer shall send one of the copies 10 the ULB along with its comments thereon.
- 16.14.5. The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 16.14.6. Upon completion of the assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the ULB or such other person as the ULB may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the ULB.

**16.16. Assistance to ULB in review of book of accounts**

- 16.16.1. Upon receipt of copy of books of accounts from ULB, the Independent Engineer shall review the Escrow account statements with respect to the provisions of the Escrow agreement, books of accounts for information pertaining (a) the traffic count (b) Fee determination thereof, and (c) Project costs, and (d) such other information relating or resulting from other duties and functions of Independent Engineer in accordance with the Agreement, as the ULB may reasonably require and submit its report within 10 days.





## 17. Vesting Certificate

- 1 The Commissioner, ULB (the “**ULB**”) refers to the Concession Agreement dated ..... (the “**Agreement**”) entered into between the ULB and ..... (the “**Concessionaire**”) for Integrated Solid Waste Management in [place] on design, build, finance, operate and transfer (“DBFOT”) basis.
- 2 The ULB hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Clause 29.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the ULB shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the ULB, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ..... day of ....., 20... at [Place].

AGREED, ACCEPTED AND SIGNED  
For and on behalf of CONCESSIONAIRE  
by:

(Signature)

(Name)

(Designation)

(Address)

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

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

## 18. Substitution Agreement

THIS SUBSTITUTION AGREEMENT is entered into on this the ..... day of 20....

### AMONGST

1. The [ ULB name], established under the \_\_\_\_\_ Act 1974, represented by its Municipal Commissioner and having its principal offices at [Address of ULB] (hereinafter referred to as the “ULB” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. .... LIMITED, a company incorporated under the provisions of the Companies Act, 1956/ 2013 and having its registered office at ....., (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. name and particulars of Lenders’ Representative and having its registered office at , acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

### WHEREAS:

- A. The ULB has entered into a Concession Agreement dated .....with the Concessionaire (the “Concession Agreement”) for the Project on design, build, finance, operate and transfer basis (DBFOT), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Lenders have requested the ULB to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the ULB has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

#### 18.1. Definitions and Interpretation

##### 18.1.1 Definitions

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

**“Agreement”** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of any breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

**“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956/ 2013, selected by the Lenders’ Representative, on behalf of Lenders, and proposed to the ULB for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Sub-clause 18.3.2(a) of Clause 18.3.2; and

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually.

## 18.1.2 Interpretation

- (a) References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Lenders.
- (b) References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- (c) The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- (d) The rules of interpretation stated in Clauses 0, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## 18.2. Assignment

### 18.2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

### 18.3. Substitution of the Concessionaire

#### 18.3.1 Rights of substitution

- (a) Pursuant to the rights, title and interest assigned under Clause 18.2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- (b) The ULB hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

#### 18.3.2 Substitution upon occurrence of Financial Default

- (a) Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the ULB for its information and record. A Notice of Financial Default under this Clause 18.3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- (b) Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- (c) At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the ULB to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 27 of the Concession Agreement, and upon receipt of such notice, the ULB shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the ULB may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the ULB may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the

avoidance of doubt, the ULB expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### 18.3.3 Substitution upon occurrence of Concessionaire Event of Default

- (a) Upon occurrence of a Concessionaire Event of Default, the ULB shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- (b) In the event that the Lenders' Representative makes a representation to the ULB within the period of 15 (fifteen) days specified in Sub-clause (a) of Clause 18.3.3, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the ULB shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### 18.3.4 Procedure for substitution

- (a) The ULB and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the ULB under Sub-clause 18.3.3(b) of Clause 18.3.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the ULB under the Concession Agreement and towards the Lenders under the Financing Agreements.
- (b) To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the ULB for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the ULBs that all or any of such criteria may be waived in the interest of the Project, and if the ULBs determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- (c) Upon selection of a Nominated Company, the Lenders' Representative shall request the ULBs to:
  - (i) accede to transfer to the Nominated Company the right to construct, operate and maintain

the Project in accordance with the provisions of the Concession Agreement;

- (ii) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (iii) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- (d) If the ULBs has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the ULBs, the Nominated Company shall be deemed to have been accepted. The ULBs thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the ULBs, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 18.3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

#### 18.3.5 Selection to be binding

The decision of the Lenders' Representative and the ULBs in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the ULBs taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or ULBs and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the ULBs or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

### 18.4. Project Agreements

#### 18.4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## 18.5. Termination of Concession Agreement

### 18.5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the ULBs to terminate the Concession Agreement forthwith, and upon receipt of such notice, the ULBs shall undertake Termination under and in accordance with the provisions of Article 28 of the Concession Agreement.

### 18.5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the ULBs is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Sub-clause 18.3.3(b) of Clause 18.3.3, the ULBs may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### 18.5.3 Realisation of Debt Due

The ULBs and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim in accordance with the provisions of the Concession Agreement.

## 18.6. Duration of the Agreement

### 18.6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements.

## 18.7. **Indemnity**

### 18.7.1 General indemnity

- (a) The Concessionaire will indemnify, defend and hold the The ULB and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for



any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- (b) The The ULB will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the The ULB to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the The ULB, its officers, servants and agents.
- (c) The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

#### 18.7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 18.7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

#### 18.8. Dispute Resolution

##### 18.8.1 Dispute resolution

- (a) Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the ULB/The ULB, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- (b) The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Name of the Place] and the language of arbitration shall be English.

## 18.9. Miscellaneous Provisions

### 18.9.1 Governing law and jurisdiction

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

### 18.9.2 Waiver of sovereign immunity

The The ULB unconditionally and irrevocably:

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

### 18.9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### 18.9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly Authorized Representatives of the Parties.

#### 18.9.5 Waiver

(a) Waiver by any Party of a default by another 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 of or obligations under this Agreement;
- (ii) shall not be effective unless it is in writing and executed by a duly Authorized Representative of the 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 thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 18.9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### 18.9.7 Survival

(a) Termination of this Agreement:

- (i) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (ii) 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.

(b) All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### 18.9.8 Severability

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

negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 18.8 of this Agreement or otherwise.

#### 18.9.9 Successors and assigns

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

#### 18.9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after

5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### 18.9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

#### 18.9.12 Authorized Representatives

Each of the Parties shall by notice in writing designate their respective Authorized Representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such Authorized Representative by similar notice.

#### 18.9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and



(e-mail address)

SIGNED      SEALED      AND  
DELIVERED

For and on behalf of ULB4 by:      (Signature) (Name) (Designation) (Address) (Fax No.)

(e-mail address)

[Insert Additional ULBs if applicable]

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative:

(Signature) (Name) (Designation) (Address) (Fax)

(e-mail address)

In the presence of:

1.

2

## 19. Land Lease Agreement

This LEASE AGREEMENT made on this \_\_\_\_ day of \_\_\_\_ in the year [□]. BETWEEN

[Name of the ULB], established under the \_\_\_\_\_ Act, 1974 (State Government) and having its registered office at [Address of the ULB] acting through the Commissioner (hereinafter referred to as the “**ULB**” or “**Lessor**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the ONE PART

AND

[XXX], a Company incorporated under the Companies Act, 1956/ 2013 and having its registered office at [XXX] (hereinafter referred to as “**Concessionaire**” or “**Lessee**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its associate/ group companies, successors and permitted assigns) of the OTHER PART

The ULB and Concessionaire are hereinafter referred to individually as the “Party” and collectively as the “Parties”

- A. The [ULB Name] covers a total area of XXXX sq.km and an estimated population of XXXX lakhs (in the year .....).
- B. The [ULB] is desirous of improving its municipal solid waste management and disposal capabilities in order to enable the due discharge of its functions under the SWM Rules 2016 and for that purpose has approved the establishment of Municipal Solid Waste Project by the Lessee (“Project”) and has entered into a concession agreement dated \_\_ with M/s \_\_, the Developer (“Concession Agreement”), on the same date as this lease Agreement, for [**\*\***] years under which the ULB has appointed the Concessionaire to perform, execute and implement the Project under and in accordance with the terms and provisions of Concession Agreement.
- C. For due implementation of the Project and to discharge its obligations under the Concession Agreement, the ULB is handing over to the Lessee (the “Concessionaire” under the Concession Agreement), by way of this Land Lease Agreement (“**Agreement**”), the Demised Premises (more particularly delineated in **Schedule A** hereto and shown in the site map attached thereto) for the purposes of performing, executing and implementing the Project including constructing, operating and maintaining the integrated SWM Processing Facility, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. This Agreement shall be co-terminus with the Concession Agreement and is to be read, for any interpretation; together with the provisions of the Concession Agreement.



2. The terms that are used but not defined in this Agreement shall have the same meaning as given to them in the Concession Agreement.
3. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the Lease Payment (“**Lease Payment**”) stipulated in Clause 4 below; the Lessor hereby demises to the Lessee, all the land (together with any physical structures existing thereon) which is described, delineated and shown in the Schedule A hereto (the "**Demised Premises**"), to hold the said Demised Premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof. The Lessor be entitled to handover possession of the Demised Premises in parts. The Term of this Agreement shall be co-terminus with the Concession Agreement. The Lessor hereby agrees and authorizes the construction, operation and maintenance of each of the Project Facilities on the Demised Premises in accordance with the terms of the Concession Agreement.
4. In consideration of the handover of the Demised Premises under this Agreement. The Lessor shall, from the COD, receive a Lease Payment of **INR 1 (Rupee One) per annum per SqM**, calculated based on Site Area. All taxes, including the lease tax, in relation of the Lease of the Demised Premises shall be borne and paid by the Lessee.

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
Annual Lease payment (in Rs./acre)																									
Annual Lease Payment (in Rs.)																									

5. The Demised Premises are being vested with the Lessee, under this Agreement, free from any Encumbrances (other than the existing physical structures thereon which has been inspected by the Lessee and agreed to be taken over in accordance with the terms of the Concession Agreement), whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances under the Demised Premises which materially adversely affect its rights in relation to the Demised Premises the Project, it shall notify the Lessor, which shall, within twenty one (21) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within twenty one (21) days from the notice thereof, the Lessee may remove or cause to be removed such encumbrance and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.
6. The Demised Premises are being vested with the Lessee, under this Agreement only for the purposes of the

Project including for the purposes of developing, establishing, designing, constructing, operating and maintaining the Plant, which the Lessor is desirous of being constructed, operated and maintained on the Demised Premises for the purposes of enabling the processing and disposal of SWM in accordance with the Concession Agreement. The Lessor hereby authorizes and consents to the receipt of consignments of Municipal Solid Waste, the storage and processing of Municipal Solid Waste and disposal of SWM.

7. The Lessor hereby authorizes the Lessee, to construct, erect, own, operate and maintain any superstructures, facility or any movable or immovable structures comprising each of the Project Facilities on the Demised Premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the Demised Premises as of the date of this Agreement. The Lessee hereby agrees that the construction, operations and maintenance of the each Project Facility at the Demised Premises and the receipt, storage and processing of Municipal Waste at the Demised Premises, being undertaken pursuant to the Concession Agreement granted by it and for the purposes of enabling the The ULB to discharge their functions of managing, processing and disposing Municipal Waste.
8. The Lessee shall have the right to, after taking prior permission of the Lessor, vest with the Lenders the power to take over the control, possession and all rights and interests in relation to the Demised Premises by appointing a person, the Nominated Company, to replace the Lessee and undertake the construction, operation and maintenance of the Plant upon the occurrence of an Event of Default by the Lessee, as the case may be, under any of the Financing Agreements for the Project. The Lessor shall then assign / novate this Agreement in favour of the Nominated Company, which shall constitute an agreement between the Nominated Company and the Lessor on the terms and conditions of this Agreement as existing at the time of such assignment / novation.
9. The Lessor hereby authorises the Lessee to create any Encumbrance over the Project Facilities constructed on the Demised Premises (excepting the land) and this Agreement in favour of the Lenders for enabling financing of the construction, operation and maintenance of the Project. The Lessor agrees that it shall facilitate such agreement as may be required by the Lenders to enable financing of the Project and creation of the Encumbrance required by the Lenders.
10. Without prejudice to the terms of this Agreement, the Lessor shall be governed by the terms of any agreement that the Lenders may have entered into with the Lessor in respect of the Encumbrance over the Project Facilities (other than the land constituting the Site which shall not be mortgaged), any assets of the Project and this Agreement, created in favour of the Lenders.
11. The Lessor hereby covenants and assures the Lessee that:
  - a) all the land comprising the Site is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Plant and the Project Facilities;
  - b) the Site is free from any encroachment or encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any The ULB, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto;

- c) Lessor is the lawful owner of the lands constituting the Demised Premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the Demised Premises for the Project;
- d) subject to Clause 4, it shall not increase the lease payment due and payable by the Lessee under the provisions of this Agreement;
- e) it shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demised Premises and all rights in relation thereto, including the creation of security interest in favour of the Lenders in accordance with the provisions of the Concession Agreement;
- f) subject to terms of the Concession Agreement, it shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the SWM Processing Plant; (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use; by the Lessee of the Demised Premises and the Plant;
- g) It shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Agreements;
- h) there are no litigation, claim, demand or any proceedings (whether administrative, legal or quasi-judicial) pending before any The ULB in respect of the Demised Premises or its use for the purposes of managing, processing and disposing SWM; and
- i) the Lessee shall have complete, lawful and uninterrupted, possession, control and use of the Demised Premises.

12. The Lessee hereby covenants with the Lessor as follow:

- i. That it shall implement the Project in accordance with the Concession Agreement; and
- ii. that it shall observe and perform all terms; covenants, conditions and stipulations of this Agreement.

13. The Lessor has lawful title, possession and control of all the lands constituting the Site and has the requisite right and The ULB to lease the same to Lessee for the Term for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful Vacant Possession, enjoyment/ occupation and use of the Demised Premises throughout the Concession Period, without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person claiming through under or in trust for Lessor or from any third person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Person claiming right, title or interest to or in the Demised Premises or any part thereof or challenging the validity of the usage of the Demised Premises for the Project or challenging the validity of this Agreement, as also against any actions, proceedings, damages, losses and expenses caused to Lessee as a result or in consequence of any such

claims or demands as aforesaid.

- 14.(a) Subject to Sub-Clause(b) and(c) below, no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part to, by any Party without prior written consent of the other Party and in the event of any assignment the assignee shall assume the duties and liabilities of the assignor
- (b) It is hereby specifically agreed that the Lessee shall, in the event of forming a limited company either as subsidiary company or jointly along with any other company or

otherwise, be at liberty to assign and transfer the Plant, the Demised Premises and this Agreement or the rights and benefits hereof or duties hereunder to such newly formed limited company or in favour of such subsidiary company of the Lessee or any of its holding company for the time being. The Lessee, shall; however, in such event obtain formal consent from the Lessor, which consent shall not be withheld by Lessor. Any assignment by the Lessee shall be subject to the condition that the assignee shall assume the duties and liabilities of the Lessee.

- (c) The Lessor hereby agrees that the Lessee shall not require any prior approval of the Lessor for creating any Encumbrance, right, title, or interest over the Demised Premises (excepting land) and the Project Facilities under his ownership in accordance with the Concession Agreement in favour of the Lenders.
  - (d) Lessor confirms that the Financing Documents may include suitable rights in favour of the Lenders for taking over the Demised Premises (excepting land) and the Plant for management, in enforcement of their security upon the happening of an event of default thereunder the Concession Agreement on the part of the Lessee.
15. The Lessor hereby assures and represents to the Lessee that the vesting of the Demised Premises under this Agreement shall be irrevocable for as long as the Concession Agreement remains in force and the Lessor shall not Terminate or seek to Terminate this Agreement except upon the expiry or early Termination of the Concession Agreement. The Parties hereby agree that on the expiry or Termination of the Concession Agreement, the Demised Premises shall be handed back to the Lessor in accordance with the provisions of the Concession Agreement and that this Agreement shall Terminate only on the handing over of the Plant and the Site to the Lessor in accordance with the terms of the Concession Agreement.
16. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration in accordance with Article 38 of the Concession Agreement as per provisions of the Arbitration and Conciliation Act; 1996. The governing law of the arbitration shall be Indian law. The Lessor hereby recognizes that this is a commercial act being undertaken by the Lessor and that it hereby unconditionally and irrevocably waives any right of immunity, sovereign or otherwise from legal proceedings that may be initiated to enforce any provisions of this Agreement.
17. The Courts in the city of execution of Agreement shall have exclusive jurisdiction over all matter arising out of or relating to this Agreement.

IN THE WITNESS WHEREOF the Parties have affixed therein and sealed to this Lease Agreement the day and year first hereinabove written: . .

SIGNED; SEALED AND DELIVERED  
ON BEHALF OF  
THROUGH:

\_\_\_\_\_

AUTHORISED SIGNATORY

\_\_\_\_\_

SIGNED; SEALED AND DELIVERED IN THE NAME AND  
IN THE NAME AND ON BEHALF OF THE LESSOR  
The LESSEE THROUGH:

\_\_\_\_\_

AUTHORISED SIGNATORY IN PRESENCE OF:

\_\_\_\_\_

## 20. Tipping Fee/Royalty Payment

[Schedule of Tipping Fee/Royalty Payment to be included here]



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**REQUEST FOR PROPOSAL**  
*Integrated Solid Waste Management Project*

**REQUEST FOR PROPOSAL**  
**FOR**  
**DEVELOPMENT OF INTEGRATED SOLID WASTE MANAGEMENT**  
*(Collection, Transportation & Processing)*

**FOR**

.....

**THROUGH**

**PUBLIC PRIVATE PARTNERSHIP**

**Volume ...: Instruction to Bidders**

**Name & Address of Contracting Agency/Department.....**

**Date....**

**REQUEST FOR PROPOSAL**  
*Integrated Solid Waste Management Project*

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**REQUEST FOR PROPOSAL**  
*Integrated Solid Waste Management Project*

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**REQUEST FOR PROPOSAL**  
*Integrated Solid Waste Management Project*

**AUTHORITY DETAILS.....**

**Notice Inviting Request for Proposal**

No. -----

Dated: -----

Online bids are hereby invited on behalf of Authority Details..... from eligible entities for the work mentioned below:

Name of Work	Estimated Project Cost (In Cr)	Plant Capacity (In TPD)	Bid Security/EMD	Performance Security	RFP Document Fee
Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation & Processing with WTE in ..... on Public Private Partnership (PPP)		<b>500 TPD and above</b>	<b>0.5% of the Estimated Project Cost</b>	<p>Prior to achievement of COD, Performance Security shall be 10% of the Estimated Project Cost i.e. INR .....</p> <p>Upon achievement of COD, as per the terms of the Concession Agreement, Performance Security shall be 5% of the Estimated Project Cost i.e. INR.....</p>	

1. RFP documents can be seen on the website: <http://.....> and downloaded from the portal: <http://.....> by the eligible entities registered on the portal.
2. Document Fee has to be paid online through RTGS/NEFT during the "Downloading of RFP Document & Payment of RFP Document Fees or via DD of " Rs. ....- (.....) in favour of "....." payable at .....
3. The prospective bidder shall be required to submit an EMD equivalent to 0.5% value of the Estimated Project Cost in the form of Bank Guarantee to the ULB as per terms of the Agreement.
4. The prospective bidder shall be required to submit a Performance Security equivalent to 10% value of the Estimated Project Cost in the form of Bank Guarantee to the ULB as per terms of the Agreement and after the achievement of the Commercial Operation Date (COD) of the waste processing facility/Power Plant, a new Bank Guarantee equivalent to 5% value of Estimated Project Cost will be submitted to the ULB and in return, the ULB shall return the earlier Bank Guarantee of 10% value of Estimated Project Cost to the concessionaire
5. The RFP may be postponed or cancelled at any time due to administrative reasons and no claim shall be entertained on this account.

**REQUEST FOR PROPOSAL**  
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6. Possession of DSC and registration of the contractors on the portal i.e. <http://.....> is a prerequisite for e-tendering. For further details and e-tendering schedule, visit website <http://.....>

**-Sd-**  
**Name,**  
.....  
.....\..

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**Disclaimer**

1. The information contained in this Request for Qualification cum Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of Department or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
2. This RFP is not an agreement and is neither an offer nor invitation by Department to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their key submissions, technical bid and financial bid pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by Department in relation to the Project.
3. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for Department, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.
4. Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Department accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
5. The Department, its employees and advisors, make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with pre-qualification of Bidders for participation in the Bidding Process.
6. The Department also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.
7. The Department may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
8. The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Department/ULB, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Department shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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**Definitions**

The words and expressions beginning with capital letters and defined in this RFP shall, unless repugnant to the context, have the meaning ascribed herein. The words and expressions beginning with capital letters but not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein. The undermentioned words and expressions used in this RFP shall have the meaning set out below:

<b>Applicable Law</b>	Shall mean all laws, brought into force and effect by the Government of India or the State Government of ....., including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of the Concession Agreement
<b>Applicable Permits</b>	Shall mean all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of the Concession Agreement
<b>Concession Agreement</b>	Shall mean the agreement to be executed by the SPV with the ULBs and Department for discharging obligations related to the Project and includes any amendment or modification made to the said agreement in accordance with the provisions thereof
<b>Concession Period</b>	Shall mean the period of <u>Twenty Five(25) years</u> , commencing from the date of the COD.
<b>Concessionaire</b>	Shall mean the SPV incorporated by the Selected Bidder to implement the Project and sign the Concession Agreement with the ULB.
<b>“Commercial Operations Date” or “COD”</b>	means the date when the Power Plant achieves commercial operations, pursuant to the provisions of the Concession Agreement;
<b>Department</b>	Shall means Department of Urban Development
<b>Designated ULB</b>	Shall mean the .....(If Cluster Project)
<b>Financial Capacity</b>	Shall have the meaning ascribed to it in Clause 3.2 (B)
<b>MSW or Municipal Solid Waste or Waste or Solid Waste</b>	Shall mean the Municipal Solid Waste as described under the Solid Waste Management Rules, 2016
<b>PPA or Power Purchase Agreement</b>	Shall mean the power purchase agreement to be entered into between the SPV and the Distribution Licensee for purchasing the electricity generated at the Power Plant.
<b>Power Plant</b>	Shall mean the waste to energy plant to be set up by the Selected Bidder as per the provisions of the Concession Agreement
<b>Participating ULBs</b>	Shall mean Municipal Corporations/ Councils/ Committees covered under the cluster during the Concession Period. ....(If Cluster Project)
<b>ULB</b>	Shall mean the Municipal Corporation/Council .....



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<b>Project</b>	Means the integrated solid waste management project for collection, transportation, processing and disposal of MSW for the ..... Cluster, as per terms and conditions of the Concession Agreement
<b>Project Area</b>	Shall mean the municipal areas under the Participating ULBs including areas under licensed colonies etc.
<b>Selected Bidder</b>	Shall mean the Bidder that has been issued the Letter of Award by the Department for the Project
<b>..... Cluster<sup>1</sup></b>	Shall mean the urban local bodies of the State of ....., namely the following: .....Cluster (i) (ii) (iii) (iv) (v)
<b>SPV or Special Purpose Vehicle</b>	Shall mean the company under the Companies Act, 2013, incorporated by the Selected Bidder for discharging its obligations with respect to the Projects in terms of the Concession Agreement
<b>SWM Rules</b>	Shall mean the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986)
<b>Technical Capacity</b>	Shall have the meaning ascribed it in 3.2 (A)
<b>User Charges/ User Fee</b>	Shall mean a fee notified by the Government of ..... and Participating ULBs from time to time on the waste Generator in the Project Area
<b>Waste Generator</b>	Shall mean persons or establishments generating MSW within the jurisdiction of the Participating ULBs

<sup>1</sup> The project can be developed for Individual ULB or for cluster of ULBs depending upon the waste quantum and project feasibility and accordingly the RFP needs to be amended by amending the cluster respective clauses

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**1. Introduction**

**1.1 Project Background**

The .....(the “**Department/ ULB**”) has initiated the online bidding process for selection of concessionaire (“**Concessionaire**”) for undertaking the integrated solid waste management project for ..... Cluster and for providing the services detailed in the Concession Agreement (hereinafter referred to as “**Project**”). The ..... comprises of the Urban Local Bodies (“**ULBs**”) of .....operating in Districts of the State of ..... (hereinafter referred to as the “..... **Cluster**”). The department has decided to carry out the bidding process (defined hereinafter) for the selection of the Concessionaire to whom the project may be awarded.

1.1.1. The brief particulars of the Project are as follows:

Name of the Project	Estimated Project Cost (In Rs. cr.)	Capacity in TPD
Integrated Solid Waste Management Project for Collection, Transportation & Processing with WtE in ..... on Public Private Partnership (PPP) for .....ULB/ Cluster	.....	500 TPD and above

1.1.2 The Selected Bidder would be required to provide the undermentioned Project related services including inter alia the following, within the jurisdiction of the Participating ULBs:

- Door to door collection of MSW in segregated manner from Waste Generators of ..... ULB/ Cluster (including Participating ULBs of cluster);
- Transportation of MSW from secondary collection points to the Processing Facility.
- Setting up and managing transfer station(s) (if required) to facilitate transportation of MSW to Processing Facilities.
- Designing and setting up at least .....MW waste-to-energy plant at ..... “Project Site” for processing of waste along with facility for biological treatment of organic waste and set up a leachate treatment facility.
- Operation and maintenance of the Processing Facilities as per SWM Rules at Project Site.
- Transportation of inert/residual waste from Processing Facility to the earmarked site provided by the ULB;
- Setting up and managing Complaint Redressal Centres at ..... to monitor Project activities and to address user complaints and maintain its record;
- In cluster Project - The concessionaire shall be obligated to deploy its representative in each participating ULB for prompt cognizance and redressal of any service complaint related to one or more of concessionaire's obligation under the Agreement. The participating ULB shall provide for the seating arrangement for such representative deployed by concessionaire.

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- Respective ULB(s) shall provide and demarcate the area for dumping of fresh waste till the Concessionaire achieves COD of their Processing facility. The Concessionaire shall be responsible for proper processing/ management of waste collected under the scope of this project.
- The Concessionaire shall neither have any right/ entitlement in respect of collection and/or appropriation of the User Charges; which shall exclusively and fully reside/vest with the competent authority/ Urban Local Body (ULB).

- 1.1.3 The Department/ULB shall receive Proposal(s) and other documents pursuant to this Request for Proposal (“**RFP**”) as modified, altered, amended and clarified from time to time and such Proposal(s) and other documents shall be prepared and submitted in accordance with terms of this RFP. The Proposal(s) shall be evaluated by the Department.
- 1.1.4 The estimated cost of the project (the “**Estimated Project Cost**”) has been specified in clause 1.1.1 above. The assessment of actual cost, however, will have to be made by the Bidders.
- 1.15 The Draft Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).

**1.2 General Information**

- 1.2.1 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or .....[**Name of Tender Inviting agency**]’s right to amend, alter, change, supplement or clarify the scope of Project, the concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the .....[**Name of Tender Inviting agency**]
- 1.2.2 The .....shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the .....pursuant to this RFP, as modified, altered, amended and clarified from time to time by the .....[**Name of Tender Inviting agency**] (collectively the “**Bidding Documents**”), and the Bid shall be prepared and submitted in accordance with such terms on or before the date specified for submission of the Bid (the “**Bid Due Date**”).
- 1.2.3 The Selected Bidder shall be required to incorporate a company under the Companies Act, 2013 (the “**SPV**”), which shall undertake obligations with respect to the Project and execute the Concession Agreement with the Department / ULB and the Designated ULB (the “**Concession Agreement**”).

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**2. Brief description of Bidding Process**

**2.1 General**

The .....[Name of Tender Inviting agency] has adopted a single stage online bidding process consisting of submission of a technical bid and a financial bid (both terms are defined hereafter) (the “Bidding Process”) for selection of the Bidder for award of the Project. Any person intending to participate in the Bidding Process online, is required to get registered for the electronic tendering system on the portal [http://.....]. For more details, please see the information in registration info link on the home page.

Eligibility and qualification of the bidder (The “Bidder”, which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted (“Technical Bid”) with respect to eligibility and qualifications criteria prescribed in this RFP. The financial bid submitted online (“Financial Bid”) shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP. For a avoidance of doubt, it is clarified that Financial Bid has to be submitted online only. No physical hard copy of Financial Bid is to be submitted by the Bidders.

2.1.1 Bidders shall be required to examine the Project in greater detail, and carry out, at their cost, such studies with respect to the Estimated Project Cost set out in the Feasibility Report, annexed as Annexure VII to the RFP, before submitting their respective Bid for award of the Project.

2.1.2 The Bids are to be submitted online and are required to be digitally signed, therefore, the Bidders are advised to obtain DSC. The physical hard copy submission of the Technical Bid shall be in accordance with Clause 2.9.2

2.1.3 The Bidders may be called for a technical presentation to share their approach and methodology for undertaking the Project including their views on the Project milestones and timelines.

2.1.4 The Department reserves the right to visit at its own cost, one or more Project Area(s) listed by the Bidder in its list of experience, to independently verify and satisfy itself about the quality of work performed and also verify the certificates filed by the Bidder, as part of Bidding Documents. Bidders shall be responsible to organize meetings with their respective clients and also take around Department’s/ Designated ULB’s team in the Project Area(s).

2.1.5 Any queries or request for additional information concerning this RFP shall be submitted through email on Email ID mentioned in this RFP document. Bidders are advised to be specific and pose clause wise queries in an unambiguous manner. The .....[Name of Tender Inviting agency] reserves the right not to respond to vague and frivolous queries. The subject of the email shall mention the following:

“QUERIES/REQUEST FOR ADDITIONAL INFORMATION: REQUEST FOR PROPOSAL FOR DEVELOPMENT OF INTEGRATED SOLID WASTE MANAGEMENT PROJECT FOR ..... CLUSTER ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS

The pre-bid queries should be submitted in the format specified below to be considered for response. Pre-bid queries not submitted in the prescribed format shall not be responded to

S. No.	Particulars	Details
1.	Organization	

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<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
2.	Document Name	
3.	Page Number	
4.	Clause Number	
5.	Query	
6.	Suggestion, if any	
7.	Name & Designation of point of contact	
8.	Contact No. & Email ID	

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**2.2 Schedule of Bidding Process**

**2.2.1** The .....[Name of Tender Inviting agency] would endeavour to adhere to the following schedule: However, the .....[Name of Tender Inviting agency] may, at its own discretion, revise or extend any of the timelines set-forth in this schedule

S. No.	MC Stage	Contractor Stage	Start Date & Time	Expiry Date & Time	Envelopes
1.	Release of Tender	-			-
2.	-	Tender Download			Financial Bid Envelope, EMD/ Bid Security Envelope, Technical Bid Envelope
3.	-	Submit Bids online			Financial Bid Envelope, EMD/ Bid Security Envelope, Technical Bid Envelope
4.		Physical Hard Copy Submission			
5.	Open EMD & Technical/PQ bid	-			Bid Security/ EMD Envelope, Technical Bid Envelope
6.	Technical Evaluation	-			Technical Bid Envelope
7.	Open Financial / Price-Bid	-			Financial Bid Envelope

**2.2.2** The date and time will be binding on all the Bidders. The Bidders are required to complete the stage within the stipulated time as per the schedule to continue their participation in the Bidding Process. All online activities are time tracked and the system enforces time locks that ensure that no activity or transaction can take place outside the start and end dates and time of the stage as defined in the Instruction to Bidders. The Bidder should check the status of a particular stage by following the below mentioned procedure:

1. Click on "Main" after login into the portal
2. Select "RFP Search" and click on "Go"
3. Next screen will appear on the screen and click on "Search" button to view the list of various tenders.
4. Select the RFP whose status is to be viewed by clicking on the RFP no.
5. Click on "Action page" button. The status of all the stages i.e. whether "Pending" or "Completed" can be viewed.



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**2.3.5 Right to accept and to reject any or all Bids**

- (i) Notwithstanding anything contained in this RFP, the Department reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- (ii) The Department reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the Department to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Department thereunder.
- (iii) The Department reserves the right to reject any Proposal and appropriate the Bid Security if in case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution or during the period of subsistence of the Concession Agreement that:
  - a. The Bidder has made a material misrepresentation or has furnished any materially incorrect or false information, or
  - b. The Bidder does not provide, within the time specified by the Department, the supplemental information sought by the Department for evaluation of the Proposal
- (iv) Any misrepresentation or furnishing an / improper response shall lead to disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified/ rejected. The Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the Letter of Award (“LoA”) or entering into of the Concession Agreement, and if the Bidder has already been issued the LoA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in the RFP, be liable to be terminated, by a communication in writing by the Department/ Designated ULB to the Bidder, without the Department being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be. In such an event, the Department shall forfeit and appropriate the Bid Security or EMD, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Department/ Designated ULB for, inter alia, time, effort, cost and effort of Department/ Designated ULB, without prejudice to any right or remedy that may be available to Department/ Designated ULB.
- (v) Further, in case disqualification or rejection occur after appointment of Selected Bidder or in case the selected bidder does not sign the Concession Agreement, then the Department shall take any such measure as it deems fit in the sole discretion of the Department, including annulling the Bidding Process and proceeding with re-tendering the Services

**2.3.6 Other Instructions**

- (i) The Bidders shall submit details of their Financial Bid in the online templates of the online Bid. The Financial Bid has to mandatorily be submitted online.
- (ii) Technical Bid Documents except EMD/Bid Security that cannot be submitted online, should be put in separate sealed envelopes and the sealed envelopes together with the documents listed in Technical Bid shall be sealed in another cover and delivered to this office before the date and time mentioned in the RFP Notice.
- (iii) Bidders must strictly abide by the stipulations set forth in notice inviting RFP and while tendering for the work, the Bidders shall adopt only the three-envelope system.
- (iv) The envelope containing the Financial Bid envelope has to be submitted mandatorily online and shall not be accepted physically under any circumstances. In case any bidder does not comply



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with procedure given above, the Bidder shall be disqualified from the Bid. Such defaulting Bidder may be de-listed without any notice for failing to abide by the strictly approved terms of notice inviting Proposals in response to the RFP.

- (v) The Bids which are not accompanied by the Bid Security or proof of Bid Security or do not strictly follow the requirements set out in the Bidding Documents, are liable to be rejected summarily.
- (vi) Bids which are subjective or dependent upon the quotations of another bidder shall be summarily rejected.
- (vii) The Bids of the bidders which do not satisfy the eligibility criteria i.e. (Technical Capacity and Financial Capacity set out in Clause 3.2 in the RFP Document) are liable to be rejected summarily without assigning any reason and no claim what so ever on any account will be considered in such cases of rejection.

**2.4 Amendment of RFP**

2.4.1. At any time prior to the deadline for submission of Bids, the Department may, for any reason, whether at its own initiative or in response to clarifications requested by Bidders, modify the terms of this RFP by the issuance of any addendum/corrigendum.

2.4.2. In order to provide the Bidders a reasonable time for taking an addendum or corrigendum into account, or for any other reason, the Department may, in its sole discretion, extend the Bid Due Date.

**2.5 Preparation and Submission of Bids**

**2.5.1 Language and Currency**

2.5.1.1. The Bid and all related correspondence and documents shall be written in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by an appropriate translation into English. Supporting materials that are not translated into English shall not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

2.5.1.2. The currency for the purpose of the Bid shall be Indian Rupee (INR).

**2.5.2 Validity of Bid**

2.5.2.1. The Bid shall indicate that it would remain valid for a period 180 (Hundred Eighty Days) from the Bid Due Date (Bid Validity Period). The Department reserves the right to reject any Bid that does not meet this requirement.

2.5.2.2. Prior to expiry of the original Bid Validity Period, the .....may request the Bidders to extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Bid, but would be required to extend the validity of its Bid Security for the period of extension

**2.6 Bid Security**

2.6.1. The Bidder will be required to deposit, along with the Bid, a Bid Security of **INR .....** (.....) in the form of a demand draft or a bank guarantee from a nationalized bank/Scheduled Bank in India having a net worth of at least Rs. 1000 crore (Rs. One

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Thousand Crore), in favour of....., after the online submission of the respective proof. For avoidance of doubt, Scheduled bank shall mean a bank as defined under Section 2 (e) of the Reserve Bank of India Act, 1934. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

- 2.6.2. The prospective bidder shall be required to submit a Performance Security equivalent to 10% value of the Estimated Project Cost in the form of Bank Guarantee to the ULB as per terms of the Agreement and after the achievement of the Commercial Operation Date (COD) of the waste processing facility/Power Plant, a new Bank Guarantee equivalent to 5% value of Estimated Project Cost will be submitted to the ULB and in return, the ULB shall return the earlier Bank Guarantee of 10% value of Estimated Project Cost to the concessionaire
- 2.6.3. The Bid Security, if given in the format of bank guarantee shall be valid at least for the duration of the Bid Validity Period, exclusive of claim period of 45 (forty five days), and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid Security, if given in the format of demand draft shall be valid at least for the duration of the Bid Validity Period. The Bid Security would be required to be extended if so required by the.....
- 2.6.4. The Bid Security shall be returned to unsuccessful Bidder(s) within a period of thirty (30) days from the date of announcement of the Successful Bidder. The Bid Security submitted by the Successful Bidder shall be released upon furnishing of the Performance Security in the form and manner stipulated in the Concession Agreement.
- 2.6.5. The Bid Security shall be forfeited in the following cases:
  - 2.6.5.1. If the Bidder fails to meet the requirements set out in Clause 2.4.10 or any other provision of the RFP;
  - 2.6.5.2. If the Bidder withdraws its Bid during the interval between the Bid Due Date and expiration of the Bid Validity Period; and
  - 2.6.5.3. If the Successful Bidder fails to provide the Performance Security within the stipulated time or any extension thereof provided by the .....
  - 2.6.5.4. For grounds provided in the Bid Security
- 2.6.6. Bidder(s) may note that the Department will not entertain any deviations to the RFP Document at the time of submission of the Bid or thereafter. The Bid to be submitted by the Bidder(s) will be unconditional and unqualified and the Bidder(s) would be deemed to have accepted the terms and conditions of the RFP Document with all its contents including the Concession Agreement. Any conditional Bid shall be regarded as non-responsive and would be liable for rejection.

**2.7 Correspondence**

- 2.7.1. All necessary correspondence / enquiries in hard copies should be submitted to the following in writing by fax /post / courier:

ATTN. OF: .....

DESIGNATION: Authority Details.....

ADDRESS: .....

FAX NO: .....

E-MAIL ADDRESS: .....

- 2.7.2. No interpretation, revision, or other communication from the .....

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regarding this solicitation shall be valid unless it is in writing and is signed by the Authorized signatory of the ..... The ..... may choose to send to all Bidder(s) or will upload on the website <http://.....> written copies of responses, including a description of the enquiry.

**2.8 Format and Signing of Bid**

**2.8.1** The Bidder shall provide all the information sought under this RFP and upload the same online as a part of its online submission of Bid as well as by way of physical submission of original copy of the Enclosures of Bid, as specified in this RFP. The ..... will evaluate only those Bids that are received in the required formats and complete in all respects. Any and all conditional Bids shall be liable to be summarily rejected.

**2.8.2** The Physical hard copy of the Technical Bid shall be submitted by the Bidder in the following two separate envelopes:

- i. Proof of deposit of Bid Security - **Envelope 'ED'**
- ii. All the documents in support of eligibility criteria and Technical Bid containing all information and documents as specified in Clause 2.9- **Envelope 'TI'**

The envelopes 'ED' and 'TI' shall be kept in a big outer envelope, which shall also be sealed. In the first instance, the Envelope - 'ED and TI' of all the Bidders shall be opened in the presence of such bidders who either themselves or through their representatives choose to be present. After that the Financial Bid will be opened as per schedule

The physical hard copy as mentioned which are to be submitted shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid.

**2.8.3** The online submission of the RFP shall be submitted by the bidder in the following three separate envelopes:

**Envelope 'ED' - Bid Security Deposit Envelop**

The online Bid Security Envelope shall contain reference details of the Bid Security Deposit instrument and scanned copy of documents.

**Envelope 'TI' - Technical Bid Envelope**

The online Technical Bid Envelope shall contain the information and scanned copies of the Documents / Certificates as required to be submitted supporting eligibility criteria and technical Bid as specified in Clause 2.9.3. Also, a list of all such documents that cannot be submitted online shall be shared with the..... This list shall contain all the information about Documents / Certificates required to be submitted in physical Technical Bid envelope as per Clause 2.9.2.

**Envelope 'CI' – Financial Bid Envelope**

To be only submitted (mandatory) online- "Information related to Price Bid of the Tender". Price bid should not be submitted in the form of hard copy.

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The bidder can submit their RFP documents as per the dates mentioned in the schedule above, subject to the following conditions:

- a. The RFP without Bid Security money will not be opened.
- b. The RFP of the bidder who does not satisfy the Eligibility and Technical Bid Criteria in the bid documents is liable to be rejected summarily without assigning any reason and no claim whatsoever on this account will be considered.

**2.8.4** The Bid submitted by the Bidder shall remain open for acceptance during the Bid Validity Period. If any bidder withdraws his Bid before the said period, any modifications in the terms and conditions of the Bid, the said Bid Security shall stand forfeited. Bids would require to be valid for 6 months from the date of closing of online bid.

**2.8.5** Technical Bid Envelop shall include scanned copies of:

- a) Acknowledgement of RFP Document and Notification of Intent to Submit Proposal Appendix as per **APPENDIX-I**
- b) Covering Letter cum Project Undertaking as per **APPENDIX- II**
- c) Bid Security in the form of Bank Guarantee as per **APPENDIX –III** or demand draft (Separate Envelope - ED, as mentioned in 2. 9.2)
- d) Power of Attorney for signing the Bid as per the format at APPENDIX- IV;
- e) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at APPENDIX-V;
- f) Copies of Bidder’s duly audited balance sheet and profit and loss account for the preceding three years at APENDIX - VI
- g) Copy of the Joint Bidding Agreement, in case of joint bidding, should be attached to the Bid (as per format provided in Annexure VI)
- h) Details of Bidders as per ANNEXURE – I
- i) Financial Capacity of the Bidder as per ANNEXURE – II
- j) Details of Eligible Project as per ANNEXURE – III
- k) Statement of Legal Capacity as per ANNEXURE – IV

**2.8.6** Financial Bid as per the format set out in Annexure – V:

Financial Bid shall be made indicating expected .....[the selected bid variable] for executing Scope of Project as defined in the TOR. For the avoidance of doubt, the Financial Bid shall only be submitted online as per the provision of this RFP and there shall be no physical submission of such Financial Bid. Physical submission of the Financial Bid shall lead to the Bid being summarily rejected.

**2.8.7** After the online submission, the physical hard copy submission of following original documents should be done by the bidders as per the mentioned dates in Section 2 – Schedule of bidding:

- i. Bank Guarantee or Demand draft for Bid Security
- ii. Power of Attorney for Authorized Signatory
- iii. Power of Attorney of the Lead Member, if there is any consortium
- iv. Joint Bidding Agreement in case of consortium

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v. Documents/Certificates mentioned in Clause 3.2 (Bid Evaluation of this RFP)

**2.8.8** Envelopes should be sealed and stamped in a single envelope, earmarked with “**REQUEST FOR PROPOSAL FOR INTEGRATED SOLID WASTE MANAGEMENT PROJECT FOR ..... CLUSTER ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS**”

**2.8.9** The envelope shall be addressed to:

ATTN. OF: .....

DESIGNATION: Authority Details.....

ADDRESS: .....

FAX NO: .....

E-MAIL ADDRESS: .....

**2.8.10** If the envelope is not sealed and marked as instructed above, the Bid may be deemed to non-responsive and would be liable for rejection. The ..... assumes no responsibility for the misplacement or premature opening of such Bid submitted.

**2.9 Bid Due Date**

2.9.1. Bids should be submitted before [●]----- hours IST on the Bid Due Date mentioned in the Schedule of Bidding Process, to the address provided in Clause 2.3.4 in the manner and form as detailed in this RFP Document. Applications submitted by either facsimile transmission or telex will not be acceptable.

2.9.2 The ....., at its sole discretion, may extend the Bid Due Date by issuing an Addendum.

**2.10 Late Bids**

Any Bid received by the Department after [●]---- hours IST on the Bid Due Date will be returned unopened to the Bidder.

**2.11 Modification and Withdrawal of Bids**

The Bidders are not allowed to modify or withdraw the Bids; once they are submitted.

**2.12 Confidentiality**

Information relating to the examination, clarification, evaluation and recommendation for the shortlisted Bidder(s) shall not be disclosed to any person not officially concerned with the process. The ..... will treat all information submitted as part of Bid in confidence and will ensure that all who have access to such material treat it in confidence. The ..... will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure.

**2.13 Clarifications**

To assist in the process of evaluation of Bids, the ..... may, at its sole discretion, ask any Bidder for clarification on its Bid. The request for clarification and the response shall be in writing. No change in the substance of the Bid would be permitted by way of such clarifications. However, such clarification(s) may without prejudice include clarifications with respect

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to minor deviations found in the Bid and shall be provided within the time specified by the .....for this purpose.

If a Bidder does not provide clarifications sought under this Clause above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Department may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the .....Proprietary data

All documents and other information supplied by the ..... or submitted by the Bidder to the ..... shall remain or become the property of the ..... Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The .....will not return any Bid or any information provided along therewith.

**2.14 Correspondence with the Bidder**

Save and except as provided in this RFP, the ..... shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Proposal.

**2.15 Eligibility of Bidder**

**2.16.1. Basic pre-qualification criteria:**

2.16.1.1 The Bidder for pre-qualification may be a single entity or a group of entities (the "Consortium"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium. A Bidder may be a natural person or a body corporate including but not limited to a company incorporated under the Companies Act, 1956/2013 or under the applicable laws of the jurisdiction of its origin or a society registered under the Societies Registration Act, 1860 or any other applicable governing law or a trust registered under the Indian Trusts Act, 1882 or any other governing law for public trusts or a partnership, limited liability partnership or a sole proprietorship registered under the relevant applicable governing law or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Joint Venture/ Consortium. A Joint Venture/ Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.17.1.2 below.

2.16.1.2 Total number of members in a Consortium shall not exceed three (3). A Consortium shall be eligible for consideration subject to condition set out in RFP

**2.16.2.** A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, ..... shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to ..... under the Bidding Documents or otherwise. Determining the Conflict of Interest shall be the prerogative of .....

**2.16.3.** Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

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- a. The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate (or any constituent thereof) is less than 25% of the paid up and subscribed capital of the other Bidder, its Member or Associate (or any constituent thereof); or
- b. A constituent of such Bidder is also a constituent of another Bidder; or
- c. Such Bidder, its Member or Associate receives or has received any direct or indirect subsidy, grant, loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, loan or subordinated debt to any other Bidder, its Member or Associate thereof; or
- d. Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- e. Such Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest
- f. Such Bidder has a relationship with another Bidder, directly or through common third parties, that puts either or both of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; org. such Bidder has participated as a consultant to ..... & ..... or other participating ULBs in the preparation of any documents, design or technical specifications of the Project. A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the .....in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 5 (five) years from the date of commercial operation of the Project.
- g. Any entity which has been barred/ blacklisted by the Central/ State Government, or an entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid (even if the litigation is pending on the same dispute (barred / blacklisted) under the jurisdiction / arbitration/ laws), would not be eligible to submit a Bid, either individually or as member of a Consortium.

***Explanation:***

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.17.3, shall include each Member of such Consortium.

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For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of a Bidder bidding individually or as a Consortium Member for the Project shall be provided to demonstrate that a person is an Associate of the Bidder bidding individually or the Consortium, as the case may be.

**Explanation:** In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.17.3 shall include each member of such Consortium.

## **2.16 Other Documents**

- 2.17.1 The Bidder shall enclose with its application, to be submitted as per the format mentioned in 2.9, complete with its Appendices and Annexes, the following:
- i. Certificate(s) and/or agreement(s) and/or duly executed work order(s) and/or Letter of Award from its concerned client(s) in support of above work undertaken and executed, clearly stating quantities collected /transported /installed capacities of the processing plant designed, operated and maintained/installed capacities of landfill deigned, operated and maintained.
- 2.17.2 Certificate(s) from its statutory auditors/Chartered Accountant in support of its Financial Capacity. The Bidder should submit a Power of Attorney as per the format at Appendix-IV, authorizing the signatory of the Bid to commit the Bidder duly supported by a charter document or board resolution in favour of the executant. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-V, duly supported by charter document or board resolution in favour of executant.
- 2.17.3 Where the Selected Bidder is a single entity, it shall be mandatory to incorporate a company under the Indian Companies Act, 2013 as a Special Purpose Vehicle (“SPV”) to implement the Project. The Selected Bidder shall hold at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV until expiry of the 2-year period from the COD and shall hold 26% (twenty six percent) of the paid up and subscribed equity of the SPV during the remaining Concession Period under the Concession Agreement. The SPV shall be required to execute the Concession Agreement with the Department and Participating ULBs for implementing the Project.
- 2.17.4 In case the Selected Bidder is a Consortium, it shall, in addition to incorporating the SPV, comply with the following additional requirements:
- a) Number of members in a consortium shall not exceed 4 (four).
  - b) Subject to the provisions of sub-clause (a) above, the Bid shall contain the corporate information of each member of the Consortium;
  - c) Members of the Consortium shall nominate one member as the lead member (the “Lead



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**Member**”), who shall have an equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV until expiry of the 3 year period from the COD and shall thereafter hold 26% (twenty six percent) of the paid up and subscribed equity during the remaining Concession Period and all other members of the Consortium, apart from the Lead Member comprising the Consortium shall hold equity shareholding not less than 10% (ten percent) of the paid up and subscribed equity of the Concessionaire until expiry of 2 years from COD as per the terms of this RFP and the Concession Agreement and thereafter shall hold a minimum shareholding proportionately in the paid up and subscribed equity of the SPV. The Bidder further acknowledges and agree that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there under. The nomination(s) as Lead Member shall be supported by issuance of a Power of Attorney, as per the format at Appendix-V, signed by all the other members of the Consortium;

- d) The Bid should include a brief description of the roles and responsibilities of individual members of the Consortium, particularly with reference to financial, technical and operation and maintenance (O&M) obligations;
- e) A copy of the Joint Bidding Agreement should be attached to the Bid (as per format provided in Annexure VI)
- f) SPV incorporated by the Selected Bidder shall be used for implementing the Project only and on completion of the Project shall be wound up.
- g) The Selected Bidder will have to provide SPVs Audited Account Report with the Department.
- h) The Selected Bidder shall maintain books of accounts in accordance with, Applicable Laws and provisions of the Concession Agreement.

2.17.5 Any entity which has been barred by the Central/ State Government, or any entity controlled by the Central/State Government, from participating in any project, and the bar subsists as on the date of Bid, the said entity would not be eligible to submit a Bid for the Project, either individually or as member of a Consortium.

2.17.6 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by imposition of a penalty by an arbitral or judicial Authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate.

**2.17 Change in composition of the Consortium**

By submitting the Bid, the Bidder shall be deemed to have acknowledged that it meets the qualification criteria set out under this RFP. The Bidder further acknowledges and undertakes that in case it is declared as the Selected Bidder by the ....., the Lead Member of consortium shall continue to hold an equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV until expiry of 3 year period from COD and shall hold

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26% of the equity of the SPV during the remaining Concession Period under the Concession Agreement and each of the other consortium members shall continue to hold at least 10% of the paid up and subscribed equity share capital of the SPV until expiry of 3 year period from COD and thereafter shall hold a minimum shareholding proportionately in the paid up and subscribed equity of the SPV.

Only in exceptional circumstances such as insolvency or permanent and irreversible closure of operations of any consortium member, shall the ..... allow change in the members of any consortium, if so requested in writing. In no circumstance, shall the lead member be allowed to leave the Project midway i.e. before completion of the Concession Period under the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause shall apply only when the Bidder is a Consortium.

**3. Criteria for Evaluation**

**3.1 Tests of responsiveness**

**3.1.1.** Prior to evaluation of the Bid(s), the ..... will determine whether each Bid is responsive to the requirements of the RFP Document. A Bid shall be considered responsive if:

- a) It is received as per format prescribed under the RFP;
- b) It is received by the Bid Due Date including any extension(s) granted by the.....;
- c) It is signed, sealed, bound together in hard cover, and marked as stipulated in the RFP document.
- d) It is accompanied by the Power of Attorney as specified in RFP and in the case of a Consortium, the Power of Attorney as specified in RFP.
- e) It contains all the information and documents (complete in all respects) as requested in this RFP;
- f) It contains information in formats specified in this RFP;
- h) It does not contain any condition or qualification; and
- i) It is not non-responsive in terms hereof.

3.1.2. The ..... reserves the right to reject any Bid which in its opinion is non-responsive and no request for modification or withdrawal shall be entertained by the .....in respect of such Bids.

3.1.3. Conditional Bid shall not be considered. Any Bid found to contain conditions attached, will be rejected.

**3.2 Bid Evaluation – Part I – Technical Bid**

**3.2.1** To be considered technically qualified (“Technically Qualified”), a Bidder shall have to fulfil following criteria:

**A. Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall have to fulfil the following conditions. The Bidder’s competence and capability for projects undertaken in last 7 (seven) years prior to the Bid Due Date:

S. No.	Parameter	Criteria
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1.	The Bidder shall have experience of minimum two years of successful operations in collection and transportation of MSW in India during the last seven years preceding the Bid Due Date	<ul style="list-style-type: none"> <li>• One project of 80% of estimated capacity of the C&amp;T Operations Or</li> <li>• two projects of 50% of the estimated capacity of the C&amp;T Operations Or</li> <li>• two projects of 40% of the estimated capacity of the C&amp;T Operations</li> </ul>
2	The Bidder shall have experience of designing, construction of Municipal Solid Waste processing facility and minimum two years of successful operations and maintenance of processing facility in India and abroad during the last seven years preceding the Bid Due Date.	<ul style="list-style-type: none"> <li>• One (1) Waste to Electricity Processing project of 80% of Estimated Project design capacity/ Or</li> <li>• Two (2) Waste to Electricity Processing project of 50% of Estimated Project design capacity Or</li> <li>• Three (3) Waste to Electricity Processing project of 40% of Estimated Project design capacity</li> </ul>

\*Along with above parameters the Bidder shall submit approach and methodology for collection and transportation and for processing of solid waste

**B. Financial Capacity:** For demonstrating financial capacity, the Bidder shall have to fulfil the following conditions (the “**Financial Capacity**”):

1. The Bidder shall be required to have average annual turnover of Rs. .... (.....)<sup>2</sup> during the last three (3) financial years at the close of the preceding financial year prior to the Bid Due Date.
2. The Bidder shall be required to have minimum Net -Worth of Rs. .... (.....)<sup>3</sup> at the close of the preceding financial year prior to the Bid Due Date.

For the purposes of this RFP, Net Worth means:

- i. in case the Bidder is a company, the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation; and
- ii. in case the Bidder is a trust or a society, the sum of a available corpus and reserves.

<sup>2</sup> 50% of the Estimated Project Cost

<sup>3</sup> 25% of the Estimated Project Cost

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- iii. in case for individual person shall mean: Assets (including cash) Less all liabilities.
- iv. For Sole Proprietorship shall mean: Total assets – total liabilities.

C. In the event that a Bidder submits a Bid for the Project and the Bidder does not meet the Technical or /and Financial Capacity as described under Clause 3.2.1 (A) and (B) above, the Bidder shall be disqualified and the Financial Bid of such Bidder shall not be opened.

**3.3 Bid Evaluation – Part II – Financial Bid**

**3.3.1** The shortlisted Bidders adjudged as responsive and Technically Qualified at the end of the evaluation of Part I – Technical Bid shall be notified and informed of the date and time of opening of Part II – Financial Bids.

**3.3.2** Financial Bid of all the short-listed Bidders who meet the Technical Capacity and Financial Capacity evaluation criteria under Clause 3.2, shall be evaluated on the basis of the financial Bid(s) (the “**Financial Bid Parameter**”) as specified in the RFP.

**3.3.3** The SPV set up by the Selected Bidder shall also be paid a capital grant (“**Grant**”), as Viability Gap Funding (VGF) by Government of ..... according to the guidelines of Swachh Bharat Mission (“**SBM**”) for setting up ISWM processing facility. The total admissible support as Viability Gap funding / Capital Grant shall be .....(.....) i.e. ....% value of estimated project cost (for waste to Energy plant).

**3.3.4** The Bid is structured <sup>4</sup>in such a manner that the Concessionaire gets his expenses for discharging obligations under the Concession Agreement through the Grant, the tipping fee and the Output Based Incentive (OBI) quoted by the Selected Bidder (*which shall include the tariff approved by ..... for the waste to energy project i.e. the Power Plant and the additional amount quoted and claimed by the Selected Bidder*). The OBI is envisaged to be the bid variable (for Net Exportable Power (Expressed in Rs./ kWh)) while upfront tipping fee component is being fixed.

It is understood that OBI quoted by bidders is likely to be more than the tariff awarded by.....as per the PPA for the project. In this case, the tariff approved by.....[State Electricity regulatory commission] shall be payable by the Distribution Licensee (Discoms) to the SPV, in terms of the PPA and balance amount of the OBI (differential amount) will be payable by the ULB. The ULB component will be escalated every year based on WPI\*.

The following financial assistance shall be provided to the Selected Bidder for discharging its obligations under the Concession Agreement:

Payments	Rate/Criteria
Fixed Processing fee for collection and transportation to Processing Facility, processing of MSW and transportation of inert/processing rejects Post-COD and during the term of the Concession Agreement to earmarked site as designated by ULB	INR 1000 per ton with year-on-year escalation as per WPI
Fixed Grant provided by State Government	INR .....crores

<sup>4</sup> Any one out of the three proposed Bid variable as deemed appropriated can be opted for selection of bidder

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Payments	Rate/Criteria
Tariff determined by ..... for power generated by Waste to Energy projects in .....	Lowest tariff amongst the following three for the electricity exported to .....: in Rs./ kWh a. ....generic tariff b. Tariff determined by the ..... under Section 62 of Electricity Act, 2003 on the tariff petition filed by the Seller; and c. Output Based Incentive (OBI) Offered
Balance amount of the OBI (differential amount) as quoted by the bidder	INR ....per unit with year-on-year escalation as per WPI

*\*Year means Financial Year (FY) from 1 April to 31 March. If COD is achieved between 01 April and 31 December, increase would be applicable from ensuing FY. However, in case COD is achieved between 01 January and 31 March, increase would be applicable in next to next FY.*

**OR**

The Bid is structured <sup>5</sup>in such a manner that the Concessionaire gets his expenses for discharging obligations under the Concession Agreement through the Grant, the tariff in Rs./ kWh and the processing fee quoted by the bidder (*which will include the tariff approved by ..... and grant for the waste to electricity project i.e. the Power Plant and the additional amount quoted and claimed by the Selected Bidder for collection, transportation and processing of waste*). The processing fee is envisaged to be the bid variable i.e. INR .....per ton of solid waste collected, transported and processed. The processing will be escalated every year based on WPI\*.

The following financial assistance shall be provided to the Selected Bidder for discharging its obligations under the Concession Agreement:

Payments	Rate/Criteria
Processing fee quoted by bidder for collection and transportation to Processing Facility, processing of MSW and transportation of inert/processing rejects Post-COD and during the term of the Concession Agreement to earmarked site as designated by ULB	INR ..... per ton with year-on-year escalation as per WPI
Fixed Grant provided by State Government	INR .....crores
Tariff determined by ..... for power generated by Waste to Energy projects in ..... (Generic Tariff to be determined prior to release of tender along with draft PPA)	Tariff determined by SERC and as per PPA in Rs./ kWh

<sup>5</sup> Any one out of the three proposed Bid variable as deemed a appropriated can be opted for selection of bidder

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*\*Year means Financial Year (FY) from 1 April to 31 March. If COD is achieved between 01 April and 31 December, increase would be applicable from ensuing FY. However, in case COD is achieved between 01 January and 31 March, increase would be applicable in next to next FY.*

**OR**

The Bid is structured <sup>6</sup>in such a manner that the Concessionaire gets his expenses for discharging obligations under the Concession Agreement through the tipping fee, the tariff in Rs./ kWh and the Grant quoted by the Selected Bidder. **The Grant as VGF (Viability Gap Funding) is envisaged to be the bid variable** while upfront tipping fee component is being fixed with year-on-year escalation as per WPI and tariff as approved by .....[State Electricity regulatory commission] shall be payable by the Distribution Licensee (Discoms) to the SPV, in terms of the PPA.

The following financial assistance shall be provided to the Selected Bidder for discharging its obligations under the Concession Agreement:

Payments	Rate/Criteria
Fixed Tipping fee for collection and transportation of MSW to Processing Facility and transportation of inert/processing expenses Post-COD and during the term of the Concession Agreement	INR 1000 per ton with year-on-year escalation as per WPI
Tariff determined by ..... for power generated by Waste to Energy projects in ..... (Generic Tariff to be determined prior to release of tender along with draft PPA)	Tariff determined by SERC and as per PPA per Rs./ kWh
Grant as VGF quoted by bidder	INR .....crores

*\*Year means Financial Year (FY) from 1 April to 31 March. If COD is achieved between 01 April and 31 December, increase would be applicable from ensuing FY. However, in case COD is achieved between 01 January and 31 March, increase would be applicable in next to next FY.*

**3.3.5 Goods & Service Tax (GST)**

GST, if applicable shall be paid by the Designated ULB as per Applicable Laws in addition to agreed OBI.

**3.3.6** Financial Bid of short-listed Bidders who qualify after evaluation of Part I – Technical Bid shall be opened in the presence of the representatives of shortlisted Bidders, who choose to attend. The Financial Bid of the shortlisted Bidders shall be read out and recorded.

**3.3.7** The Bidder who quotes the lowest OBI/Processing Fee/Grant (based on selected bid variable) shall be declared as the lowest i.e. L1 and would be declared as the Selected Bidder.

**3.3.8** In the event that two or more Bidders quote exactly the same validated Financial Bid Parameter for the project, then the Department reserves the right either to:

- i. Invite fresh Bids from such Bidders; or

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<sup>6</sup> Any one out of the three proposed Bid variable as deemed appropriated can be opted for selection of bidder

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- ii. Take any such measure as may be deemed fit in its sole discretion, including annulment of the bidding process; or
- iii. Identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tied Bidders, who choose to attend.

**3.3.9 Financial information for purposes of evaluation**

The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same.

**3.4 Notification and Issue of Letter of Award**

The Selected Bidder shall be issued a Letter of Award within 15 days of the opening of the Financial Bid.

**4 Fraud and Corrupt Practices**

The Applicants participating in the bidding process and responding to the RFP and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Department may reject an Application without being liable in any manner whatsoever to the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

Without prejudice to the rights of the Department under the RFP hereinabove, if an Applicant is found by the Department to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFP issued by the Department during a period of 2 (two) years from the date such Applicant is found by the Department to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

For the purposes of this RFP, the following terms shall have the meaning hereinafter respectively assigned to them:

- a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Department/ Participating ULBs who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Department/ Participating ULBs, shall be deemed to constitute influencing the actions of a person connected with the

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Bidding Process); engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Department/ Participating ULBs in relation to any matter concerning the Project;

- b) “fraudulent practice” means misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Department/ Participating ULBs with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e) “Restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

**5 Pre-bid Conference**

A Pre-bid conference of the interested parties shall be convened at the designated date, time and place. During the course of Pre-bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Department. The Department shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

**6 Miscellaneous**

The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at ..... shall have the exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

The Department, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- Consult with any Bidder in order to receive clarification or further information;
- Pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
- Retain any information and/ or evidence submitted to the Department by, on behalf of, and/ or in relation to any Bidder; and/ or
- Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Bid, the Bidder agrees that the Department, its employees, agents and advisers are irrevocably, unconditionally, fully and finally indemnified from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent



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permitted by Applicable Law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

**7 Scope of Work**

- The Concessionaire will Design, Build, Finance, Operate and Maintain the Integrated Waste Processing Facility for a period of 25 years from COD, catering for the future increase in MSW generation during the Concession Period in line with the Applicable Laws including but not limited to SWM Rules, 2016.
- The Concessionaire will perform Door to door collection of MSW in segregated manner from Waste Generators of ..... ULB/ Cluster (including Participating ULBs of cluster);
- Transportation of MSW from secondary collection points to the Processing Facility.
- Setting up and managing transfer station(s) (if required) to facilitate transportation of MSW to Processing Facilities.
- The Concessionaire should provide a .....TPD ISWM facility with ....MW waste to electricity facility and .....TPD biomethanation/Compost facility producing RDF/segregated wet waste for compost or biomethanation/recyclable/ inert waste streams.
- Transportation of inert/residual waste from Processing Facility to the earmarked site provided by the ULB;
- The facility shall be set up at the land provided by the ULB. The land provided shall only be used for the purposes of the Project.
- The Concessionaire shall carryout all necessary studies, survey for assessment of site conditions for site development and construction of ISWM Facility. The Concessionaire shall prepare Technical Feasibility Report (TFR) for setting up of ISWM facility on land provided by ULB.
- The Technology suggested/offered shall follow all applicable standards as per prevailing regulations of CPCB, SPCB and MSW Rules 2016.
- The Concessionaire should set up necessary infrastructures including plant, building, machinery, temporary storage shed and other necessary utilities as required. There should be a weighbridge/ weighing scale for weighing of the waste.
- The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes, and systems used or incorporated in the Project.
- There should be a segregation unit in the area allocated for segregation and the Concessionaire will be responsible for segregating the waste as per input quality.
- The Concessionaire should obtain necessary statutory clearances/permissions.
- The work shall have to be executed in accordance with the drawings (prepared by Contractor) and approved by the competent authority and shall have to meet high standards of workmanship, safety and security.
- The ISWM Facility shall be commissioned with successful trial runs within a period of \_\_\_\_\_ months or the implementation schedule submitted in the technical proposal (whichever is minimum) from the date of signing of concession agreement. The Concessionaire shall submit monthly progress reports during the above period to the ULB. The Concessionaire shall operate and maintain the ISWM Facility in accordance with the Applicable Laws.
- All penalties, levies due to any non-compliance will be borne by the Concessionaire.
- The Concessionaire will be responsible for selling the recyclables as per the SWM Rules, 2016 and other applicable environmental laws. It will also be responsible for transportation of post-

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processing rejects/Inert/residues (not exceeding 20 % of incoming waste quantity) to the designated site (to be provided by the ULB).

- The revenue generated through carbon credits, if any, shall be shared in the ratio of 50:50 between the Concessionaire and the ULB.
- The Concessionaire shall maintain daily records (digital inventory management system for each segregated waste fraction) of quantum of incoming, processed waste, rejects, products in the formats approved by Independent Engineer/ Project Engineer / Project Management Unit/ULB. The monthly report shall be submitted by the Concessionaire to the by Independent Engineer/ Project Engineer / Project Management Unit//ULB.
- The Concessionaire will conduct capacity building workshops and awareness campaigns for source segregation of waste in the city in association with the ULB.
- It will be responsible for providing toll free number for the collection of solid waste in bulk quantity.
- The Concessionaire shall be responsible for Water and Electricity required to be consumed during the period of Construction and O&M of the plant.
- The Concessionaire shall minimize odour generation, prevent off-site migration of gaseous emissions. Ambient air quality at the site and in the vicinity shall be monitored to meet the specified standards as per CPCB and SPCB rules and regulations, MSW rules 2016 and other applicable laws/rules.
- The Concessionaire should endeavour & ensure running of the system for atleast 330 days during which the segregation of Municipal Solid Waste (MSW) shall not be stopped for the reasons other than mentioned below:-
  - Any Power shutdown.
  - Any Electrical breakdown.
  - Due to any other reasons specified by the ULB
- Even in the cases mentioned above, the restoration of the system should be done with least interruption.
- The Construction and manufacturing defects during the contract period shall be attended by the Concessionaire at his own cost.
- Tools and tackles required for operation and maintenance should be provided by the Concessionaire.
- Tightening of foundation bolts, checking of oil, lubricating, greasing, preventing leakage, cleaning the equipment every day or as required should be ensured.
- The Concessionaire are expected to employ reserve operators in performance of contract consequent to labor regulations/statute on working of personnel on National Holidays etc., and also on any day when operator(s) is/are absent from duty.
- The operating personnel shall have thorough knowledge of safety precautions during emergency cases and also be conversant with the rules/regulations, IE Act/ Rules and Indian Factory Act/Rules.
- The Contractor shall provide a Notice Board on which the precautions to be taken by operation and maintenance staff have to be exhibited.
- A daily record should be maintained for any further inspection.
- Daily charts of the personnel are to be displayed in the premises. The engineer in charge can inspect the attendance on the basis daily charts.
- The Concessionaire shall erect at least (1) signboard with details (capacity, contact details and signage) about the ISWM facility in local language, Hindi and English of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance in a manner that is ordinarily visible to any person using such entrance

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- The Concessionaire shall display layout at the entrance and indicate warning signs in the ISWM facility
- The Concessionaire shall also set up a board displaying the air quality parameters.
- The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons, and other Personal Protective Equipment (PPE).

**Bidder's KPI**

- I. Bidder will ensure 330 days of plant operations
- II. Inert should not be more than 20% of the incoming waste and should be handed over/transported to the earmarked site (to be informed by the authority)
- III. Environmental Parameters:
  - a. Bidder will ensure dust, Air pollution (fly ash and bottom ash control) & noise, levels as per guidelines prescribed by CPCB/SPCB on Ambient Air Quality Standards and Noise Pollution at site and in the vicinity

**Penalties**

**Penalties & Damages**

S.No.	Default	Monitoring Mechanism	Cure Period	Penalty
Primary Collection				
1	door to door MSW collection in segregated manner is not provided to Waste Generators / Households as per target specified in the CA	user complaint /verification by PMU	No collection of Waste for 2 consecutive Days	Rs. 10/Day/ Household
			No collection of Waste for 5 consecutive Days	Rs. 25 /Day/ Household
Secondary Storage & transportation				
2	Non-clearance of bins/dhalao for consecutive 2 days ( kept only in market areas)	Spot inspection conducted by Designated ULB/ PMU/ user complaint	One day	Rs. 500 per instance
3	Transportation of MSW in non-covered vehicles	Spot inspection conducted by Designated ULB/ PMU/ user complaint	Every instance	Rs. 1000 per instance
4	Non-operation of transfer station for one	Spot inspection	One day	Rs. 5000 per day

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	day	conducted by Designated ULB/ PMU		
ISWM Facility (Waste processing)				
5	Weighbridge is non-operational at transfer Station/ Processing facility/ landfill due to breakdown for a consecutive period of 4 days	Daily check by Authority	ULB will select WB from a list of weighbridges provided by operator for weighing, located near the project / processing site till the problem resolves	Rs. 5000 per day after 4 days
6	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	Inspection by PMU/ Designated ULB/ Progress Report	30 days from Scheduled Construction Completion Date	1% of the Performance Security per day of delay beyond 30 days and maximum upto 90 days
Disposal of Inert/processing rejects				
7	Inert/ Residual waste greater than 20% sent to earmarked site	Weighment slips/ Daily reports/ Inspection	-	For every ton of increase beyond 20% of incoming waste, an amount equivalent to 2.5 times of per ton processing fee payment made on Processing. In the event Processing fee quoted by selected operator is zero, penalty shall be imposed at the rate of Rs 2500/ton.
Complaint redressal				
8	Improper working of call centre: Down time exceeds 3 hours per day	Inspection by Authority	3 hours	Rs. 2500 per hour after 3 hours

Notwithstanding anything to the contrary contained herein, in the event the plant is non-operational for more than 30 days apart from the scheduled maintenance then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination.

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**8 CONFIDENTIAL INFORMATION AND PROPRIETARY DATA**

**8.1 Proprietary Data**

All documents and other information provided by the Authority or submitted by a Bidder to the Authority will remain or become the property of the Authority, as the case may be. Bidders should not use any information provided by the Authority in connection with the Bid Process for any purpose other than for preparation and submission of their Bids.

**8.2 Confidentiality Obligations of the Authority**

The Authority will treat all information, submitted as part of a Bid as confidential and will require all those who have access to such material to treat it in confidence. The Authority may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising the Authority or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the Authority or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

**9 GOVERNING LAW AND JURISDICTION**

**9.1 Governing Law**

The Bid Process, this RFP and the Bids shall be governed by, and construed in accordance with, the laws of India.

**9.2 Exclusive Jurisdiction**

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The competent courts at [*insert name of city which should have exclusive jurisdiction*] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids

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**Appendices**

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**APPENDIX I: Format for acknowledgement of RFP document**

**Date:**

**To**

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

**Dear Sir,**

Re: Request for Proposal for Development of Integrated Solid Waste Management Project for  
..... Cluster on Public Private Partnership (PPP)

The undersigned hereby acknowledges and confirms receipt of the Request for Proposal (RFP) Document for the captioned Project from the Department and conveys its intention to submit a Bid for the Project on Public Private Partnership mode.

.....

**Name of the Bidder**

.....

**Signature of the Authorised Person**

.....

**Name of the Authorised Person**

**Note:**

***On the Letterhead of the Bidder or Lead Member of Consortium. To be signed by the Lead Member in case of a Consortium.***

***The acknowledgement should be sent within 5 days of purchase/ downloading of the RFP Document.***



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**APPENDIX II: Format for Covering Letter cum Project Undertaking**

**Date:**

**To**

.....  
.....

**Dear Sir,**

Re: Request for Proposal for Development of Integrated Solid Waste Management Project for ..... Cluster on Public Private Partnership (PPP)

We have read and understood the Request for Proposal (RFP) Document in respect of the Project provided to us by the Department. We hereby submit our Bid for the captioned project.

We are enclosing our Bid in one (1) original plus one (1) copy and two (2) soft copies in a compact disc (CD), with the details as per the requirements of the RFP Document, for your evaluation.

We confirm that our Bid is valid for a period of 180 (one hundred eighty) days from ..... (Bid Due Date)

We hereby agree and undertake as under:

Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Bid we hereby represent and confirm that our Bid is unqualified and unconditional in all respects and we agree to the terms of the Draft Concession Agreement, a draft of which also forms a part of the RFP Document provided to us.

**Dated this ....., Day of .....,**

**Name of the Bidder**

.....

**Signature of the Authorised Person**

.....

**Name of the Authorised Person**

**Note:**

*On the Letterhead of the Bidder*

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**APPENDIX- III: (Proforma of Bank Guarantee for Bid Security)**

B.G No. Dated:

1. In consideration of you, the Department, having its office at ....., Name of State having agreed to receive the Bid of \_\_\_\_\_ [a company registered under provision of the Companies Act, 2013] and having its registered office at \_\_\_\_\_ [and acting on behalf of its consortium] (herein after referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Integrated Solid Waste Management Project for ..... Cluster on PPP basis (here in after referred to as “**the Project**”). Pursuant to the RFP document dated \*\*\*\*\* issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (herein after referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Department an amount of Rs. ..../- Crore (.....) as bid security (herein referred to as the “**Bid Security**”) encashable/payable at any of our branches including our [insert branch address in .....] branch at ..... as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Department stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Department is disputed by the Bidder or not merely on the first demand from the Department stating that the amount claimed is due to the Department by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \*\*\*\*\*/- (Rupees \*\*\*\*\*/- only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty days) from the Due Date inclusive of a claim period of 45 (forty-five) days or for such extended period as may be mutually agreed between the Department and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Department shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid

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open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Department that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Department and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Department shall be entitled to treat the Bank as the principal debtor. The Department shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Department, and the Bank shall not be released from its liability under these presents by any exercise by the Department of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Department or any indulgence by the Department to the said Bidder or by any change in the constitution of the Department or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] at ..... and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Department to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Department may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Department in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by \_\_\_\_\_ Bank

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By the hand of Mr./Ms \_\_\_\_\_, its \_\_\_\_\_ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

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**APPENDIX-IV: Power of Attorney for Signing of Application**

(To be executed on Stamp Paper of Rs.100/-)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms.(name).....son/daughter/wife of..... and presently residing at ....., who is presently employed with us/the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (here in after referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the Integrated solid waste management Project for ..... Cluster proposed or being developed by the Department including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre- Applications and other conferences and providing information/ responses to the Department, representing us in all matters before the Department, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Department in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Department and Designated ULB.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2019.

For

.....

(Signature, name, designation and address)

Witnesses:

1.

2.

(Notarised)

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Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

*Notes:*

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

*Wherever required, the Bidder should submit for verification the extract of the charter documents such as a board or shareholder's resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

*For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostle certificate.*

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**APPENDIX-V: Power of Attorney for Lead Member of Consortium**

*(To be executed on Stamp Paper of Rs. 100/-)*

Whereas the Department has invited applications from interested parties for the Integrated Municipal Solid Waste (MSW) Management Project in ..... Cluster (the “Project”)

Whereas, .....and (collectively the Consortium) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and Authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, ..... Having our registered office at .....

M/s, ..... Having its registered office at .....

M/s, ..... Having its registered office at .....

Ms/s, ..... Having its registered office at ....., (herein after collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. .... Having our registered office at .....,being one of the Members of the Consortium, as the Lead Member and true lawful attorney (with power to sub delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and; in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Department, and/ or any other Government Agency or any person, in all matters in connection with or relating or arising out of the Consortium’s bid for the Project and/or upon award thereof till the Concession Agreement is entered into with the Department.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED

THIS POWER OF ATTORNEY ON THIS..... DAY OF .....20 .....

**REQUEST FOR PROPOSAL**  
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For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

For .....

(Signature)

.....

(Name & Title)

Witnesses:

- 1.
- 2.

.....

(Executants)

(To be executed by all the Members of the Consortium)



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**Notes:**

*The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

*Also, wherever required, the Bidder should submit for verification the extract of the charter documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

*For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

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**Annexures**

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**ANNEXURE-I: Details of Bidder**

1. Details of Bidder
  - (a) Name:
  - (b) Country of incorporation:
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
  - (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Department:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.18.4(e) should be attached to the Application (as per format provided in Annexure VI)
  - (c) Information regarding the role of each Member should be provided as per table below:

S. No.	Name of Member	Role	Percentage of equity in the Consortium
1.			
2.			
3.			

- (d) The following information shall also be provided for each Member of the Consortium:  
Name of Bidder/Member of Consortium

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S. No.	Criteria	Yes	No
1.	Has the Bidder constituent of the Consortium been barred by the [Central/ State] Government, or any entity controlled by it from participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/Consortium paid liquidated damages of more than 5% (five per cent) of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

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**ANNEXURE-II: Financial Capacity of the Bidder (In Rs. crore)**

<b>Bidder Type</b>	<b>Member Code</b>	<b>Average Annual Turnover of Last three FY</b>	<b>Net Worth</b>
<b>Single entity Bidder</b>			
<b>Consortium Member 1</b>			
<b>Consortium Member 2</b>			
<b>TOTAL</b>			

**Instructions:**

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (Three) years preceding the Application Due Date. The financial statements shall:
  - a. Reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - b. Be audited by a statutory auditor;
  - c. Be complete, including all notes to the financial statements; and
  - d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. For the purposes of this RFP, the term net worth means following:
  - a. "Net worth" for company shall mean the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
    - i. Net Worth for Partnership Firm would mean: [Fixed Assets + Trade Receivables + Current Assets] – [Firms Loan + Current Liabilities]
    - ii. Net worth for Trust or Society would mean: - Capital/Corpus + Free Reserves.
    - iii. Net Worth for Individual Person shall mean: Assets (including cash) LESS All Liabilities.
    - iv. Net Worth for Sole Proprietorship would mean: Total Assets- Total Liabilities
3. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted (as per format provided in Annexure VI)
4. The Bidder shall provide an Auditor's certificate/Chartered Accountant certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth

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**ANNEXURE - III: Details of Eligible Projects**

**Bidder/Member**

Item	Particulars of the Project
<b>Title of the Project</b>	
<b>Nature of the project</b>	
<b>Entity for which the project was constructed Developed</b>	
<b>Location</b>	
<b>Project capacity &amp; Project cost</b>	
<b>Date of commencement of project/ contract</b>	
<b>Date of commissioning</b>	
<b>Equity shareholding (with period during which equity was held)</b>	
<b>Whether credit is being taken for the eligible Experience of an Associate (Yes/ No)</b>	

**Instructions:**

1. Bidders are expected to provide information in respect of each Eligible Project in this Annexure. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each Eligible Project.
3. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

Certificate from respective clients must be furnished as per formats below for each Eligible Project.

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**ANNEXURE - IV: Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Ref.

Date:

To

.....  
.....

Dear Sir:

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document. We have agreed that ..... (insert member's name) will act as the Lead Member of our Consortium. \*

We have agreed that ..... (insert individual's name) will act as our representative/will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**ANNEXURE - V: Format for Financial Bid**

Date:

To

.....  
 .....

Dear Sir,

Re: Request for Proposal for Development of Integrated Solid Waste Management Project for .....  
 Cluster on Public Private Partnership (PPP) mode.

We are pleased to submit our Financial Bid for the development of the aforesaid Project.

S. No	Description	Amount in Figures	Amount in Words
1.	Per Unit Output Based Incentive (OBI) for net exportable power (in kWh)		
OR			
	Per ton processing fee for collection, transportation and processing of solid waste		
OR			
	Gap funding as VGF for setting up the plant		7

In witness thereof, I/we submit this Financial Bid under and in accordance with the terms of the RFP document no.....

Yours faithfully

Authorized signatory

(Name & seal of the bidder)

Date:

Place:

<sup>7</sup> Select any of the one bid variable for selection of the agency





**ANNEXURE -VI: Format for Joint Bidding Agreement**

**Joint Bidding Agreement**

*[Refer Clause 2.18.4 (e)]*

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of ..... 20...

**AMONGST**

1. .... Limited, a company incorporated under the Companies Act, 1956/2013<sup>¥</sup> and having its registered office at ..... (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

**AND**

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above-mentioned parties of the FIRST, SECOND, and THIRD PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

**WHEREAS,**

- (A) [..... hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the “**Applications**”) by its Request for Proposal No. .... dated ..... (the “**RFP**”) for development, operation and maintenance of the ..... Integrated Solid Waste Management Project (the “**Project**”) through public private partnership.
- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

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<sup>¥</sup> A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organized and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

**2. Consortium**

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical Member of the Consortium;}
- {(c) Party of the Third Part shall be the Financial Member of the Consortium; and}
- {(d) Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

**5. Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

**6. Shareholding in the SPV**

- 6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

- 6.2 The Lead Member shall hold; (i) at least 51% shareholding in the paid up and subscribed equity of the concessionaire until expiry of 2 years from COD; and (ii) thereafter hold at least 26% shareholding in the paid up and subscribed equity during the remaining Concession Period. All other members of the Consortium, apart from the Lead Member, shall hold a minimum of 10% (ten per cent) or more of the paid up and subscribed equity of the SPV for a minimum period of 3 (three) years from the commercial operation date of the Project in accordance with the provisions of the Draft Concession Agreement and thereafter shall hold a minimum shareholding proportionately in the paid up and subscribed equity of the SPV.
- 6.3 The lead member shall fulfil the above shareholding requirement.
- 6.4 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

#### **4. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
- (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
  - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse

effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

**8. Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

**9. Miscellaneous**

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

<p>SIGNED, SEALED AND DELIVERED For and on behalf of <b>LEAD MEMBER</b> by:</p>     <p>(Signature) (Name) (Designation) (Address)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of <b>SECOND PART</b></p>     <p>(Signature) (Name) (Designation) (Address)</p>
<p>SIGNED, SEALED AND DELIVERED For and on behalf of <b>THIRD PART</b></p>	

(Signature) (Name) (Designation) (Address)	
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*Notes:*

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.



**Ministry of Housing and Urban Affairs**  
**Government of India**

# **INTEGRATED SOLID WASTE MANAGEMENT PROJECT**