



Model

Concession Agreement

WASTE TO COMPOST

July 2023

DRAFT MODEL CONCESSION AGREEMENT

For

**DEVELOPMENT OF A WASTE TO COMPOST PLANT
ON PPP BASIS**

[•]

[Insert Title]

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PART I – PRELIMINARY

Draft

CONCESSION AGREEMENT

This Concession Agreement (**Agreement**) is executed on this [•] day of [•] at [•]:

AMONGST

- (1) [_____][*insert name of the Authority/ULB*], a statutory body constituted under the [•], with its registered office at [*insert address*] acting through _____, _____ [*insert name of the authorised signatory and his/her designation*] (hereinafter referred to as the **Authority**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) The [Department of Local Government/Urban Development], [*Insert the name of the State*], (hereinafter referred to as the **Confirming Party**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) [_____][*insert name of the [Selected Bidder/]¹ Concessionaire*], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at _____, [*insert address*] acting through _____, _____ [*insert name of the authorised signatory and his/her designation*] duly authorized by resolution dated _____ [*insert date of the Board Resolution*] (hereinafter referred to as the [*Selected Bidder/*]² **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

The Authority, the Concessionaire and the Confirming Party shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. By the 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**). Article 243W entrusts ULBs with the responsibility to implement schemes in relation to the matters listed in the Twelfth Schedule of the Constitution of India (which include, public health, sanitation, conservancy, and solid waste management).

¹ **Drafting Note:** To be deleted if Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement.

² **Drafting Note:** To be deleted if Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement.

- B. The Ministry of Environment, Forest and Climate Change (**MoEFCC**), under the aegis of Government of India (**GoI**), formulated the Solid Waste Management Rules, 2016 (**SWM Rules**), which provide that every municipal authority shall, within the administrative area of its municipality, be responsible for implementation of the SWM Rules and development of infrastructure for segregation, storage, collection, transportation, processing and disposal of municipal solid wastes (**SWM Services**). Accordingly, municipal authorities are obligated to provide SWM Services in accordance with SWM Rules and protect the environment and public health of the citizens and public in general.
- C. The Authority, recognizing the challenges of solid waste management in [*insert name of city in which the Project is to be developed*], has identified developing facilities to handle and process waste as one of its priorities. For this purpose, the Authority is keen to undertake the development of a waste to compost (**WtC**) facility including pre-processing unit for processing of mixed waste to recover segregated wet waste for compost generation which shall be capable of receiving and processing up to [**•**] TPD of MSW/Wet Waste at [**•**] to meet the solid waste management requirements of [*insert name of city in which the Project is to be developed*], on a public private partnership (**PPP**) basis, through a Design, Build, Finance, Operate and Transfer (**DBFOT**)³ model (**Project**).
- D. In order to implement the Project and for better coordination and implementation of the SWM Services, the Authority intends to engage a concessionaire who will design, develop, finance, construct, operate and maintain the Project Facilities on the Site under and in accordance with the requirements of this Agreement and after the expiry of the Concession Period, transfer the Project Facilities to the Authority, in accordance with this Agreement.
- E. The Project includes processing and disposal of the waste and conversion of Acceptable Waste to Compost.
- F. On [**•**], the Authority commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their qualification proposals and financial proposals to the Authority for undertaking the Project.
- G. Pursuant to the terms of the RFP, the Authority received proposals from various bidders, including a proposal submitted by the Selected Bidder on [*insert date*].
- H. Following a process of evaluation of qualification proposals and financial proposals submitted by the bidders (including the Selected Bidder (which shall include a consortium of bidders)⁴), Authority has accepted the proposal submitted by the Selected Bidder for the development of the Project and issued the letter of award dated [**•**] to the Selected Bidder (the **LOA**).
- I. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with

³ **Drafting Note:** The model on which the Project is to be developed should, if required, be revised on a case to case basis depending on the structure adopted by the relevant Authority for each Project.

⁴ **Drafting Note:** To be deleted prior to execution if the Selected Bidder is a single bidder and not a consortium.

the terms of this Agreement.

- J. The Selected Bidder has incorporated the Concessionaire as a limited liability company under the Companies Act, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement and has requested the Authority vide letter dated [•] to accept the Concessionaire.⁵

[The Selected Bidder has informed the Authority by its letter dated [□] that it undertakes to incorporate a special purpose vehicle to implement the Project, within [30 (thirty)] days from the Effective Date and once incorporated, the special purpose vehicle (i.e., the Concessionaire) is the entity which shall undertake and perform the obligations of the Selected Bidder.]⁶

- K. By its letter dated [•], the Concessionaire also joined the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise of the rights of the Selected Bidder under the LOA, including the obligations to enter into this Agreement, pursuant to the LOA.
- L. The Authority has agreed to the request of the Selected Bidder and the Concessionaire and has along with the Confirming Party, agreed to enter into this Agreement with the Concessionaire for execution of the Project on a DBFOT basis, subject to and on the terms, conditions and covenants set out in this Agreement.

IT IS AGREED as follows:

⁵ **Drafting Note:** To be deleted if the Selected Bidder has not incorporated the Concessionaire prior to execution of the Agreement.

⁶ **Drafting Note:** To be deleted if the Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement.

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

a.

Acceptable Waste	[means source Segregated organic wet waste or mixed waste that can be pre-processed to segregate the wet waste which will then be degraded by micro-organisms into simpler stable compounds through composting produced by households, commercial enterprises & Institutions agricultural establishments, healthcare units (non-bio-medical) including agriculture and dairy waste, food waste, animal by-products exclude Prohibited Waste and C&D waste specifically
Acceptable Waste Delivery Schedule	means the schedule according to which the Authority shall undertake the delivery of Acceptable Waste to the Concessionaire for handling and processing at the WtC Facility, and which shall be notified to the Concessionaire at least [3 (three)] months prior to the Scheduled COD.
Acceptance Certificate	means the certificate issued by the Authority to the Concessionaire upon successful completion of the Trial Operations of the WtC Facility.
Acceptance Tests Schedule	has the meaning ascribed to it in Clause 16.1(c)(v).
Accounting Year	means the Accounting 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.
Acres	means a unit of land area equal to [•] sq.ft.
Additional Damages	has the meaning ascribed to it in Clause 14.8(e).
Adjoining Property	means any land and/or property adjoining or adjacent to the Site, including all conduits, roads, footpaths, walls, fences, buildings and other structures and other apparatus on, under or within such land and/or property.
Adjusted Net Equity	for the purposes of determining the Termination

Compensation, shall be calculated as follows:

$$\text{Max}(\sum_{i=1}^t [(Equity Contribution - Equity Distribution)_i \times (1 + EIRR)^{(t-i)}], 0)$$

Where,

t = total number of 12 (twelve) month intervals in the period from the Effective Date until the date of termination; provided that if the last interval is shorter than 12 (twelve) months, it shall be considered a 12 (twelve) month interval.

i = index denoting a specific 12 (twelve) month interval (where i=1 for the 1st (first) 12 (twelve) month interval and i=t for the last 12 (twelve) month interval, which may be shorter than 12 (twelve) months)

EIRR = [•]% annual rate of return

Affected Party

means the Party affected by a Force Majeure Event.

Agreement

means this concession agreement entered into between the Parties, along with all schedules and annexures to this agreement and includes any Variation Orders and other amendments made in accordance with this agreement.

Alternate Disposal Location

means the location notified by the Authority as a part of the RFP to which the Concessionaire is required to transport the Residual Inert Matter and/or Residual Waste for disposal in accordance with the instructions of the Authority.

Applicable Laws

means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government, any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project Facilities, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules and SWM Rules.

Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws, as set out in Schedule [•].
Arbitration Act	means the Indian Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Selected Bidder, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls the Concessionaire, the Selected Bidder or Member of the Selected Bidder, as the case may be.
Associated Infrastructure	means the infrastructure facilities associated with the operation of the Project Facilities or otherwise required to be provided by the Concessionaire, including weighbridges, site office, administrative buildings, security room, boundary wall/security fence, laboratories, ambient air quality monitoring stations, utilities, a waste Segregation pre-processing Facility for Segregating Mixed waste etc., as described in greater detail in the Scope of Work and the Technical Specifications.
Authority	has the meaning ascribed to it in the array of Parties.
Authority Applicable Permits	means the Applicable Permits which are required to be obtained by the Authority to undertake the Project, as set out in Schedule [•].
Authority Event of Default	has the meaning ascribed to it in Clause 28.3.
Authority Related Parties	means any of the following: <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the

Authority, acting in that capacity;

(b) any contractor or subcontractor of the Authority and their directors, officers, servants, employees or agents, acting in that capacity; or

(c) any Person acting on behalf of the Authority.

For the avoidance a doubt, 'Authority Related Parties' does not include the Concessionaire.

Authority's Representative means any officer nominated by the Authority, from time to time, to act on its behalf and liaise with the Concessionaire for the purposes of this Agreement and notified as such in writing to the Concessionaire.

Availability Guarantee has the meaning ascribed to it in Clause 21.1.

Availability Liquidated Damages means the liquidated damages payable by the Concessionaire to the Authority for a failure of the WtC Facility to achieve the Availability Guarantee, which are to be calculated in accordance with Schedule [•].

Average Per Ton Gross Revenue has the meaning ascribed to it in Clause 18.7(b).

Bid Due Date means the last date of submission of the Bids as set out in the RFP.

Bid Process means the [single-stage bidding process, with two sub-stages] / [two-stage bidding process]⁷, undertaken by the Authority to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Execution Date.

Bid Security means the unconditional, irrevocable bank guarantee submitted by the Concessionaire to the Authority during the Bid Process.

Bids means the bids submitted in response to the RFP for

⁷ **Drafting Note:** To be deleted if the bidding process is structured as a single stage bidding process with two sub-stages.

qualification and award of the Project.

Biodegradable Waste

means any waste that can be degraded by micro-organisms into simpler stable compounds.

Composting

means the process of enzymatic decomposition of organic matter by microbial action in the presence of oxygen (i.e. aerobic process) by forming windrows to produce compost.

By-Products

means the by-products recovered while pre-processing of the Acceptable Waste at the Project Facilities like recyclable dry waste and RDF etc. which meet the standards specified in Schedule [•].

C&T Contractors

means the contractors appointed by the Authority for collection and transportation of waste in [•].

Change in Law

means the occurrence of any of the following events after the Bid Due Date:

- (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law;
- (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority;
- (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority;
- (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or
- (e) the introduction of any new Tax or a change in the rate of an existing Tax.

It is clarified that Change in Law shall not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire;

Clause	means a clause of this Agreement.
COD Certificate	means the certificate issued by the Authority to the Concessionaire after issue of the Acceptance Certificate and satisfaction of the conditions set out in Clause 17.1(a), evidencing the date on which the WtC Facility has entered commercial operations.
COD Conditions Completion Notice	has the meaning ascribed to it in Clause 17.1(a).
Commercial Operations Date or COD	means the date on which the COD Certificate is issued (or deemed to be issued) to the Concessionaire.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Concession	has the meaning ascribed to it in Clause 3.1.
Concession Period	has the meaning ascribed to it in Clause 3.3.
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the Project Facilities, as set out in Schedule [•].
Concessionaire Event of Default	has the meaning ascribed to it in Clause 28.1.
[Concessionaire Payments	means the payments to be made by the Authority to the Concessionaire in the form of [the Grant] ⁸ [and/or] [the Processing Fee] ⁹ .]
Concessionaire Related Parties	means any of the following: (a) the Selected Bidder or Associates of the Selected

⁸ **Drafting Note:** To be deleted if only Tipping Fee is payable.

⁹ **Drafting Note:** To be deleted if only Grant is payable.

Bidder;

- (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity;
- (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or
- (d) any Person acting on behalf of the Concessionaire.

Concessionaire's Representative

means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the Authority for the purposes of this Agreement and notified as such in writing to the Authority.

Conditions Precedent

means collectively, the obligations of the Concessionaire that are set out at Clause 4.2, the obligations of the Authority that are set out at Clause 4.3 and the obligations of the Parties that are set out at Clause 4.4, and '**Condition Precedent**' means any one of these.

Confidential Information

means any part of this Agreement, or any material provided to any Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.

Confirming Party

has the meaning ascribed to it in the array of Parties.

[Construction Completion Certificate

means a certificate issued by the Authority in accordance with Clause 16.1(a), to certify the completion of the construction works in relation to the Project Facilities has been achieved in accordance with the requirements of this Agreement.]¹⁰

Construction Period

has the meaning ascribed to it in Clause 14.1.

Construction Plan

means the detailed construction plan for the Project Facilities to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve completion of the works in relation to the construction of the

¹⁰ **Drafting Note:** To be deleted if a Grant is payable and therefore, there are Project Milestones in respect of which Milestone Completion Certificates will be issued.

Project Facilities, in order to achieve the COD by the Scheduled COD. The Construction Plan shall be approved by the Authority in accordance with Clause 14.3.

Control

means, with respect to a Person:

- (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or
- (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise,

and the term '**Controlled**' shall be construed accordingly.

Cost

means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.

Covenant

has the meaning ascribed to it in Clause 5.2(d).

CP Long-Stop Date

has the meaning ascribed to it in Clause 4.5(b).

Daily Acceptable Waste Quantity

means the weight of Acceptable Waste received by the Concessionaire daily and calculated in accordance with Clause 18.6(e)(iii).

Daily Guaranteed Acceptable Waste Quantity

means the guaranteed Acceptable Waste that Authority shall supply to the Concessionaire during each day of the O&M Period as set out in Clause 18.5(a).

Debt Due

means the aggregate of the following sums expressed in Rupees outstanding on the date of issuance of Termination Notice:

- (a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project but excluding any part of the principal that had fallen due for repayment [1 (one)] year prior to the date of the Termination Notice, as set out in the Financial Package; and

- (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in (a) above until the date of the Termination Notice, [including any hedging/swap breakage costs], but excluding (i) any interest, fees or charges that had fallen due [1 (one)] year prior to the date of the Termination Notice, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to an Authority Event of Default,
- (c) 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 shall be dealt with as if such conversion had not been undertaken.

For the purpose of calculating Debt Due:

- (a) the Debt Due shall, in no event, exceed [•]% of the Total Project Cost [less the Grant payable to the Concessionaire]¹¹; and
- (b) any amount of Debt Due in foreign currency as on the date of the Termination Notice shall be converted to Rupees at the exchange rate published on the official website of the Reserve Bank of India as at 12 (twelve) noon on the relevant date.

Illustration: If the aggregate of the principal amounts of the debt provided by the Lenders under the Financing Documents for the Project is [•], the Total Project Cost is [•] [and the Grant is [•]]¹², the Debt Due will be capped at [•].

Debt Service

means the sum of all payments on account of principal,

¹¹ **Drafting Note:** To be deleted if no Grant is payable.

¹² **Drafting Note:** To be deleted if no Grant is payable.

interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Documents.

Delay Event	has the meaning ascribed to it in Clause 14.7(b).
Delay Liquidated Damages	has the meaning ascribed to it in Clause 14.8(a).
Delivery Point	means the SLF or the Alternate Disposal Location (as notified by the Authority), in accordance with this Agreement.
Design Capacity	means the quantity of Acceptable Waste that the WtC Facility should be designed to handle and process in a day, which shall be [•] TPD.
Designs and Drawings	means the detailed designs and drawings, technical information, plans, specifications, calculations, and models prepared by the Concessionaire for the Project Facilities, on the basis of the Technical Specifications and which are approved by the Authority in accordance with Clause 14.2(b).
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 26.1(b)(iii).
Discharge Guarantee	has the meaning ascribed to it in Clause 21.1(c).
Discharge Liquidated Damages	means the liquidated damages payable by the Concessionaire to Authority for a failure of the WtC Facility to achieve the Discharge Guarantee, which are to be calculated in accordance with Schedule [•].
Dispute	has the meaning ascribed to it in Clause 34.1.
Dispute Meeting	has the meaning ascribed to it in Clause 34.1.
Dispute Notice	has the meaning ascribed to it in Clause 34.1.
DPR	means a detailed project report prepared in accordance with Clause 14.2(a).
Effective Date	means the date on which all the Conditions Precedent have been satisfied, or waived, by the Parties in accordance with

this Agreement.

EHS Guidelines	means the guidelines available at: [•]
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of the Authority or the Concessionaire, may endanger the environment or lives or security of people at or around the Site (including any ragpickers) or that poses an imminent threat of material damage to any property (including the Project Facilities) at or around the Site.
EMP	means an environmental management plan to be prepared by the Concessionaire and approved by the Authority and the Independent Engineer in accordance with Clause 14.4.
Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
EPC Contract	means the engineering, procurement and construction contract between the Concessionaire and the EPC contractor named therein for the design and construction of the Project Facilities.
Equity Contribution	means the sum expressed in INR representing the paid up share capital of the Concessionaire for meeting the equity component of its financial obligations under this Agreement and the Financing Documents, which, for the purpose of this Agreement, shall include instruments that shall compulsorily convert into equity share capital and any loans provided by any shareholder of the Concessionaire or any Associate of the Concessionaire and which shall be capped at the amount specified as the equity contribution in the Financial Package submitted to the Authority by Concessionaire in accordance with Clause 4.2(h).

Equity Distribution	means: (a) payments made by the Concessionaire towards dividends, share buy-backs, redemptions of shares, payment of principal, interest or fees in respect of instruments convertible into equity share capital or subordinated loans from its Associates, shareholders or other parties (excluding payments made to Lenders); (b) loans given by the Concessionaire to its Associates or shareholders; or (c) any other payments made by the Concessionaire to its shareholders.
Escrow Account	means the interest-bearing account opened by the Authority with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry, or early termination of the Agreement.
Escrow Agreement	means the agreement to be executed among the Authority, the Confirming Party, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, substantially in the form set out at Schedule [•].
Escrow Bank	means the Scheduled Bank with which the Authority opens the Escrow Account, pursuant to the Escrow Agreement.
Event of Default	means an Authority Event of Default or a Concessionaire Event of Default, as the context may require.
Execution Date	means the date of signing of this Agreement.
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the [Selected Bidder/Member(s)] ¹³ determined in accordance with the RFP.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the

¹³ **Drafting Note:** Delete Member(s) if the Selected Bidder is a single entity.

Concessionaire has access to the Financial Assistance.

Financial Model

means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and expected revenues from the Project, 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 the calculations and projections therein.

Financial Package

means the financing package indicating the means of financing the Project Facilities, and includes all Financial Assistance specified in the Financing Documents and the Equity Contribution.

Financial Proposal

means the financial proposal submitted by a bidder in accordance with the RFP for undertaking the Project.

Financing Documents

means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.

FM Notice

has the meaning ascribed to it in Clause 26.2(a).

Force Majeure Cost

has the meaning ascribed to it in Clause 26.6(b).

Force Majeure Event

means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.

Forced Unavailability

means an interruption of or a reduction in the availability of the WtC Facility that is the result of:

- (a) the Authority's failure to deliver sufficient quantities of Acceptable Waste; or
- (b) the Design Capacity being reached as notified by the Concessionaire to the Authority in accordance with Clause 18.12(b); or
- (c) a suspension of the performance of the O&M

obligations pursuant to Article 27, to the extent any such event is not attributable to the Concessionaire; or

- (d) delivery of Prohibited Waste or Non-biodegradable Waste to the Concessionaire; or
- (e) a Force Majeure Event; or
- (f) instructions issued by a Government Authority to the Authority or the Concessionaire to curtail the production of compost from the WtC Facility, provided that such instructions are not attributable to the Concessionaire's failure to operate the WtC Facility in accordance with the Agreement and Applicable Laws.
- (g) [suspension of supply of water or power by [*the municipal authority*] / [*insert the entity responsible for supply of water to the Facility*] beyond [48] hours.]

GoI

means the Government of India.

Good Industry Practices

means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in the construction, operation, and maintenance of waste to energy facilities in India of the type and size similar to the Project Facilities.

Government Authority

means the GoI, any State Government, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or any State Government exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Agreement.

[Grant¹⁴

means an amount equal to INR [•] [*quoted by the Selected Bidder in its Bid*]¹⁵, being the capital support to be paid by the Authority to the Concessionaire in instalments during the Concession Period, upon satisfactory completion of the Project Milestones set out in Schedule [•], in accordance with the terms of this Agreement.]

[Gross Revenue

means:

- (a) all pre-tax revenues from the sale of the compost by the Concessionaire;
- (b) [all pre-tax revenues from the sale of the By-Products and Recyclable Materials by the Concessionaire]; and

Guaranteed Waste Liquidated Damages

has the meaning ascribed to it in Clause 18.7(b).

Hand-back Conditions

mean the condition in which the Site and the Project Facilities shall be handed back to the Authority or any entity nominated by the Authority on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement and are described in greater detail in the Scope of Work and Technical Specifications.

Hand-back Date

means the date on which this Agreement and the Concession hereunder expires or terminates pursuant to the terms of the Agreement.

Hand-back Requirements

means the obligations of the Concessionaire in relation to transfer of the Site and Project Facilities upon termination of the Project, as set out in Clause 30.3.

Independent Engineer

means the Person to be jointly appointed by the Authority and the Concessionaire to act as the independent engineer for the Project in accordance with the provisions of the Agreement.

Indirect Political Force

has the meaning ascribed to it in Clause 26.1(b)(ii).

¹⁴ **Drafting Note:** To be deleted if no Grant is payable.

¹⁵ **Drafting Note:** Language in square brackets to be retained only when the Grant is the bidding parameter.

Majeure Events

Inspection Report

has the meaning ascribed to it in Clause 15.2.

Insurance Cover

means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Article 25 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.

Intellectual Property Rights

means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.

Invoice

means an invoice for payment of the Concessionaire Payments, submitted by the Concessionaire to the Authority in accordance with Article 22.

KPI Adherence Report

has the meaning ascribed to it in Clause 21.1(f).

KPIs

means the key performance indicators set out in Clause 21.1 and Schedule [•], which the Project Facilities must achieve during the O&M Period.

Letter of Credit (LC)

has the meaning ascribed to it in Clause 22.8.

Lead Member

[means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.]¹⁶

Lenders

includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial

¹⁶ **Drafting Note:** To be deleted if the Selected Bidder is not a consortium.

Assistance to the Concessionaire under the Financing Documents but does not include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.

Liquidated Damages	means the Delay Liquidated Damages, the Availability Liquidated Damages, the Throughput Liquidated Damages, the Discharge Liquidated Damages [and the O&M Liquidated Damages].
LOA	has the meaning ascribed to it in Recital H.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.
Member	[means, where the Selected Bidder is a consortium, a member of the Selected Bidder.] ¹⁷
[Milestone Completion Certificate	means, in respect of any Project Milestone, a certificate issued by the Authority in accordance with Clause 16.1(a), to certify that such Project Milestone has been achieved in accordance with the requirements of this Agreement.] ¹⁸
Minimum Escrow Balance	has the meaning ascribed to it in Clause 24.2.
Minor Casualty	means any fire or other casualty that results in physical damage to the Project Facilities to the extent that the total cost (as estimated by the Independent Engineer) of repairing and/or replacing the damaged portion of the Project Facilities to the same condition as previously existed would not exceed the amount of INR [•] (Rupees [•]).
Mixed Waste	means un-Segregated wet and dry waste or Biodegradable Waste and Non-biodegradable Waste, that is produced by households, commercial enterprises, healthcare units (non-bio-medical) including, solid or semi-solid domestic waste, sanitary waste (as defined under the SWM Rules), commercial

¹⁷ **Drafting Note:** To be deleted if the Selected Bidder is not a consortium.

¹⁸ **Drafting Note:** To be deleted if no Grant is payable and, therefore, there are no Project Milestones.

waste, institutional waste, horticulture waste, agriculture and dairy waste, catering and market waste and other non-residential wastes, food waste, paper, cardboard, wood, textiles, rubber, leather, plastics, metal and glass, but excludes Prohibited Waste and C&D Waste .

MoEFCC	means the Ministry of Environment, Forest and Climate Change, GoI.
Non-biodegradable Waste	means any waste that cannot be degraded by micro-organisms into simpler stable compounds.
Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 26.1(b)(i).
Notice of Arbitration	has the meaning ascribed to it in Clause 34.2(a).
O&M	means operation and maintenance.
O&M Agreement	means the agreement for the operation and maintenance of the Project Facilities executed between the Concessionaire and the O&M contractor named therein.
O&M Expenses	means expenses incurred by the Concessionaire or by the Authority, as the case may be, for all O&M works in relation to the Project, including: <ul style="list-style-type: none">(a) cost of salaries and other compensation to employees;(b) cost of materials, supplies, utilities and other services;(c) premium for insurance;(d) all taxes, duties, cess and fees due and payable for O&M; and(e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs.
O&M Inspection Report	has the meaning ascribed to it in Clause 20.2.
[O&M Liquidated Damages	means the damages payable for breach of O&M Standards set

out in Schedule [•].]

O&M Period	means the period commencing on COD and ending on the Hand-back Date during which the Concessionaire is required to operate and maintain the Project Facilities.
O&M Plan	means the plan required to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 18.2, for the operation and maintenance of the Project Facilities.
O&M Security	has the meaning ascribed to it in Clause 9.3.
[O&M Standards	means the requirements and performance standards for the operation and maintenance of the Project Facilities set out in Schedule [•].]
Offtake Agreement	means any agreement entered into between the Concessionaire and the Offtaker for sale and purchase of the Compost.
Offtaker	means any person that agrees to purchase all or part of the Compost from the Concessionaire during the Concession Period.
OHS Plan	means an occupational health and safety management plan to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 14.4(e), which shall include a Site safety plan.
Panel of Chartered Accountants	has the meaning ascribed to it in Clause 23.2.
Party	has the meaning ascribed to it array of Parties.
Payment Certificate	has the meaning ascribed to it in Article 22.
Performance Security	has the meaning ascribed to it in Clause 9.1.
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.

PPP	means public private partnership.
Pre-Construction Works	means the works required to be undertaken by the Concessionaire in order to ensure that the Site is suitable and stable for construction of the WtC Facility and shall include conducting geophysical and geotechnical studies and investigations, assessing the soil bearing capacity, conducting tests to determine the design and construction requirements and carrying out piling, soil filling, concrete filling etc. The detailed description of the Pre-Construction Works required to be performed by the Concessionaire is set out in Schedule [•] (<i>Scope of Work</i>).
[Premium	has the meaning ascribed to it in Clause 22.4(a).
Premium Instalments	has the meaning ascribed to it in Clause 22.4(b).] ¹⁹
Prohibited Waste	[means hazardous waste (as defined under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016), bio-medical waste (as defined under the Bio-Medical Waste Management Rules, 2016), construction and demolition waste (as defined under the Construction and Demolition Waste Management Rules, 2016) industrial waste, e-waste (as defined under the E-Waste (Management) Rules, 2016), waste from batteries (as defined under the Batteries (Management and Handling) Rules, 2001, radioactive waste (as defined under the Atomic Energy (Safe disposal of Radioactive Wastes) Rules, 1987), sludge, sewage waste, ash, dirt, soil, and silt.]
Project	has the meaning ascribed to it in Recital C.
Project Agreements	means this Agreement, the Financing Documents, the EPC Contract, the O&M Agreement, any Offtake Agreements and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to the Project, but does not include the Substitution Agreement and Escrow Agreement.
Project Facilities	means the WtC Facility and the Associated Infrastructure,

¹⁹ **Drafting Note:** To be deleted if there is no Premium payable to the Authority.

which need to be constructed, installed, operated and maintained by the Concessionaire in accordance with this Agreement (including the Technical Specifications), and the term **Project Facility** shall be construed accordingly.

[Project Milestones	means the four construction milestones, according to which the Grant will be paid to the Concessionaire in accordance with Article 22 and as set out in Schedule [•], and ' Project Milestone ' shall mean any one of them, as the context may require.] ²⁰
Proposed Technology	means aerobic process by forming windrows to be used by the Concessionaire to develop the WtC Facility, as specified by the Concessionaire in its Designs and Drawings.
Receipt Point	means the location at the Site, to be mutually agreed between the Parties as part of the Construction Plan, at which the Authority (or any C&T Contractors on behalf of the Authority) will be required to deliver the Acceptable Waste to the Concessionaire in accordance with this Agreement.
Recyclable Materials	has the meaning ascribed to it in Clause 18.10(b)(i).
Reference Period	has the meaning given to it in Clause 18.7(b).
Reserve Fund	has the meaning given to it in Clause 24.3.
Residual Inert Matter	means the waste matter produced after processing of the Acceptable Waste at the WtC Facility.
Residual Waste	means the residual waste that is left after Segregation of the Mixed Waste, which is not capable of being used by the Concessionaire for processing at the WtC Facility to produce compost and which the Concessionaire shall be required to dispose of in accordance with the terms of this Agreement.
RFP	has the meaning ascribed to it in Recital F.
Right of Way	means all privileges, easements and other rights of way for enabling unfettered and unrestricted access and/or right of use

²⁰ **Drafting Note:** To be deleted if no Grant is payable to the Concessionaire.

	of the Site.
Rupee or Rs. or INR	means Indian Rupees, the lawful currency of India.
Safety Requirements	has the meaning ascribed to it in Clause 19.1.
SBI MCLR	means the prevailing marginal cost of fund based lending rate for a tenor of 1 year, as notified by the State Bank of India.
Schedule	means a schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled COD	means the date which is [•] months from the Effective Date, by which the Concessionaire is required to achieve the COD.
Scheduled CP Completion Date	has the meaning ascribed to it in Clause 4.5(a).
Scheduled Maintenance	means a planned maintenance of the WtC Facility that: <ul style="list-style-type: none"> (a) has been scheduled and allowed by the Authority in accordance with the Scheduled Maintenance Programme; and (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of the WtC Facility, as the case may be.
Scheduled Maintenance Programme	has the meaning ascribed to it in Clause 18.13(b).
[Scheduled Project Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant Project Milestone.] ²¹
Scope of Work	means the scope of work for construction and O&M of the Project Facilities as set out in Schedule [•].

²¹ **Drafting Note:** To be deleted if no Grant is payable and, therefore, there are no Project Milestones.

Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Segregation	shall have the meaning as ascribed to the term in the SWM Rules and the terms " Segregate " and " Segregated " shall also have similar meanings.
Selected Bidder	means the bidder selected by the Authority for award of the Project.
Shortfall Quantity	has the meaning ascribed to it in Clause 18.7(b).
Site	means the area equivalent to [•] acres, indicated at [Figure [•] of Schedule [•]], on which the Concessionaire shall develop the Project Facilities.
SLF	means the sanitary landfill identified by the Authority for safe and scientific disposal of the Residual Inert Matter and any Residual Waste.
Sq. ft.	means square feet.
Statutory Auditors	means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 23.2.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Subordinated Debt	<p>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 Hand-back Date:</p> <p>(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</p>

provided by the senior Lenders; and

- (b) 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 per cent)] above the bank rate in case of loans denominated 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 [1 (one)] year prior to the Hand-back 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.

Substitution Agreement

means the substitution agreement to be executed by Authority, the Concessionaire, the Confirming Party and the Lenders, in the format set out in Schedule [•].

SWM Rules

means the Solid Waste Management Rules, 2016, issued by the MoEFCC on 8 April, 2016, as may be amended from time to time.

Taxes

means any Indian taxes including levies, imposts, cesses, duties and other forms of taxation, including income tax, goods and services tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, stamp duty or capital duty (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 Authority, but excludes any interest, penalties and other sums in relation thereto imposed on any account whatsoever.

Technical Capacity

means the technical capacity and experience of the Selected

Bidder [/Member(s)]²² determined in accordance with the RFP.

Technical Specifications	means the technical specifications for design, development, construction, commissioning, operation and maintenance of the Project Facilities, as set out in Schedule [•].
Termination Compensation	means the compensation payable by the Authority upon termination of this Agreement, in accordance with Article 29.
Termination Notice	means a termination notice issued by the Authority in case of a Concessionaire Event of Default (in accordance with Clause 28.2) or a termination notice issued by the Concessionaire in case of an Authority Event of Default (in accordance with Clause 28.4), stating its intention to terminate this Agreement.
Tests on Completion	has the meaning ascribed to it in Clause 16.1(b)(i).
Tests on Completion Notice	has the meaning ascribed to it in Clause 16.1(b)(ii).
Throughput Guarantee	has the meaning ascribed to it in Clause 21.1(b).
Throughput Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the WtC Facility to achieve the daily Throughput Guarantee, which are to be calculated in accordance with Schedule [•].
[Tipping Fee	has the meaning ascribed to it in Clause 22.5(a).
Tipping Fee Statement	has the meaning ascribed to it in Clause 22.5(a).] ²³
Total Casualty	means any fire or other casualty that results in physical damage to the WtC Facility (or any part thereof), to the extent that the total cost of repairing, replacing or restoring the damaged portion of the WtC Facility (as determined by the Independent Engineer) to the same condition as existed previously would be more than [25% (twenty-five per cent)] or more of the then total replacement cost of the WtC Facility (or any part thereof).

²² **Drafting Note:** Delete Member(s) if the Selected Bidder is a single entity.

²³ **Drafting Note:** To be deleted if no Tipping Fee is payable.

Total Project Cost	means the total capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of: <ul style="list-style-type: none"> (a) the capital cost of the Project, as set forth in the Detailed Project Report/ Technical Feasibility Report/ Financial Package; (b) the actual capital cost of the Project on COD; and (c) a sum of Rs. [•] (Rupees [•]).
Total Unloaded Waste	has the meaning ascribed to it in Clause 18.6(e)(ii).
TPD	means tonnes per day.
TPY	means tonnes per year.
Trial Operations	means the operation of the WtC Facility on a trial basis for a period of not less than [•] months from the date on which the Trial Operations Commencement Notice is issued for the WtC Facility or such longer period as may be determined in accordance with Clause 16.1(c).
Trial Operations Commencement Notice	has the meaning ascribed to it in Clause 16.1(b)(v).
ULB	has the meaning given to it in the array of Parties.
Unloaded Prohibited Waste Quantity	has the meaning ascribed to it in Clause 18.6(d)(ii).
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by the Authority or proposed by the Concessionaire, in accordance with Article 31.
Variation Order	means an order issued by the Authority certifying its approval of a proposed Variation and recording the terms and conditions on which the proposed Variation is required to be implemented.
Vesting Certificate	has the meaning ascribed to it in Clause 30.4.

Waste Acceptance, Segregation and Rejection Plan

means the plan required to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 18.3, for the inspection, testing, rejection and Segregation of waste delivered to the Concessionaire.

Weighbridges

means the weighbridges to be installed by the Concessionaire at the Receipt Point to weigh each consignment of waste delivered by the Authority or the C&T Contractors on its behalf.

Wilful Misconduct

means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.

WtC Facility

means the waste to compost facility to be set up by the Concessionaire in accordance with the terms of this Agreement (including the Scope of Work and Technical Specifications), which shall be capable of handling and processing Acceptable Waste up to the Design Capacity.

1.2 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated,

from time to time.

- (g) Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) A requirement that a payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The terms of the RFP 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. In the event of any discrepancy between this Agreement and the RFP, the provisions set out in this Agreement shall prevail.
- (l) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the Authority for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Authority shall be responsible to and indemnify the Concessionaire for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.
- (m) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Authority, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (n) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (o) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Liquidated Damages) are a genuine pre-estimate of and reasonable compensation

for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement and are not in the nature of a penalty.

1.3 Units of Measurement

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the 3rd (third) digit of 5 (five) or above being rounded up and below being rounded down.

1.4 Priority of agreements, clauses and schedules

- (a) The provisions of the Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules.
- (b) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules.
- (c) In the event of any discrepancy between various documents issued by or provided to the Authority as a part of the Bid Process, the following order of priority shall apply:
 - (i) this Agreement;
 - (ii) the Schedules to this Agreement;
 - (iii) the LOA issued to the Selected Bidder;
 - (iv) the Financial Proposal submitted by the Selected Bidder;
 - (v) the written clarifications, if any, issued to the bidders; and
 - (vi) the RFP.

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PART II – THE CONCESSION

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ARTICLE 2

2. SCOPE OF THE PROJECT

b.

- 2.1 The scope of the Project shall be as set out in Schedule [•] (*Scope of Work*) and shall include:
- (a) designing, financing, developing, constructing, completing and commissioning the Project Facilities by the Scheduled COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the DPR, the Construction Plan, the EMP, the OHS Plan and Good Industry Practices; and
 - (b) operating and maintaining the Project Facilities in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the O&M Plan, the EMP, the OHS Plan and Good Industry Practices to ensure compliance with the KPIs; and
 - (c) sale of Compost to the Offtaker (s) and disposal of the By-Products, Recyclable Materials, Residual Inert Matter and Residual Waste in accordance with the requirements of this Agreement; and
 - (d) hand back of the Project Facilities upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

ARTICLE 3

3. GRANT OF THE CONCESSION

c.

3.1 Concession

On and from the Effective Date, and subject to, and in accordance with the requirements of this Agreement, Applicable Laws and Applicable Permits, the Authority grants to the Concessionaire the exclusive right, license and authority to:

- (a) design, finance, develop, construct, complete and commission the Project Facilities; and
- (b) upon completion of construction and commissioning of the Project Facilities, operate and maintain the Project Facilities during the O&M Period,

for the Concession Period (the **Concession**), 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

The grant of the Concession set out in Clause 3.1 shall oblige or entitle the Concessionaire, as the case may be, to the following:

- (a) perform and fulfil all of the Concessionaire's obligations under, and in accordance with, the requirements of this Agreement;
- (b) access to the Site, for the sole purpose of implementing the Project;
- (c) apply for and obtain all the Concessionaire Applicable Permits required to undertake the Project;
- (d) raise funds (through both debt and equity financing) to finance the Project and, if required, mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities in accordance with the terms of this Agreement;
- (e) undertake the Pre-Construction Works in accordance with Schedule [•] (*Scope of Work*);
- (f) design, engineer, procure, develop, construct, install, complete and commission the Project Facilities in order to achieve the COD by the Scheduled COD;
- (g) upon completion of construction of the Project Facilities, undertake the Trial Operations and performance testing of the WtC Facility;

- (h) upon successful completion of the Trial Operations and performance tests, operate and maintain the Project Facilities for the O&M Period, 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;
- (i) receive, handle and process the Acceptable Waste up to the Design Capacity to produce the Compost;
- (j) receive, handle and Segregate Mixed Waste up to the Maximum Permissible Mixed Waste Quantity;
- (k) transport the Residual Inert Matter and/or Residual Waste to the Delivery Point;
- (l) store, use, appropriate, dispose of or market and sell all products of the Acceptable Waste including but not limited to the Compost, the By-Products and any Recyclable Materials in accordance with Applicable Laws;
- (m) with reasonable assistance from the Authority, obtain the utilities required for enabling the construction of the Project Facilities;
- (n) develop and maintain a buffer zone (including a green area) around the WtC Facility in accordance with Applicable Laws;
- (o) supply and deliver the Compost to the Offtaker(s) in accordance with the terms of the Offtake Agreement(s);
- (p) transfer the Site and the Project Facilities to the Authority upon the expiry of the Concession Period or termination of this Agreement, after rectification of any defects in the Project Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements;
- (q) [receive the Concessionaire Payments, subject to compliance with the terms and performance of the obligations under this Agreement;]²⁴
- (r) appoint Subcontractors, agents, advisors and consultants and enter into Subcontracts to undertake the Project, provided that subcontracts of a value above INR [•] will be executed only with the prior approval of the Authority.

3.3 Concession Period

The Authority grants the Concession to the Concessionaire for a term commencing on the Execution Date and for a period of [•] years from the COD Date (the **Concession Period**) during which the Concessionaire

²⁴ **Drafting Note:** To be deleted if no Grant / Processing Fee is payable to the Concessionaire.

is authorised and obligated to implement the Project in accordance with this Agreement, provided that:

- (a) if the Concession Period is extended by the Authority in accordance with Clause 3.4 below, the Concession Period shall include the period by which the Concession Period is so extended; and
- (b) in the event of an early termination of the Agreement by either Party in accordance with the terms of this Agreement, the Concession Period shall mean and be limited to the period commencing on the Execution Date and ending on the date of termination of the Agreement.

3.4 Extension of Concession Period

The Concession Period may be extended by mutual agreement of the Parties either on the same terms and conditions, or on modified terms and conditions. Provided that, any such mutually agreed extension of the Concession Period shall be recorded in writing, by way of an amendment to this Agreement, by no later than [30 (thirty)] days prior to the expiry of the Concession Period.

3.5 Re-bidding of the Project on Expiry of the Concession Period

- (a) The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to invite bids and grant a concession with respect to the WtC Facility for a period after the expiry of the Concession Period.
- (b) The Authority agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms of the relevant bid documents issued at the time. Subject to that during the project his LDs paid does not exceed 15% of the performance security or there are not more than 5 concessionaire defaults for six consecutive months.
- (c) During such bidding, the Concessionaire shall have a first right of refusal to match the proposal submitted by the lowest bidder, or highest ranked bidder, as the case may be, subject to the following:
 - (i) the Concessionaire is otherwise eligible to participate in the bid process in accordance with the terms of the relevant bidding documents;
 - (ii) the Concessionaire's bid is within the range of plus-minus (+/-) [10% (ten per cent)] of the lowest (or highest) evaluated bid received.
- (d) If the successful bidder is not the Concessionaire, then the Concessionaire shall allow the core team (consisting of maximum of four persons) of the successful bidder to enter the Site at least [30 (thirty)] days before the date of expiry of the Concession Period to monitor work and undertake inspections of the Project Facilities. Provided that, during such period, the Authority

shall ensure that such persons who are given access to the Site and the Project Facilities do not cause any interference with the operations and maintenance of the Project Facilities by the Concessionaire or any loss or harm to the Concessionaire's property and personnel at the Site.

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ARTICLE 4

4. CONDITIONS PRECEDENT AND EFFECTIVENESS

4.1 Effectiveness

- (a) Save and except for this Article 4, Article 3 (*Grant of the Concession*), Clause 5.1(k) (*Appointment of Concessionaire's Representative*), Clause 5.10 (*Change in Ownership*), Clause 6.1(e) (*Appointment of Authority's Representative*), Article 7 (*Representations and Warranties*), Article 9 (*Performance Security and O&M Security*), Article 10 (*Project Site*), Article 12 (*Financing Support, Substitution Agreement and Security*), Article 13 (*Independent Engineer*), Clause 14.1 (*Commencement and Duration*), Clause 14.2(a) (*DPR*), Clause 14.2(b) (*Designs and Drawings*), Clause 14.3 (*Construction Plan*), Clause 14.4 (*Environment and Occupational Health and Safety Related Obligations*), Clause 14.6(a) (*Completion of Pre-Construction Works*), Article 26 (*Force Majeure*), Article 32 (*Change in Law*), Article 34 (*Dispute Resolution*) and Article 35 (*Miscellaneous*) and the related Schedules which come into effect on the Execution Date, the rights and obligations of the Parties under this Agreement shall come into full force and effect and be binding on the Parties on and from the day on which all of the Conditions Precedent have been satisfied, or waived in writing, in accordance with this Article 4 (**Effective Date**) and shall continue until such time as this Agreement expires or is terminated in accordance with its terms.
- (b) For the purposes of this Clause 4.1, the date on which the notice of completion of the last Condition Precedent specified in this Article 4 is issued by the Authority to the Concessionaire will be treated as the Effective Date.

4.2 Concessionaire Conditions Precedent

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- (a) provide the Performance Security to the Authority;
- (b) prepare the Construction Plan and designs and submit to the Authority and the Independent Engineer for their approval in accordance with Clause 14.3;
- (c) Prepare and submit the EMP Report to the Authority and the Independent Engineer for their approval in accordance with Clause 14.4(a);
- (d) obtain all Concessionaire Applicable Permits that are required for achieving Financial Closure and for commencement of construction of the Project Facilities (including the environmental

clearance) at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;

- (e) [execute and provide a copy to the Authority of the technology license agreement(s) executed with the Selected Bidder or the third party technology supplier for setting up the WtC Facility;]²⁵
- (f) submit to the Authority certified true copies of all resolutions adopted by the board of directors of the Concessionaire authorising execution, delivery and performance of this Agreement, the Substitution Agreement and the Escrow Agreement by the Concessionaire;
- (g) achieve Financial Close and submit 3 true copies of the Financing Documents and the Financial Package to the Authority, duly certified 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, provided that the Authority shall co-operate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders for this purpose;
- (h) [execute a shareholders' agreement amongst the shareholders of the Concessionaire, and deliver to the Authority a certified true copy of the shareholders' agreement (attested by a director of the Concessionaire);]²⁶
- (i) submit to the Authority certified true copies of the constitutional documents of the Concessionaire;
- (j) submit to the Authority a confirmation from the Concessionaire, in original, of the correctness of their Representations and Warranties set out in Article 7 of this Agreement;
- (k) submit to the Authority a legal opinion stating that: (i) this Agreement, the Substitution Agreement and the Escrow Agreement have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement, the Substitution Agreement and the Escrow Agreement have been taken, fulfilled or done;

²⁵ **Drafting Note:** To be deleted if the Selected Bidder is entering into the Concession itself (and not through an SPV).

²⁶ **Drafting Note:** This Condition Precedent to be deleted if the Selected Bidder is not a consortium.

- (l) if [the Selected Bidder/a Member/Associate]²⁷ has submitted unaudited annual accounts or audited annual accounts for the Accounting Year immediately preceding the last Accounting Year along with the Bid, the Concessionaire shall submit to the Authority: (i) a certified copy of [the Selected Bidder's/Member's/Associate's]²⁸ duly audited balance sheet, annual report and profit and loss account for the latest Accounting Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member/Associate]²⁹ met the Financial Capacity specified in the RFP as of the Bid Due Date;
- (m) if [the Selected Bidder/a Member/Associate]³⁰ has submitted a certificate from a chartered accountant to demonstrate that it meets the Financial Capacity specified in the RFP on the date not more than [7 (seven)] days prior to the Bid Due Date, the Concessionaire shall submit to the Authority,: (i) audited accounts for the period for which it submitted the chartered accountant certificate; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member/Associate]³¹ met the Financial Capacity specified in the RFP as of the Bid Due Date; and
- (n) submit to the Authority a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire.

4.3 Authority Conditions Precedent

The Authority shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- (a) grant the Concessionaire Right of Way to the Site, free of Encumbrances and encroachments in accordance with Article 10;
- (b) Clause 4.2(c), review and approve the Construction Plan in accordance with Clause 14.3;
- (c) subject to Clause 4.2(d), review and approve the EMP in accordance with Clause 14.4;
- (d) obtain all approvals and consents, required for the Authority to enter into this Agreement;
- (e) provide access road(s) to the Site, which are capable of being used for transportation of equipment and material to the Site for the construction of the Project Facilities;
- (f) [open the Escrow Account and fund the Escrow Account with an amount equivalent to the

²⁷ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

²⁸ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

²⁹ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³⁰ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³¹ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

Minimum Escrow Balance;]³²

- (g) provide an LC from a Scheduled Bank in accordance with Clause 22.8; and
- (h) facilitate the Concessionaire in obtaining all Concessionaire Applicable Permits if requested by the Concessionaire, including permits in relation to environmental protection and conservation.

d.

4.4 Other Conditions Precedent

- (a) The Authority and Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):
 - (i) execute the Escrow Agreement with the Escrow Bank in the form set out at Annexure [•];
 - (ii) within [60 (sixty)] days of the Execution Date, appoint the Independent Engineer in accordance with Article 13; and
 - (iii) execute the Substitution Agreement with the Lenders in the form set out at Schedule [•].
- (b) The Confirming Party shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):
 - (i) execute the Substitution Agreement with the Lenders in the form set out at Schedule [•]; and
 - (ii) execute the Escrow Agreement with the Escrow Bank, the Authority and the Concessionaire in the form set out at Annexure [•].

4.5 Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within [180 (one hundred and eighty)] days from the Execution Date (the **Scheduled CP Completion Date**).³³
- (b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the Scheduled CP Completion Date due to:
 - (i) a Force Majeure Event;

³² **Drafting Note:** To be deleted if no Grant is payable.

³³ **Drafting Note:** Scheduled CP Completion Date to be confirmed.

- (ii) a Change in Law;
- (iii) in case of the Concessionaire, delay by the relevant Government Authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied for such Concessionaire Applicable Permit within the specified timelines, having paid the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
- (iv) delay by the other Parties in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the Scheduled CP Completion Date shall be extended on a day-for-day basis for the period of such delay, provided that the Scheduled CP Completion Date shall not be extended beyond the date which is [•] days from the Scheduled CP Completion Date (**CP Long-stop Date**).

- (c) Each Party shall cooperate and use its reasonable efforts to assist the other Parties in satisfying the Conditions Precedent.
- (d) The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent.
- (e) Each Party shall promptly inform the other Parties when any Condition Precedent for which it is responsible has been satisfied. The Authority shall, within [7 (seven)] days of the satisfaction of all the Conditions Precedent in accordance with this Article 4, issue a notice to the Concessionaire in which it shall declare the Effective Date of the Agreement.

4.6 **Consequences of failure to satisfy Conditions Precedent**

- (a) If:
 - (i) the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the Scheduled CP Completion Date, as may be extended in accordance with Clause 4.5(b), then it shall be liable to pay liquidated damages for each week of delay beyond the Scheduled CP Completion Date at the rate of [0.2] % of the Performance Security up to the CP Long-stop Date. The Authority may recover such damages from the Performance Security.
 - (ii) the Authority fails to satisfy any of the Conditions Precedent that it is required to fulfil by the Scheduled CP Completion Date, as may be extended in accordance with Clause 4.5(b), then it shall be liable to pay liquidated damages for each week of delay beyond the Scheduled CP Completion Date at the rate of [0.2]% of the Performance Security,

up to the CP Long-stop Date. The Authority shall pay such liquidated damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Concessionaire.

It is clarified for the avoidance of any doubt that if either the Concessionaire or the Authority fail to satisfy any of their Conditions Precedent by the Scheduled CP Completion Date due to the Confirming Party failing to satisfy its Condition Precedent as per Clause 4.4(b), or if both the Concessionaire and the Authority have failed to fulfil any of their Conditions Precedent by the Scheduled CP Completion Date (including any Conditions Precedent under Clause 4.4(a)), then neither the Concessionaire nor the Authority shall be liable to pay liquidated damages under this Clause 4.6.

- (b) The Parties acknowledge that the damages specified in Clause 4.6(a)(i) and Clause 4.6(a)(ii) above are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the non-defaulting Party(ies) as a result of the delay in fulfilment of the Conditions Precedent and consequently, occurrence of the Effective Date.
- (c) Subject to Clause 4.6(e), if the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Authority has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- (d) Subject to Clause 4.6(e), if the Authority fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Concessionaire has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- (e) The Concessionaire and the Authority shall be permitted to waive or relax any Condition Precedent required to be fulfilled by the other Party or agree to an extension of the CP Long-stop Date for satisfaction of the Conditions Precedent required to be fulfilled by the other Party.
- (f) If the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it, other than due to the reasons set out in Clause 4.5(b) or due to the Confirming Party failing to satisfy its Condition Precedent as per Clause 4.4(b), by the CP Long-Stop Date and this Agreement is terminated in accordance with this Clause 4.6, then:
 - (i) the Authority shall return the Performance Security submitted by the Concessionaire after deducting any amounts due and payable by the Concessionaire towards the liquidated damages as per Clause 4.6(a) up to and until the date of termination of this Agreement;
 - (ii) the Concessionaire shall not be entitled to receive any payment or compensation from

the Authority for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Agreement (including preparing, the Construction Plan, the DPR and the ESIA Report) prior to the termination of this Agreement;

- (iii) the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement;
 - (iv) the Authority shall hand over to the Concessionaire the Construction Plan, the EMP Report and any other document and Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement; and
 - (v) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.
- (g) If the Authority or the Confirming Party has failed to satisfy any of the Conditions Precedent required to be satisfied by them or the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it due to the reasons set out in Clause 4.5(b), in each case by the CP Long-Stop Date, and this Agreement is terminated in accordance with this Clause 4.6, then:
- (i) the Authority shall return the Performance Security submitted by the Concessionaire;
 - (ii) [the Authority shall reimburse the Concessionaire for the reasonable documented costs incurred by the Concessionaire in preparing the Construction Plan, designs plans and the EMP Report less any liquidated damages paid by the Authority under Clause 4.6(a), provided that such costs shall be capped at a sum no greater than [1 (one)]% of the Total Project Cost;]
 - (iii) the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement;
 - (iv) the Authority shall hand over to the Concessionaire the Construction Plan, designs, plans, the EMP Report and any other document and Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement;
 - (v) the Authority shall not use any soft copies of the Construction Plan, designs plans, the EMP Report and any other document and Confidential Information submitted by the

Concessionaire to the Authority prior to termination of this Agreement, without the prior written consent of the Concessionaire; and

- (vi) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.
- (h) Upon termination of this Agreement pursuant to this Clause 4.6, other than to the extent specified in this Clause 4.6, no Party shall have any liability to the other Party in connection with this Agreement.

ARTICLE 5

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

The Concessionaire shall:

- (a) at its own cost and expense, procure finance for and undertake the design, engineering, procurement, development, construction, commissioning, operation and maintenance of the Project Facilities in a manner that is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan, EMP, the OHS Plan and Good Industry Practice;
- (b) operate and maintain the Project Facilities throughout the O&M Period in a manner that is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan, EMP, the OHS Plan and Good Industry Practice;
- (c) design, engineer, procure, construct, operate and maintain the Associated Infrastructure in accordance with the requirements of this Agreement;
- (d) maintain and comply with the terms and conditions of all Applicable Permits in undertaking the construction and O&M of the Project Facilities;
- (e) perform and fulfil all obligations under the Financing Documents;
- (f) procure, as required, all necessary rights (including proprietary rights), licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- (g) discharge its obligations as a reasonable and prudent person and make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Subcontractors in connection with the performance of its obligations under the Agreement;
- (h) ensure that the WtC Facility is capable of handling and processing Acceptable Waste up to its Design Capacity catering to the entire concession period on a daily basis;
- (i) within [30 (thirty)] days of the Execution Date, and in any event, prior to the commencement of any work at the Site, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Project Facilities, and liaise with Authority's

Representative and the Independent Engineer during the Concession Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to Authority;

- (j) provide all necessary assistance to the Independent Engineer and Authority in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement;
- (k) take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the Adjoining Properties, in accordance with the approved EMP, OHS Plan, and all Applicable Laws;
- (l) ensure that all excavated materials, earthworks, waste materials, Residual Inert Matter and hazardous substances are stored and/or disposed in accordance with this Agreement, the EMP, OHS Plan, Applicable Laws and Applicable Permits;
- (m) obtain and maintain adequate insurances as per this Agreement;
- (n) provide and maintain a buffer zone around the WtC Facility;
- (o) [procure and maintain an adequate supply of water for the construction, operation and maintenance of the Project Facilities;]
- (p) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (q) hand back the Project Facilities to the Authority upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

5.2 **Obligations relating to Project Agreements**

- (a) It is expressly agreed that the Concessionaire shall, at all times, be 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 any other agreement shall excuse the Concessionaire from its obligations or liability under this Agreement.
- (b) The Concessionaire shall submit to the Authority copies of all Project Agreements or any amendments or replacements thereto within [15 (fifteen)] days from the date of their execution.
- (c) The Concessionaire shall not make any addition, replacement or amendment to any of the Financing Documents without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of increasing the financial liability of

the Authority under this Agreement, 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 Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for the restructuring or rescheduling of the Debt Due to the extent that such restructuring or rescheduling does not increase the financial liability of the Authority under this Agreement.

- (d) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of termination or suspension (the **Covenant**). The Parties agree that in the event the Authority does not exercise such rights of substitution within a period not exceeding [90 (ninety)] days from the Hand-back Date, the Project Agreements shall be deemed to cease to be in force and effect on the Hand-back Date without any liability whatsoever on the Authority 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 Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under 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 Authority in the event of termination or suspension.
- (e) 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 party(ies) and that the Authority or its advisors/contractors/consultants shall not be impleaded in such disputes whatsoever.

5.3 **Land Use**

The Concessionaire shall ensure optimum utilization of the Site and land available and shall not use the same for any purpose unconnected with, or which is not incidental to the Project.

5.4 **Processing of Acceptable Waste**

The technologies adopted for processing Acceptable Waste shall be those proposed in the Concessionaire's Bid submitted in response to the RFP.

5.5 **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.

5.6 Branding of the Project

- (a) The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of "Waste to Compost Facility in [*insert the location*]".
- (b) 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. However, the Concessionaire shall have the right to utilize the name of the Project to exhibit technical and financial capability of the Concessionaire when bidding for other projects.

5.7 Obligations relating to Information

e.

- (a) Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority or the Confirming Party 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 or the Confirming Party.
- (b) After receiving a notice from the Authority or the Confirming Party 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 or the Confirming Party proposes to publish, the Concessionaire shall provide such comments in the manner and form required by the Authority or the Confirming Party.

5.8 Obligations in relation to Other Charges

- (a) The Concessionaire shall make timely payments for all utility services in respect of the Site, including water, sewerage, electricity, telecommunication, internet and cable charges, etc. on its own account.
- (b) The Concessionaire shall hold harmless and keep the Authority indemnified from any fine, penalty, charges, levies, damages and losses that arise on account of any claims, suits, demands and proceedings due to the non-payment or delayed payment of such charges.

5.9 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 Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.10 Obligations relating to Change in Ownership

(a) Ownership Information

The shareholding pattern of the [Selected Bidder/Members]³⁴ in the Concessionaire is as follows:

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity/Preference]	Value of the shares held [in Rs.]	Shareholding [in %]

The Concessionaire represents and warrants to the Authority that no arrangements are in place that have resulted or may result in a breach of the change in ownership restrictions set out in Clause 5.10(b) below.

(b) Change in Ownership Restrictions

- (i) [The Concessionaire shall ensure that the Selected Bidder holds at least: (i) [51% (fifty one percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after COD; and (ii) [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire during the remaining Concession Period.]³⁵

OR

- (i) [The Concessionaire shall ensure that Members of the Selected Bidder, being the shareholders of the Concessionaire, comply with the following ownership restrictions:
- (A) the consortium shall cumulatively hold not less than [51% (fifty one percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD;
 - (B) the Lead Member shall hold not less than [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD; and

³⁴ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³⁵ **Drafting Note:** This paragraph may be deleted if the Selected Bidder is a consortium.

- (C) the Members, whose Technical Capacity or Financial Capacity was assessed for the purpose of qualification, shall individually hold not less than [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years from the COD. Provided that, any Member who demonstrated O&M experience for the purpose of qualification, shall hold not less than [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire for the Concession Period.

After the expiry of [2 (two)] years from the COD, the Lead Member and other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated O&M experience for the purposes of qualification continuing to be part of the Concessionaire; and (B) the cumulative shareholding of the consortium in the Concessionaire being at least [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire during the remaining Concession Period.]³⁶

- (ii) The Concessionaire shall ensure that the change in ownership restrictions set out in Clause 5.10(b) are incorporated in the articles of association of the Concessionaire.

³⁶ **Drafting Note:** This paragraph may be deleted if the Selected Bidder is a single entity.

ARTICLE 6

2. OBLIGATIONS OF THE AUTHORITY AND THE CONFIRMING PARTY

2.1 General Obligations of the Authority

The Authority shall:

- (a) comply with all its obligations under Applicable Laws;
- (b) make reasonable endeavours to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) grant, in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require, or is obliged to seek, from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations;
- (d) provide reasonable assistance to the Concessionaire in obtaining permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities that may be required for the Project, including providing reasonable assistance to the Concessionaire in procuring the water supply for the construction, operation and maintenance of the Project Facilities;
- (e) within [30 (thirty)] days of the Execution Date, and in any event, prior to the commencement of any construction of the Project Facilities, appoint a Person with sufficient skill and expertise to act as Authority's Representative. The Authority's Representative shall liaise with the Concessionaire's Representative and the Independent Engineer during the Concession Period. At any time during the Concession Period, Authority may replace Authority's Representative with prior written notice to the Concessionaire;
- (f) grant to the Concessionaire, Right of Way and peaceful and actual possession of the Site in accordance with the timelines in this Agreement and ensure that the Concessionaire enjoys peaceful access to the Site
- (g) not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement;
- (h) declare and maintain, or cause to declare and maintain, a no-development zone of habitation around the Site in accordance with Applicable Laws;

- (i) make the SLF or any Alternate Disposal Location available in time to allow the Concessionaire to deliver any Residual Inert Matter generated from the Trial Operations and operation of the WtC Facility and any Residual Waste;
- (j) cause the Independent Engineer to carry out timely inspection of the Project Facilities, and perform its other obligations and duties under this Agreement;
- (k) upon progressive completion of the works for the construction of the Project Facilities, inspect or cause the Independent Engineer to inspect the works and issue the [Milestone Completion Certificates³⁷ / Construction Completion Certificate³⁸] to the Concessionaire;
- (l) monitor and review the operations and performance of the Project Facilities, including the obligation to review the records and reports that the Concessionaire is required to maintain, during normal working hours;
- (m) supply adequate quantities of Acceptable Waste required by the Concessionaire for it to conduct the Trial Operations and performance testing of the Project Facilities;
- (n) engage sufficient number of C&T Contractors to ensure that it supplies the Daily Guaranteed Acceptable Waste Quantity to the Concessionaire at the Receipt Point in accordance with the requirements of this Agreement;
- (o) ensure that Acceptable Waste is delivered to the Concessionaire at the Receipt Point and is not dumped at any other place on or about the Site;
- (p) ensure that any excess Acceptable Waste (i.e., Acceptable Waste beyond the Design Capacity of the WtC Facility), which is not utilized at the WtC Facility is diverted to an alternate location;
- (q) ensure that no Prohibited Waste is delivered to the Concessionaire and if any Prohibited Waste is delivered at the Site, then cause such Prohibited Waste to be promptly and safely removed from the Site;
- (r) ensure that the Escrow Account is funded with the Minimum Escrow Balance;
- (s) ensure that the LC is procured and maintained in accordance with the requirements as set out in Clause 22.8;
- (t) [make the Grant payments, on satisfactory completion of the relevant Project Milestones in accordance with Article 22;]³⁹ and

³⁷ **Drafting Note:** To be deleted if no Grant is payable and, therefore, there are no Project Milestones.

³⁸ **Drafting Note:** To be deleted if a Grant is payable and, therefore, there are Project Milestones.

³⁹ **Drafting Note:** To be deleted if no Grant is payable.

- (u) [make the Processing Fee payments, after approval of the Processing Fee Statement, in accordance with Article 22.]⁴⁰

2.2 General Obligations of the Confirming Party

The Confirming Party agrees to perform the following:

- (a) in case of a failure by the Authority to do so, ensure that the Escrow Account is funded with the Minimum Escrow Balance;
- (b) provide reasonable assistance to the Concessionaire in:
 - (i) obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits; and
 - (ii) achieving Financial Close.

2.3 Obligations relating to Refinancing

- (a) Without prejudice to any rights or remedies of the Authority under this Agreement or otherwise, upon a request made by the Concessionaire to this effect, the Authority shall, in conformity with Applicable Laws, 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 that any refinancing undertaken shall not have the effect of increasing the Authority's financial obligations under this Agreement. Any refinancing shall be subject to the prior consent of the Authority, provided that such consent shall not be withheld if the effect of such refinancing will not result in an increase in the Authority's financial obligations under the Agreement.
- (b) The Authority shall endeavor to convey its decision on a request for refinancing submitted by the Concessionaire within [30 (thirty)] days of receipt of the request. For the avoidance of doubt, the tenure of debt refinanced may be determined mutually between the Lenders and the Concessionaire, but the repayment of the debt due shall be completed no later than [1 (one) year] prior to expiry of the Concession Period.

ARTICLE 7

⁴⁰ **Drafting Note:** To be deleted if no Tipping Fee is payable.
Document not to be printed or published
Model Concession Agreement for Waste to Compost

3. REPRESENTATIONS AND WARRANTIES

f.

3.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Substitution Agreement, the Escrow Agreement and any other agreements required in relation to the Project;
- (b) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement, the Substitution Agreement and the Escrow Agreement; and
- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement, the Substitution Agreement or the Escrow Agreement.

3.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to Authority that:

- (a) it is duly organized, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, finance, construct, complete, operate and maintain the Project Facilities in accordance with this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid of the Selected Bidder or in response to the RFP, and as updated on or before the date of this Agreement is true and accurate in all respects as on the Execution Date;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant,

contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the GoI or [*insert the relevant State Government*]⁴¹ which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (i) the Selected Bidder [and any Member of the Selected Bidder] is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority 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;
- (j) all its rights and interests in the Project shall pass to and vest in the Authority on the Hand-back Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or act of the Authority and none of the assets of the Project shall be acquired by it or be 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 for in this Agreement;
- (k) 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 Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (l) it shall at no time undertake or permit any change in ownership except as permitted by Clause 5.10; and
- (m) no representation or warranty by it contained in this Agreement or in any other document furnished by it to Authority, the GoI or [*insert the relevant State Government*]⁴² in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty.

⁴¹ **Drafting Note:** Insert the relevant State Government.

⁴² **Drafting Note:** Insert the relevant State Government.

3.3 Authority's Representations and Warranties

Authority represents and warrants to the Concessionaire that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- (c) it has taken all necessary approvals to execute this and perform its obligations under this Agreement;
- (d) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (e) 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 the GoI or the [*insert the relevant State Government*]⁴³, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (f) it has complied with all Applicable Laws and Applicable Permits in all material respects;
- (g) the Site is not subject to any mortgage, lien, charge or any other Encumbrance;
- (h) it does not have any liability for any Taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
- (i) all information provided by it in the RFP and this Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

3.4 Acknowledgement

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. Such notification shall not have the effect of remedying any breach of the

⁴³ **Drafting Note:** Insert the relevant State Government.

representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a Party under this Agreement.

- (c) Authority and Authority Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
- (iii) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by Authority to the Concessionaire; or
 - (iv) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

ARTICLE 8

4. DISCLAIMER

- 4.1 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 RFP, Scope of Work, Technical Specifications, the Site, existing structures, local conditions, physical qualities of ground, subsoil, and geology, waste characteristics and all information provided by the Authority 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 Authority 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 confirms that it shall have no claim whatsoever against the Authority in this regard.
- g.
- 4.2 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 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Concessionaire Related Parties or any person claiming through or under any of them.
- h.
- 4.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1 above shall not vitiate this Agreement or render it voidable.
- i.
- 4.4 In the event that any Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1 above, that Party shall immediately notify the other Parties, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- j.
- 4.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III – DEVELOPMENT AND OPERATIONS

Draft

ARTICLE 9

5. PERFORMANCE SECURITY AND O&M SECURITY

- 5.1 **The Concessionaire shall have submitted to the Authority, prior to the Execution Date, an unconditional and irrevocable bank guarantee for an amount equal to INR [•] (i.e., an amount equal to [•]% of the Total Project Cost) (the Performance Security). Until the Performance Security has been submitted to the Authority, the Bid Security shall remain in force and effect, and upon the submission of the Performance Security, the Authority's Representative shall release the Bid Security to the Concessionaire.** Notwithstanding anything to the contrary in this Agreement, in the event that the Performance Security is not provided by the Concessionaire on or before the execution of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as damages, and all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the LOA shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire.
- 5.2 **The Performance Security shall remain valid for a period until [30 (ninety) days] after the COD.**
k.
- 5.3 To secure the performance of its obligations during the O&M Period, the Concessionaire shall be required to submit a bank guarantee substantially in the format as the Performance Security for an amount equivalent to INR [•] (**O&M Security**) [at least 30 (thirty) days prior to the COD]. The O&M Security may have an initial validity period of [1 (one) year], and must be renewed on a year-on-year basis, before the expiry of the 11th (**eleventh**) month of the relevant year, until the expiry of the Concession Period.
l.
- 5.4 **The Performance Security shall secure the due performance of the Concessionaire's obligations up to the COD and the O&M Security shall secure the due performance of the Concessionaire's obligations from the COD till the expiry of the Concession Period. The cost of procuring the Performance Security and the O&M Security shall be borne solely by the Concessionaire.**
m.
- 5.5 **If the Performance Security is scheduled to expire before the timeline mentioned in Clause 9.2, then the Concessionaire shall arrange for an extension of the Performance Security at least [30 (thirty) days] prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Authority shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.**
- 5.6 **If the O&M Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year after the COD, then the Authority shall be entitled to drawdown the total amount available under the O&M Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security.**
- 5.7 **The Authority shall be entitled to utilize such retained amount in the same manner as it would utilise the Performance Security or the O&M Security, as the case may be.**

- n.**
- 5.8 **Upon receipt of a renewed or replacement Performance Security, or O&M Security, as the case may be, the Authority shall return the unutilized cash security amount for the Performance Security, or O&M Security, to the Concessionaire.**
- 5.9 **The interest earned on any retained amounts or cash security shall be to the account of the Authority and the Authority shall not be required to pass on such sums to the Concessionaire.**
- 5.11 **The Authority shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments up to the COD, or any amount due and payable by the Concessionaire to the Authority (including any Delay Liquidated Damages and any amounts the Concessionaire is liable to pay for breach of the indemnities under Article 33), in accordance with this Agreement.**
- o.**
- 5.12 **The Authority shall have the right to draw on the O&M Security and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments after the COD till the expiry of the Concession Period, or any amount due and payable by the Concessionaire to the Authority (including any Liquidated Damages, any amounts the Concessionaire is liable to pay for breach of the indemnities under Article 33 and any amounts the Concessionaire is liable to pay under Clause 30.2), in accordance with this Agreement.**
- p.**
- 5.13 **The Authority shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Security or the O&M Security, as the case may be. However, the Authority shall provide the Concessionaire with a copy of any demand notice issued by the Authority under the Performance Security or the O&M Security, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Performance Security or the O&M Security.**
- 5.14 **If the Authority makes a demand under the Performance Security 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 or O&M Security to the amount stated in Clause 9.1 or Clause 9.3.**
- 5.15 **Subject to Clause 28.5(e), within [90 (ninety)] days from the COD or the termination of this Agreement, whichever is earlier, the Performance Security or, as the case may be, the amount retained by Authority as cash security under Clause 9.5, shall be released to the Concessionaire, provided that, where the Agreement has not been termination and the COD has occurred, the Performance Security shall not be released to the Concessionaire until the O&M Security has been delivered by the Concessionaire.**
- 5.16 **Subject to Clause 28.5(e), upon the expiry of the Concession Period or the termination of this Agreement, whichever is earlier, the O&M Security or, as the case may be, the amount retained by the Authority as**

cash security under Clause 9.6, shall be released to the Concessionaire (after setting-off any sums payable by the Concessionaire to the Authority) after the expiry of [30 (thirty)] days from the date of expiry or termination of this Agreement.

Draft

ARTICLE 10

6. PROJECT SITE

6.11 The Site

- (a) The Site of the Project Facilities shall comprise the land as described in Schedule [•], and in respect of which the Rights of Way shall be provided and granted by the Authority to the Concessionaire on a leave and license basis under and in accordance with this Agreement.
- (b) The Site would include (but not be limited to) the land for setting up of Project Facilities relating to waste to compost facility and [•] etc.
- (c) Without prejudice and subject to the Agreement, the ownership of the Project except the Site, including all improvements made therein by the Concessionaire, during the Concession Period, shall at all times remain with the Concessionaire.

6.12 Grant of License over the Site

- (a) The Authority shall, on and from the Execution Date, grant the Concessionaire access to the Site, along with all necessary Right of Way to enter upon the Site for conducting any site inspection and studies that may be required for preparing the Construction Plan, designs and EMP report.
- (b) Within [•] days from the Execution Date, the Authority shall handover to the Concessionaire the cleared and levelled Site, free of any Encumbrances and from such date, the Authority shall grant the Concessionaire a license over the Site, along with all necessary Right of Way to enter upon, access, and occupy the Site. Provided that, license to use the Site granted to the Concessionaire shall always be subject to the right of the Authority and its nominated contractors to enter upon and access the Site. The license granted to the Concessionaire shall include the exclusive right to:
 - (i) undertake the Pre- Construction Works;
 - (ii) design, construct and commission the Project Facilities at the Site;
 - (iii) operate and maintain the Project Facilities during the O&M Period;
 - (iv) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;

- (v) use access roads, gates, fences and utilities at or about the Site; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Site.
- (c) Any charges payable for clearing and levelling the Site, granting access to the Concessionaire and obtaining all necessary Right of Way will be paid directly by the Authority.
- (d) The Authority shall provide the Site to the Concessionaire free of Encumbrances and encroachments. If the Concessionaire discovers any hazardous substances at the time of handover of the Site, the Authority will remove such hazardous substances at its own cost and expense.
- (e) The Concessionaire shall not without the prior written consent or approval of Authority use the Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by Authority.
- (f) The full ownership and title over the Site shall, at all times during the Concession Period, vest with the Authority.
- (g) The Authority warrants that the Concessionaire shall, subject to Clause 10.1(a), occupy the Site, from such time that access is granted to the Concessionaire and until the expiry of the Concession Period. If the Concessionaire is obstructed by any Person claiming to be affected by the Project, including construction of the Project Facilities at the Site or if any injunction is granted by a court against the construction of the Project Facilities at the Site, the Authority shall, if called upon by the Concessionaire, take appropriate actions to tackle or defend such claims and proceedings.
- (h) Subject to any substitution rights exercised by the Lenders, the license and the Right of Way granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

6.13 **Right, Title and Interest in the Project Facilities**

q.

- (a) The full ownership, rights and title to the Project Facilities constructed or installed by the Concessionaire pursuant to this Agreement shall vest with the Concessionaire during the Concession Period.
- (b) Except as otherwise provided in this Agreement, the Concessionaire shall not:
 - (i) sell or create any Security over the Project Facilities or any part thereof, except in

accordance with the terms of the Financing Documents;

- (ii) dispose of any assets forming part of the Project Facilities, other than for the purposes of replacement due to normal wear and tear; or
- (iii) transfer, assign or novate all of its rights and obligations under this Agreement and in contravention of the terms of this Agreement,

without the prior written consent of the Authority (such consent not being unreasonably withheld or delayed).

r.

6.14 **Site Data and Verification**

- (a) The Authority has made available to the Concessionaire, the layout plans (as set out in Schedule [•] of this Agreement) and all other relevant data, studies and reports in the Authority's possession in connection with the Site and the Project Facilities.
- (b) 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 Site.
- (c) 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 Authority and any other information available with respect to the Project Facilities and the Site and to have satisfied itself as to all the relevant matters including:
 - (i) the nature of the Site, including the subsurface conditions, ecosystem, water table, drainage, subsoil, the load bearing and other characteristics of the Site;
 - (ii) the suitability of the Site for undertaking the construction and operation of the Project Facilities;
 - (iii) the adequacy of the utilities available till the battery limits of the Site;
 - (iv) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
 - (v) the nature of design, construction work and O&M services necessary to perform its obligations under this Agreement;
 - (vi) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;

- (vii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
 - (viii) the precautions, and methods of working necessary to prevent any public nuisance; and
 - (ix) all other matters that may affect the performance of its obligations under this Agreement.
- (d) The Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Authority, then the Authority and the Concessionaire may mutually arrive at a decision regarding any extension of [the relevant Scheduled Project Milestone Completion Date or]⁴⁴ the Scheduled COD and/or compensation for additional costs incurred 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 Authority 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 10.4(c) above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

6.15 **Unforeseen Site Conditions**

Without prejudice to Clause 10.4 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, including as a result of a failure by any contractor appointed by the Authority to rehabilitate the Site or level the Site prior to its handover to the Concessionaire, the Concessionaire may seek a Variation in accordance with Clause 31.3. Upon receipt of a request for a Variation due to unforeseen Site conditions, if, in the opinion of the Independent Engineer, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices or if such conditions are the result of the Authority not having fulfilled its obligations under the Agreement, in each case as evidenced by a notice issued by the Independent Engineer to the Authority and the Concessionaire, then Authority shall issue a Variation Order in accordance with Article 31. Any decision of Authority regarding the existence of any unforeseen Site conditions shall be final and binding.

6.16 **Site Related Covenants**

The Concessionaire agrees and undertakes that:

⁴⁴ **Drafting Note:** To be deleted if no Grant is payable and, therefore, there are no Project Milestones.

- (a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
- (b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site where such encroachment or unauthorized occupation occurs after the date on which the Site is handed over to the Concessionaire in accordance with Clause 10.2(b);
- (c) the Concessionaire shall not use the Site for any purpose unconnected with the Project;
- (d) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
- (e) the Concessionaire shall be wholly responsible for safety at and security of the Site and the Project Facilities;
- (f) the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
- (g) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform the Authority of such discovery and carry out the instructions of the Authority in this regard;
- (h) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties; and
- (i) the Concessionaire shall use all reasonable endeavours not to do or permit to be done anything which might:
 - (i) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;

- (ii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
- (iii) cause any contamination or damage to any Adjoining Property,

and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of any Government Authority to undertake such construction works and/or the O&M services. The Authority shall provide all assistance to the Concessionaire for procuring such approvals.

6.17 **Access to the Authority Related Parties and Government Authorities**

The Concessionaire shall ensure that the Authority Related Parties and relevant Government Authorities have access to the Site and the license granted to the Concessionaire over the Site shall always be subject to:

- (a) the rights of the Authority, the Authority's Representative, other Authority Related Parties, and the Independent Engineer to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the Authority shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project Facilities in any manner whatsoever; and
- (b) the rights of the Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose.

If any physical damage is caused to the Site or the Project Facilities as a result of such access and use of the Site by the Authority, the Independent Engineer, the Authority Related Parties or Government Authorities, then the Authority shall bear the costs of remedying such damage and restoring the Site and the Project Facilities.

ARTICLE 11

7. UTILITIES, ASSOCIATED ROADS AND TREES

7.11 Existing Utilities and Roads

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 Authority as the controlling body of such road, right of way or utility, and the Authority 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.

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7.12 Shifting of Obstructing Utilities

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

t.

7.13 New Utilities and Roads

(a) The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the construction of the Project Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site.

(b) The Concessionaire shall allow, subject to such conditions as the Authority 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.

(c) The Concessionaire shall not be entitled to any extension of time or costs or in any other manner be relieved from the performance of its obligations in relation to Project Facilities to comply with its obligations under Clause 11.1, 11.3(a) and 11.3(b) above.

(d) The Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities.

u.

7.14 Felling of Trees

The Authority shall assist the Concessionaire in obtaining Applicable Permits for felling of any trees identified by the Concessionaire for this purpose 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 Authority, and in the event of any delay in felling of the trees for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations under this Agreement if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

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Draft

ARTICLE 12

8. FINANCING SUPPORT, SUBSTITUTION AGREEMENT AND SECURITY

8.11 Financing and Bankability Support

The Parties acknowledge that for the purposes of implementing the Project, the Concessionaire may require Financial Assistance from the Lenders. To this end, the Authority shall co-operate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.

8.12 Substitution Agreement

- (a) This Agreement shall not be assigned by the Concessionaire, provided that, subject to the provisions of this Agreement, the Lenders may be given the right of substitution by execution of the Substitution Agreement.
- (b) In case of a Concessionaire Event of Default and if a Substitution Agreement has been entered into, the Authority acknowledges that the Lenders will have a right to substitute the Concessionaire in accordance with Clause 28.2 and the Substitution Agreement. The Authority will suspend its right to step-in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their substitution rights under Clause 28.2.

8.13 Security Creation

- (a) The Concessionaire shall be entitled to create Security over all of its rights, title and interests in and to the Concession Agreement and the Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to the Authority.
- (b) The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Article 25 and/or grant Security over the proceeds of such insurance.
- (c) The Concessionaire shall be entitled to create Security over the Project Facilities in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project.
- (d) The Concessionaire shall not be entitled to create any Security over the Site or any part thereof whether in favour of the Lenders or any third Persons.

ARTICLE 13

9. INDEPENDENT ENGINEER

9.11 Procedure for appointment and duties and functions of the Independent Engineer

- (a) Within [90 (ninety) days] of the Execution Date, the Authority and the Concessionaire shall jointly appoint an appropriately qualified Person as the Independent Engineer. The initial term of appointment of the Independent Engineer will be for a period of [3 (three)] years, which can be renewed on a year-on-year basis as mutually agreed between the Authority and the Concessionaire. The procedure for appointment, replacement and the scope of work of the Independent Engineer is set out at Schedule [•].
- x.
- (b) In appointing any replacement of the Independent Engineer, Authority and the Concessionaire shall comply with this Article 13 and Schedule [•].
- (c) The Authority shall ensure that a copy of this Agreement is annexed to the appointment letter of the Independent Engineer highlighting all the rights and obligations of the Independent Engineer. The appointment letter signed and returned by the Independent Engineer shall acknowledge acceptance of its rights and obligations set out in this Agreement.
- (d) The Independent Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure: (a) the timely completion of construction of the Project Facilities in accordance with the timelines prescribed in this Agreement; and (b) compliance with the KPIs and other O&M obligations of the Concessionaire after the COD.
- (e) The Independent Engineer shall inspect the Project Facilities at least once a month and prepare inspection reports, setting out the progress of the, construction and operation of the Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, the DPR, Technical Specifications, Designs and Drawings, EMP, OHS Plan, Waste Acceptance, Segregation and Rejection Plan, ESIA Report, Subcontractor management plan, O&M Plan, and KPIs. The Independent Engineer shall send monthly inspection reports to the Authority.
- (f) The Independent Engineer shall at all times during the Concession Period have the right to enter upon and access the Site to carry out any inspections or to attend meetings or discussions at the Site, in accordance with its scope of work and responsibilities. The Concessionaire shall have the right to accompany the Independent Engineer during its inspection of the Project Facilities.
- (g) 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 EMP, OHS Plan, ESIA Report, Subcontractor management plan, the O&M Plan and all Applicable Laws and Applicable Permits.

- (h) 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.
- (i) 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 and its compliance with the terms of this Agreement.

9.12 **Payments to the Independent Engineer**

All fees, costs, charges, and expenses payable to the Independent Engineer shall be agreed in advance of its appointment and shall be equally shared by the Authority and the Concessionaire. Such amounts shall be paid to the Independent Engineer by the Authority. [The Authority shall then deduct the Concessionaire's part of the payment made to the Independent Engineer from amounts due to the Concessionaire under this Agreement.]⁴⁵

y.

9.13 **Replacement of the Independent Engineer**

- (a) [The Authority and the Concessionaire may mutually decide to replace the Independent Engineer in any of the following circumstances:]
 - (i) if either of them has a reason to believe that the Independent Engineer has not discharged its duties in accordance with the terms of this Agreement;
 - (ii) if they decide not to renew the appointment of the Independent Engineer; or
 - (iii) if the Independent Engineer tenders its resignation in accordance with the terms of its appointment letter.
- (b) In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority and the Concessionaire shall appoint forthwith another Independent Engineer in accordance with Clause 13.1.

⁴⁵ **Drafting Note:** In cases where no payments are due from the Authority to the Concessionaire under this Agreement, replace the square bracketed portion with: "*The Authority shall raise an invoice on the Concessionaire for the payment of its share of the Independent Engineer's fees, and the Concessionaire shall make such payments to the Authority within [30 (thirty) days] from the date of receipt of the invoice.*"

9.14 **Authorised Signatories**

z.

The Authority shall require the Independent Engineer to designate and notify to the Authority 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.

ARTICLE 14

10. CONSTRUCTION PERIOD

aa.

10.11 Commencement and Duration

The period for construction of the Project Facilities shall commence on and from the Effective Date and shall continue until the COD (the **Construction Period**).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Effective Date, be entitled to commence:

- (a) soil or geophysical investigation or testing at the Site;
- (b) the Pre-Construction Works; and
- (c) appointment of Subcontractors for the construction works for the Project Facilities, with the prior approval of the Authority.

bb.

10.12 Designs and Drawings

cc.

(a) Detailed Project Report

- (i) Within [•] months from the Execution Date, the Concessionaire shall prepare and submit to the Authority and the Independent Engineer a DPR in accordance with the requirements set out in Schedule [•]. The DPR shall include details of the Proposed Technology, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, project financing details, revenue projections and financial analysis.
- (ii) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft DPR to the Concessionaire or notify the Concessionaire of their approval of the draft DPR within [60 (sixty)] days from the date of receipt of the draft DPR from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft DPR if the Authority or the Independent Engineer identifies any deficiencies or shortcomings in the draft DPR. If the Concessionaire receives any comments, suggestions or instructions to modify the draft DPR (including any plan included within the DPR) from the Authority or the Independent Engineer, then the Concessionaire shall incorporate the suggestions made the Authority and the Independent Engineer and modify the draft DPR to address any such comments, shortcomings or deficiencies identified by the Authority and the Independent Engineer. Thereafter, the Concessionaire shall submit the revised DPR to the Authority and the Independent Engineer for their approval. The process set out in this Clause 14.2(a)(ii)

shall continue until the DPR is approved by the Authority and the Independent Engineer in accordance with this Clause 14.2(a)(ii). Within [7 (seven)] days from the approval of the DPR, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the DPR to the Authority.

- (iii) The Concessionaire shall design, engineer and construct the Project Facilities strictly in accordance with the approved DPR. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved DPR without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the DPR does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the DPR in accordance with this Clause 14.2(a).
- (iv) Notwithstanding any approval of the DPR by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the DPR and complying with the requirements of this Clause 14.2(a).

(b) Designs and Drawings

- (i) The Concessionaire shall prepare the Designs and Drawings in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The Designs and Drawings shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth development of the Project Facilities. The Project Facilities should be designed in a manner such that the Concessionaire can obtain an environmental clearance for the WtC Facility, an authorisation under the SWM Rules for setting up the WtC Facility and a consent to operate for the operation of the Project Facilities.
- (ii) Within [•] months from the Effective Date, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the draft Designs and Drawings to the Authority and the Independent Engineer for their review and approval. By submitting the Designs and Drawings for review to the Authority and the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the Designs and Drawings, including the field construction criteria related thereto, are in conformity with the Technical Specifications, Applicable Laws and Good Industry Practice.
- (iii) The Authority and the Independent Engineer shall provide comments if any, on the draft Designs and Drawings to the Concessionaire or notify the Concessionaire of their

approval of the draft Designs and Drawings within [60 (sixty)] days from the date of receipt of the draft Designs and Drawings. The Authority may require the Concessionaire to amend or modify the draft Designs and Drawings if the Authority or the Independent Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Designs and Drawings. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Designs and Drawings from the Authority or the Independent Engineer, then the Concessionaire shall modify the draft Designs and Drawings to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, the Authority's/the Independent Engineer's comments on the draft Designs and Drawings and submit the revised Designs and Drawings to the Authority and the Independent Engineer for their approval within [30 (thirty)] days of receipt of comments. The process set out in this Clause 14.2(b)(iii) shall continue until the Designs and Drawings are approved by Authority and the Independent Engineer in accordance with this Clause 14.2(b)(iii).

- (iv) Within [7 (seven)] days from the approval of the Designs and Drawings, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the final Designs and Drawings to the Authority.
- (v) The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of the Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Designs and Drawings in accordance with this Clause 14.2. If the Concessionaire undertakes any construction work for the Project Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and the Authority shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.
- (vi) Notwithstanding any approval of the Designs and Drawings by the Authority and the Independent Engineer, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 14.2.

(c) Use of Proposed Technology

- (i) The Concessionaire shall design and develop the WtC Facility on the basis of the

Proposed Technology, approved by the Authority as part of the Designs and Drawings.

- (ii) [If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the WtC Facility.]⁴⁶
- (iii) If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the Authority be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.
- (iv) Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the WtC Facility to the Authority at no additional cost to the Authority.
- (v) The Concessionaire shall indemnify the Authority for any claims, losses, damages and costs suffered by the Authority as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.

1.2 Construction Plan

- (a) Within [•] months from the Execution Date, the Concessionaire shall prepare and submit to the Authority a detailed Construction Plan. The Construction Plan shall be prepared in accordance with the requirements set out in Schedule [•] and must include:
 - (i) the detailed plan for completing the construction of the Project Facilities in order to [complete the Project Milestones by the Scheduled Project Milestone Completion Date and]⁴⁷ achieve the COD by the Scheduled COD;
 - (ii) a quality assurance plan setting out the activities and actions, proposed to be undertaken and the construction materials, equipment, and machinery to be used for the construction of the Project Facilities to ensure that the Project Facilities comply with the requirements of the Technical Specifications and Applicable Laws; and

⁴⁶ **Drafting Note:** To be deleted if the Selected Bidder has not incorporated the Concessionaire prior to execution of the Agreement and is entering into the Agreement itself.

⁴⁷ **Drafting Note:** To be deleted if no Grant is payable.

- (iii) an emergency response plan setting out in detail the procedures to be followed by the Concessionaire, its Sub-Contractors, agents and employees upon the occurrence of an Emergency.
- (b) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Construction Plan within [60 (sixty)] days from the date of receipt of the draft Construction Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Construction Plan if the Authority or the Independent Engineer identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan (including any plan included within the Construction Plan) from the Authority or the Independent Engineer, then the Concessionaire shall incorporate the suggestions made the Authority and the Independent Engineer and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by the Authority and the Independent Engineer. Thereafter, the Concessionaire shall submit the revised Construction Plan to the Authority and the Independent Engineer for their approval. The process set out in this Clause 14.3(b) shall continue until the Construction Plan is approved by the Authority and the Independent Engineer in accordance with this Clause 14.3(b). Within [7 (seven)] days from the approval of the Construction Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Construction Plan to the Authority.
- (c) The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the Construction Plan does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Construction Plan in accordance with this Clause 14.3.
- (d) Notwithstanding any approval of the Construction Plan by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Construction Plan and complying with the requirements of this Clause 14.3.
- (e) If, after completing the Pre-Construction Works, the Concessionaire is of the view that the Construction Plan approved under this Clause 14.3 needs to be amended or modified in any way so as to incorporate any learnings from the Pre-Construction Works, it shall revise the Construction Plan and submit it to the Authority and the Independent Engineer and the process set out in Clause 14.3(b) shall follow for approval of the revised Construction Plan. Within [7

(seven)] days from the approval of the revised Construction Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Construction Plan to the Authority.

1.3 **Environment and Occupational Health and Safety Related Obligations**

dd.

- (a) Within [60 (Sixty)] days from the Execution Date, the Concessionaire shall commence the ESIA, to identify potential environmental and social risks and impacts arising from the Project, in accordance with the terms of reference prepared by the Concessionaire, and approved by the Authority, Applicable Laws, Applicable Permits and Good Industry Practices. As part of the ESIA, the Concessionaire shall establish a baseline measurement for all environmental and social aspects considered relevant to the Project, which will serve as a reference for comparison with any existing environmental or social impact of the Project. The Concessionaire shall submit a draft ESIA Report to the Authority and the Independent Engineer within [12 (twelve)] months from the Execution Date. The Authority and the Independent Engineer shall review and provide comments, if any, on the draft ESIA Report to the Concessionaire or notify the Concessionaire of their approval of the draft ESIA Report within [30 (thirty)] days from the date of receipt of the draft ESIA Report from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft ESIA Report if the Authority or the Independent Engineer identifies any deficiencies or shortcomings in the draft ESIA Report. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESIA Report from the Authority or the Independent Engineer, then the Concessionaire shall incorporate the suggestions made by the Authority and the Independent Engineer and modify the draft ESIA Report to address any such comments, shortcomings or deficiencies identified by the Authority and the Independent Engineer. Thereafter, the Concessionaire shall submit the revised ESIA Report to the Authority and the Independent Engineer for their approval. The process set out in this Clause 14.4(a) shall continue until the ESIA Report is approved by the Authority and the Independent Engineer in accordance with this Clause 14.4(a). Within [7 (seven)] days from the approval of the ESIA Report, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the ESIA Report to the Authority.
- (b) Based on the approved ESIA Report, the Concessionaire shall prepare and submit a detailed EMP to the Authority and the Independent Engineer within [30 (thirty)] days after the approval of the ESIA Report in accordance with Clause 14.4(a) above.
- (c) The EMP shall set out the environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project in accordance with the approved ESIA Report, Applicable Laws, Applicable Permits, the Technical Specifications and Good Industry Practices. The details set out in the EMP will include (i) measures to mitigate the environmental impact of construction and operations of the Project Facilities as identified through the ESIA; and (ii) details of the stakeholder communications plan to be developed, implemented and maintained by the Concessionaire, as set out in Schedule [•].

- (d) The Concessionaire shall also, within [•] months from the Effective Date, develop an OHS Plan, which sets out the health and safety policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project and shall include a comprehensive Site safety assurance plan developed in accordance with the approved ESIA Report, Applicable Laws, Applicable Permits, the Technical Specifications and Good Industry Practices.
- (e) The Authority and the Independent Engineer shall provide comments, if any, on the draft EMP and OHS Plan to the Concessionaire or notify the Concessionaire of their approval of the draft EMP and OHS Plan within [60 (sixty)] days from the date of receipt of the draft EMP and OHS Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft EMP and/or OHS Plan if the Authority or the Independent Engineer identifies any deficiencies or shortcomings in the draft EMP and/or OHS Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft EMP and/or OHS Plan from the Authority or the Independent Engineer, then the Concessionaire shall modify the EMP and/or OHS Plan to address any such comments, shortcomings or deficiencies identified by the Authority or the Independent Engineer. Thereafter, the Concessionaire shall submit the revised EMP and/or OHS Plan to the Authority and the Independent Engineer for their approval. The process set out in this Clause 14.4(e) shall continue until the EMP and OHS Plan are approved by the Authority and the Independent Engineer in accordance with this Clause 14.4(e). Within [7 (seven)] days from the approval of the EMP and OHS Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the EMP and OHS Plan to Authority.
- (f) The Concessionaire shall, and shall ensure that its Subcontractors also, comply and conform with all aspects of the EMP and OHS Plan, approved in accordance with this Clause 14.4, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify the Authority against all costs, expenses, penalties and liabilities incurred/suffered by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with the EMP or OHS Plan in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved EMP or OHS Plan without the prior written approval of the Authority.
- (g) Neither any approval of the EMP and OHS Plan by the Authority, nor any failure to review and provide comments on the EMP or OHS Plan shall excuse any failure by the Concessionaire or any Subcontractor to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final EMP or OHS Plan in ensuring compliance with all Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the EMP or OHS Plan and complying with the requirements of this Clause 14.4.

- (h) [The Authority shall, within [•] months of the Execution Date, undertake and complete a biodiversity assessment plan near the Site in order to identify potential risks and mitigation measures to be adopted by the Concessionaire to reduce the impact of the construction and O&M of the Project Facilities on plants, vegetation and animal life in the vicinity of the Site.]⁴⁸

1.4 Subcontracting

- (a) The Concessionaire shall, within [30 (thirty)] days of the approval of the Construction Plan in accordance with Clause 14.3(b) above, submit to Authority, the draft Subcontractor management plan, which outlines the works and services (including procurement of equipment and materials) which the Concessionaire proposes to Subcontract, along with the estimated value of each Subcontract, details of the Subcontractor and methods by which the Concessionaire will ensure the Subcontractors comply with the terms of this Agreement, the Construction Plan, the DPR, the EMP and OHS Plan, the O&M Plan, Applicable Laws and Applicable Permits. The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Subcontractor management plan to the Concessionaire or notify the Concessionaire of their approval of the draft Subcontractor management plan within [30 (thirty)] days from the date of receipt of the draft Subcontractor management plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Subcontractor management plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Subcontractor management plan from the Authority or the Independent Engineer, then the Concessionaire shall incorporate the suggestions made by the Authority and/or the Independent Engineer and modify the draft Subcontractor management plan to address any such comments. Thereafter, the Concessionaire shall submit the revised Subcontractor management plan to the Authority and the Independent Engineer for their approval. The process set out in this Clause 14.5(a) shall continue until the Subcontractor management plan is approved by Authority and the Independent Engineer in accordance with this Clause 14.5(a). Within [7 (seven)] days from the approval of the Subcontractor management plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Subcontractor management plan to Authority. The Concessionaire shall not make any subsequent modification or amendment to the approved Subcontractor management plan without the prior written approval of Authority.
- (b) The Concessionaire may enter into Subcontracts to perform any part of its Scope of Work, in accordance with the approved Subcontractor management plan, provided that notwithstanding the approval of the Subcontractor management plan, subcontracts of a value above INR [•] will be executed only with the prior approval of the Authority. To clarify, subcontracts proposed to be executed by the Concessionaire of a value below INR [•] with a Subcontractor do not need to be separately approved by the Authority.

⁴⁸ **Drafting Note:** To determine on a project-by-project basis if a biodiversity assessment is required.

- (c) The Concessionaire shall provide a copy of each proposed Subcontract of a value above INR [•], along with details of the relevant Subcontractor, to the Authority for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement and the approved Subcontractor management plan.
- (d) Within [15 (fifteen)] days of receipt of a draft Subcontract under Clause 14.5(c) above, the Authority shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (e) The approval of any Subcontractor and the corresponding Subcontract by the Authority shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire;
 - (ii) the Subcontract is on terms consistent with this Agreement;
 - (iii) the Subcontract contains provisions that provide, at the Authority's option, for the subcontract to be novated or assigned to the Authority or its nominee without any further consent or approval from the Concessionaire or the Subcontractor or entitle the Authority or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of the Authority shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.
- (f) If the Authority does not notify its approval or rejection of any Subcontract to the Concessionaire within [15 (fifteen)] days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by the Authority.
- (g) Within [7 (seven)] days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the Authority for its records.
- (h) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the Authority and the process set out in this Clause 14.5 shall apply in such case.

- (i) Notwithstanding the approval of the Subcontractor management plan or any Subcontractor by the Authority, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

1.5 Concessionaire's Pre-Construction and Construction Obligations

The Concessionaire shall design, finance, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the EMP, OHS Plan, the Designs and Drawings, the Construction Plan the DPR and other provisions of this Agreement.

For this purpose, from the Execution Date and during the Construction Period, the Concessionaire shall:

- (a) complete Pre-Construction Works in accordance with Scope of Work and Technical Specifications. Subject to Clause 4.3(a) and Article 26, the Concessionaire shall not be entitled to any extension of time or costs on account of any delays in completing the Pre-Construction Works.
- (b) complete the work [corresponding to each Project Milestone by the Scheduled Project Milestone Completion Date and]⁴⁹ [so as to ensure that the WtC Facility achieves COD on or before the Scheduled COD] in a manner that:
 - (i) is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the DPR, the EMP, OHS Plan, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) the Project Facilities are free from all defects in design, materials, and workmanship;
 - (iii) the Project Facilities are safe, reliable and fit for purpose;
 - (iv) the WtC Facility is capable of handling and processing the Acceptable Waste up to the Design Capacity;
 - (v) the Project Facilities are capable of Segregating Mixed Waste up to the Maximum

⁴⁹ **Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

Permissible Mixed Waste Quantity; and

- (vi) all aspects of the Project Facilities, including the processes and materials employed in the construction, operation, and maintenance of the Project Facilities comply with the Applicable Laws in relation to environment, health, and safety, including in particular the SWM Rules, and there is no damage to the environment resulting from the construction of the Project Facilities.
- (c) reasonably consider and act upon the comments/suggestions made by the Independent Engineer and Authority during any meetings with the Concessionaire;
- (d) rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by the Independent Engineer and the Authority;
- (e) ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all labour charges, fees, cess, payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the Building and Other Construction Workers Welfare Cess Act, 1996. The Concessionaire shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the Authority from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislations);
- (f) arrange for all equipment, machinery, tools and other resources, including trucks for transportation of the Residual Inert Matter and/or Residual Waste to the Delivery Point during Trial Operations, required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources, in accordance with the quality assurance plan submitted as part of the Construction Plan. The Authority may provide the Concessionaire an indicative list of vendors for procurement of equipment for the Project Facilities, and the Concessionaire may, at its discretion, procure equipment from such vendors;
- (g) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
- (h) maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents

with respect to the Project Facilities in accordance with Applicable Laws; and

- (i) prepare and keep up-to-date, "as-built" records of the execution of the work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site and be made available to the Independent Engineer and Authority for review and verification. The Concessionaire shall provide [4 (four)] hard copies and [1 (one)] soft copy on a USB drive, of the complete set of "as-built" drawings for the Project Facilities to Authority as a condition precedent to the issuance of the COD Certificate.

1.6 Construction Timelines

- (a) The Concessionaire shall comply with the DPR, the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities so as to ensure that the WtC Facility achieves COD on or before the Scheduled COD.
- (b) Subject to Clause 14.7(c) below, the Concessionaire shall be entitled to a day-for-day extension of [the relevant Scheduled Project Milestone Completion Date or, as the case may be,]⁵⁰ the Scheduled COD, if the completion of construction, Trial Operations, and testing of the Project Facilities is delayed due to any of the following reasons (each such event, a **Delay Event**):
 - (i) occurrence of a Force Majeure Event, provided that the requirements of Article 26 have been complied with;
 - (ii) a Change in Law;
 - (iii) undue delay by the relevant Government Authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (iv) undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (v) any delay attributable to unforeseen site conditions in accordance with Clause 10.4;
 - (vi) delay by the Authority in approving the EMP and OHS Plan in accordance with Clause 14.4;
 - (vii) delay by the Authority in approving the O&M Plan in accordance with Clause 18.2;
 - (viii) delay by the Authority in approving the Waste Acceptance, Segregation and Rejection

⁵⁰ **Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

Plan in accordance with Clause 18.3;

- (ix) a suspension of construction of the Project Facilities pursuant to Clause 27.1(a)(i) or Clause 27.2(a)(i), which is not attributable to the Concessionaire;
- (x) delay by the Independent Engineer in inspecting the completed portion of the works or notifying the Concessionaire of any defects or deficiencies in the works in accordance with Clause 16.1(a)(iv);
- (xi) delay by the Authority in issuing the [Milestone Completion Certificate in accordance with Clause 16.1(a)]⁵¹ [Construction Completion Certificate in accordance with Clause 16.1(a)]⁵²;
- (xii) delay by the Independent Engineer in issuing the Trial Operations Commencement Notice in accordance with Clause 16.1(b);
- (xiii) delay by the Authority in supplying adequate quantities of Acceptable Waste to undertake the Trial Operations;
- (xiv) delay by the Authority in (i) notifying the Concessionaire of any defects in the Project Facilities; or (ii) issuing the Acceptance Certificate in accordance with Clause 16.1(c)(xiii);
- (xv) delay by the Authority in issuing the COD Certificate in accordance with Clause 17.1 for reasons not attributable to the Concessionaire;
- (xvi) undue delay by Authority in obtaining any Applicable Permit required to be obtained by it under this Agreement; or
- (xvii) any variation proposed by Authority or necessitated by actual Site conditions in the Scope of Work, Technical Specifications or the Designs and Drawings in accordance with Article 31.

The Concessionaire shall promptly provide the Authority (with a copy to the Independent Engineer) with a notice upon becoming aware of any Delay Event listed in this Clause 14.7(b). The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Clause 14.7(b), within [7 (seven)] days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the

⁵¹ **Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

⁵² **Drafting Note:** The square bracketed portion to be deleted if a Grant is being paid to the Concessionaire.

Concessionaire's entitlement to an extension under Clause 14.7(b).

- (c) Without prejudice to the Concessionaire's obligations to notify the Authority regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 14.7(b); and (ii) give the Authority and the Independent Engineer access to such records and documents or provide the Authority and the Independent Engineer with copies, if so requested.
- (d) If the Concessionaire claims an extension of time in accordance with Clause 14.7(b) and Authority is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 14.7(b), then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- (e) If two or more of the Delay Events listed in Clause 14.7(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 14.7(b).
- (f) Except as provided in Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of Authority or the Independent Engineer which are attributable to any act or omission of the Concessionaire;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines; or
 - (iii) unavailability or shortage of equipment, materials, or any other resources.
- (g) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 34.

1.2 Delay Liquidated Damages

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- (a) Subject to Clause 14.7(b), [if the Concessionaire fails to complete the work corresponding to any Project Milestone by the relevant Scheduled Project Milestone Completion Date or]⁵³ fails to achieve the COD by the Scheduled COD, then the Authority shall be entitled to liquidated damages for each day of delay beyond the [Scheduled Project Milestone Completion Date, or, as the case may be, the]⁵⁴ Scheduled COD, at the rate of [0.1]% of the Performance Security, up to [6 (six)] months from the [relevant Scheduled Project Milestone Completion Date, or, as

⁵³ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁵⁴ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

the case may be, the]⁵⁵ Scheduled COD (collectively, the **Delay Liquidated Damages**).

- (b) The Delay Liquidated Damages will be payable until [the work for the relevant Project Milestone is completed or, as the case may be,]⁵⁶ COD is achieved or deemed to be achieved in accordance with Article 17.
- (c) [If the Concessionaire achieves the COD by the Scheduled COD, the aggregate Delay Liquidated Damages recovered by the Authority under Clause 14.8(a) for a delay in achieving any Project Milestone shall be refunded by the Authority to the Concessionaire, without any interest.]⁵⁷
- (d) [The Authority shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any Project Milestone, and if such amounts are insufficient, the Authority shall have a right to invoke the Performance Security to the extent of the Delay Liquidated Damages.]⁵⁸
- (e) In addition to the Delay Liquidated Damages, if as a result of any delay in achieving COD, the Authority is required to pay a Processing Fee to any third party for disposal of the Acceptable Waste, which should otherwise have been processed at the WtC Facility, then the Concessionaire shall reimburse the Authority for such Processing Fee at actuals (**Additional Damages**). The Authority shall have the right to recover the Additional Damages by invoking the Performance Security for such amounts.
- (f) The Parties acknowledge that the Delay Liquidated Damages and the Additional Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Authority as a result of the delay in the completion of the Project Facilities, and not as penalty.
- (g) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages or Additional Damages are void, invalid or otherwise inoperative so as to disentitle the Authority from claiming any Delay Liquidated Damages or Additional Damages, then the Authority will be entitled to claim against the Concessionaire for general damages [for delay in completing the works for the relevant Project Milestone by the Scheduled Project Milestone Completion Date, or]⁵⁹ for the delay in achieving the COD by the Scheduled COD.
- (h) [If the Concessionaire fails to complete the works for a Project Milestone within [6 (six)]

⁵⁵ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁵⁶ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁵⁷ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁵⁸ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁵⁹ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

months of the Scheduled Project Milestone Completion Date or] ⁶⁰ if the Concessionaire fails to achieve the COD within [6 (six)] months of the Scheduled COD, other than on account of any Delay Event, then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 28.1.

- (i) The payment of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Project Facilities and commission the WtC Facility, or from any of its other duties, obligations or responsibilities under the Agreement.
- (j) The Concessionaire shall pay any Delay Liquidated Damages or Additional Damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Authority.

⁶⁰ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

ARTICLE 15

2. MONITORING OF CONSTRUCTION

2.1 Monthly Progress Reports

During the Construction Period, the Concessionaire shall, submit monthly reports to the Independent Engineer (with a copy to the Authority), no later than [7 (seven)] days after the end of each month, which should set out the following:

- (a) extent of progress of construction activities performed by the Concessionaire for the Project Facilities;
- (b) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
- (c) details of any accident or hazardous incident at the Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
- (d) status of rectification of defects and/or deficiencies discovered by the Independent Engineer or the Authority.

The Concessionaire shall promptly give such other relevant information as may be required by the Independent Engineer.

2.2 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 Work and Technical Specifications. It shall send a copy of the Inspection Report to the Authority 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 the Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

2.3 Tests

- (a) For determining that the construction works conform to the Technical Specifications, the Independent Engineer may require the Concessionaire to carry out, or cause to be carried out, tests, in accordance with Good Industry Practice, for quality assurance. The costs incurred on the tests shall be borne solely by the Concessionaire.

- (b) If the 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 regard. The Independent Engineer shall have the right to verify such reports and if required, request 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 Technical Specifications, and the procedure set forth in this Clause 15.3 shall be repeated until such construction works conform to the Technical Specifications.

2.4 **Suspension of Unsafe Construction Works**

- (a) Upon recommendation of the Independent Engineer to this effect, the Authority 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 Authority, such work is unsafe and a potential safety hazard.
- (b) The Concessionaire shall, pursuant to a notice under this Clause 15.4, suspend all or part of the construction works for such time and in such manner as may be specified by the Authority and carry out remedial measure to secure the safety of the suspended works. The Concessionaire may by notice, require the Independent Engineer to inspect such remedial measures adopted and submit a report to the Authority recommending whether such suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out further remedial measures that are necessary, in the reasonable opinion of the Authority, and the procedure set forth in this Clause 15.4 shall be repeated until the suspension is revoked.

2.5 **Video Recording**

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During the Construction Period, the Concessionaire shall provide to the Authority for every quarter, a video recording, which will be compiled into a [3 (three)] hour USB drive, covering the status and progress of construction works in that quarter. The first such video recording shall be provided to the Authority within [7 (seven)] days of the Effective Date and thereafter, no later than [15 (fifteen)] days after the close of each quarter.

ARTICLE 16

3. COMPLETION CERTIFICATE

3.1 Completion of Works

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(a) [Completion of Construction

- (i) Upon completion of construction of all the works in relation to the Project Facilities, as specified in the Construction Plan and the DPR, the Concessionaire shall issue a notice to the Authority, with a copy to the Independent Engineer, requiring the Authority to cause the Independent Engineer to inspect the completed works. The purpose of such inspection shall be to determine whether the works have been completed in accordance with the requirements of Clause 14.6.
- (ii) If the Independent Engineer is satisfied that the works have been completed in accordance with the requirements of Clause 14.6, then it shall submit a report to the Authority to this effect within [3 (three)] days of such inspection and thereafter, the Authority shall issue a Construction Completion Certificate to the Concessionaire, within [7 (seven)] days from the date of the Independent Engineer's report.
- (iii) If the Independent Engineer is of the view that the works do not satisfy the requirements of Clause 14.6, then the Independent Engineer shall have the right to provide comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 14.6. Upon receipt of such comments, suggestions, or instructions from the Independent Engineer, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Authority and the Independent Engineer. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the Independent Engineer is satisfied that the works have been completed in accordance with the requirements of Clause 14.6 and the Authority issues the Construction Completion Certificate in accordance with this Clause 16.1(a).
- (iv) If:
 - (A) the Independent Engineer fails to inspect the completed portion of the works, within [7 (seven)] days from the date of receipt of a notice from the Concessionaire under Clause 16.1(a)(i) above;
 - (B) the Independent Engineer fails to provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the works, within

[7 (seven)] days from the date of inspection of such works; or

- (C) the Authority fails to issue the Construction Completion Certificate, within [7 (seven)] days from the date of inspection of the works,

then, such delay shall be treated as a Delay Event under Clause 14.7.]⁶¹

(a) Completion of Project Milestones

- (i) Upon completion of construction of the works corresponding to a Project Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to the Authority, with a copy to the Independent Engineer, requiring the Authority to cause the Independent Engineer to inspect the completed works covered by the relevant Project Milestones. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Project Milestones have been completed in accordance with the requirements of Clause 14.6.
- (ii) If the Independent Engineer is satisfied that the works for the relevant Project Milestone have been completed in accordance with the requirements of Clause 14.6, then it shall submit a report to the Authority to this effect within [3 (three)] days of such inspection and thereafter, the Authority shall issue a Milestone Completion Certificate to the Concessionaire for such completed Project Milestone, within [7 (seven)] days from the date of the Independent Engineer's report.
- (iii) If the Independent Engineer is of the view that the works for the relevant Project Milestone do not satisfy the requirements of Clause 14.6, then the Independent Engineer shall have the right to provide comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 14.6. Upon receipt of such comments, suggestions, or instructions from the Independent Engineer, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Authority and the Independent Engineer. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the Independent Engineer is satisfied that the works for the relevant Project Milestone have been completed in accordance with the requirements of Clause 14.6 and the Authority issues a Milestone Completion Certificate in accordance with this Clause 16.1(a).
- (iv) If:

⁶¹ **Drafting Note:** To be deleted if a Grant is payable and in which case, completion will be certified based on completion of works corresponding to certain Project Milestones.

- (A) the Independent Engineer fails to inspect the completed portion of the works covered by the relevant Project Milestone, within [7 (seven)] days from the date of receipt of a notice from the Concessionaire under Clause 16.1(a)(i) above;
- (B) the Independent Engineer fails to provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Project Milestone, within [7 (seven)] days from the date of inspection of such completed portion of the works; or
- (C) the Authority fails to issue the Milestone Completion Certificate, within [7 (seven)] days from the date of inspection of the completed portion of the works covered by the relevant Project Milestone,

then, such delay shall be treated as a Delay Event under Clause 14.7.]⁶²

(b) Tests on Completion

- (i) Upon issuance of the [Milestone Completion Certificate for the last Project Milestone]⁶³ / [Construction Completion Certificate]⁶⁴ by the Authority, the Concessionaire shall proceed to conduct the tests on completion in accordance with this Clause 16.1(b) and the Technical Specifications (the **Tests on Completion**).
- (ii) The Concessionaire shall notify the Authority and the Independent Engineer of the date(s) on which the Tests on Completion shall be conducted by the Concessionaire, at least [7 (seven)] days prior to such date(s) (the **Tests on Completion Notice**).
- (iii) The Concessionaire shall, on the dates specified in the Tests on Completion Notice, carry out the Tests on Completion under the supervision of the Independent Engineer to demonstrate that the Project Facilities have been constructed and installed in accordance with the Technical Specifications.
- (iv) If, pursuant to the Tests on Completion, the Independent Engineer identifies any defects or deficiencies in the Project Facilities, then the Concessionaire shall remedy such defects or deficiencies identified by the Independent Engineer. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Tests on Completion demonstrate, to the Independent Engineer's satisfaction, that the Project Facilities have been constructed and installed in accordance

⁶² **Drafting Note:** To be deleted if there is no Grant and corresponding Project Milestones.

⁶³ **Drafting Note:** To be deleted if no Grant is payable.

⁶⁴ **Drafting Note:** To be deleted if Grant is payable and there are Project Milestones.

with the Technical Specifications. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.

- (v) If the Independent Engineer is satisfied that the Project Facilities have been constructed and installed in accordance with the Technical Specifications, then the Independent Engineer shall issue a notice to the Authority within [7 (seven)] days of completion of the tests, with a copy to the Concessionaire, that the Project Facilities are ready for Trial Operations (the **Trial Operations Commencement Notice**).
- (c) Trial Operations and Acceptance Tests
 - (i) Subject to Clause 16.1(c)(iv) below, within [•] days of issuance of the Trial Operations Commencement Notice, the Concessionaire shall commence the Trial Operations of the WtC Facility in accordance with the Technical Specifications, to determine whether the WtC Facility meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations for handling and processing of Acceptable Waste and production of the Compost in accordance with this Agreement. The Concessionaire shall undertake the Trial Operations of the WtC Facility, for a minimum period of [•] months from the date on which the Trial Operations of the WtC Facility commence.
 - (ii) At least [30 (thirty)] days prior to commencement of the Trial Operations, the Concessionaire shall notify the Authority of the quantity of Acceptable Waste (not exceeding the Daily Guaranteed Acceptable Waste Quantity) required by it on a daily basis to undertake the Trial Operations of the WtC Facility. The Authority shall ensure that such quantities of Acceptable Waste is delivered to the Concessionaire at the Receipt Point during the Trial Operations to enable the Concessionaire to demonstrate that the WtC Facility meets the Technical Specifications and the KPIs. The Authority shall also ensure that during the period of Trial Operations, the SLF or an Alternate Disposal Location is available for scientific disposal of the Residual Inert Matter or any Residual Waste during such Trial Operations period.
 - (iii) If the Concessionaire fails to commence or continue the Trial Operations due to an inadequate quantity of Acceptable Waste delivered at the Receipt Point, then the Concessionaire shall promptly notify the Authority and the Independent Engineer. If in the opinion of the Independent Engineer, the quantity of Acceptable Waste is not adequate to undertake Trial Operations, then the Authority shall extend the time period for the Trial Operations. In such case, the Scheduled COD will also be extended on a day-for-day basis.
 - (iv) During the Trial Operations, the Independent Engineer shall monitor the performance of the WtC Facility on a regular basis and shall have the right to test the compliance of the

WtC Facility with the KPIs, Technical Specifications, Designs and Drawings, Applicable Laws and Applicable Permits.

- (v) Within [•] days of the issuance of the [Milestone Completion Certificate for the last Project Milestone⁶⁵]/ [Construction Completion Certificate⁶⁶], the Concessionaire shall prepare and submit to the Independent Engineer, with a copy to the Authority, a schedule of acceptance tests to be carried out for the WtC Facility as a part of the Trial Operations to demonstrate that the WtC Facility is capable of achieving the KPIs (**Acceptance Tests Schedule**).
- (vi) Within [5 (five)] days from the date of receipt of the Acceptance Tests Schedule under Clause 16.1(c)(v) above, the Independent Engineer or the Authority may request the Concessionaire to vary the date(s) of the acceptance tests and the Concessionaire shall accommodate such request, provided that, such date(s) shall be no later than [7 (seven)] days from the date(s) specified in the Acceptance Tests Schedule received from the Concessionaire under Clause 16.1(c)(v) above.
- (vii) The Concessionaire shall, on the dates specified in the Acceptance Tests Schedule, carry out the acceptance tests under the supervision of the Independent Engineer to demonstrate that the Project Facilities are capable of achieving the KPIs and comply with the Technical Specifications.
- (viii) If the Independent Engineer is not satisfied with the results of the acceptance tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities identified by the Independent Engineer or revealed through the acceptance tests. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the acceptance tests demonstrate that the WtC Facility is capable of achieving the KPIs and the Independent Engineer is satisfied that the Project Facilities have been completed in accordance with Clause 14.6 and are safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
- (ix) It is clarified that no Liquidated Damages for failure to achieve the KPIs will be payable by the Concessionaire during the Trial Operations period.
- (x) After the expiry of [•] months from the date of commencement of Trial Operations or after successful completion of the acceptance tests, whichever is later, the Concessionaire shall issue a report to the Independent Engineer, with a copy to the Authority, stating that the Trial Operations have been successfully completed, along with details of compliance with the KPIs, performance of various components of the Project Facilities and details of defects

⁶⁵ **Drafting Note:** To be deleted if no Grant is payable.

⁶⁶ **Drafting Note:** To be deleted if Grant is payable and there are Project Milestones.

identified during the Trial Operations and steps taken by the Concessionaire to rectify such defects.

- (xi) If, the Independent Engineer is satisfied that the Project Facilities are capable of meeting the KPIs on a consistent basis and are otherwise in compliance with the Technical Specifications, and capable of safe and reliable operations, then, the Independent Engineer shall issue a notice to the Authority recommending the issue of the Acceptance Certificate. The Authority shall issue the Acceptance Certificate within 7 (seven) days of receiving the Independent Engineer's notice.
- (xii) If, the Authority or the Independent Engineer believes that the Project Facilities do not comply with the KPIs, or Technical Specifications, then the Authority or the Independent Engineer shall notify the Concessionaire within [7 (seven)] days of receiving the Concessionaire's report and the Concessionaire shall rectify any defects identified by the Authority or the Independent Engineer and resubmit a report in accordance with Clause 16.1(c)(x). This process shall continue until the Authority issues an Acceptance Certificate in accordance with Clause 16.1(c)(xi) above.
- (xiii) If the Authority or the Independent Engineer: (i) fails to notify the Concessionaire of any defects in the Project Facilities within [7 (seven)] days of receiving the Concessionaire's report; or (ii) the Authority fails to issue the Acceptance Certificate within [7 (seven)] days of receiving the Concessionaire's report, then such delay shall be treated as a Delay Event in accordance with Clause 14.7.
- (xiv) Notwithstanding anything contained in Clause 16.1(c)(xiii), if the Concessionaire fails to successfully complete the Trial Operations, including the acceptance tests, within [6 (six)] months from the original Scheduled COD due to the reasons specified in Clause 16.1(c)(iii) above, then such failure will be treated as an Authority Event of Default, and the consequences set out in Article 28 shall follow.
- (xv) The Concessionaire will not be entitled to any payment for conducting the Trial Operations and the acceptance tests, which shall be carried out solely at the cost and risk of the Concessionaire.

ARTICLE 17

2. ENTRY INTO COMMERCIAL SERVICE

2.1 Commercial Operations Date

- (a) The Concessionaire shall, upon satisfaction of the conditions set out in this Clause 17.1(a) below, issue a notice to the Authority, with a copy to the Independent Engineer, requesting the Authority to issue the COD Certificate (**COD Conditions Completion Notice**). The Authority shall issue the COD Certificate, with a copy to the Independent Engineer, to the Concessionaire, within 7 (seven) days from the date of receipt of the COD Conditions Completion Notice. The conditions to be satisfied prior to the Concessionaire issuing the COD Conditions Completion Notice are:
- (i) the Authority having issued the Acceptance Certificate;
 - (ii) the Concessionaire having provided and maintained a buffer zone around the WtC Facility;
 - (iii) the Concessionaire having obtained all Applicable Permits necessary for operation of the WtC Facility (including but not limited to all approvals for the safety, installation and energization of any electrical equipment and the consent to operate from the relevant Government Authorities);
 - (iv) the Concessionaire having obtained adequate insurance for the Project Facilities in accordance with Article 25;
 - (v) the Concessionaire having paid, or the Authority having fully recovered any Delay Liquidated Damages and/or Additional Damages due and payable to Authority in accordance with Clause 14.8;
 - (vi) the Concessionaire having submitted to the Authority the Scheduled Maintenance Programme for the first-year post COD;
 - (vii) the Concessionaire having submitted the O&M Security to the Authority;
 - (viii) the O&M Plan having been approved by the Authority;
 - (ix) the Waste Acceptance, Segregation and Rejection Plan being approved by the Authority;
 - (x) the Concessionaire having notified the Authority of the actual capital cost of the

Project; and

- (xi) the Concessionaire having provided [4 (four)] hard copies and [1 (one)] soft copy on a USB drive, of the complete set of "as-built" drawings for the Project Facilities to the Authority.
- (b) [If the Authority fails to issue the COD Certificate to the Concessionaire within [7 (seven)] days from the date of the issue of the COD Conditions Completion Notice, without reason, or if the conditions set out above cannot be satisfied due to reasons not attributable to the Concessionaire (such as a delay in completion or making available for use the SLF or an Alternate Disposal Location), then:
- (i) the Authority shall pay the Concessionaire liquidated damages at the rate of [0.1]% of the Performance Security for each day of delay, subject to a maximum delay of [6 (six)] months from the date of the COD Conditions Completion Notice. The Authority shall pay such liquidated damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Concessionaire. The Authority acknowledges that the damages payable by the Authority pursuant to this Clause 17.1(b) are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Concessionaire as a result of the delay in the issuance of the COD Certificate, and not as penalty; and
 - (ii) if, upon the expiry of [6 (six)] months from the date of the COD Conditions Completion Notice, the Authority's failure to issue the COD Certificate continues due to reasons not attributable to the Concessionaire, the COD Certificate shall be deemed to be issued.
- (c) The date on which the COD Certificate is issued (or deemed to be issued) to the Concessionaire shall be the COD of the Project Facilities.

ARTICLE 18

2. OPERATIONS AND MAINTENANCE PERIOD

2.1 Commencement and Duration

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The period for the operation and maintenance of the Project Facilities shall commence on and from the COD and shall continue until the expiry of the Concession Period, unless terminated earlier in accordance with Article 28.

2.2 O&M Plan

- (a) At least [60 (sixty)] days prior to the Scheduled COD, the Concessionaire shall prepare and submit a detailed O&M Plan for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, EMP, OHS Plan, Applicable Laws and Applicable Permits. The O&M Plan shall specify the operation procedures and maintenance procedures (separately for each component of the Project Facilities). If there are any errors or deficiencies in the Technical Specifications, the O&M Plan shall take in account, address or rectify such errors or deficiencies.
- (b) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft O&M Plan to the Concessionaire, or notify the Concessionaire of their approval of the draft O&M Plan, within [30 (thirty)] days from the date of receipt of the draft O&M Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft O&M Plan if the Authority or the Independent Engineer identify any deficiencies, inaccuracies or shortcomings in the draft O&M Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Plan from the Authority or the Independent Engineer, then the Concessionaire shall modify the draft O&M Plan to correct any shortcomings, inaccuracies or deficiencies identified by the Authority or the Independent Engineer and/or address, in writing, the Authority's and/or the Independent Engineer's comments on the draft O&M Plan and submit the revised O&M Plan to the Authority and the Independent Engineer for their approval. The process set out in this Clause 18.2(b) shall continue until the O&M Plan is approved by the Authority and the Independent Engineer in accordance with this Clause 18.2(b). The Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the approved O&M Plan to the Authority.
- (c) The Concessionaire shall revise the O&M Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.2(b) will apply as is to the approval of the revised plan.
- (d) The Concessionaire shall undertake the O&M of the Project Facilities strictly in accordance with the approved O&M Plan. The Concessionaire shall not deviate from or make any

amendment to the approved O&M Plan without the prior written approval of the Authority. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the O&M Plan in accordance with this Clause 18.2.

- (e) Notwithstanding any approval of the O&M Plan by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Plan. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Plan and complying with the requirements of this Clause 18.2.

2.3 Waste Acceptance, Segregation and Rejection Plan

- (a) At least [60 (sixty)] days prior to the Scheduled COD, the Concessionaire shall prepare and submit a Waste Acceptance, Segregation and Rejection Plan for the WtC Facility. The Waste Acceptance, Segregation and Rejection Plan shall specify the procedures to be followed by the Parties in relation to the delivery, acceptance, Segregation and rejection of waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point, including any Segregation and rejection of Prohibited Waste.
- (b) The Waste Acceptance, Segregation and Rejection Plan shall set out the methodology that the Concessionaire proposes to use when inspecting, testing, Segregating, processing and disposing of waste that is delivered at the Receipt Point. In particular, the Waste Acceptance, Segregation and Rejection Plan shall detail the manner in which any Mixed Waste that is delivered (up to the Maximum Permissible Mixed Waste Quantity) shall be Segregated such that any Biodegradable Waste that is capable of being processed at the WtC Facility is set aside for processing at the WtC Facility to produce the Compost, and any Residual Waste is separated, stored and disposed of in accordance with the requirements of this Agreement.
- (c) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Waste Acceptance, Segregation and Rejection Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Waste Acceptance, Segregation and Rejection Plan within [30 (thirty)] days from the date of receipt of the draft Waste Acceptance, Segregation and Rejection Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Waste Acceptance, Segregation and Rejection Plan if the Authority or the Independent Engineer identify any deficiencies, inaccuracies or shortcomings in the draft Waste Acceptance, Segregation and Rejection Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Waste Acceptance, Segregation and Rejection Plan from the Authority or the Independent Engineer, then the Concessionaire shall modify the draft Waste Acceptance, Segregation and Rejection Plan to correct any shortcomings, inaccuracies or deficiencies identified by the Authority or the Independent Engineer and/or address, in writing, the Authority's and/or the Independent Engineer's comments on the draft Waste Acceptance, Segregation and Rejection Plan and submit the

revised Waste Acceptance, Segregation and Rejection Plan to Authority and the Independent Engineer for their approval. The process set out in this Clause 18.3(c) shall continue until the Waste Acceptance, Segregation and Rejection Plan is approved by the Authority and the Independent Engineer in accordance with this Clause 18.3(c). The Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the approved Waste Acceptance, Segregation and Rejection Plan to the Authority.

- (d) The Concessionaire shall revise the Waste Acceptance, Segregation and Rejection Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.3(c) will apply as is to the approval of the revised plan.
- (e) The Authority (or any C&T Contractors on behalf of the Authority) shall deliver waste to the Concessionaire at the Receipt Point strictly in accordance with the approved Waste Acceptance, Segregation and Rejection Plan. The Concessionaire shall also ensure that any acceptance and/or rejection of waste that is delivered at the Receipt Point, is done strictly in accordance with the approved Waste Acceptance, Segregation and Rejection Plan. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the Waste Acceptance, Segregation and Rejection Plan in accordance with this Clause 18.3, unless a deemed COD Certificate has been issued in accordance with Clause 17.1(b).
- (f) Notwithstanding any approval of the Waste Acceptance, Segregation and Rejection Plan by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Waste Acceptance, Segregation and Rejection Plan. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the Waste Acceptance, Segregation and Rejection Plan and complying with the requirements of this Clause 18.3.

ii.

2.4 Concessionaire's rights and obligations during the O&M Period

- (a) The Concessionaire shall operate and maintain the Project Facilities in a manner that:
 - (i) results in the Project Facilities achieving the KPIs;
 - (ii) is compliant with the O&M Standards, Applicable Law and the terms of Applicable Permits;
 - (iii) ensures the Project Facilities are capable of handling and processing Acceptable Waste up to its Design Capacity on a daily basis, including Segregating, handling, processing, storing and disposing of Mixed Waste
 - (iv) is safe and reliable, subject to normal wear and tear of the Project Facilities;

- (v) ensures safe and reliable transportation of the Residual Inert Matter and/or any Residual Waste to the Delivery Point;
 - (vi) ensures that there is no damage to or deterioration of the environment resulting from the operation of the Project Facilities;
 - (vii) ensures that there is zero liquid discharge from the operations of the Project Facilities including leachate runoff from the processing of Acceptable Waste mixing with and polluting any surface water, ground water, stream, pond, or other water body/source;
 - (viii) ensures that there is no leakage from the operations of the Project Facilities which could endanger the environment, persons or property at or about the Site;
 - (ix) ensures that the Project Facilities comply with all emission control norms specified under Applicable Law, failing which the Concessionaire shall be liable to pay any penalties and/or fines levied by any Government Authority under Applicable Law;
 - (x) ensures safe and proper handling of any Prohibited Waste delivered at the Site;
 - (xi) is in compliance with Applicable norms (FCO) and standards relation to the production and quality of compost
 - (xii) maintains the safety and security of personnel, material and property at the Site, in accordance with the approved EMP, OHS Plan, Applicable Laws and Applicable Permits;
 - (xiii) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EMP, OHS Plan, Applicable Laws and Applicable Permits.
- (b) During the O&M Period, the Concessionaire shall:
- (i) ensure that it reasonably considers and acts upon the comments/suggestions made by the Authority and the Independent Engineer during any meetings of the Concessionaire with its Subcontractors;
 - (xiv) provide the Authority and the Independent Engineer with reasonable access to the Site during office hours to monitor and inspect the Project Facilities;
 - (xv) ensure that all equipment, machinery, tools and other resources required to undertake the O&M of the Project Facilities are arranged for and take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not unreasonably hinder or cause excess interference with local traffic in the vicinity of the Site;

- (xvi) develop and implement a safety and surveillance programme for the Project Facilities and adopt appropriate measures and safeguards for the security of the environment, life, and property at the Site.

2.5 Delivery of Waste

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(a) Delivery of Acceptable Waste

- (i) From the COD and until the expiry of the Concession Period or early termination of this Agreement, the Authority shall, or shall cause its C&T Contractors to, deliver Acceptable Waste to the Concessionaire for processing at the WtC Facility, in accordance with the Acceptable Waste Delivery Schedule.
- (ii) The Acceptable Waste supplied by the Authority on any day shall not be less than [•] TPD (the **Daily Guaranteed Acceptable Waste Quantity**).
- (iii) If the Acceptable Waste delivered by the Authority on any day during the O&M Period is less than the Daily Guaranteed Acceptable Waste Quantity, then the Authority shall be liable to pay liquidated damages to the Concessionaire in accordance with Clause 18.7. The liquidated damages payable by the Authority for the shortfall in supply of the Daily Guaranteed Acceptable Waste Quantities shall be calculated and payable on a monthly basis.
- (iv) The Concessionaire will not be required to receive and accept any quantities of Acceptable Waste in excess of the Design Capacity. Further, the Concessionaire shall not accept any waste, including any Acceptable Waste, which is not delivered by the Authority, or any C&T Contractors appointed by Authority.

(b) Delivery of Mixed Waste

- (i) The Authority shall ensure that the Mixed waste delivered to the Concessionaire at the Receipt Point on any day of the O&M Period does not include Prohibited Waste and C&D Waste .
- (ii) If the amount of Prohibited Waste and C&D Waste in Mixed waste delivered to the Concessionaire on any day exceeds, then the Concessionaire may, in its sole discretion:
 - (A) elect to Segregate, process and handle such Waste Quantity in accordance with Clause 18.8, in which case such Waste Quantity shall be deemed to be Acceptable Waste for the purpose of assessing if the Daily Guaranteed Acceptable Waste Quantity was delivered by the Authority to the

Concessionaire under Clause 18.5(a) above; or

(B) reject such Waste Quantity in accordance with Clause 18.6 below.

1.2 Weighment, Inspection, Acceptance, and Rejection of Waste

- (a) As part of the Associated Infrastructure, the Concessionaire shall provide [•] weighbridges (**Weighbridges**) in accordance with the Technical Specifications, to weigh the waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point and the Residual Inert Matter generated from the operations of the WtC Facility.
- (b) The Concessionaire shall weigh each truck carrying a consignment of waste to the Site at the Weighbridges as follows:
- (i) Each truck entering the Site must obtain an identification number from the Concessionaire's personnel posted at the gate.
 - (ii) At the Weighbridges, the weight of the truck loaded with the consignment of waste will be taken and the Concessionaire shall record the following details (to the extent applicable) in the format to be approved by the Authority as part of the O&M Plan:
 - (A) date of entry into the Site;
 - (B) registration number of the truck;
 - (C) time of entry into the Site;
 - (D) total weight of the truck; and
 - (E) zone/circle/ward from which the waste has been collected and delivered to the Concessionaire.
- (c) Visual Inspection prior to Unloading
- (i) Once a truck carrying a consignment of waste has been weighed at the Weighbridge, the Concessionaire shall undertake a visual inspection of the consignment of waste to determine if any Prohibited Waste or Mixed Waste has been delivered.
 - (ii) If, upon such visual inspection of a consignment of waste prior to unloading, the Concessionaire:

- (A) determines that such consignment includes any Prohibited Waste, then the Concessionaire may refuse to accept such consignment and proceed to reject the consignment without allowing it to be unloaded; or
 - (B) determines that such consignment includes only Prohibited Waste & C&D waste, then the Concessionaire may refuse to accept such Mixed Waste and reject the consignment without allowing it to be unloaded; or
 - (C) determines that such consignment includes Mixed Waste, and where the Concessionaire elects to accept such Mixed Waste, it shall unload the Mixed Waste.
- (d) Inspection after Unloading
- (i) Once a truck carrying a consignment of waste has been weighed at the Weighbridge, and the Concessionaire has completed its visual inspection prior to unloading, then, subject to the Concessionaire's right to reject the entire consignment of waste in accordance with Clause 18.6(c) above, the Concessionaire shall unload the waste for further inspection.
 - (ii) If pursuant to a further inspection of a consignment of waste after unloading, the Concessionaire determines that such consignment includes any Prohibited Waste or any Mixed Waste, then the Concessionaire shall:
 - (A) proceed to weigh the Prohibited Waste (if any) in order to determine the quantity of Prohibited Waste & C&D waste (the **Unloaded Prohibited Waste Quantity**).
 - (iii) If, there exists any Unloaded Prohibited Waste Quantity, then the Concessionaire shall have the right to reject the Unloaded Prohibited Waste Quantity.
 - (iv) The Concessionaire shall physically separate and set aside the Unloaded Prohibited Waste Quantity, for inspection by the Independent Engineer.
 - (v) The Concessionaire shall promptly (and in any event within [•] hours of delivery of the relevant consignment of waste that includes Prohibited Waste) notify the Authority of the rejection of any consignment of Prohibited Waste and, along with details of the truck carrying the Prohibited Waste and details of who supplied the Prohibited Waste and such other details as the Authority may require.
 - (vi) Upon receipt of a notice from the Concessionaire regarding delivery of any Prohibited

Waste and C&D waste to the Site, the Authority shall have the right to cause the Independent Engineer to inspect the relevant waste consignment within [•] hours of receipt of such notice from the Concessionaire. If the Independent Engineer certifies that the Mixed Waste does not exceed the Maximum Permissible Mixed Waste Quantity or the waste is not Prohibited Waste, then the Concessionaire shall be required to accept the waste for Segregation, processing, and handling at the WtC Facility, in which case such waste shall be deemed to be Acceptable Waste delivered to the Concessionaire for determining if the Authority has delivered the Daily Guaranteed Acceptable Waste Quantity. If the Independent Engineer certifies that the waste is Prohibited Waste and C&D Waste Quantity which has been delivered, then, and subject to the Concessionaire's right under Clause 18.5(b), the Authority shall (or shall cause the C&T Contractors to) remove such waste from the Site within [•] hours of inspection of such waste. If the Authority chooses to accept the Concessionaire's determination of Prohibited Waste and C&D Waste Quantity (and not require the Independent Engineer to undertake a separate inspection), then, the Authority shall cause the Unloaded Prohibited Waste Quantity, and/ or, subject to the Concessionaire's right under Clause 18.5(b), the Unloaded Prohibited Waste and C&D Waste Quantity to be removed from the Site within [•] hours of receipt of the notice from the Concessionaire. All costs associated with the removal and transportation of the Unloaded Prohibited Waste and C&D waste Quantity from the Site, including additional costs incurred by the Concessionaire to load the Unloaded Prohibited Waste and C&D Waste Quantity onto trucks, shall be borne by Authority.

- (vii) In handling any Prohibited Waste and C&D Waste Quantity that has been delivered to the Site, the Concessionaire shall comply with the Waste Acceptance, Segregation and Rejection Plan, the EMP, the OHS Plan, Applicable Laws and Applicable Permits.

(e) Calculation of the Acceptable Waste Delivered

- (i) After inspection and unloading of the waste, the Concessionaire shall weigh the truck at the time of exit of the truck from the Site. The Concessionaire shall record the weight of the empty truck or, the truck carrying the Prohibited Waste and C&D Waste Quantity not accepted in accordance with Clause 18.6(c), as the case may be, and the time of exit of the truck in the in the format to be approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan.
- (ii) The difference between the weight of the truck carrying the waste, as recorded at the time of entry of the truck into the Site, and the weight of the truck recorded at the time the truck exits the Site, will be treated as the weight/volume of the total waste unloaded at the Receipt Point (the **Total Unloaded Waste**).

- (iii) The Total Unloaded Waste less any Unloaded Prohibited Waste Quantity that the Concessionaire chooses to accept pursuant to Clause 18.5(b)), will be treated as the weight/volume of Acceptable Waste actually received by the Concessionaire for processing at the WtC Facility (the **Daily Acceptable Waste Quantity**). Provided that, any Unloaded Prohibited Waste & CD Waste Quantity that the Concessionaire chooses to accept pursuant to Clause 18.5(b) shall be counted towards the Daily Acceptable Waste Quantity received by the Concessionaire.
- (iv) The Daily Acceptable Waste Quantity, Mixed Waste quantity and Unloaded Prohibited Waste Quantity, and details specified in Clause 18.6(b)(ii), will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan. The daily weight sheets must be certified by the Independent Engineer.
- (v) If the Weighbridges are unavailable for any reason, then the Concessionaire has to make alternate arrangements for weighing of trucks at its own cost and in a manner acceptable to the Authority and the Independent Engineer. If the Concessionaire is unable to make acceptable alternate arrangements to weigh the trucks carrying the waste, then the following formula will be used to estimate the quantity of waste delivered to the Concessionaire on the days that the weighbridges are unavailable:

$$W = W_{AVG} * N$$

Where,

W = weight of the Acceptable Waste delivered to the Concessionaire at the Receipt Point during the period when the Weighbridges are not available;

W_{AVG} = the average Daily Acceptable Waste Quantity, per truck delivered at the Receipt Point over [30 (thirty) days] immediately preceding the date on which the Weighbridges were first unavailable; and

N = the number of truck loads of consignment of waste, received by the Concessionaire at the Receipt Point during the period that the Weighbridges are not available.

1.2 **Guaranteed Waste Liquidated Damages**

- (a) If the Daily Acceptable Waste Quantity is less than the Daily Guaranteed Acceptable Waste Quantity, then the Authority shall be liable to pay liquidated damages to the Concessionaire for each day of the shortfall, which shall be calculated in accordance with this Clause 18.7.
- (b) For the shortfall in the Daily Acceptable Waste Quantity as compared to the Daily Guaranteed

Acceptable Waste Quantity (the **Shortfall Quantity**), the Authority shall compensate the Concessionaire for the Shortfall Quantity and such compensation shall be calculated as the product of the Shortfall Quantity and [85% (eighty-five per cent)] of the Average Per Ton Gross Revenue (the **Guaranteed Waste Liquidated Damages**), such that:

Guaranteed Waste Liquidated Damages = Shortfall Quantity *multiplied by* ([0.85] x Average Per Ton Gross Revenue)

Where,

Shortfall Quantity = Daily Guaranteed Acceptable Waste Quantity *minus* Daily Acceptable Waste Quantity

Average Per Ton Gross Revenue =
Gross Revenue during the Reference Period *divided by* Total quantity (in tons) of Acceptable Waste delivered during the Reference Period.

Reference Period = any [3 (three)] month period immediately preceding the month in which the Shortfall Quantity arose.

- (c) The Guaranteed Waste Liquidated Damages shall accrue on a daily basis, for each day there is a Shortfall Quantity, but will be calculated and payable, on a monthly basis.
- (d) If there is a Shortfall Quantity on any day in a month, the Concessionaire shall, by the [15th (fifteenth) Day] of the immediately following month, prepare and submit to the Authority and the Independent Engineer an invoice for payment of the Guaranteed Waste Liquidated Damages for the previous month. As a part of such invoice, the Concessionaire will provide details of the Average Per Ton Gross Revenue, along with proof of payments received from any party from whom such revenue was earned. The Independent Engineer shall review the invoice and either accept the Concessionaire's calculation of the Guaranteed Waste Liquidated Damages, or reject such calculation, with reasons. If the Independent Engineer identifies any discrepancy, inaccuracy or shortcoming in the invoice, it shall require the Concessionaire to amend or modify the invoice and the Concessionaire shall proceed to revise and re-submit the invoice to the Authority and the Independent Engineer.
- (e) Once the Independent Engineer approves the invoice submitted by the Concessionaire pursuant to Clause 18.7(d), the Authority shall make payment of the Guaranteed Waste Liquidated Damages within a period of [15 (fifteen) days] from the date of the Independent Engineer's approval.

1.3 Segregation of Mixed Waste

- (a) The Concessionaire shall set up a waste Segregation system for Segregation of the Mixed Waste in accordance with the Waste Acceptance, Segregation and Rejection Plan. The Segregation system shall be setup in accordance with the Technical Specifications, Applicable law and the terms of any Applicable Permits and shall include providing adequate number of sorting machines to sort and Segregate the Mixed Waste up to the Maximum Permissible Mixed Waste Quantity.
- (b) The Concessionaire shall be required to provide at the Site adequate storage facilities for the various wastes that are recovered after the Segregation of Mixed Waste.
- (c) Any Biodegradable Waste that is Segregated from the Mixed Waste will be processed at the WtC Facility as if such waste was Acceptable Waste and any Recyclable Materials, RDF recovered from the Segregation of the Mixed Waste may be sold by the Concessionaire in accordance with Clause 18.10.
- (d) Any Residual Waste (including any Non-biodegradable Waste) left after Segregation of the Mixed Waste, and that cannot be processed at the Project Facilities or be sold as Recyclable Materials, shall be delivered by the Concessionaire at the Delivery Point for disposal in accordance with Clause 18.9.

1.4 Delivery of Residual Inert Matter and Residual Waste

- (a) The Concessionaire shall procure the trucks and other vehicles required for the transportation of the Residual Inert Matter and any Residual Waste to the Delivery Point and shall ensure that such trucks and vehicles are operated and maintained in a manner which poses no risk of harm or damage to the environment, life or property in the course of transportation to the relevant disposal or delivery location.
- (b) The Concessionaire shall load the Residual Inert Matter and/or any Residual Waste onto trucks and have the weight of each truck taken at the Weighbridges. The Concessionaire shall record the following details with respect to each truck which is used to transport the Residual Inert Matter and/or any Residual Waste:
 - (i) date of exit from the Site;
 - (ii) registration number of the truck;
 - (iii) time of exit from the Site; and
 - (iv) total weight of the truck

- (c) The details specified in Clause 18.9(b), will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan. The daily weight sheets must be certified by the Independent Engineer.
- (d) The Concessionaire shall be responsible for safe and reliable transportation of the Residual Inert Matter and/or any Residual Waste to the Delivery Point and ensure that there is no spillage or leakage which could cause public nuisance or otherwise endanger environment, life or property.
- (e) From the COD and until the expiry of the Concession Period, the Authority shall cause the SLF or the Alternate Disposal Location to accept the Residual Inert Matter and/or any Residual Waste for disposal.
- (f) If at any time during the O&M Period, the SLF or the Alternate Disposal Location is unavailable to accept the Residual Inert Matter and/or the Residual Waste, and the Authority instructs the Concessionaire to deliver the Residual Inert Matter and/or any Residual Waste to an alternate location, which is more than [•] kms from the Site, then, the Authority shall reimburse the Concessionaire for any incremental transportation cost incurred by the Concessionaire.

1.5 **Sale of Compost, By-Products and Recyclable Materials**

(a) Sale of Compost

- (i) The Concessionaire shall be free to store, use, appropriate, market and sell the Compost.
- (ii) The Concessionaire may sell the Compost, at such price and to such Person as it deems fit, and the proceeds of such sale shall be to the account of the Concessionaire
- (iii) The Concessionaire shall enter into an Offtake Agreement with any Offtaker of the Compost.
- (iv) The Concessionaire shall maintain records and submit reports to the Concessionaire of the quantum of the compost sold. The Independent Engineer shall have the right to, at any time during the O&M Period, inspect the records maintained by the Concessionaire in order to verify the quantum of Compost produced and sold

(b) Sale of Recyclable Materials, RDF and By-Products

- (i) The Concessionaire shall, as a part of the Associated Infrastructure, create an area of storage at the Site for the By-Products and any material that is recyclable (**Recyclable**

Material & RDF).

- (ii) The By-Products, RDF and the Recyclable Material shall be handled safely and stored by the Concessionaire in accordance with the EMP, OHS Plan, Applicable Laws and Applicable Permits.
- (iii) The Concessionaire shall maintain records and submit reports to the Authority of the quantum of RDF, By-Products generated from the Project Facilities and the Recyclable Material recovered on a [weekly] basis. The Independent Engineer shall have the right to, at any time during the O&M Period, inspect the records maintained by the Concessionaire in order to verify the quantum of By-Products generated and Recyclable Material recovered.
- (iv) The ownership of the RDF, By-Products and the Recyclable Material will vest in the Concessionaire.
- (v) The Concessionaire shall be free to sell or otherwise dispose of the RDF, By-Product and /or the Recyclable Material, at such price and to such person as it deems fit, and the proceeds of such sale shall be to the account of the Concessionaire.
- (vi) The Concessionaire shall arrange for transportation of the By-Products and the Recyclable Material from the Site, at its own cost.

1.2 **Utilities**

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- (a) The Concessionaire shall maintain at its cost, all utilities necessary for undertaking the O&M of the Project Facilities, including all power connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- (b) [The Concessionaire shall be responsible for arranging for adequate supply of water for use in the operation of the WtC Facility during the O&M Period. The charges for any water supplied to the Concessionaire for utilization at the WtC Facility shall be as per the tariff to be notified by [*municipal authority / insert relevant entity for water supply*] and the Concessionaire shall be responsible to pay all such charges directly to [*municipal authority / insert relevant entity for water supply*].]
- (c) [Notwithstanding anything contained in this Clause 18.11, if [*municipal authority / insert relevant entity for water supply*] fails to supply adequate quantities of water to the Concessionaire for use in the operation of the WtC Facility, the Concessionaire shall be responsible for arranging an alternate source of water in order to ensure the continuous operations of the WtC Facility and the Concessionaire shall not be entitled to claim any additional costs in such cases.]

1.3 Design Capacity Utilization

- (a) During each day of the O&M Period, the Concessionaire shall ensure that the WtC Facility can accept and process Acceptable Waste up to its Design Capacity.
- (b) The Concessionaire shall notify the Authority (with a copy to the Independent Engineer) as soon as it becomes aware that the volume of Acceptable Waste received at the Receipt Point is more than the Design Capacity.
- (c) If the volume of Acceptable Waste received at the Receipt Point is more than the Design Capacity, as a result of which the Concessionaire is unable to accept the Acceptable Waste at the WtC Facility, then such a situation shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified the Authority and the Independent Engineer in accordance with Clause 18.12(b) above. In such cases, the Authority shall (or shall cause the C&T Contractors to) remove any excess waste from the Site within [•] hours of receiving a notice from the Concessionaire. The Authority has the right to require the Independent Engineer to verify the capacity utilization of the WtC Facility at any time during the O&M Period.

1.4 Maintenance and Repair of the WtC Facility

- (a) During the O&M Period, the Concessionaire shall maintain the WtC Facility and repair any damage to the WtC Facility either by itself, or through an approved Subcontractor, in accordance with the O&M Plan, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers such that the WtC Facility is:
 - (i) in good working condition (subject only to wear and tear and Force Majeure) and capable of achieving its useful economic life in accordance with the Designs and Drawings; and
 - (ii) capable of meeting the KPIs.
- (b) For the first year of the O&M Period, the Concessionaire shall, at least [1 (one)] month before the Scheduled COD, submit to the Authority its scheduled maintenance programme for the WtC Facility, specifying the Scheduled Maintenance periods for the WtC Facility and the impact of such Scheduled Maintenance periods on the Availability of the WtC Facility (**Scheduled Maintenance Programme**). For every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least [1 (one)] month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs.

- (c) Within [15 (fifteen)] days of receipt of the Scheduled Maintenance Programme, the Authority shall notify the Concessionaire of its approval of such schedule.
- (d) If the Authority does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the availability of the WtC Facility to accept and process the Acceptable Waste, the Authority shall advise the Concessionaire within [15 (fifteen)] days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the availability of the WtC Facility may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If the Authority fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 18.13, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon [60 (sixty)] days' prior written notice to the Authority. The Authority shall respond to such request within [10 (ten)] days and shall not unreasonably withhold its permission for such re-scheduling.

- (e) Within [5 (five)] days of any re-scheduling of a Scheduled Maintenance in accordance with Clause 18.13(d) above, the Concessionaire shall provide to the Authority, the amended Scheduled Maintenance Programme, which shall then be the "Scheduled Maintenance Programme".
- (f) The Concessionaire shall, at its own cost, replace any components or parts of the Project Facilities, including the Weighbridges, that are damaged or worn out or, in the Concessionaire's judgement, are no longer practicable to repair as a result of normal wear and tear.
- (g) If at any time during the O&M Period, the WtC Facility is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the WtC Facility to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- (h) If at any time during the O&M Period, the WtC Facility is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out at Clause 26.7 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged WtC Facility to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall

be applied to such repair, replacement or restoration.

1.5 **O&M Personnel**

- (a) The Concessionaire shall engage (either directly or through an approved Subcontractor) adequate number of suitably skilled and qualified personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 18.
- (b) The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable labour laws.
- (c) Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.
- (d) The Authority is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify the Authority against all losses, claims, costs and damages that the Authority may suffer due to the Concessionaire's or any of its Subcontractor's failure to comply with applicable labour laws.

1.6 **Subcontracting**

- (a) In accordance with the Subcontractor management plan prepared by the Concessionaire and approved by Authority under Clause 14.5(a), the Concessionaire may enter into Subcontracts to perform any of its O&M obligations, provided that a Subcontract of a value above INR [•] (Rupees [•]) will be executed by the Concessionaire only with the prior approval of Authority.
- (b) The provisions of Clause 14.5 shall apply to all Subcontracts executed by the Concessionaire for any O&M aspects of its Scope of Work.

ARTICLE 19

2. SAFETY REQUIREMENTS

2.1 Safety Requirements

The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities, and shall comply with the safety requirements set out in this Article 19 and Schedule [•] (the **Safety Requirements**).

2.2 Guiding Principles

- (a) The Safety Requirements aim at minimising threat of injuries, loss of human life and damage to property resulting from accidents on, or in relation to the construction, operation and maintenance of the Project Facilities, irrespective of the person(s) at fault.
- (b) The Safety Requirements shall apply to all phases of construction, operation and maintenance of the Project Facilities with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.

2.3 Obligations of the Concessionaire

- (a) The Concessionaire shall abide by the following to ensure safety of Project Facilities, human life and property:
 - (i) instructions issued by the Authority;
 - (ii) Applicable Laws and Applicable Permits;
 - (iii) provisions of this Agreement;
 - (iv) relevant standards/guidelines contained in internationally accepted codes; and
 - (v) Good Industry Practice.
- (b) The Concessionaire shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by the Concessionaire Related Parties.
- (c) The Concessionaire shall be responsible for undertaking all the measures under its control to ensure the safety and security of the Project Facilities.
- (d) The Concessionaire agrees that the Authority shall be entitled to inspect the Project Facilities to verify adherence to Safety Requirements and the Concessionaire shall be obliged to facilitate

such inspection and implement the corrective measures identified in such inspection.

2.4 **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 Work.

ARTICLE 20

3. MONITORING OF OPERATION AND MAINTENANCE

3.1 Monitoring and Reporting

(a) Environmental Monitoring

- (i) The Concessionaire shall operate the Project Facilities and process the Acceptable Waste at the WtC Facility strictly in accordance with the O&M Plan, EMP, the Waste Acceptance, Segregation and Rejection Plan, OHS Plan, SWM Rules, other Applicable Laws and Applicable Permits and in a manner that causes no damage to the environment, including any air pollution, odours, pests, insects, litter, soil or ground water contamination.
- (ii) The Concessionaire shall ensure that there is zero liquid discharge caused due to the O&M of the WtC Facility. If an incident occurs at the Site, as result of which there is any liquid discharge on the Site or Adjoining Property, the Concessionaire shall ensure proper collection, clean-up and disposal of any such liquid discharge in accordance with the EMP and O&M Plan.
- (iii) The Concessionaire shall carry out continuous environmental monitoring of the WtC Facility in accordance with the EMP, O&M Plan and Applicable Laws. The monitoring schedule and parameters will be set out in the EMP.
- (iv) For the purposes of the continuous environmental monitoring of the WtC Facility, the Concessionaire shall install and maintain an online monitoring system as part of the Project Facilities, in accordance with the Technical Specifications and Applicable Laws to monitor compliance with the KPIs.

(b) Records and Reporting Requirements

The Concessionaire shall deliver to the Authority, with a copy to the Independent Engineer, the following within the specified timelines:

- (i) no later than [7 (seven)] days after the close of each month, a monthly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the O&M Plan, [O&M Standards], EMP and the OHS Plan and identify and state in reasonable detail the defects and deficiencies that require rectification., and shall give such other relevant information as may be required by the Independent Engineer;
- (ii) reports relating to any activity, incident or circumstance that threatens or may threaten

public health, safety, the environment or the safety and security of the Site or the Project Facilities or any Adjoining Property, and any action taken to mitigate the effect of such incident as soon as reasonably practicable but no later than [12 (twelve)] hours after the occurrence of such event or circumstance;

- (iii) reports on any critical breakdowns or failures in the Project Facilities, including any of the Weighbridges, within [12 (twelve)] hours of such occurrence;
- (iv) reports on accidents or other incidents in relation to the O&M personnel or any third party, including any non-compliance with the EMP or the OHS Plan, along with the actions taken to minimise recurrence, within [72 (seventy-two)] hours of such occurrence;
- (v) daily weight sheets prepared in the format approved by the Authority as part of the O&M Plan/Waste Acceptance, Segregation and Rejection Plan, recording the details specified in Clause 18.6 at the end of each day (i.e., on or before [•] hours every day);
- (vi) 2 (two) Monthly reports on the quantum of compost (in MT) produced from the WtC Facility
- (vii) [monthly/quarterly] report compiling the data collected from the environmental monitoring system, on or before the [7th (seventh)] day of the following [month/quarter];
- (viii) monthly report on compliance with the KPIs, details of sale of the By-Products and Recyclable Materials, and details of any Emergency during the relevant month, on or before the [7th (seventh)] day of the following month. The monthly progress report must be certified by the Independent Engineer before it is submitted to the Authority;
- (ix) copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws or Applicable Permits, within [2 (two)] days of receipt of such notice from or submission of replies to the relevant Government Authority; and
- (x) reports on any material litigation, to which the Concessionaire is a party, and any adverse orders or judgments passed by any Government Authority that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

3.2 **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 Report**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the O&M Plan, [O&M Standards], KPIs, EMP and the OHS Plan, and send a copy thereof to the Authority and the Concessionaire within [7 (seven)] days of such inspection.

3.3 **Tests**

For determining that the Project Facilities conforms to the O&M Plan and [the O&M Standards], the Independent Engineer shall require the Concessionaire to carryout, 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 to the Independent Engineer. The costs incurred on the Tests shall be borne solely by the Concessionaire.

3.4 **Remedial Measures**

- (a) The Concessionaire shall repair or rectify the defects or deficiencies, if any, set out in the O&M Inspection Report or in the test results referred to in Clause 20.3 and furnish a report to the Independent Engineer and the Authority within [15 (fifteen)] days of receiving the O&M Inspection Report or the test results, as the case may be.
- (b) The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine if such remedial measures have brought the Project Facilities into compliance with the O&M Plan [and O&M Standards] and the procedure set forth in this Clause 20.4 shall be repeated until the Project Facilities conforms to the O&M Plan [and O&M Standards].
- (c) If after the COD, the Concessionaire ceases to operate the WtC Facility for a period of [•] consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Clause 27.1 or Clause 27.2, which is not attributable to the Concessionaire, without the prior written consent of the Authority, then the Authority shall be entitled to step-in and undertake the O&M of the WtC Facility until the Concessionaire demonstrates to the satisfaction of the Authority that it can and will resume normal operation and maintenance of the WtC Facility. The exercise of the Authority's rights under this Clause 20.4 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the WtC Facility, provided that, any revenue earned from the O&M of the WtC Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the WtC Facility).

ARTICLE 21

4. KEY PERFORMANCE INDICATOR

4.1 Key Performance Indicators

(a) Availability Guarantee

- (i) The Concessionaire shall ensure that the Availability of the Project Facilities on every day during the O&M Period shall be [\bullet] % (the **Availability Guarantee**). Provided that during the period of a Scheduled Maintenance that is undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with Clause 18.13 for the Project Facilities, the Concessionaire shall ensure that the Availability Guarantee of the Project Facilities is at least [\bullet] %.

The '**Availability**' of the Project Facilities will be determined as a ratio of the number of hours in a day during which the Project Facilities are available to accept and process Acceptable Waste up to its Design Capacity, to the total number of hours in a day, and the term '**Available**' shall be construed accordingly.

- (ii) In computing the Availability of the Project Facilities, the Concessionaire agrees that the Project Facilities will be deemed to be Available at all times, other than during the period of:

- (A) an unscheduled outage affecting the Project Facilities;
- (B) suspension of the O&M services for the Project Facilities, for reasons attributable to the Concessionaire (in accordance with Clause 27.1 and 27.2);
or
- (C) an Emergency affecting the Project Facilities, attributable to the Concessionaire,

during which the Project Facilities will be deemed to be not Available.

- (iii) Notwithstanding anything contained in this Agreement, the Project Facilities will be deemed to be Available in case of the following:

- (A) a Forced Unavailability; or
- (B) an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire.

- (iv) If the Concessionaire is unable to achieve the Availability Guarantee on any day of the

O&M Period, then the Concessionaire shall be liable to pay Availability Liquidated Damages calculated in accordance with the formula set out in Schedule [•]. Provided that, the Concessionaire shall not be liable to pay any Availability Liquidated Damages during the Trial Operations period.

- (v) The Availability Liquidated Damages payable by the Concessionaire for its failure to achieve the Availability Guarantee, if any, shall accrue during a month on a daily basis but will be payable by the Concessionaire for the entire month in aggregate, within [7 (seven)] days from the end of each month during the O&M Period].

(b) Throughput Guarantee

- (i) The Concessionaire shall ensure that it accepts all quantities of Acceptable Waste delivered by the Authority at the Receipt Point up to the Design Capacity. On any day during the O&M Period, if the Concessionaire is unable to accept quantities of Acceptable Waste equivalent to [•] TPD (the **Throughput Guarantee**), then the Concessionaire shall be liable to pay Throughput Liquidated Damages calculated in accordance with Schedule [•].
- (ii) The Concessionaire shall be exempt from achieving the Throughput Guarantee in case of the following:
 - (A) a Forced Unavailability; or
 - (B) an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire.
- (iii) The Throughput Liquidated Damages payable by the Concessionaire for its failure to meet the Throughput Guarantee, if any, shall accrue during a month on a daily basis but will be payable by the Concessionaire for the entire month in aggregate, within [7 (seven)] days from the end of each month during the O&M Period].

(c) Discharge Guarantee

The Concessionaire shall ensure that the WtC Facility is operated as a zero liquid discharge facility throughout the O&M Period (**Discharge Guarantee**). For every incident of liquid discharge from the WtC Facility, the Concessionaire shall be liable to pay the Discharge Liquidated Damages calculated in accordance with Schedule [•].

The Discharge Liquidated Damages shall be calculated, and payable by the Concessionaire, for each month of the O&M Period, if applicable and shall be paid within [7 (seven)] days from the end of such month.

(d) [Breach of O&M Standards]

The Concessionaire shall ensure that the WtC Facility is operated and maintained in accordance with the O&M Standards. If the Concessionaire breaches the O&M Standards during the O&M Period, the Concessionaire shall be liable to pay the O&M Liquidated Damages calculated in accordance with Schedule [•.]

(e) The Parties acknowledge that the Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused and losses that the Authority may suffer due to the Concessionaire's failure to comply with the KPIs and not as penalty. The payment of Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, including any tortious liability, for causing any environmental pollution or health hazard due to its failure to comply with the KPIs and/or Applicable Laws.

(f) Within [7 (seven)] days from the end of each quarter, the Concessionaire shall be required to provide a report on compliance of the WtC Facility with the KPIs (prepared in accordance with Clause 20.1(b)(viii) above), which should indicate the periods during which the WtC Facility did not meet the KPIs and the reasons for such failure. The Independent Engineer shall be required to certify each such report before it is provided to Authority. Such certified report on compliance with KPIs shall be referred to as the **KPI Adherence Report**.

PART IV – FINANCIAL COVENANTS

Draft

ARTICLE 22

5. [GRANT] & [PROCESSING FEE]

5.1 [In consideration of the works and services required to be performed by the Concessionaire for designing, constructing, operating and maintaining the Project Facilities in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, by way of cash support, an amount equal to INR [•] (being the amount quoted by the Selected Bidder in its Bid), subject to, and in accordance with, the provisions of this Article 22 (**Grant**).

5.2 The Concessionaire shall be deemed to have satisfied itself regarding the sufficiency of the Grant. No adjustments shall be made to the Grant payable to the Concessionaire, except for any adjustment in accordance with Clause 32.2 (as a consequence of a Change in Law) or any permitted Variation. The Grant shall be disbursed by the Authority in accordance with the provisions of Clause 22.3.

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5.3 **Grant Payments**

(a) Upon the completion of the Project Milestones, the Authority shall credit the corresponding portion of the Grant to the Escrow Account in accordance with Clause 22.3(c)(iii) below. The Grant shall be applied by the Concessionaire to meet the Total Project Cost.

(b) [Notwithstanding the amount quoted by the Selected Bidder in its Bid, the Grant that the Concessionaire is entitled to under this Agreement shall be the lower of the following amounts:

- (i) the sum specified by the Selected Bidder in the Bid and as accepted by the Authority;
- (ii) the sum equal to [150% (one hundred and fifty per cent)] of the Equity Contribution; and
- (iii) an amount not exceeding [30% (thirty per cent)] of the Total Project Cost.]

(c) Grant Disbursal

(i) Subject to this Clause 22.3(c), the Grant will be paid by the Authority to the Concessionaire in the following instalments:

- (A) 1st (first) instalment of [25% (twenty per cent)] of the Grant, upon issue of the Milestone Completion Certificate for the 1st (first) Project Milestone;
- (B) 2nd (second) instalment of [25% (twenty per cent)] of the Grant, upon issue of the Milestone Completion Certificate for the 2nd (second) Project Milestone;

- (C) 3rd (third) instalment of [25% (twenty per cent)] of the Grant, upon issue of the Milestone Completion Certificate for the 3rd (third) Project Milestone; and
 - (D) 4th (fourth) instalment of [25% (twenty per cent)] of the Grant, upon issue of the COD Certificate (or deemed COD Certificate).
- (ii) Within [7 (seven) days] of issue of the Milestone Completion Certificate for a Project Milestone, or the COD Certificate (or deemed COD Certificate), as the case may be, the Concessionaire shall submit an Invoice to the Authority for the amount of the Grant linked to such Project Milestone. Any Invoice raised by the Concessionaire for the Grant shall be accompanied by a copy of the relevant Milestone Completion Certificate and/or the COD Certificate, as the case may be, issued by the Authority, provided that in case the COD Certificate is deemed to be issued under Clause 17.1(b)(iii) then the Invoice raised by the Concessionaire shall be accompanied by a copy of the COD Request Notice.
 - (iii) Within [30 (thirty)] days of receipt of an Invoice from the Concessionaire pursuant to Clause 22.3(c)(ii) above, the Authority shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - (A) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws and Liquidated Damages, if any); or
 - (B) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority. If the Authority disputes only part of the Invoice, the Authority shall issue a certificate to the Escrow Bank (with a copy to the Concessionaire), conveying its approval for the release of the undisputed amount specified in the Invoice less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws.
 - (iv) The Concessionaire shall submit a revised Invoice to the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice.
 - (v) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 34.
 - (vi) A certificate issued by the Authority in accordance with Clause 22.3(c)(iii)(A) shall be referred to as a **Payment Certificate**.

- (vii) If, within [30 (thirty)] days from the date of receipt of an Invoice, the Authority does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Authority, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the Authority) to release the amounts specified in the Invoice, upon the expiry of the [30 (thirty)] day period.
- (viii) Immediately upon receipt of a Payment Certificate from the Authority in accordance with Clause 22.3(c)(iii) or upon receipt of instructions from the Concessionaire in accordance with Clause 22.3(c)(vii), the Escrow Bank shall release the amount specified in the Payment Certificate, or, if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (ix) Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to issue a Payment Certificate unless:
 - (A) the Performance Security remains valid and in effect at the time;
 - (B) the insurances to be obtained by the Concessionaire in accordance with Article 25 are valid and in effect;
 - (C) the Concessionaire Applicable Permits for design, construction and completion of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (D) the Concessionaire has complied with the EMP and OHS Plan in undertaking the design, construction and O&M of the Project Facilities; and
 - (E) there is no subsisting Concessionaire Event of Default.]

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1.2 [Processing Fee]⁶⁷

- (a) As consideration for accepting, handling, Segregating, processing and disposing of MSW/Wet waste in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, an amount equal to INR [•] (being the amount quoted by the Selected Bidder in its Bid) per ton of

⁶⁷ **Drafting Note:** In the event that the bidding parameter for the Project is a tipping fee to be quoted by the Bidders for accepting and handling waste, the provisions of Clauses 22.1, 22.2 and 22.3 relating to the Grant shall be substituted by the provisions of Clause 22.5 relating to the payment of the Tipping Fee and the Clauses shall be renumbered accordingly. If no Tipping Fee is payable, then this Clause 22.5 should be deleted and subsequent clauses re-numbered accordingly. Provided that, if both a Grant and a Tipping Fee are payable then both provisions should be retained and the invoicing process as set out for the Grant and the Tipping Fee will continue given that payments for each are required to be made at different stages.

Acceptable Waste accepted and processed by the Concessionaire at the Receipt Point in a month (**Processing Fee**), provided that no Processing Fee shall be paid during the Trial Operations period.

- (b) The Concessionaire shall, on the [5th (fifth)] day of every month after the COD, or in case the [5th (fifth)] day of a month is a holiday, then on the following working day of such month, submit to the Authority a statement (**Fee Statement**) setting out the following details:
 - (i) the quantities of Total Mixed Waste delivered by the Authority at the Receipt Point during the preceding month, along with copies of the daily weight-sheets for the Total Unloaded Waste signed by the Independent Engineer;
 - (ii) the quantities of Mixed Waste that has been accepted and Segregated by the Concessionaire, providing separate details of the quantity of Biodegradable Waste Segregated from the Mixed Waste and any Residual Waste that cannot be processed at the Project Facilities (including any Non-Biodegradable Waste), along with copies of the daily weight-sheets for the Mixed Waste signed by the Independent Engineer.
- (c) The Processing Fee Statement shall be accompanied by an Invoice setting out the total amounts payable by the Authority towards the Processing Fee
- (d) Within [30 (thirty)] days of receipt of an Invoice from the Concessionaire pursuant to Clause 22.5(d) above, the Authority shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - (i) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws and Liquidated Damages, if any); or
 - (ii) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority. If the Authority disputes only part of the Invoice, the Authority shall issue a certificate to the Escrow Bank (with a copy the Concessionaire), conveying its approval for the release of the undisputed amount specified in the Invoice less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws.
- (e) The Concessionaire shall submit a revised Invoice to the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice.

- (f) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 34.
- (g) A certificate issued by the Authority in accordance with Clause 22.5(e)(i) shall be referred to as a **Payment Certificate**.
- (h) If, within [30 (thirty)] days from the date of receipt of an Invoice, the Authority does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Authority, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the Authority) to release the amounts specified in the Invoice, upon the expiry of the [30 (thirty)] day period.
- (i) Immediately upon receipt of a Payment Certificate from the Authority in accordance with Clause 22.5(e) or upon receipt of instructions from the Concessionaire in accordance with Clause 22.5(i), the Escrow Bank shall release the amount specified in the Payment Certificate, or, if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (j) Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to issue a Payment Certificate unless:
 - (i) the Performance Security remains valid and in effect at the time;
 - (ii) the insurances to be obtained by the Concessionaire in accordance with Article 25 are valid and in effect;
 - (iii) the Concessionaire Applicable Permits for design, construction and completion of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (iv) the Concessionaire has complied with the EMP and OHS Plan in undertaking the design, construction and O&M of the Project Facilities; and
 - (v) there is no subsisting Concessionaire Event of Default.

1.3 Letter of Credit

- (a) On or before the Effective Date, the Authority shall provide the Concessionaire with an unconditional, revolving, irrevocable stand-by and payable at sight letter of credit (LC) issued

by a Scheduled Bank in the form set out in Schedule [•] for an amount equal to the Minimum Escrow Balance, which may be drawn upon by the Concessionaire in accordance with this Article 22 and Article 24. The LC shall have an initial term of [12 (twelve)] months and shall be renewed automatically, for an amount equivalent to the [•].

- (b) The [Authority] will be responsible for the LC opening charges, the LC extension charges, advising bank charges and discrepancy charges, if any.
- (c) If, during the Concession Period, the Concessionaire is unable to obtain payment of any undisputed amounts due to it from the Escrow Account in accordance with Clause 22.3(c)(vii) and Clause 22.5(i), because of an insufficiency of funds in the Escrow Account, or due to any other reason, the Concessionaire shall have the right to draw upon the LC for any outstanding payments due to the Concessionaire and accordingly the LC issuing bank shall pay without any reference to instructions from the Authority, an amount equivalent to the undisputed amounts which is due and payable, on receipt of copy of the Invoice issued by the Concessionaire to the Authority.
- (d) If the Concessionaire draws down on the LC at any point in time pursuant to sub-clause (c) above, the Authority shall replenish and restore the LC to its full value within [7 (seven)] days.
- (e) The Authority shall cause the LC issuing bank to intimate the Concessionaire in writing regarding the establishing of the LC.
- (f) The Authority shall ensure that the LC is renewed no later than [10 (ten)] days prior to the expiry of such LC.

1.4 **Confirming Party's Obligations**

- (a) The Confirming Party hereby guarantees the payment of any undisputed amounts due and payable to the Concessionaire under this Agreement, including the Concessionaire Payments and Termination Compensation (if any), if: (i) in case of the Concessionaire Payments, the Concessionaire is unable to recover such payments from the Escrow Account and the LC; and (ii) in the case of the termination payments, if the Authority fails to make such payments to the Concessionaire within the timelines set out in Article 29.
- (b) In the event that any amount due and payable by the Authority under this Agreement is not paid within the period provided in the Agreement and Concessionaire has failed to recover such amounts from (i) the Escrow Account; or (ii) the LC, for any reason not attributable to the Concessionaire, the Concessionaire shall issue a notice to the Confirming Party and the Confirming Party shall pay such amounts to the Concessionaire within [30 (thirty)] days from the date of the notice.

1.5 Taxes

- (a) The [Grant] [and] [Processing Fee] payable are inclusive of all Taxes.
- (b) The Authority may deduct from the [Grant] [and] [Processing Fee] and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.
- (c) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- (d) Upon a request from the Concessionaire, the Authority will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the Authority shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.
- (e) The Concessionaire shall indemnify the Authority from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.
- (f) Any Taxes payable in relation to the Site shall be borne by the Authority.

1.6 Default Interest

Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at the rate of [•] per annum or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 28 or any other right or remedy available to it under this Agreement or Applicable Laws.

1.7 Right of Set-Off

The Concessionaire shall not be entitled to retain or set off any amount due to the Authority by it (other than the Concessionaire's right to set off any payment of Premium Instalments against the Guaranteed Waste Liquidated Damages due and payable to it by the Authority in accordance with Clause 22.4(c)), but the Authority may retain or set off any amount owed to it by the Concessionaire under this Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Agreement. The Authority shall notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

ARTICLE 23

2. ACCOUNTS AND AUDIT

2.1 Audited Accounts

- (a) The Concessionaire shall maintain books of accounts recording all its receipts (including revenue from sale of the compost and other revenues derived/collected by it from or on account of the Project Facilities and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.
- (b) 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 the Parties under this Agreement, to the extent required. The Authority 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 Authority 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 the Parties under this Agreement.
- (c) The Concessionaire shall, within [45 (forty-five)] days of the close of each quarter of an Accounting Year, furnish to the Authority 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.

2.2 Appointment of Auditors

- (a) 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 Accountants**). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- (b) The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm 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.

2.3 **Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the Authority 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.

ARTICLE 24

3. ESCROW ACCOUNT

3.1 Escrow Account

Prior to the Effective Date, the Concessionaire, the Confirming Party, the Authority and the Escrow Bank shall enter into the Escrow Agreement, substantially in the format set out in Schedule [□], and the Authority shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement. The Escrow Account shall be operational until the expiry of the Concession Period. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank and the Authority's obligation to deposit [the Grant]⁶⁸ [and/or] [Processing Fee]⁶⁹ in accordance with this Agreement.

3.2 Minimum Escrow Balance

- (a) The Authority shall deposit:
- (i) [an amount equal to the first instalment of the Grant payable to the Concessionaire as set out in Clause 22.3(c)(i) prior to the Effective Date, and from the Effective Date, the Authority shall ensure that the Escrow Account is funded with an amount equal to the next instalment of the Grant due and payable to the Concessionaire in accordance with Clause 22.3;]⁷⁰ [and/or]
 - (ii) [at least [30 (thirty)] days prior to the Scheduled COD and maintain till the expiry of the Concession Period or early termination of this Agreement, the Processing Fee in the Escrow Account such that the Escrow Account is funded at all times with an amount equivalent to the estimated Processing Fee payable for 3 months]⁷¹
(the **Minimum Escrow Balance**).
- (b) If at any time after the Effective Date, the balance in the Escrow Account falls below the Minimum Escrow Balance, the Authority shall promptly, and in any event, no later than [60 (sixty)] days, fund the Escrow Account such that the Minimum Escrow Balance is maintained.
- (c) Any interest earned on the amounts deposited by the Authority in the Escrow Account will be counted towards the Minimum Escrow Balance.
- (d) If at any time after the Effective Date, the balance in the Escrow Account falls below the

⁶⁸ **Drafting Note:** To be deleted if no grant is payable.

⁶⁹ **Drafting Note:** To be deleted if no tipping fee is payable.

⁷⁰ **Drafting Note:** To be deleted if no grant is payable.

⁷¹ **Drafting Note:** To be deleted if no tipping fee is payable.

Minimum Escrow Balance and the Authority is unable to rectify this within [•] days, the Confirming Party shall promptly fund the Escrow Account such that the Minimum Escrow Balance is maintained.

3.3 Deposits into the Escrow Account

- (a) The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- (i) all funds constituting the Financial Package disbursed by Lenders in terms of the Financing Documents;
 - (ii) all revenues from the sale of the compost, By-Products and Recyclable Materials by the Concessionaire;
 - (iii) proceeds of any rentals, deposits, capital receipts or insurance claims; and
 - (iv) all payments by the Authority and the Confirming Party, after deduction of any outstanding payments,

provided that, the senior Lenders may make a direct disbursement to the EPC contractor in accordance with the express provisions contained in the Financing Documents.

- (b) The Authority and the Confirming Party shall at all times and in any month of the Concession Period, ensure that in a reserve sub-account (the **Reserve Fund**) under the Escrow Account, an amount equivalent to the Minimum Escrow Balance, in accordance with Clause 24.2, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and the Authority does not notify the Escrow Bank in respect of any non-performance or breach of obligation by the Concessionaire directing Escrow Bank to stop any appropriation from Reserve Fund; in case of any delay by the Authority in the payment of any due and undisputed amount to the 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 Authority shall forthwith top up and maintain the Minimum Escrow Balance in the Reserve Fund.

3.4 Withdrawals during the Concession Period

- (a) The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions by way of the 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 Documents;
 - (iii) the O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (iv) the O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
 - (v) any amounts due and payable to the Authority;
 - (vi) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (vii) all payments and damages certified by the Authority as due and payable to it by the Concessionaire;
 - (viii) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - (ix) any reserve requirements set forth in the Financing Documents; and
 - (x) balance, if any, in accordance with the instructions of the Concessionaire.
- (b) The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.4(a) above, except with the prior written approval of the Authority.
- (c) The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority 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 Authority. Any demand from the Authority 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.

3.5 **Withdrawals upon expiry of the Concession Period or Termination**

- (a) 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 or termination of this Agreement, 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;
 - (iv) all payments and damages certified by the Authority 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 Clause 24.5(a)(x) until a Vesting Certificate has been issued by the Authority in accordance with Clause 30.4.

- (b) The provisions of this Clause 24.5 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.5(a) have been fully discharged.

ARTICLE 25

4. INSURANCE

- 4.1 The Concessionaire shall, obtain and maintain the policies of insurance set out in this Article 25 in the minimum coverage amounts and during the specified periods for the Project Facilities. In addition, the Concessionaire shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Concessionaire, the Lenders or the Authority in accordance with this Article 25.
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- 4.2 During the Construction Period, the Concessionaire shall obtain and maintain such insurances for such maximum sums as may be required under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices.
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- 4.3 During the O&M Period, the Concessionaire shall obtain and maintain insurance policies including but not limited to the following:
- (a) loss, damage or destruction of the WtC Facility, at replacement value;
 - (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
 - (c) the Concessionaire's general liability arising out of the Project;
 - (d) liability to third parties for goods or property damage;
 - (e) workmen's compensation insurance; and
 - (f) any other insurance that may be necessary to protect the Project Facilities, the Concessionaire and its employees, including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.
- 4.4 The level of insurance to be maintained by the Concessionaire shall be determined in accordance with the Financing Documents. The level of insurance to be maintained by the Concessionaire after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of the Lenders' dues, in accordance with the Financing Documents.
- 4.5 The Concessionaire shall, within [30 (thirty)] days of the Effective Date, provide a notice to the Authority, setting out information in respect of the insurances that it proposes to obtain and maintain. Within [15 (fifteen)] days of receipt of such notice, the Authority may require the Concessionaire to obtain and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement

relating to any such insurance, the provisions of Article 34 shall apply.

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- 4.6 The Concessionaire shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within [15 (fifteen)] days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.

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- 4.7 Each insurance policy shall contain the following endorsements:
- (a) the Authority shall be additional insured under all policies maintained by the Concessionaire in relation to the Site and the Project, against loss or damage;
 - (b) the insurers shall waive all rights of subrogation against the Authority;
 - (c) the insurance policy may not be cancelled or materially changed by the insurer without giving [45 (forty-five)] days' prior written notice, except in the case of non-payment, in which case it will be [10 (ten)] days' prior written notice, to the Authority; and
 - (d) the Authority shall not be responsible for payment of any insurance premium.

- 4.8 Any changes in the insurances which impact the Site or the Project Facilities will need the prior written consent of the Authority, which consent shall not be unreasonably withheld.

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- 4.9 The Concessionaire shall apply proceeds from all insurance claims, except life and injury, for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.

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- 4.10 If the Concessionaire fails to procure or maintain any insurance required pursuant to this Article 25 which is required to be obtained for the Site or the Project, the Authority shall have the right to procure and maintain such insurance in accordance with the requirements of this Article 25 and charge the full cost thereof to the Concessionaire.

PART V – FORCE MAJEURE AND TERMINATION

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ARTICLE 26

5. FORCE MAJEURE

5.1 Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
- (i) beyond the reasonable control of the Affected Party;
 - (ii) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
 - (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.
- (b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 26.1(a):
- (i) Non-Political Force Majeure Events
 - (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
 - (B) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (C) chemical or radioactive contamination or ionising radiation;
 - (D) epidemic, pandemic, plague or quarantine;
 - (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;
 - (F) strikes or boycotts (other than those involving the Concessionaire, its Subcontractors or its employees) interrupting supplies or services for a continuous

period of [7 (seven)] days and an aggregate period exceeding [14 (fourteen)] days and not being an Indirect Political Force Majeure Event;

- (G) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Project Facilities; and
- (H) any failure or delay by a Subcontractor but only to the extent caused by another Non-Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- (A) heavy rainfall;
 - (B) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
 - (C) a delay in the performance of any Subcontractor;
 - (D) a termination of any Offtake Agreement;
 - (E) non-performance resulting from normal wear and tear; or
 - (F) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.
- (ii) Indirect Political Force Majeure Events
- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the [*the relevant State Government*] or occurring in [*insert the State where the Project Facilities are located*];
 - (B) invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the [*the relevant State Government*] or occurring in [*insert the State where the Project Facilities are located*];

- (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
 - (D) any protests by rag pickers who are meant to be relocated and resettled by the Authority;
 - (E) any protests/agitation by members of the public against development of the Project Facilities at the Site;
 - (F) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit;
 - (G) failure of the Authority to permit the Concessionaire to continue perform its obligations under this Agreement, with or without modifications, in the event of stoppage of any works after discovery of any geological or archaeological finds or for any other reason;
 - (H) any failure or delay of any Subcontractor but only to the extent caused by another Indirect Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor;
 - (I) the imposition, by any Government Authorities, of any lockdowns, curfews or mandatory quarantine rules arising out of the occurrence of any Non-Political Force Majeure Event or otherwise, which prevents the construction and/or O&M of the Project Facilities for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
 - (J) suspension of the construction or O&M of a Project Facility pursuant to an Emergency not attributable to the Concessionaire under, and in accordance with, Clause 27.1(b)(ii)(B) and Clause 27.2(b)(ii)(B); and
 - (K) any event or circumstances of a nature analogous to any of the foregoing.
- (iii) Direct Political Force Majeure Events
- (A) occurrence of a Change in Law, to the extent that its consequences cannot be dealt with under and in accordance with the provisions of Article 32 and its effect, in financial terms, exceeds the sum specified in Clause 32.1;

- (B) compulsory acquisition in national interest or expropriation of the Site and/or the Project Facilities;
 - (C) any order, notification or judgement issued or passed by any Government Authority, including the National Green Tribunal, which declares the construction and/or operation of the Project Facilities on the Site to be unlawful or opposed to public health and sanitation or as being a threat to the environment and/or ecologically sensitive areas/zones near the Site (including bird sanctuaries, wildlife sanctuaries, etc.) and accordingly requires the Authority to cease the construction and/or operation of the Project Facilities at the Site, unless such judgement is, in any manner, attributable to the Concessionaire;
 - (D) any failure or delay of any Subcontractor but only to the extent caused by another Direct Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor;
 - (E) any event or circumstance of a nature analogous to any of the foregoing.
- (c) Without prejudice to the provisions of Clauses 26.1(a) or 26.1(b) above,
- (i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Clause 26.1; and
 - (iv) any act, event or circumstance which primarily affects any of Authority Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected Authority, it would have come within the definition of Force Majeure Event under this Clause 26.1.
- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 34, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

1.2 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within [3 (three)] days after the Affected Party knew of its occurrence. The

FM Notice shall set out (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof; (ii) 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 and (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event.

- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 26.2.

1.3 **Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed [120 (one hundred and twenty)] days for a Non-Political Force Majeure Event, [90 (ninety)] days for an Indirect Political Force Majeure Event and [60 (sixty)] days for a Direct Political Force Majeure Event from the date of issuance of the FM Notice.

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1.4 **No Liability for Other Losses**

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 26.

1.5 **Resumption of Performance**

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

1.6 **Allocation of costs during a Force Majeure Event**

- (a) Upon occurrence of a Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay any costs to the other Parties.

- (b) Upon occurrence of a Force Majeure Event post the Effective Date, the costs incurred and attributable to such Force Majeure Event and directly relating to the Project (**Force Majeure Costs**) shall be allocated as follows:
- (ii) upon the occurrence of a Non-Political Force Majeure Event, the Parties shall bear their respective Force Majeure Costs and no Party shall be required to pay any costs to any other Party;
 - (iii) upon the occurrence of an Indirect Political Event, all Force Majeure Costs up to the Insurance Cover will be borne by the Concessionaire and to the extent Force Majeure Costs exceed the Insurance Cover, one half of such excess amount shall be reimbursed by the Authority;
 - (iv) upon occurrence of a Direct Political Force Majeure Event, all Force Majeure Costs attributable to such Direct Political Force Majeure Event shall be reimbursed by the Authority to the Concessionaire.

For the purposes of this Clause 26.6, '**Force Majeure Costs**' mean interest payments on debt, O&M Expenses, and any increase in the cost of construction works and O&M directly attributable to the Force Majeure Event and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant. Force Majeure Costs shall not include any debt repayment obligations or loss of profits or income. Provided however, Force Majeure Costs attributable to a Direct Political Force Majeure Event shall, in addition to the above, also include interest on the Equity Contribution which shall be equal to the interest payable on debt, as specified in the Financial Package/Financing Documents.

1.2 Termination due to Force Majeure Event

(a) Termination due to a Non-Political Force Majeure Event

If a Non-Political Force Majeure Event continues for a period of [120 (one hundred and twenty)] days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of [120 (one hundred and twenty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Clause 26.7(a):

- (i) if the WtC Facility is affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the [120 (one hundred and twenty)] days' period stipulated for a Non-Political Force Majeure Event;
- (ii) if the WtC Facility is affected by a Minor Casualty, then the Concessionaire shall be

required to repair and restore the WtC Facility to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

(b) Termination due to an Indirect Political Force Majeure Event

If an Indirect Political Force Majeure Event continues for a period of [90 (ninety)] days after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of [90 (ninety)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

(c) Termination due to a Direct Political Force Majeure Event

If a Direct Political Force Majeure Event continues for a period of [60 (sixty)] days after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of [60 (sixty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

(d) All the other consequences of termination that are set out at Article 28 shall apply in case of termination of this Agreement due to a Force Majeure Event.

1.3 Effect of Force Majeure Event on the Concession Period

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(a) Upon the occurrence of any Force Majeure Event prior to the Effective Date, the period set forth in Clause 4.5 for fulfilment of Conditions Precedent and for achieving the Effective Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

(b) At any time after the Effective Date and up until COD, if any Force Majeure Event occurs, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from performing its obligations.

ARTICLE 27

2. SUSPENSION OF THE CONCESSIONAIRE'S RIGHTS

2.1 Suspension by the Concessionaire

(a) Suspension of construction or O&M of the Project Facilities

- (i) At any time during the Concession Period, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of any Project Facility, in case of an Emergency.
- (ii) The Concessionaire acknowledges that suspension of the construction of any Project Facility pursuant to Clause 27.1(a)(i) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire, provided that any suspension of construction of the Project Facilities pursuant to Clause 27.1(a)(i) for reasons not attributable to the Concessionaire shall be treated as a Delay Event.
- (iii) Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than [3 (three)] days after such occurrence, notify the Authority of such occurrence.
- (iv) If, upon notification, the Authority does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately recommence the construction or O&M of the relevant Project Facility, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 34, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

(b) Mitigation, Resumption and Termination

- (i) The Concessionaire shall make best endeavours to:
 - (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.1(a)(i) above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to receive any

payments for the duration that the Authority steps-in to operate and maintain the WtC Facility, provided that, any revenue earned from the O&M of the WtC Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the WtC Facility); and

- (B) resume the construction or O&M services of the relevant Project Facility within [24 (twenty-four)] hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.1(a)(i) or such longer period as may be approved by the Authority, and notify the Authority of the resumption of the works or services.
- (ii) Without prejudice to Clause 27.1(b)(i):
 - (A) if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1(a)(i) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 28.1; and
 - (B) if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1(a)(i) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and such event is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in Article 26 shall apply.

1.2 **Suspension by Authority**

(a) Suspension of construction and/or O&M of the Project Facilities

- (i) At any time during the Concession Period, the Authority may suspend, whether partially or wholly, the construction or O&M of a Project Facility, in any of the following events or circumstances:
 - (A) upon the occurrence of an Emergency; or
 - (B) if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the Construction Plan, the DPR, the EMP, OHS Plan, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan or otherwise fails to

perform its obligations in accordance with this Agreement (including the Technical Specifications).

- (ii) The Concessionaire acknowledges that suspension of the construction of the Project Facilities shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire, provided that any suspension of construction of the Project Facilities pursuant to Clause 27.2(a)(i) for reasons not attributable to the Concessionaire shall be treated as a Delay Event.

(b) Mitigation, Resumption and Termination

- (i) The Concessionaire shall make best endeavours to:
 - (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.2(a) above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the WtC Facility, provided that, any revenue earned from the O&M of the WtC Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the WtC Facility); and
 - (B) resume the construction or O&M services of the relevant Project Facility within [24 (twenty-four)] hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.2(a) or such longer period as may be agreed between the Parties, and notify the Authority of the resumption of the works or services.
- (ii) Without prejudice to Clause 27.2(b)(i):
 - (A) If suspension of the construction or O&M of the relevant Project Facility pursuant to Clause 27.2(a)(i)(A) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period and the Emergency is attributable to the Concessionaire, or a suspension pursuant to Clause 27.2(a)(i)(B) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, then such suspension

shall amount to a Concessionaire Event of Default in accordance with Clause 28.1; and

- (B) if suspension of the construction or O&M of the relevant Project Facility pursuant to Clause 27.2(a)(i)(A) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and the Emergency is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in Article 28 shall apply.

ARTICLE 28

2. EVENTS OF DEFAULT

vv.

2.1 Concessionaire Events of Default

A **Concessionaire Event of Default** means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of an Authority Event of Default or any Force Majeure Event, and where the Concessionaire has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of [60 (sixty)] days:

- (b) [the Concessionaire fails to complete the works for a Project Milestone within [6 (six)] months of the Scheduled Project Milestone Completion Date;]⁷²
- (c) the Concessionaire fails to achieve the COD within [6 (six)] months of the Scheduled COD other than on account of a Delay Event;
- (d) [the Concessionaire fails to pay the Premium in accordance with the terms of this Agreement;]⁷³
- (e) the Concessionaire fails to pay the Delay Liquidated Damages within the timelines specified in this Agreement;
- (f) a failure to achieve the KPIs which results in the Concessionaire's aggregate liability for Liquidated Damages pursuant to Article 21 to exceed [•];
- (g) suspension of construction or O&M of the Project Facilities pursuant to Clause 27.1(a)(i) or Clause 27.2(a)(i)(A) (to the extent the Emergency is attributable to the Concessionaire) or a suspension pursuant to Clause 27.2(a)(i)(B), for a continuous period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty) days] over the Concession Period;
- (h) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of issuance of written notice from Authority specifying such breach and requiring the Concessionaire to remedy the same;
- (i) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;

⁷² **Drafting Note:** To be deleted if no Grant is being paid to the Concessionaire.

⁷³ **Drafting Note:** To be deleted if no Premium is being paid to the Concessionaire.

- (j) failure of the Concessionaire to submit and maintain a valid Performance Security in accordance with Clause 9.1 or a valid O&M Security in accordance with Clause 9.3;
- (k) breach by the Concessionaire of its obligations under Clauses 12.3 (*Security Creation*), 10 (*Project Site*) or 35.12 (*Assignment*);
- (l) breach of the Concessionaire's obligations under Clause 5.10 (*Change in Ownership*);
- (m) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- (n) failure of the Concessionaire to comply with any Applicable Law;
- (o) failure of the Concessionaire to obtain and maintain Insurance Cover in accordance with Clause 25.2;
- (p) failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan in accordance with Clause 14.4(f);
- (q) the Concessionaire being admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016, entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect;
- (r) the breach of the Concessionaire's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Escrow Agreement, or termination of the Financing Documents, or the Escrow Agreement (for reasons attributable to the Concessionaire);
- (s) the Concessionaire abandons the construction and operation of the Project Facilities without the prior written consent of the Authority; or
- (t) the breach of the Concessionaire's obligations under any of the Project Agreements that has or may have a Material Adverse Effect.

2.2 Termination Notice upon occurrence of a Concessionaire Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a

Concessionaire Event of Default, the Authority may initiate termination by delivering a Termination Notice to the Concessionaire. The Termination Notice shall specify with reasonable detail the grounds on which termination is sought.

- (b) If, within [15 (fifteen)] days from the date of the Termination Notice, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the Authority or the Authority is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, the Authority shall withdraw the Termination Notice, in writing.
- (c) If, within [15 (fifteen)] days from the date of the Termination Notice, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of the Authority or the Authority is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, the Authority shall issue a notice to the Lenders to exercise their substitution rights.
- (d) If, within [30 (thirty)] days from the date of receipt of the Termination Notice pursuant to Clause 28.2(c) or such longer period as may be mutually agreed between the Authority and the Lenders, the Lenders have notified their intent to substitute the defaulting Concessionaire, then:
 - (i) the Authority shall withdraw the Termination Notice, in writing, with a copy to the Lenders; and
 - (ii) the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.

Provided that, the Lenders may, instead of exercising the right of substitution, procure that the default specified in the Termination Notice is cured within a period of [60 (sixty)] days from the date of the Termination Notice, and upon such curing of the default, the Authority shall withdraw the Termination Notice.

- (e) If, within [30 (thirty)] days from the date of receipt of the Termination Notice pursuant to Clause 28.2(c) or such longer period as may be mutually agreed between Authority and the Lenders, the Lenders have not notified their intent to substitute the defaulting Concessionaire, then, Authority shall terminate the Agreement and the consequences set out in Clause 28.5 shall apply.
- (f) Notwithstanding anything contained in this Clause 28.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

2.3 Authority's Events of Default

An **Authority Event of Default** means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or any Force Majeure Event and where the Authority has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of [60 (sixty)] days:

- (a) a breach by the Authority of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of a notice being given by the Concessionaire;
- (b) a breach by the Authority of its obligations under Clause 6.1(f) and Clause 6.1(g), in relation to its rights, title and interest in the Site;
- (c) if successful completion of Trial Operations, including the acceptance tests, is not achieved due to the reasons set out in Clause 16.1(c)(xiv) within [6 (six)] months from the Scheduled COD;
- (d) a failure by the Authority to pay the Concessionaire any undisputed amounts due and payable under this Agreement within [60 (sixty)] days from the date on which such payments were due, and where such undisputed amounts are not recovered through the (i) Escrow Account; (ii) the LC; or (iii) from the Confirming Party pursuant to Article 22;
- (e) a breach by the Authority of Clause 35.12(b) (*Assignment*);
- (f) a suspension of the construction or O&M of the Project Facilities by the Authority in breach of Clause 27.2; or
- (g) any representation made or warranties given by Authority under this Agreement being found to be false or misleading in any material respect.

2.4 Termination Notice upon occurrence of an Authority Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of an Authority Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Termination Notice, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within [15 (fifteen)] days from the date of the Termination Notice, the Authority rectifies or remedies the Authority Event of Default to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the Authority or the

Authority Event of Default has ceased to exist, the Concessionaire shall withdraw the Termination Notice, in writing.

- (c) If, within [15 (fifteen)] days from the date of the Termination Notice, the Authority Event of Default has not been remedied or the Authority has not taken steps or proposed to take steps to remedy the Authority Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Agreement and the consequences set out in Clause 28.5 shall follow.
- (d) During the subsistence of an Authority Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

2.5 **Consequences of termination of the Agreement post the Effective Date**

In case of termination of the Agreement (including for any termination due to the occurrence of a Force Majeure Event in accordance with Article 26) after the Effective Date:

- (a) the Concessionaire shall cease all work in relation to construction or O&M, as the case may be, of the Project Facilities;
- (b) the Concessionaire shall cease the Trial Operations, if the Trial Operations of the WtC Facility have commenced and are ongoing;
- (c) the Concessionaire shall take all necessary steps to safeguard and protect the Project Facilities (at whatever stage of completion) and all other equipment, materials and goods on the Site;
- (d) in case of termination of this Agreement due to an Authority Event of Default, the Authority shall return the Performance Security or the O&M Security, as the case may be, within [30 (thirty)] days from the date of the Termination Notice;
- (e) in case of termination of this Agreement due to a Concessionaire Event of Default, the Authority shall have the right to forfeit the Performance Security or the O&M Security;
- (f) the Concessionaire shall hand over the Site and the Project Facilities (provided that, in case of termination of the Agreement due to a Force Majeure Event, the Concessionaire shall hand over the Site and the Project Facilities to the Authority on an "as is where is" basis), to the Authority or its nominee in accordance with the Hand-back Requirements set out in Clause 30.3, to the extent applicable; and
- (g) the Authority shall have the right to succeed, upon election by the Authority, without the

necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Subcontractors and/or Offtakers only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Subcontractors and/or Offtakers (including any penalties or other dues claimed by any Offtaker) as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Subcontractors and/or Offtakers, and the Authority shall not in any manner be liable for such sums, penalties or other dues. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Compensation.

2.6 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of a Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of a Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) Nothing in Article 27 or this Article 28 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

ARTICLE 29

3. TERMINATION COMPENSATION

3.1 The Parties acknowledge that no termination payment shall be payable by either Party in case of a termination of this Agreement prior to the Execution Date, other than as provided under Clause 4.6. This Article 29 sets out all payments to be made on termination of this Agreement after the Effective Date.

a.

3.2 Termination Compensation for Termination post the Effective Date

(a) For an Authority Event of Default

If the Agreement is terminated after the Effective Date for an Authority Event of Default, the Authority shall be liable to pay to the Concessionaire the aggregate of:

- (i) any accrued and undisputed amounts payable to the Concessionaire under the Agreement towards the [Grant for Project Milestones completed and certified], [Processing Fee] and
- (ii) Debt Due as on the date of Termination Notice;
- (iii) Adjusted Net Equity;

LESS

- (i) any other amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 30.2).

(b) For a Concessionaire Event of Default

If the Agreement is terminated after the Effective Date for a Concessionaire Event of Default, Authority shall pay to the Concessionaire, the aggregate of:

- (i) any accrued and undisputed amounts payable to the Concessionaire under the Agreement towards the [Grant for Project Milestones completed and certified], [Processing Fee]
- (ii) [85% (eighty-five per cent)] of Debt Due as on the date of Termination Notice 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 be included in the computation of Debt Due;

LESS

- (iii) any accrued and unpaid amounts payable to the Authority towards the [Premium] and
- (iv) any other amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 30.2).

3.3 Termination Compensation for Termination due to a Force Majeure Event

b.

(a) Non-Political Force Majeure Event

If the Agreement is terminated as a result of a Non-Political Force Majeure Event after the Effective Date, the Authority shall be liable to pay to the Concessionaire the aggregate of:

- (i) any accrued and undisputed amounts payable to the Concessionaire under the Agreement towards the [Grant for Project Milestones completed and certified], [Processing Fee]
- (ii) [85% (eighty five per cent)]% of Debt Due as on the date of Termination Notice 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 be included in the computation of Debt Due;

LESS

- (iii) any accrued and unpaid amounts payable the to the Authority towards the [Premium] and
- (iv) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 30.2).

(b) Indirect Political or Direct Political Force Majeure Event

If the Agreement is terminated as a result of an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the Authority shall be liable to pay to the Concessionaire the aggregate of:

- (i) any accrued and undisputed amounts payable to the Concessionaire under the Agreement towards the [Grant for Project Milestones completed and certified], [Processing Fee]

(ii) Debt Due as on the date of Termination Notice;

(iii) Adjusted Net Equity;

c.

LESS

(iv) any accrued and unpaid amounts payable to the Authority towards the [Premium] and

(v) any other amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 30.2).

3.4 All Termination Compensation required to be paid by the Authority to the Concessionaire shall be paid within [60 (sixty)] days of handover of the Site and the Project Facilities to the Authority in accordance with Article 30.

d.

3.5 **Full and Final Settlement**

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 29 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against Authority, in relation to termination of this Agreement and the Concessionaire shall be excluded from all other rights and remedies in respect of such termination.

e.

3.6 The provisions of this Article 29 shall survive the termination of this Agreement.

ARTICLE 30

4. DIVESTMENT OF RIGHTS AND INTEREST

4.1 Transfer of the Site and the Project Facilities

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Site and the Project Facilities to the Authority, or any other entity nominated by Authority in accordance with this Article 30.

4.2 Inspection of the Site and the Project Facilities

- (a) No later than [30 (thirty)] days from the end of the [•]th year from the COD or [30 (thirty)] days from the date of termination of the Agreement, as the case may be, the Authority shall or shall cause the Independent Engineer to carry out a survey of the Site and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- (b) The Authority shall notify the Concessionaire at least [7 (seven)] days prior to the date on which it wishes to carry out the survey of the Site and the Project Facilities.
- (c) If the survey carried out by the Authority or the Independent Engineer shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the Authority shall notify the Concessionaire of the rectification and/or maintenance work which is required to be undertaken by the Concessionaire to ensure that the condition of the Site and the Project Facilities, is restored to the Hand-back Conditions.
- (d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within [30 (thirty)] days from the receipt of a notice from the Authority in accordance with Clause 30.2(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request the Authority to carry out a final survey and inspection of the Site and the Project Facilities. The Authority shall carry out the final survey within [7 (seven)] days of receipt of a notice from the Concessionaire pursuant to this Clause 30.2(d).

If the Authority is satisfied with the results of the final survey, then the Authority shall notify the Concessionaire within [7 (seven)] days of carrying out the final survey that the Site and the Project Facilities, comply with the Hand-back Conditions. If the Authority is not satisfied with the results of the final survey, then the Authority shall, or shall cause the Independent Engineer, to estimate the cost of restoring the Site and the Project Facilities, to the Hand-back Conditions and recover such cost from the Concessionaire, including through deduction of such cost from

the from the Performance Security, O&M Security, or the Termination Compensation, as the case may be, payable to the Concessionaire.

4.3 **Hand-back Requirements**

On the expiry or early termination of this Agreement, the Concessionaire shall:

- (a) hand over to the Authority or any entity nominated by the Authority, Site and the Project Facilities, free of any consideration, except for any Termination Compensation payable under Article 29;
 - (b) transfer to the Authority, or any entity nominated by the Authority, all its rights, title and interest in the assets comprising in the Project Facilities and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;
 - (c) hand over all documents relating to the Site and the Project Facilities, including Designs and Drawings, "as-built" drawings and other "as-built" record of the execution of the works, O&M Plan, operating logs, manuals, reports, plans and records;
 - (d) [assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the Project Facilities to the Authority at no additional cost to the Authority];
 - (e) transfer or cause to be transferred to the Authority or its nominee any Subcontract that the Authority or its nominee has chosen to take over and terminate all other Subcontracts;
 - (f) transfer to the Authority or its nominee all Concessionaire Applicable Permits which the Authority or its nominee may require, and which can be legally transferred; and
 - (g) remove from the Site all employees and workmen, and assets, equipment and materials that are not required to be taken over by the Authority or its nominee.
- f. The provisions of this Article 30 shall survive the termination of this Agreement.

4.4 **Vesting Certificate**

The divestment of all rights, title and interest in the Project Facilities shall be deemed to be complete on the date when all of the Hand-back Requirements set out in Clause 30.3 above have been fulfilled, and the Authority shall, without unreasonable delay, issue a certificate substantially in the form set out in Schedule [•] (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 Facilities, and their vesting in the Authority. It is expressly agreed that any defect or deficiency in the Hand-back Requirements shall

not in any manner be construed or interpreted as a restriction on the exercise of any rights by the Authority in respect of the Project Facilities on the basis that all Hand-back Requirements have been complied with by the Concessionaire.

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PART VI – OTHER PROVISIONS

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ARTICLE 31

5. VARIATION

5.1 Both the 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.

5.2 Authority Proposed Variation

- (a) The Authority may propose a Variation in the Scope of Work, Technical Specifications or the approved Designs and Drawings. Provided that, the Authority shall not propose a Variation, which: (i) is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permits.
- (b) Within [15 (fifteen)] days of receipt of a request for Variation from the Authority, the Concessionaire shall submit a proposal to the Authority (with a copy to the Independent Engineer) setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, [the Scheduled Project Milestone Completion Date,]⁷⁴ the Scheduled 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 the Authority's schedule of rates for similar works.
- (c) Notwithstanding anything to the contrary in this Clause 31.2, the Concessionaire shall have the right to reject a Variation proposed by the Authority if, in the Concessionaire's view, the proposed variation will result in: (i) the Concessionaire incurring additional costs, of more than [•]% of the Total Project Cost; (ii) reduction in the Total Project Cost by more than [•]%; or (iii) a delay of more than [120 (one hundred and twenty)] days in [a Scheduled Project Milestone Completion Date or]⁷⁵ the Scheduled Completion Date.
- (d) Based on its review of the proposal submitted by the Concessionaire, the Authority may, at its sole discretion: (i) accept the proposal; or (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 Clause 31.2(b) above.
- (e) To the extent the Authority seeks amendments and/or justification in the proposal submitted by

⁷⁴ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁷⁵ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Authority's comments and submit a revised proposal.

- (f) On approval of the proposal or the revised proposal, as the case may be, the Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (g) If the Parties are unable to agree on the implications of a Variation proposed by the Authority, which in the Authority's view is necessary or desirable for the Project, the Authority shall have the right to require the Concessionaire to carry out the proposed variation at the cost determined in accordance with the Authority's schedule of rates for similar works. Where the Authority's schedule of rates does not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be decided by the Independent Engineer. Any dispute on the terms of the Variation will be resolved in accordance with Article 34.
- (h) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the Construction Plan, [the, Scheduled Project Milestone Completion Date]⁷⁶, Scheduled Completion Date and/or payment of additional amounts, if any, set out in the Variation Order.

5.3 Concessionaire Proposed Variation

- (a) The Concessionaire may propose a Variation where it is necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the Project Facilities. Such a Variation may be on account of reasons such as 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, including as a result of a failure by any contractor appointed by the Authority to rehabilitate the Site prior to its handover to the Concessionaire. Provided that, the Concessionaire shall not be entitled to propose a Variation where the underlying circumstances leading to the proposed Variation are attributable to the Concessionaire's failure to perform the works in accordance with the Construction Plan, the DPR and Designs and Drawings or due to the Concessionaire's inefficiency.
- (b) To propose a Variation, the Concessionaire shall submit a proposal to the Authority (with a copy to the Independent Engineer), with a statement setting out:
 - (i) the need for a Variation;
 - (ii) the additional work required;

⁷⁶ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

- (iii) adjustment to the Construction Plan, [the Scheduled Project Milestone Completion Date]⁷⁷ and Scheduled COD; and
 - (iv) adjustment to the Total Project Cost.
- (c) Based on its review of the proposal submitted by the Concessionaire, if the Authority is of the view that the proposed Variation is justified, then it will determine the cost of the proposed Variation using the Authority's schedule of rates for similar works and where the Authority's schedule of rates does not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be decided by the Independent Engineer. Thereafter, the Authority shall notify the Concessionaire of the additional cost determined by the Authority for the proposed Variation and any other comments that the Authority may have on the implications of the proposed Variation. To the extent the Authority seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Authority's comments.
- (d) On the Concessionaire's acceptance of the costs determined by the Authority for the proposed Variation and any other amendments sought by the Authority to the Concessionaire's proposal, the Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (e) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the Construction Plan and/or additional costs, as set out in the Variation Order.
- (f) Notwithstanding anything to the contrary in this Article 31, 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 32.
- (g) Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Subcontractor 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.
- (h) No Variation shall invalidate this Agreement.

⁷⁷ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

ARTICLE 32

6. CHANGE IN LAW

6.1 Change in Law

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 32.

6.2 Increase in Costs

- (a) If as a result of a Change in Law, the Concessionaire suffers an increase in costs, a reduction in the net after-tax return or any other financial burden, the aggregate financial effect of which exceeds INR [•] in any Accounting Year, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law.
- (b) As soon as practicable and in any event, within [30 (thirty)] days from the receipt of any notice from the Concessionaire under Clause 32.2(a) above, the Parties shall agree on any amendments to this Agreement or on any other mutually agreed arrangement by which the Authority will compensate the Concessionaire.
- (c) If no agreement is reached between the Parties within [90 (ninety)] days of receipt of any notice under Clause 32.2(a) above, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position as the Concessionaire 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 Authority shall pay the amount specified in the notice, provided that if the Authority disputes such claim from the Concessionaire then the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 34.
- (d) For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to any Change in Law that directly affects the Concessionaire's costs of performing its obligations under the Agreement.

6.3 Reduction in Costs

- (a) If as a result of a Change in Law, the Concessionaire benefits from a reduction in costs, an increase in the net after-tax return or any other financial gains, the aggregate financial effect of which exceeds INR [•] in any Accounting Year, the Authority may notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law.

- (b) As soon as practicable and in any event, within [30 (thirty)] days from the receipt of any notice from the Authority under Clause 32.2(a) above, the Parties shall agree on any amendments to this Agreement or on any other mutually agreed arrangement.
- (c) If no agreement is reached between the Parties within [90 (ninety)] days of receipt of any notice under Clause 32.2(a) above, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position as the Concessionaire 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 in the notice, provided that if the Concessionaire disputes such claim from the Authority then the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 34.
- (d) For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to any Change in Law that directly affects the Concessionaire's costs of performing its obligations under the Agreement.

6.4 **Restriction on Cash Compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 32 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 [1 (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 [2 (two)] years from the close of such Accounting Year.

ARTICLE 33

7. INDEMNITY

7.1 Indemnity

- (a) Subject to Clause 33.1(b) below, the Concessionaire shall be responsible for, release, hold harmless and indemnify the Authority and the Authority Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:
- (i) death or personal injury of any person;
 - (ii) loss of or damage to property;
 - (iii) non-compliance by the Concessionaire or its Subcontractor(s) with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents and labour welfare legislations);
 - (iv) non-compliance by the Concessionaire or its Subcontractor(s) with the EMP or OHS Plan;
 - (v) any damage caused to the environment by the Concessionaire;
 - (vi) Concessionaire's failure to pay all applicable Taxes, in connection with the Project;
 - (vii) any third party losses or claims; and
 - (viii) any claims and/or fines or penalties imposed by any Government Authority in relation to the Site or the Project Facilities,
- which may arise out of, or in consequence of the performance or non-performance of the Concessionaire's obligations under this Agreement.
- (b) The Concessionaire shall not be required to indemnify the Authority for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of the Authority or the Authority Related Parties or by a breach by the Authority of its obligations under this Agreement.
- (c) The Authority 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 them in respect of, resulting from, related to or arising out of any matter for which they are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees)

thereof, shall be subject to the indemnification obligations of the Concessionaire.

If, however, the Concessionaire acknowledges in writing its obligations to indemnify the Authority in respect of loss to the full extent provided by this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Authority and reimburses the Authority for the costs and expenses incurred by the Authority prior to the assumption by the Concessionaire of such defence. A Party shall not settle or enter into a compromise with respect to any such claim, action, suit or proceeding without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel, as and when incurred, shall be at the expense of the Authority.

- (d) 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 any environmental pollution, contamination or health hazard caused by the deposit and handling of solid waste at the Site prior to handover of the Site to the Concessionaire or caused by the delivery of any Prohibited Waste to the Site after the handover of the Site to the Concessionaire.
- (e) The provisions of this Article 33 shall survive the termination of this Agreement.

ARTICLE 34

8. DISPUTE RESOLUTION

8.1 Amicable Settlement

In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (a **Dispute**), the representatives of the Parties shall, within [15 (fifteen)] days of service of a written notice from one Party to the other Parties (the **Dispute Notice**) hold a meeting (the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of Authority in [•].

8.2 Dispute Resolution by Arbitration

(a) Arbitration Procedure

If a Dispute is not resolved within [30 (thirty)] days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any Party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 34.2 by issuing a notice to the other Parties (**Notice of Arbitration**). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

(b) Appointment of Arbitrator

If a Dispute is referred to arbitration by a Party, such Dispute shall be resolved by 3 (three) arbitrators comprising of one arbitrator appointed by the Concessionaire, one arbitrator appointed by the Authority and the third arbitrator appointed by the first two arbitrators appointed by the Parties. If a Party fails to appoint an arbitrator within [30 (thirty)] days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the Arbitration Act.

(c) Venue, Language and Rules of Arbitration

The venue of the arbitration shall be [•] and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

(d) Award and Apportionment of costs

(i) The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing.

(ii) The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

(e) Law Governing the Arbitration

The arbitration shall be governed by the laws of India.

8.3 **Survival**

The provisions of this Article 34 shall survive the termination of this Agreement.

ARTICLE 35

9. MISCELLANEOUS

g.

9.1 **Survival**

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Concession Period or by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Concession Period or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

9.2 **Entire Agreement**

The Parties hereto acknowledge, confirm and undertake that this Agreement and the RFP constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

9.3 **Non-exhaustive Remedies**

- (a) Save and except as provided in this Agreement, the remedies available to the Concessionaire under this Agreement are not exhaustive and the Concessionaire and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (b) Save and except as provided in this Agreement, the exercise of any rights by any Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

9.4 **Notices**

- (a) Any notice or request in reference to this Agreement shall be written in English language and shall be sent by email, registered post, courier or facsimile and shall be directed to the other Party at the address mentioned below:

Authority : Attention: [•]
Address: [•]
Tel: [•]
Fax: [•]
Email: [•]

Concessionaire : Attention: [•]
Address: [•]
Tel: [•]
Fax: [•]
Email: [•]

Confirming Party : Attention: [•]
Address: [•]
Tel: [•]
Fax: [•]
Email: [•]

- (b) Any notice or demand served by registered post or courier shall be deemed to be duly served [48 (forty eight)] hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered post or courier, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.
- (c) Any Party may change the above address by prior written notice to the other Parties.

9.5 **Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of the courts at [•].

9.6 **Counterparts**

This Agreement may be executed in [3 (three)] counterparts, each of which, when executed and delivered, will be an original, and the [3 (three)] counterparts together shall constitute one and the same instrument.

9.7 Language

- (a) The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.
- (b) All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

9.8 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Concession Period and for a period of [5 (five)] years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including Authority Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.
- (b) This Clause 35.8 shall not apply to Confidential Information, which:
 - (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
 - (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;

- (vi) is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;
- (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any Persons to whom a Party is entitled to disclose Confidential Information under this Clause 35.8(b);
- (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- (xii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 35.8(a) above.

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 35.8(a) shall,
 - (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Associates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 35.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

- (e) The recipient party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the recipient party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient party or such Affiliate and/or which the recipient party or its Associates is required to retain by Applicable Law if it continues to keep such Confidential Information confidential in accordance with this Agreement.

9.9 Amendments

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- (b) A Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by the other Parties, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

9.10 Waivers and Consents

- (a) Unless otherwise specified, any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.

- (c) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

9.11 Severability

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

9.12 Assignment

- (a) Except as expressly permitted in this Agreement, the Concessionaire shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of the Authority.
- (b) The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (i) is a single entity;
 - (ii) acquires the whole of the Agreement;
 - (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, as the case may be; and
 - (iv) has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement.

9.13 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and no Party shall have any authority to bind, commit or make any representations on behalf of any other Party.

9.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement, the Substitution Agreement and the Escrow Agreement.
- (b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement, the Substitution Agreement and the Escrow Agreement

9.15 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of the Authority to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to the Authority upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Authority in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Authority in respect of any other default.

9.16 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Authority Related Parties, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

9.17 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agree 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 Authority with respect to its assets; and
- (c) consent to the enforcement of any judgment or award against them in any such proceedings.

In witness whereof the Parties hereto have signed this Agreement on this _____ day of _____.

[•] (AUTHORITY)

By:

Name:

Title:

[•] (CONFIRMING PARTY)

By:

Name:

Title:]

[Insert name of the Concessionaire] (CONCESSIONAIRE)

By:

Name:

Title: