

Model RFP & Concession Agreement for

WASTE TO ELECTRICITY PROJECT.



Ministry of Housing and Urban Affairs
Government of India

GUIDANCE NOTE FOR THE WASTE TO ELECTRICITY MODEL DOCUMENTS

1. Background and objective of Model Documents

- 1.1 The Ministry of Housing and Urban Affairs (**MoHUA**) signed an agreement with the International Finance Corporation (**IFC**), a member of the World Bank Group, to form a partnership to promote investment in the waste management sector in India. Through this partnership, IFC assisted MoHUA in preparing a model concession agreement (**MCA**) and a model request for proposal (**RFP**, together the **Model Documents**) for use by urban local bodies (**ULBs**) for development of waste to electricity projects in India.
- 1.2 The objective of the Model Documents is to:
- (a) provide ULBs with standardised documents to implement waste to electricity projects; and
 - (b) develop an enabling framework for greater private sector participation in the waste management sector in India.
- 1.3 This guidance note has been prepared for use by any ULB or other authority (**Authority**) that intends to develop a waste to electricity project to address the solid waste management requirements in its city (**Project**). The Authority should use this guidance note and the ‘Drafting Notes’ set out as footnotes in the Model Documents (**Drafting Notes**) to finalize the Model Documents prior to commencement of the tender process to identify a selected bidder for development of the Project.
- 1.4 Capitalized terms used but not defined in this guidance note will have the meaning given to them in the MCA.

2. Adapting the Model Documents for different Project structures / models

- 2.1 The Model Documents have been prepared to cater to different transaction structures that may be adopted for the Project, depending on the revenue streams for the Concessionaire.
- 2.2 The various revenue streams provided under the Model Documents are:
- (a) **Grant:** A grant (including any viability gap funding) paid by the Authority to the Concessionaire as capital support to be paid during the construction period, upon completion and certification of the work corresponding to the construction milestones (**Grant**). If the Authority decides that a Grant is required to ensure or enhance the viability of a Project, then the Grant may be: (i) the bid parameter, in which case Grant will be the amount quoted by the Bidder in its Financial Proposal; or (ii) a fixed Grant set out in the RFP at the outset, if a Processing Fee (*as defined below*) or Quoted Tariff (*as defined below*) is the bid parameter.
 - (b) **Processing Fee:** A per ton fee payable by the Authority to the Concessionaire for accepting, handling and processing Acceptable Waste to be paid during the O&M Period (**Processing Fee**). Depending on the structure of the Project, if the Authority decides that a Processing Fee is payable then the Processing Fee may be: (i) the bid parameter, in which case the per ton fee must be quoted by the Bidder in its Financial Proposal; or (ii) a fixed Processing Fee set out in the RFP at the outset, if Grant or Quoted Tariff is the bid parameter.

- (c) **Tariff:** The tariff will be paid by the Offtaker, i.e., the distribution utility with whom the Concessionaire will execute the power purchase agreement (**PPA**) for sale of electricity generated from the Project. Depending on whether or not a feed-in tariff for waste to electricity projects has been approved by the relevant State Electricity Regulatory Commission which is valid until the scheduled completion of the Project (with an adequate buffer for unforeseen delay events), the tariff may be: (i) the bid parameter, in which case the tariff payable will be the Quoted Tariff submitted by the Bidder in its Financial Proposal (subject to adoption by the relevant State Electricity Regulatory Commission); or (ii) a fixed tariff, i.e., the approved Feed-in Tariff available for the Project. If the control period of the Feed-in Tariff expires prior to COD (where the Project is delayed for reasons not attributable to the Concessionaire), and this results in the applicable feed-in tariff in the relevant state decreasing, the Authority may need to compensate the Concessionaire for the difference in tariff for the concession term.

3. Key issues to be addressed by the Authority before issuing the Model Documents

- 3.1 The Authority should determine the applicable payment structure and the corresponding bid parameter, based on the options described in paragraph 2 above, before launching the tender and accordingly, retain the relevant options and appropriately modify the Model Documents (*as discussed in section 4 of this guidance note*).
- 3.2 In addition to the above, the Authority must perform the following key activities before launching the tender and issuing the Model Documents:
- (a) pre-feasibility assessment of the proposed Project;
 - (b) identifying the Site for the Project Facilities;
 - (c) identifying the substation (having adequate available capacity) through which the Project will connect to the state distribution grid;
 - (d) coordinating with the Offtaker to finalise the terms of the PPA to be executed by the Concessionaire, which will need to be annexed to the RFP;
 - (e) identifying the site for disposal of residual inert matter;
 - (f) determining the Design Capacity (TPD) of the WtE Facility;
 - (g) determining the quantities of Acceptable Waste that the Authority is able to guarantee and the quantity of Acceptable Waste that the Concessionaire needs to accept, in each case on a TPD basis;
 - (h) assessing how the Acceptable Waste shall be delivered to the Site, including if applicable, identifying the C&T contractors appointed or to be appointed to deliver the waste to the Site;
 - (i) determining the estimated Total Project Cost;
 - (j) appoint an environmental specialist to conduct an environmental site assessment in accordance with ASTM E1903-19 Standard Practice for Environmental Site Assessments: Phase II and produce a Site Contamination Report that sets out the baseline level of contamination (if any) at the Project Site; and

- (k) finalizing the Model Documents in accordance with paragraphs 4 and 5 below.

4. Key changes to the Model Documents

4.1 Key changes to be made to finalize the Model Documents:

- (a) E-procurement requirements: The RFP may need to be revised depending on the procurement requirements of the relevant State Government and any requirements/specifications of the e-procurement portal being used by the Authority.
- (b) Selected Bidder/Concessionaire: The MCA provides drafting options depending on whether the Concessionaire has been incorporated prior to the execution of the MCA and the applicable provision should be selected in line with the Drafting Notes (including the Drafting Notes set out in the array of parties, recital J and the condition precedent in relation to the technology license agreement set out in clause 4.2(g)).
- (c) Single Bidder/Consortium: The MCA provides drafting options depending on whether the Selected Bidder is a single bidder or a consortium. The applicable provision should be selected/modified based on the Drafting Notes set out in the Model Documents. For example, if the Selected Bidder is a single bidder, then the references to "consortium" and "Member" should be deleted, the condition precedent to provide the Authority with an executed shareholders agreement among the shareholders of the Concessionaire should be deleted, the conditions precedent in clauses 4.2(o) and 4.2(p) and the representation in clause 7.2(i) should be revised to retain references to the Selected Bidder and delete references to a Member, and clause 5.10 should be amended to retain the change in ownership restrictions applicable to a single bidder and delete the change in ownership provision applicable to a consortium.
- (d) Payments and Bid Parameter: Drafting options have been included in the Model Documents depending on the payments to be made to the Concessionaire and the bid parameter.

Once the payment structure and bid parameter is finalized by the Authority, the Model Documents should be modified using the guidance set out in Drafting Notes, as this will result in changes throughout the Model Documents. Some of the key changes to be made to the Model Documents are set out below:

- (i) Clauses 1.2, 2.10, 21, 24 and 28 of the RFP provide drafting options depending on whether Grant, Processing Fee or Quoted Tariff is the bid parameter. The applicable provision should be selected or modified based on the Drafting Notes.
- (ii) Article 22 of the MCA provides for drafting options depending on whether Grant, Processing Fee and/or Quoted Tariff is payable to the Concessionaire (under the MCA and/or PPA), and the applicable provision should be selected or modified based on the Drafting Notes. Where two forms of payment are to be made under the MCA (such as if Quoted Tariff is the bid parameter but a fixed Processing Fee or a fixed Grant is also payable to the Concessionaire), the Drafting Notes clarify how the various applicable provisions should be selected.
- (iii) Article 24.2 of the MCA which specifies the Minimum Escrow Balance to be maintained by the Authority should be modified depending on whether Grant and/or

Processing Fee is payable and deleted if only Applicable Tariff is payable, in each case in accordance with the Drafting Notes.

- (iv) The definitions section of the Model Documents should be revised to retain only applicable definitions and where relevant, modify the definitions in accordance with the Drafting Notes. For e.g., if no Grant is payable then the definitions of "Grant", and "Project Milestone" should be deleted and the definitions of "Concessionaire Payments" and "Debt Due" should be modified as per the Drafting Notes.
- (e) Project Milestones: Under the MCA, Grant is paid upon completion and certification of the work corresponding to 4 (four) Project Milestones. If no Grant is to be paid, delete all provisions related to "Project Milestones" and "Scheduled Project Milestone Completion Date" (including the provision on 'Completion of Project Milestones' in clause 16.1) and retain the alternative clauses provided in accordance with the Drafting Notes. If a Grant is to be paid, then delete the alternative clauses in accordance with the Drafting Notes such as the provision on 'Completion of Construction' in Clause 16.1.
- (f) Livelihood Restoration Plan and Resettlement Action Plan: Provision in relation to the livelihood restoration plan and resettlement action plan to be deleted if there is no displacement of people due to the Project or if no waste pickers are facing loss of revenue due to a grant of license over the Site or diversion of waste to the WtE Facility.
- (g) Bio-diversity Assessment: Provision in relation to biodiversity assessment to be deleted if this is not required for the Project (as determined by the Authority on a case-by-case basis).

4.2 Key provisions of the Model Documents to which any changes should be avoided:

- (a) DBFOT Model: The Model Documents assume that the Project is being developed on a public private partnership basis, through a Design, Build, Finance, Operate and Transfer (**DBFOT**) model. The Authority should avoid deviating from the DBFOT model unless there are strong reasons for such deviation. If an alternate model is adopted by the Authority, then the Authority must determine the drafting changes required to reflect the alternate model.
- (b) Daily Guaranteed Acceptable Waste: The Authority should not deviate from the commitment to provide a daily guaranteed quantity of Acceptable Waste or dilute or weaken the provisions in relation to payment of liquidated damages for a failure to supply such quantities. This is because these are the Authority's key obligations during the O&M Period and the Authority's failure to supply such quantities will affect the ability of the Concessionaire to operate the Project Facilities and meet its supply commitments under the PPA, which in turn would impact the Concessionaire's revenue stream and the bankability of the Project.
- (c) Conditions Precedent: The conditions precedent should not be changed other than to include additional conditions precedent if required for a Project on a case-by-case basis. In particular, the Authority's conditions precedent that could impact the bankability of the Project should not be diluted or weakened such as granting a right of way to the Site, facilitating the approval of the PPA and Applicable Tariff, providing access road(s) to the Site, providing an LC, opening an Escrow Account and entering into a Substitution Agreement.
- (d) Drawings and Design: The requirement that the Concessionaire should prepare the drawings and design in accordance with the technical specifications should not be changed as the risk

allocation under the Model Documents has been determined on the basis that the Concessionaire is providing the drawings and design for the Project.

- (e) Equity Lock-in: The equity lock-in provisions set out in Model Documents (including in clause 5.10 of the MCA and clause 3.2 of the RFP) have been designed to ensure that the selected bidder/consortium members remain adequately invested in the Project to ensure the successful commissioning and operation of the Project during the Concession Period, while retaining the flexibility to induct other investors/strategic partners in the Project. Therefore, the Authority should avoid making the equity lock-in provisions more stringent, which may disincentivise the private sector from bidding for the Project. The Authority may consider relaxing the equity lock-in requirements on a case-by-case basis depending on the evolution of the technology and the waste to electricity sector.
- (f) Compensatory Tariff: The provisions in relation to the Authority having to compensate the Concessionaire in case of a reduction in the Applicable Tariff, for reasons not attributable to the Concessionaire, have been designed to ensure that the Concessionaire has an assured revenue stream which does not deviate from the assumptions in its financial model, and should not be diluted or weakened as that would directly and adversely impact the bankability of the Project.
- (g) Payment Security: The provisions in relation to payment security (i.e., provision of an LC, funding the Escrow Account with an amount equivalent to the Minimum Escrow Balance and the guarantee from the Confirming Party in clause 22.7) should not be diluted or weakened as that would directly and adversely impact the bankability of the Project. However, the requirement to provide an LC and maintain a Minimum Escrow Balance must be deleted if no Grant or Processing Fee is to be paid under the Model Documents.
- (h) Key Performance Indicators: The Authority should avoid deleting any of the key performance indicators as these are essential to measure the performance of the WtE Facility once it is operational.
- (i) Force Majeure: The Authority should avoid changing the risk-allocation in the force majeure provisions as the termination payments vary depending on whether a Force Majeure Event is a Non-Political Force Majeure Event, or an Indirect Political Force Majeure Event or Direct Political Force Majeure Event. Any additions to, or deletions from, the list of Non-Political Force Majeure Event, Indirect Political Force Majeure Event or Direct Political Force Majeure Event should be made keeping in mind the consequences of the specific category of Force Majeure Event and the associated termination payments in case of prolonged force majeure.
- (j) Termination Compensation: To the extent possible, the termination compensation provisions should not be changed. In particular, the obligation to pay debt due or a certain percentage of debt due upon termination for either Party's default and at any time during the Concession Period should not be diluted or weakened further as this may significantly impact the bankability of the Project.
- (k) Change in Law: The Authority should avoid weakening or diluting the Concessionaire's right to claim relief for a Change in Law event in accordance with Article 32 of the MCA as this may impact the bankability of the Project.

5. Data required for finalization of the Model Documents

Reference	Data required
General	
Name of State	Populate the name of the State in which the Project is located in the relevant placeholders in the Model Documents, including the recitals.
Project and Authority Details	Throughout the RFP there are various placeholders for the name of the Project, name of the city and state where the Project and Authority are located, the relevant email ID of the Authority, name and logo of the Authority, the Authority's authorised signatories and their designations and the Design Capacity. Please populate these details in the relevant placeholders.
References to numerical figures	All references to numerical figures (such as liquidated damages at the rate of 0.2% of the Performance Security set out in clause 4.6) are in square brackets. All numerical figures to be re-confirmed (and where required, revised) at the time of finalisation of the Model Documents.
References to time-periods	All references to time periods (such as 10 days or 3 months) are in square brackets. Time periods set out in the Model Documents to be re-confirmed (and where required, revised) at the time of finalisation of the Model Documents.
Drafting Notes	Once the elections have been made basis the Drafting Notes included in the footnotes, the Drafting Notes should be deleted prior to finalisation of the Model Documents.
Square brackets	A square bracket search must be done to ensure all placeholders have been populated and only the relevant drafting options have been retained.
MCA	
Array of Parties	Populate the: (i) name, address, authorised signatory of the Authority; (ii) details of the department of local government / urban development that is acting as the Confirming Party; and (iii) name, address, authorised signatory and date of the board resolution of the Selected Bidder / Concessionaire.
Recital C	Insert the name of the city in which the project is being developed and the design capacity and location of the WtE Facility.
Recital F, G, H and K	Insert the date on which the bid process was launched, the date on which the bid proposal was submitted, the date of issue of the letter of award and the date on which the Concessionaire joined the Selected Bidder's request to undertake and perform the Selected Bidder's obligations under the LOA.
Definition of Adjusted Net Equity	Populate the annual rate of return.
Definition of Appropriate Commission	Insert name of relevant State Electricity Regulatory Commission.
Definition of Bid Process	The RFP sets out a two-stage bidding process and if no change is made to the RFP process, 'two-stage bidding process' to be retained and reference to single-stage bidding process, with two-substages to be deleted.
Definition of C&T Contractors	Populate the name of the city where the Project is being developed.
Definition of Control Period	Insert the end date of the applicable control period, if the Quoted Tariff is not a bid parameter.
Definition of Debt Due	Finalise the definition of debt due by considering whether any hedging/swap breakage costs should be included, populating the maximum percentage of the Total Project Cost that the Debt Due should not exceed and inserting the figures in the relevant placeholders in the illustration.
Definition of Design Capacity	Insert the TPD quantity of Acceptable Waste that the WtE Facility is designed to handle and process.
Definition of Feed-in Tariff	Insert the applicable feed-in tariff, if the Quoted Tariff is not a bid parameter.
Definition of Forced Unavailability and clause 18.11	Insert the entity for water supply and the entity for power supply for the Project.
Definition of Grant	If a Grant is payable, insert the Grant amount.
Definition of Interconnection Point	Insert details of the interconnection point, i.e., the point at the identified substation at which the Project will connect with the grid, along with details of the relevant distribution/transmission grid.

Reference	Data required
Definition of Minor Casualty	Insert a maximum threshold for cost of repair / replacement of the damaged portion of the Project Facilities.
Definition of Offtaker	Insert name of the distribution utility that will execute the PPA with the Concessionaire.
Definition of Performance Standards	Insert the web page link for IFC's Performance Standards on Social & Environmental Sustainability, dated January 1, 2012 and Environmental, Health, and Safety Guidelines on Waste Management Facilities dated December 10, 2007.
Definition of Site	Populate the placeholders in the definition of Site including the area in acres.
Definition of Site Contamination Report	Populate the placeholders in the definition of Site Contamination Report.
Definition of Total Project Cost	Insert the estimated Total Project Cost prepared by the Authority in limb (c).
Definition of Trial Operations	Insert a duration for the minimum trial operations period.
Clause 3.2(s)	Insert the value of the Subcontracts above which the Subcontracts will be executed only with the prior approval of the Authority which should be equal to 25% (twenty-five per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost).
Clause 5.6	Insert the location of the Project.
Clause 5.10	Populate the shareholding pattern of the Selected Bidder/Members in the Concessionaire as per the placeholders in the table.
Clause 6.1(p)	Insert the maximum quantum of Acceptable Waste, i.e., a percentage of the Design Capacity, that the Concessionaire is required to accept on a daily basis.
Clause 7.2(g), 7.2(m) and 7.3(e)	Insert the relevant State Government.
Clause 9.1	Insert the amount of the Performance Security which should be an amount equal to 10% (ten per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost).
Clause 9.3	Insert the amount of the O&M Security which should be an amount equal to 5% (five per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost).
Clause 10.1(b)	Populate the details of what the Site includes, in particular if it includes land for setting up anything in addition to the Project. If not, delete the placeholder.
Clause 10.2(b)	Insert the time-period from the Execution Date within which the Authority is obligated to handover the Site to the Concessionaire.
Clause 14.2(c)(ii)	Insert the time-period from the Appointed Date within which the Concessionaire is obligated to submit the Designs and Drawings to the Authority.
Clause 14.4(d)	Insert the time-period from the Appointed Date for development of the OHS Plan.
Clause 14.4(h) and (i)	If a biodiversity assessment, a livelihood restoration plan or a resettlement action plan is required, insert the time-period from the Execution Date within which these must be completed or implemented (as applicable).
Clause 16.1(c)(i)	Insert the time period after issuance of the Trial Operations Commencement Notice within which the Concessionaire must commence Trial Operations. Insert the minimum duration of Trial Operations (same as the minimum trial operations period set out in the definition of Trial Operations).
Clause 16.1(c)(v)	Insert the time period after issuance of the Milestone Completion Certificate / Construction Completion Certificate within which the Concessionaire must submit the Acceptance Tests Schedule.
Clause 16.1(c)(x)	Insert the time period for submission of a report on successful completion of Trial Operations.
Clause 18.4(a)(iii)	Insert the maximum quantum of Acceptable Waste, i.e., a percentage of the Design Capacity, that the Concessionaire is required to accept on a daily basis.
Clause 18.5(b)	Insert the Daily Guaranteed Acceptable Waste Quantity to be supplied by the Authority.
Clause 18.5(d)(i) and (ii)	Insert the maximum quantum of Acceptable Waste, i.e., a percentage of the Design Capacity, that the Concessionaire is required to accept on a daily basis, and the aggregate quantity required to be accepted during any consecutive 7 (seven) day period.
Clause 18.6(a)	Insert the number of weighbridges required.
Clause 18.6(d)(iv) and (v)	Populate the time durations for (i) notifying the Authority of Prohibited; (ii) inspection by the Independent Engineer; (iii) removal of waste from the Site after inspection.

Reference	Data required
Clause 18.7(b)	Populate the percentage of the Average Per Ton Gross Revenue that will be used for calculation of the Guaranteed Waste Liquidated Damages.
Clause 18.9(f)	Populate the minimum distance of an alternate disposal site from the Site beyond which the Authority is required to reimburse any incremental transportation cost incurred by the Concessionaire.
Clause 18.12(c)	Populate the time duration for removal of waste from the Site.
Clause 20.1(v) and (vi)	Populate the time on each day prior to which the daily weight sheets and daily reports on the quantum of electricity produced should be delivered to the Authority.
Clause 20.4(c)	Insert the time period for which if the Concessionaire ceases to operate, step-in rights are triggered.
Clause 21.1(b)(i)	Insert the quantity of Acceptable Waste that the Concessionaire is required to accept in TPD which is equal to the 100% of the Design Capacity of the WtE Facility.
Article 22	As applicable, populate the amount of the Grant and/or the Processing Fee and any placeholders for time durations.
Clause 22.6(a)	Insert the LC amount.
Clause 22.9	Insert the default interest rate.
Clause 24.2	Insert the time duration after which the Confirming Party must fund the Escrow Account.
Clause 26.1(b)(ii)	Insert the State where the Project is located and the relevant State Government.
Clause 28.1(e)	Insert the liquidated damages cap.
Clause 30.2(a)	Insert the year after COD in which the Authority can conduct a survey of the Site in accordance with the divestment provisions.
Clause 31.2(c)	Insert the threshold (as a percentage of the Total Project Cost) which triggers the Concessionaire's right to reject a variation.
Clause 32.2(a)	Insert the increase in costs threshold due to change in law which gives the Concessionaire a right to propose amendments to the MCA.
Article 34	Insert the place where the initial Dispute Meeting will be held and the venue of the arbitration.
Clause 35.4	Populate the notice details.
Clause 35.5	Insert the courts which have exclusive jurisdiction in India.
Schedules to the MCA	
Schedules	Populate the schedule numbers throughout the document once the schedules are finalised.
Scope of Works	Prepare a schedule that sets out the scope of works for construction and O&M of the Project.
Site	Prepare a schedule that sets out a description of the Site (including identification of the battery limits of the Site) and any layout plans in relation to the Site.
Technical Specifications	Prepare a schedule that sets out the technical specifications for design, development, construction, commissioning, operation, and maintenance of the Project.
Plans	Prepare a schedule(s) that sets out the requirements for preparing the Project Execution Plan, Detailed Project Report, Construction Plan and EMP.
Applicable Permits	Prepare a schedule that sets out the Applicable Permits required to be obtained by the Concessionaire and the Authority from time to time in connection with the Project.
Liquidated Damages	Prepare a schedule that sets out the liquidated damages to be paid by the Concessionaire for a failure to meet the KPIs.
Escrow Agreement	Prepare a schedule that sets out the form of the Escrow Agreement.
Substitution Agreement	Prepare a schedule that sets out the form of the Substitution Agreement.
Independent Engineer	Prepare a schedule that sets out the procedure for appointment, replacement and the scope of work of the Independent Engineer.
Safety Requirements	Prepare a schedule that sets out the safety requirements.
Letter of credit	Prepare a schedule that sets out the form of the letter of credit to be provided by the Authority to the Concessionaire.
Vesting Certificate	Prepare a schedule that sets out the form of the vesting certificate.
RFP	
Definition of Appropriate Commission	Insert name of relevant State Electricity Regulatory Commission.

Reference	Data required
Definition of C&T Contractors	Insert the city.
Definition of Confirming Party	Insert details of the Confirming Party and the State in which the Project is located.
Definition of Design Capacity	Insert the TPD quantity of Acceptable Waste that the WtE Facility is designed to handle and process.
Definition of Disposal Location	Insert the location of the disposal site and the distance from the Site.
Definition of e-Procurement Portal	Insert the State Government and the link for the portal.
Definition of Feed-in Tariff	Insert the applicable feed-in tariff for waste to electricity projects in the state, along with the date on which the control period is scheduled to expire.
Definition of Interconnection Point	Insert details of the interconnection point, i.e., the point at the identified substation at which the Project will connect with the grid, along with details of the relevant distribution/transmission grid.
Definition of Offtaker	Insert name of the distribution utility that will execute the PPA with the Concessionaire.
Definition of Performance Standards	Insert the web page link for IFC's Performance Standards on Social & Environmental Sustainability, dated January 1, 2012 and Environmental, Health, and Safety Guidelines on Waste Management Facilities dated December 10, 2007.
Definition of Processing Fee	Insert the processing fee details, if a fixed processing fee is to be paid to the Concessionaire.
Definition of Project Site	Populate the placeholders in the definition of Site including the area in acres.
Definition of RFP	Insert date of the RFP.
Clause 1.2(l)	Populate the fixed Grant and/or fixed Processing Fee, in each case if applicable.
Clause 1.2(n)	Insert the LC amount.
Clause 2.7	Insert amount of the Earnest Money Deposit and account details.
Clause 2.15	Populate the bid schedule.
Clause 4.1(a) and (b)	Insert the quantity of waste equivalent to 80%, 50% and 40% of the Design Capacity in TPD, in each case as per the placeholders in Clause 4.1(a) and 4.1(b).
Clause 4.2(a)	Insert the minimum net worth equal to 25% (twenty-five per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost under the MCA).
Clause 4.2(b)	Insert the average annual turnover equal to 50% (fifty per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost under the MCA).
Clause 4.2(f)	Insert the cut-off date of incorporation.
Clause 4.2(h)	Insert the RBI Reference Rate for conversion to INR.
Clause 13.2	Insert the name of the city which has exclusive jurisdiction.
Clause 15.1	Insert the amount of the Earnest Money Deposit equal to 1% (one per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost under the MCA).
Clause 16.1	Insert the amount of the Performance Security equal to 10% (ten per cent) of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost under the MCA).
Clause 20.1(l)	Insert the bid document fee amount and account details where it has been transferred.
Clause 24.1	Insert the maximum limit for file size of each file uploaded on the e-Procurement Portal.
Clause 24.11	Insert the address details for delivery of hard copy documents.
Clause 25.2	Insert the name and designation of the addressee of a letter to modify the Bid.
Clause 30.1	Insert the time period after declaration of the Preferred Bidder within which the LOA should be issued.

DISCLAIMER

IFC has appointed Trilegal as the legal consultant for drafting, revising, and finalizing the Model Documents and this guidance note. The Model Documents and this guidance note have been drafted and revised by Trilegal based on instructions, comments, feedback, and other information received from IFC and MoHUA. MoHUA released the draft Model Documents on its website on 10 July 2023. Thereafter, comments were received from multiple stakeholders (including private players and government agencies) and the Model Documents have been revised accordingly, where necessary.

IFC, together with its consultants and advisors, does not guarantee the adequacy, correctness, completeness or reliability of the content included in this guidance note or the Model Documents and accepts no responsibility or liability for any omissions or errors (including, without limitation, typographical errors and technical errors) in the content whatsoever, or for any reliance thereon.

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The cost of developing this guidance note and the Model Documents, including professional fees paid to consultants and advisors, has been met through funding obtained from the European Union. The contents of this guidance note and the Model Documents do not necessarily reflect the views of the European Union.

[Insert name and logo of issuing Authority]

**DEVELOPMENT OF A WASTE TO ELECTRICITY FACILITY
AT [●]
ON A PUBLIC PRIVATE PARTNERSHIP BASIS**

REQUEST FOR PROPOSAL

TENDER NOTICE NO.: No: [●]

BACKGROUND AND DISCLAIMER¹

The Ministry of Housing and Urban Affairs (**MoHUA**) has signed an agreement with the International Finance Corporation (**IFC**), a member of the World Bank Group, to form a partnership to accelerate investment in the solid waste management sector in India. Through this partnership, IFC has assisted MoHUA in preparing a model concession agreement (**MCA**), a model request for proposal (**RfP**, together the **Model Documents**), and a guidance note in relation to the Model Documents (**Guidance Note**) for use by urban local bodies for development of waste to electricity projects in India. The objective of preparing the Model Documents and the Guidance Note is to develop an enabling framework for private sector participation in the solid waste management sector. Urban local bodies are advised to refer to the Model Documents and the Guidance Note while preparing the bid documents for a tender process in relation to development of a waste to electricity project.

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MoHUA released the draft Model Documents on its website on 10 July 2023. Thereafter, comments were received from multiple stakeholders (including private players and government agencies) and the Model Documents have been revised accordingly, where necessary.

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IFC, together with its consultants and advisors, makes no representation or warranty and will have no liability to any person, including any bidder, under any law, statute, rules or regulations or tort or otherwise for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of anything contained in the Model Documents or the Guidance Note, and any assessment, assumption, statement or information contained in these Model Documents or the Guidance Note or deemed to form part of the Model Documents or the Guidance Note.

The cost of developing the Model Documents and the Guidance Note, including professional fees paid to consultants and advisors, has been met through funding obtained from the European Union. The contents of the Model Documents and the Guidance Note do not necessarily reflect the views of the European Union.

¹ **Drafting Note:** This background and disclaimer section is for the benefit of MoHUA, any urban local body or other authority using or reviewing the Model Documents and the Guidance Note. This background and disclaimer section should be deleted prior to issuing the Model Documents to the bidders in a tender process.

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DISCLAIMER

The information contained in this RFP or any other information or document provided to the Bidders, whether verbally or in writing or in any other form, by or on behalf of the [●] (the **Authority**) and its employees or advisors is provided to the Bidders on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and further it is neither an offer nor an invitation by the Authority to the Bidders or any other Person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in the preparation and submission of their Bids.

This RFP includes statements which reflect various assumptions and assessments arrived at by the Authority and their advisors for the Project. Such assumptions, assessments and statements do not purport to contain all the information that the Bidders may require. The information contained in this RFP may not be appropriate for all Persons and it is not possible for the Authority and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Person who reads this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP.

The information provided in this RFP is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of the law.

Except as provided in the RFP and the Agreement, the Authority and their employees and advisors make no representation or warranty and will have no liability to any Person, including any Bidder, under any law, statute, rules or regulations or tort or otherwise for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of anything contained in this RFP, including the accuracy, adequacy, correctness, completeness or reliability of this RFP and any assessment, assumption, statement or information contained in this RFP or deemed to form part of this RFP.

It will be deemed that by submitting the Bid, a Bidder agrees and releases the Authority and their employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for any claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations under this RFP and/or in connection with the Bid Process, to the fullest extent permitted by applicable law.

The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment, statement or assumptions contained in this RFP. The issue of this RFP does not imply that the Authority is bound to qualify any Bidder or to award the Project to any Bidder. The Authority reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

GLOSSARY

In this RFP, unless the context otherwise requires, capitalised terms shall have the meaning given to them in the table below.

Acceptable Waste	[means source segregated dry 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), non-hazardous industrial solid waste, commercial waste, institutional waste, horticulture waste, agriculture and dairy waste, catering and market waste, food waste, paper, cardboard, wood, textiles, plastics, and excludes Prohibited Waste.]
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.
Addendum or Addenda	means an addendum or addenda to this RFP.
Agreement	means the Concession Agreement to be executed between the Authority, the Confirming Party and the Concessionaire, a draft of which is, or shall be, issued by the Authority along with this RFP.
Annex	means an annexure to this RFP.
Annual Turnover	means the gross revenue recognised in the profit and loss account of a Company from the sale, supply, or distribution of goods or on account of services rendered, or both, during an Accounting Year.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, the State Government, the Appropriate Commission, any government authority or any local government having jurisdiction over the Parties, the Project 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, the SWM Rules and laws concerning any environmental, social, labour, health and safety or security risks of the type contemplated by the Performance Standards.
Applicable Tariff	means the [Quoted Tariff of the Selected Bidder, as adopted by the Appropriate Commission] ² or the [Feed-in Tariff, as may be revised in accordance with the terms of the Agreement] ³ .
Appointed Date	means the date on which all the conditions precedent specified in the Agreement for effectiveness of the Agreement have been satisfied, or waived, by the Parties, as evidenced by a notice of satisfaction of the conditions precedent issued by the

² **Drafting Note:** To be retained if the project is being awarded through tariff based bidding.

³ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

	Authority to the Concessionaire in accordance with the terms of the Agreement.
Appropriate Commission	means [<i>insert name of relevant State Electricity Regulatory Commission</i>].
Associate	means, in relation to an entity, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who Controls such entity.
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, waste storage facility, waste segregation facility, transmission infrastructure for evacuation of electricity until the Interconnection Point, etc., as described in greater detail in the Scope of Work in the Agreement and the Technical Specifications.
Authority	[_____][<i>insert name of the Authority/ULB</i>], a statutory body constituted under the [•], with its registered office at [<i>insert address</i>] acting through _____, _____ [<i>insert name of the authorised signatory and his/her designation</i>].
Average Annual Turnover	has the meaning ascribed to it in Clause 4.2(b).
Best Quote	means the [[lowest quoted Grant] / [lowest Quoted Tariff] / [lowest quoted Processing Fee]] ⁴ .
Bid	means a bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and Bids mean collectively, all the bids for the Project.
Bidder	means an interested Company or a Consortium of Companies which submits a Bid to the Authority in accordance with this RFP and includes each Member when the Bidder is a Consortium, and Bidders shall be construed accordingly.
Bid Document Fee	means the fee to be paid by the Bidder for purchasing and downloading this RFP in accordance with Clause 2.7.
Bid Due Date	means the last date for submission of the Bids specified in the Bid Schedule, as may be extended from time to time in accordance with Clause 19.
Bid Process	means the single-stage bidding process, with two sub-stages ⁵ , undertaken by the Authority to award the Project to the Selected Bidder on the terms and conditions set out in this RFP. The Bid Process has commenced with the issue of this RFP and will end on the date that the Agreement is executed with the special purpose vehicle incorporated by the Selected Bidder for the Project or the Selected Bidder

⁴ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Quoted Tariff or Processing Fee.

⁵ **Drafting Note:** This RfP has been drafted on the basis that the Bid Process will be a single-stage bidding process with two sub-stages. RfP to be modified if the bid process will be a two-stage bidding process.

itself, as the case may be.

Bid Schedule	means the schedule of the Bid Process set out in Clause 2.15, as may be amended from time to time.
[C&T Contractors	means the contractors appointed, or to be appointed, by the Authority for collection and transportation of waste in [●].] ⁶
Clause	means a clause of this RFP.
COD	means the date on which the COD Certificate is issued (or deemed to be issued) by the Authority to the Concessionaire after successful trial operations and testing of the WtE Facility.
COD Certificate	means the certificate issued (or deemed to be issued) by the Authority to the Concessionaire evidencing the date on which the WtE Facility has entered commercial operations under the Agreement.
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.
Company	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its jurisdiction.
Concessionaire	means the special purpose vehicle incorporated by the Selected Bidder under the Companies Act to enter into the Agreement with the Authority and the Confirming Party and implement the Project.
Conflict of Interest	has the meaning ascribed to it in Clause 3.3.
Confirming Party	means the [<i>Department of Local Government/Urban Development</i>] of [<i>Insert the name of the relevant State where the Project is located</i>].
Consortium	means any combination of up to [3 (three)] Companies that have formed a consortium for the purpose of submitting a Bid and to implement the Project if such consortium is declared the Selected Bidder.
Control	means, with respect to a Person: <ul style="list-style-type: none"> (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.
Daily Guaranteed	has the meaning ascribed to it in the Agreement.

⁶ **Drafting Note:** To be deleted if no C&T Contractors have been appointed or will be appointed by the Authority.

Acceptable Waste Quantity

Design Capacity means the quantity of Acceptable Waste that the WtE Facility should be designed to handle and process in a day, which shall be [●] TPD.

Disposal Location means the [sanitary landfill located [●] km from the Project Site at [●]]⁷ / [the disposal location [●] km from the Project Site at [●]]⁸ identified by the Authority for safe and scientific disposal of the Residual Inert Matter and any Residual Waste.

Earnest Money Deposit means the bid security that must be submitted by a Bidder along with its Bid in accordance with Clause 15.

Eligibility Criteria means the eligibility criteria set out in Clause 3 that a Bidder is required to satisfy (in addition to the Qualification Criteria), to be qualified for evaluation of the Financial Proposal.

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.

e-Procurement Portal means the e-procurement portal of the [*insert the relevant State Government*] available at the following url: [●].

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 the Agreement and the financing documents, which, for the purpose of the 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 or any Associate of any shareholder of the Concessionaire and which shall be capped at the amount specified as the equity contribution in the financing package indicating the means of financing the Project Facilities submitted to the Authority by Concessionaire in accordance with the Agreement.

[Feed-in Tariff Means INR [●] per kWh, i.e., the tariff determined by the Appropriate Commission for procurement of power from waste to electricity projects commissioned on or before [*insert expiry date for the subsisting control period for the applicable tariff for WtE projects in the relevant state*].]⁹

Financial Capacity means the financial capacity and strength of the Bidder, as determined in accordance with Clause 4.2.

Financial Proposal means the financial proposal to be submitted by a Bidder in accordance with this

⁷ **Drafting Note:** To be deleted if the Residual Waste and Residual Inert Matter will not be disposed of at a sanitary landfill and an alternate location is to be specified.

⁸ **Drafting Note:** To be deleted if the Residual Waste and Residual Inert Matter will not be disposed of at a sanitary landfill and an alternate location is to be specified.

⁹ **Drafting Note:** To be deleted if the project will be awarded through tariff based bidding and retained if a fixed feed-in tariff for waste to energy plants is available in the state, which will be payable to the concessionaire.

	RFP.
GoI	means the Government of India.
[Grant	means the amount required by the Bidder from the Authority, in INR, as capital support for undertaking the Project and which is to be paid in instalments during the concession period in accordance with the terms of the Agreement.] ¹⁰
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.
Interconnection Point	means a point located at [●] substation, at which the WtE Facility shall be required to connect with the [distribution/transmission] grid owned and operated by [●] to evacuate electricity generated from the WtE Facility.
Lead Member	means with respect to a Consortium, the Member who: <ul style="list-style-type: none"> (i) will hold at least 26% of the Equity Contribution and voting rights of the Concessionaire; and (ii) is authorised by all other Consortium Members to be responsible for the Bid Process and to represent and act on behalf of the Consortium for submission of the Bid, in terms of the joint bidding agreement.
LOA	means the letter of award that will be issued by the Authority to the Selected Bidder in accordance with Clause 30.
Member	means a member of a Consortium.
[[Minimum Escrow Balance]¹¹	means an amount equivalent to [(i) prior to the Appointed Date, the first instalment of the Grant payable to the Concessionaire in accordance with the Project Milestones, (ii) from the Appointed Date, the next instalment of the Grant due and payable to the Concessionaire in accordance with the Project Milestones.] ¹² [and] [(iii) the estimated Processing Fee due and payable to the Concessionaire for the next [3 (three)] months, in accordance with the terms of the Agreement] ¹³
MoEFCC	means the Ministry of Environment, Forest and Climate Change, GoI.
Net worth	has the meaning ascribed to it in Clause 4.2 (a).
Office Memorandum	means the Office Memorandum F.No.6/18/2019-PPD dated 23 July 2020 issued by the Ministry of Finance, Department of Expenditure, Public Procurement Division, Government of India to amend Rule 144 of the General Financial Rules

¹⁰ **Drafting Note:** To be deleted if Grant is not the bidding criteria. Where Royalty is the bidding criteria and a fixed Grant is also payable, the definition of Grant to be modified as follows: “means INR [●], payable by the Authority to the Concessionaire as capital support for undertaking the Project and which is to be paid in instalments during the concession period in accordance with the Agreement.”

¹¹ **Drafting Note:** Definition of Minimum Escrow Balance to be deleted if no Grant or Processing Fee is payable.

¹² **Drafting Note:** To be deleted if no Grant is to be paid to the Concessionaire and the numbering in the definition to be revised accordingly.

¹³ **Drafting Note:** To be deleted if no Processing Fee is to be paid to the Concessionaire.

along with all subsequent amendments and clarifications.

Offtaker	means [<i>insert name of the distribution utility that will execute the PPA with the Concessionaire</i>].
O&M	means operation and maintenance.
O&M Capacity	has the meaning ascribed to it in Clause 4.1(b).
O&M Period	means the period commencing on COD and ending on the date of expiry or termination of the Agreement during which the Concessionaire is required to operate and maintain the Project Facilities.
Parties	means the Authority, the Concessionaire and the Confirming Party and Party means any of one of them.
Performance Security	has the meaning ascribed to it in Clause 16.
Performance Standards	means IFC's Performance Standards on Social & Environmental Sustainability, dated January 1, 2012, available at [<i>insert relevant web page link</i>] and Environmental, Health, and Safety Guidelines on Waste Management Facilities dated December 10, 2007, available at [<i>insert relevant web page link</i>].
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.
PPA	means the power purchase agreement to be entered into between the Offtaker and the Concessionaire for sale of power generated from the WtE Facility.
PPP	means public private partnership.
Pre-Bid Meeting	means the meeting to be held in accordance with Clause 8.2.
Preferred Bidder	means the Bidder which: (a) meets the Qualification Criteria and the Eligibility Criteria; and (b) has the Best Quote.
[Processing Fee	means the per ton fee quoted by the Bidder in its Financial Proposal, for accepting, handling, and processing of Acceptable Waste.] ¹⁴
[Processing Fee	means INR [•] per ton of Acceptable Waste payable by the Authority to the Concessionaire, for handling, and processing of Acceptable Waste in accordance with the Agreement.] ¹⁵
Prohibited Waste	means hazardous industrial waste, liquid non-hazardous waste, , bio-medical waste

¹⁴ **Drafting Note:** To be deleted if Processing Fee is not the bidding criteria.

¹⁵ **Drafting Note:** To be included only if the Grant is the bidding criteria and a Processing Fee for handling of waste is offered to the bidders which is fixed in the RfP. To be deleted if the bidding criteria is Processing Fee. If the bidding criteria is Processing Fee, then the first definition for Processing Fee will be retained.

(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), glass, metals, leather, rubber, sludge, sewage waste, ash, dirt, soil, silt, stones (from any sources), and other household waste that does not fall within the definition of Acceptable Waste.

Project	has the meaning ascribed to it in Clause 1.1.
Project Agreement	has the meaning ascribed to it in the Agreement.
Project Facilities	means the WtE Facility and the Associated Infrastructure, which need to be constructed, installed, operated and maintained by the Concessionaire in accordance with the terms of the Agreement (including the Technical Specifications, Applicable Laws and the Performance Standards).
[Project Milestones	means the four construction milestones according to which the Grant will be paid to the Concessionaire, determined in accordance with the terms of the Agreement.] ¹⁶
Project Site	means the area equivalent to [●] acres, indicated at [Figure [●] of Schedule [●]], on which the Concessionaire shall develop the Project Facilities.
Residual Inert Matter	means the waste matter produced after processing of the Acceptable Waste at the WtE Facility.
Qualification Criteria	means the qualification criteria set out in Clause 4 that a Bidder is required to satisfy (in addition to the Eligibility Criteria), to be qualified for evaluation of the Financial Proposal.
Qualification Proposal	means the proposal to be submitted by each Bidder to demonstrate that it meets the Eligibility Criteria and the Qualification Criteria as set out in Clause 3 and Clause 4.
[Quoted Tariff	means the tariff quoted by each Bidder for sale of electricity generated from the WtE Facilities in accordance with the PPA.] ¹⁷
RBI Reference Rate	means the Reserve Bank of India reference rate as available on https://www.fbil.org.in/ .
RFP	means this request for proposal dated [●] along with its Annexes and includes any Addenda, if issued.
Rupees or INR	means Indian Rupees, the lawful currency of India.

¹⁶ **Drafting Note:** To be deleted if no Grant is to be paid to the Concessionaire.

¹⁷ **Drafting Note:** To be retained if the project will be awarded through tariff-based bidding.

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.
Scope of Work	has the meaning ascribed to it in the Agreement.
Section	means a section of this RFP.
Selected Bidder	means the eligible Bidder selected by the Authority for award of the Project.
Site Contamination Report	has the meaning ascribed to it in Clause 2.8(b).
State Government	means the [<i>insert the relevant State Government</i>]. ¹⁸
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.
Technical Capacity	means the technical capacity and experience of a Bidder, as determined in accordance with Clause 4.1.
Technical Specifications	means the technical specifications for the design, development, construction, commissioning, operation and maintenance of the Project Facilities, which the Concessionaire must comply with, as set out in the Agreement.
TPD	means tonnes per day.
UTR Receipt	has the meaning ascribed to it in Clause 2.7.
WtE Facility	means the waste to electricity facility to be set up by the Concessionaire in accordance with the terms of the Agreement (including the Scope of Work and Technical Specifications), which shall be capable of handling and processing Acceptable Waste up to the Design Capacity.

¹⁸ **Drafting Note:** Insert the relevant State Government.

SECTION I INTRODUCTION

1. BACKGROUND

The Authority, recognizing the challenges of solid waste management in [*insert name of city in which the Project is to be developed*], is keen to undertake the development of a waste to electricity facility at [*insert location of the Project*] which shall be connected to the [*insert name of substation identified for the Project*] substation at the Interconnection Point and shall be capable of receiving and processing up to [*•*] TPD of Acceptable Waste 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**)¹⁹ model (**Project**).

1.1 The objectives that the Authority wishes to achieve through the Project include:

- (a) proper handling, processing and disposal of waste and conversion of Acceptable Waste to electricity;
- (b) proper handling and scientific disposal of Residual Inert Waste generated from, or segregated at, the WtE Facility; and
- (c) mobilizing private sector investment and expertise for efficient management of solid waste in the city of [*insert name of city in which the Project is to be developed*].

1.2 Project Description

The main features of the Project are set out below:

- (a) The Authority will grant to the Concessionaire a license to use the Project Site to develop, construct, operate, and maintain the Project Facilities, and ensure that the Concessionaire enjoys peaceful unencumbered access to and possession of the Project Site during the term of the Agreement.
- (b) The Concessionaire will be required to obtain approvals for the Project, including connectivity for delivery of electricity at the Interconnection Point.
- (c) The Concessionaire will design, construct, operate and maintain the Project Facilities, in accordance with the Agreement.
- (d) The Concessionaire will be required to achieve the COD of the WtE Facility within [24 (twenty four)] months from the Appointed Date and shall operate and maintain WtE Facility for a period of [25 (twenty five)] years thereafter in accordance with the terms of the Agreement.
- (e) The Concessionaire shall develop and maintain a buffer zone (including a green area) around the WtE Facility, in accordance with Applicable Laws.

¹⁹ **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.

- (f) The Authority shall, or cause its C&T Contractors to, deliver Acceptable Waste to the Concessionaire for processing at the WtE Facility and the Acceptable Waste delivered during any day of the O&M Period shall not be less than the Daily Guaranteed Acceptable Waste Quantity.
- (g) On each day during the O&M Period, the Concessionaire shall be capable of accepting Acceptable Waste up to 110% (one hundred and ten per cent)] of the Design Capacity and handling and processing the Acceptable Waste up to the Design Capacity to generate electricity.
- (h) The Concessionaire shall deliver the Residual Inert Waste at the Disposal Location.
- (i) The Concessionaire shall supply electricity to the Offtaker in accordance with the terms of the PPA at the Applicable Tariff.
- (j) The Concessionaire shall hand back the Project Site and the Project Facilities upon expiry or early termination of the Agreement, in accordance with the hand-back conditions and the hand-back requirements specified in the Agreement.
- (k) [The Grant [(which, for the avoidance of doubt, includes any viability gap funding available for the Project)] will be paid by the Authority to the Concessionaire during the construction period, upon completion and certification of the work corresponding to the construction milestones to be specified in accordance with the Agreement.]

[From COD, the Authority shall pay the Concessionaire the Processing Fee quoted by the Selected Bidder in the Financial Proposal for each ton of Acceptable Waste accepted by the Concessionaire for handling and processing at the WtE Facility in the manner, and within the timelines, specified in the Agreement.]²⁰

- (l) [The Authority shall pay the Concessionaire a fixed Grant equal to INR [•] as capital support for undertaking the Project. Payments towards the Grant shall be made to the Concessionaire in accordance with the terms of the Agreement.]²¹ [or] [The Authority shall pay the Concessionaire a fixed Processing Fee equal to INR [•] for handling and processing of Acceptable Waste in accordance with the terms of the Agreement.]²²
- (m) The Authority will open an escrow account for the Project and all payments required to be made to the Concessionaire under the Agreement will be made through this escrow account. [The escrow account shall be funded by the Authority at all times with an amount equivalent to the Minimum Escrow Balance as set out in the Agreement.]²³
- (n) In order to secure the payments to be made by the Authority to the Concessionaire, the Authority shall also, procure and provide to the Concessionaire an unconditional, revolving, irrevocable stand-by and payable at sight letter of credit (LC) issued by a

²⁰ **Drafting Note:** To be deleted if the Processing Fee is not the bidding criteria.

²¹ **Drafting Note:** To be deleted if no fixed Grant is payable by the Authority, or, if the Grant is the bidding parameter.

²² **Drafting Note:** To be deleted if no fixed Processing Fee is payable by the Authority, or, if the Processing Fee is the bidding parameter.

²³ **Drafting Note:** To be deleted if no Grant or Processing Fee is payable to the Concessionaire.

Scheduled Bank for an amount equal to [•]. The Concessionaire shall be entitled to draw upon the LC in accordance with the terms of the Agreement.

- (o) Prior to the Appointed Date, the Authority and the Concessionaire will appoint an Independent Engineer who will supervise the implementation and operation of the Project, in accordance with the Agreement.

- 1.3 The Authority is now inviting interested Companies to submit Bids to implement the Project.
- 1.4 The Selected Bidder is required to incorporate a special purpose vehicle (i.e., the Concessionaire) to implement the Project and such special purpose vehicle and the Authority will execute the Agreement, in the format in the format provided by the Authority.
- 1.5 The statements and explanations contained in this RFP are intended to provide the Bidders with an understanding of the subject matter of this RFP and the Project. Such statements and explanations should not be construed or interpreted as limiting in any way or manner:
 - (a) the scope of the rights and obligations of the Concessionaire, which will be set out definitively in the Agreement; or
 - (b) the Authority's right to alter, amend, change, supplement or clarify the rights and obligations of the Concessionaire or the terms and conditions that will be set out in the Agreement, in accordance with this RFP.

Consequently, any omissions, conflicts or contradictions between this RFP and the Agreement are to be noted, interpreted, and applied appropriately to give effect to this intent. The Authority will not entertain any claims on account of such omissions, conflicts, or contradictions.

2. BRIEF DESCRIPTION OF THE BID PROCESS

- 2.1 The Authority has adopted a single stage Bid Process for identification of the Selected Bidder for award of the Project, which is divided into two sub-stages.
- 2.2 The Bid Process will be conducted by way of e-procurement. All interested parties are required to register online on the e-Procurement Portal to submit a Bid for the Project.
- 2.3 [The Bidders shall download the RFP from the e-Procurement Portal. The RFP will appear on the e-Procurement Portal in the "Tenders" section and will be available only until the specified time on the Bid Due Date. The Authority is not responsible for the completeness of the RFP if it is not downloaded directly from the e-Procurement Portal]²⁴.
- 2.4 Each Bidder is required to submit a single Bid, which should consist of: (a) the Qualification Proposal; and (b) the Financial Proposal. The Qualification Proposal and Financial Proposal should be prepared and submitted in accordance with the instructions contained in this RFP.
- 2.5 **Evaluation stages**

The evaluation of the Bids will be carried out in 2 sub-stages:

²⁴ **Drafting Note:** To be modified suitably based on the requirements/specifications of each e-procurement portal.

- (a) The first sub-stage will involve qualification of the Bidders based on the evaluation of their Qualification Proposals to determine compliance with the Eligibility Criteria and the Qualification Criteria in accordance with Clauses 3 and 4. Only those Bidders who are found to meet the Eligibility Criteria and the Qualification Criteria will be qualified for the next sub-stage.
- (b) The second sub-stage will involve evaluation of the Financial Proposals of those Bidders whose Qualification Proposals meet the requirements set out in this RFP, to identify the Selected Bidder for the Project.

2.6 The Bids must be valid for a period that is not less than [180 (one hundred and eighty)] days from the Bid Due Date.

2.7 Bidders will be required to provide the Earnest Money Deposit along with their Bids. The Bidders shall provide the Earnest Money Deposit in the form of a bank guarantee issued by a Scheduled Bank and payable at [*insert name of city in which the Project is to be developed*] in favour of [*"insert name of the Authority"* represented by [•]] in the format set out at **Annex 8**. The original of the Earnest Money Deposit must be submitted to the Authority at the address mentioned in Clause 24.11. A scanned copy of the Earnest Money Deposit must be uploaded by the Bidders on the e-Procurement Portal along with their Bids.

[In addition to the Earnest Money Deposit, the Bidders are required to pay an amount of INR [•] as the Bid Document Fee through an [RTGS/NEFT transfer] to the following account:

Account Holder:

[•]

The Bidders are required to submit a receipt containing the unique transaction reference number for the [RTGS/NEFT transaction], evidencing the successful transfer of the Bid Document Fee to the account mentioned above (**UTR Receipt**). The Bid shall be summarily rejected if it is not accompanied by the Earnest Money Deposit and UTR Receipt evidencing payment of the Bid Document Fee.]²⁵

2.8 Authority's Obligations

- (a) The Authority shall organise a Project Site visit for up to 3 representatives of each Bidder on the date set out in the Bid Schedule. In addition to this Project Site visit, Bidders may inspect the Project Site, after obtaining approval from the Authority at least [2 (two)] days prior to such proposed inspection, to evaluate the scope of the Project in greater detail, and carry out, at their own cost, such studies as may be required to submit their respective Bids.
- (b) The Authority shall appoint an environmental specialist to conduct an environmental site assessment in accordance with ASTM E1903-19 Standard Practice for Environmental Site Assessments: Phase II and produce a report that sets out the baseline level of contamination (if any) at the Project Site (**Site Contamination**

²⁵ **Drafting Note:** To be deleted if no Bid Document Fee is proposed to be sought from bidders.

Report). The Authority shall deliver the Site Contamination Report to the Bidders on or prior to the date set out in the Bid Schedule.

- (c) The Authority shall facilitate the inspection of the quality and characteristics of the Acceptable Waste by the Bidders, including, providing access to samples of Acceptable Waste and/or organising a visit to the site where the Acceptable Waste is stored. Bidders shall have the opportunity to evaluate the quality of the Acceptable Waste in greater detail, and carry out, at their own cost, such studies as may be required in order to aid their Bid submission.

2.9 It will be assumed that Bidders will have accounted for all relevant factors, including technical data, market studies, actual condition of the Project Site, and connectivity requirements, while submitting their Bids. Bidders will be deemed to have full knowledge of the Project, including the scope of services to be provided by the Concessionaire under the Agreement, irrespective of whether they have carried out such studies or not.

2.10 **Bid Parameter**

Each Bidder is required to quote, in its Financial Proposal, the [[Grant] / [Processing Fee] / [Quoted Tariff]]²⁶. [The [[Grant]/[Processing Fee]]²⁷ to be quoted by Bidders in their Financial Proposals (on the e-Procurement Portal) must be a whole number without any decimal places.]²⁸ [The Quoted Tariff to be quoted by Bidders in their Financial Proposals (on the e-Procurement Portal) shall include up to 2 (two) decimal places.]²⁹

2.11 Subject to Clause 7.1(e), generally, the Preferred Bidder shall be the Selected Bidder. If the Preferred Bidder withdraws its Bid or is not selected for any reason, then the Authority may, in its discretion, invite the qualified Bidder with the next best quote to match the Bid of the Preferred Bidder. If such qualified Bidder matches the quote of the Preferred Bidder, then such qualified Bidder will be declared the Preferred Bidder. If such qualified Bidder fails to match the Bid of the Preferred Bidder, then the Authority may take any such measures as it may deem fit in the sole discretion of the Authority, including: (i) inviting the qualified Bidder with the next best quote to match the Bid of the Preferred Bidder; or (ii) annulling the entire Bid Process.

2.12 All Bids are required to be prepared and submitted in accordance with the terms of this RFP on or before the Bid Due Date.

2.13 **e-Procurement**³⁰

- (a) The Bid Process will be conducted by way of e-tendering. In order to participate in the Bid Process, a Bidder must procure a digital signature certificate and register on the e-Procurement Portal using its digital signature. A digital signature certificate may be procured from a registered certifying authority as stipulated by the Controller of Certifying Authorities, GoI.

²⁶ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

²⁷ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

²⁸ **Drafting Note:** To be deleted if the only bidding criteria is the Quoted Tariff.

²⁹ **Drafting Note:** To be retained if the bidding criteria is the Quoted Tariff.

³⁰ **Drafting Note:** To be modified suitably based on the requirements/specifications of each e-procurement portal and the applicable central and state government tender rules and guidelines for public procurement.

- (b) In case of a Consortium, the Lead Member must register with the e-Procurement Portal, using the digital signature certificate issued in the name of the authorised signatory of the Lead Member.
- (c) [The Bidders must: (i) upload a soft copy/scanned copy of their Qualification Proposal, including a copy of the bank guarantee for Earnest Money Deposit and the UTR Receipt for the Bid Document Fee on the e-Procurement Portal in PDF format; and (ii) populate the Financial Proposal format provided on the e-Procurement Portal, before the specified time on the Bid Due Date. The Bidders are also required to submit a hard copy of the original bank guarantee for the Earnest Money Deposit and the power of attorney(ies) (**POAs**) required under Clause 20 to the Authority before the specified time on the Bid Due Date, in the manner set out at Clause 24 of this RFP. Bidders shall not submit a hard copy of the Qualification Proposal (other than in respect of the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20) or the Financial Proposal format provided on the e-Procurement Portal.]³¹
- (d) The Bidders are encouraged to visit the e-Procurement Portal to acquaint themselves with the process of submitting their Bids online.
- (e) For the purposes of determining the cut-off time for submission of queries and Bids, the central server time displayed on the clock on the e-Procurement Portal will be followed by the Bidders and the Authority.

2.14 Any queries or requests for additional information relating to this RFP should be submitted on the e-Procurement Portal or sent to the Authority by e-mail to [*insert email ID*] on or before the time and date specified in the Bid Schedule. The communications must clearly bear the following subject line – ["●"].

2.15 The Authority shall endeavour to adhere to the following Bid Schedule:

S. No.	Event	Date/Time/Location
1.	Issue of RFP	[●]
2.	Issue of Agreement and Project Information Memorandum	[●]
3.	Project Site visit	[●]
4.	Issue of Site Contamination Report	[●] ³²
5.	Acceptable Waste inspection	[●]

³¹ **Drafting Note:** Mechanism and procedure for submission of documents both online and offline may need to be tailored on the basis of the requirements/specifications of the e-procurement portal and the applicable central and state government tender rules and guidelines for public procurement.

³² **Drafting Note:** The date of issue of the Site Contamination Report should allow sufficient time (preferably at least 2 months) between date of issuance of the report and the Bid Due Date.

S. No.	Event	Date/Time/Location
6.	Pre-Bid Meeting	[●], [●] hours IST at [the Authority office, [●]]
7.	Last date for receiving queries from Bidders	[●]
8.	Last date for issuing responses to queries from Bidders and issuance of Addendum/revised RFP and/or Agreement	[●]
9.	Bid Due Date ³³	[●], [●] hrs IST
10.	Opening of Qualification Proposals	[●], [●] hrs IST
11.	Notification of Bidders who have met the Eligibility Criteria and Qualification Criteria	[●]
12.	Opening of Financial Proposals	[●]
13.	Issuance of LOA	Within [●] days from the selection of the Preferred Bidder
14.	Signing of the Agreement	Within [60 (sixty)] days from the date of issue of the LOA to the Selected Bidder

³³ **Drafting Note:** The Bid Due Date should allow sufficient time between launch of the bid documents and the Bid Due Date and ideally, this period should not be less than 3 months with a minimum of 45 days between the date on which the Authority issues the responses to the bidder queries and the Bid Due Date.

SECTION II

ELIGIBILITY AND QUALIFICATION CRITERIA

3. ELIGIBILITY OF BIDDERS

3.1 Nature of Bidder

- (a) A Bidder may be a Company or a Consortium of Companies.
- (b) If a Bidder is a Consortium, then the Consortium and its Members shall comply with the following conditions:
 - (i) the number of Members in such Consortium shall not exceed [3 (three)];
 - (ii) the Bid submitted by the Consortium should contain the required information for each Member and a brief description of the roles and responsibilities of each Member;
 - (iii) the Consortium will nominate one of the Members as the Lead Member. Such nomination will be supported by a power of attorney from each Member of the Consortium and will be in the format set out in **Annex 3B**. The Lead Member will have the authority to represent and bind all the Members during the Bid Process and, if the Consortium is identified as the Selected Bidder, execute the Agreement on behalf of the Consortium; and
 - (iv) the Consortium is required to submit a binding and enforceable joint bidding agreement, in the format set out in **Annex 9**, and the Members will not be permitted to amend or terminate the joint bidding agreement, at any time during the validity of the Bid without the prior consent of the Authority.

3.2 Lock-in Restrictions and Change in Control

- 3.2.1 If a Bidder (whether a single entity or Consortium) is identified as the Selected Bidder, it is required to incorporate a special purpose vehicle (i.e., the Concessionaire) to implement the Project.
- 3.2.2 The Selected Bidder shall hold 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.
- 3.2.3 If the Selected Bidder is a Consortium, then the Members are required to comply with the following conditions with respect to the Concessionaire:
 - (a) the Consortium shall cumulatively hold 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;

- (b) without prejudice to Clause 3.2.3(a) above,
 - (A) the Lead Member shall hold not less [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD;
 - (B) the Members, whose Technical Capacity or Financial Capacity was assessed for the purpose of qualification, shall individually hold not less than [10% (ten percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD; and
 - (C) after the expiry of [2 (two)] years after the COD, the Lead Member and other Members can exit the Concessionaire, subject to any Member who demonstrated O&M experience for the purpose of qualification, continuing to hold not less than [10% (ten percent)] of the total Equity Contribution and voting rights of the Concessionaire for the Concession Period.

3.2.4 If after submission of the Bid and before COD, any Associate of the Bidder or any Member, whose credentials have been taken into consideration for determining Technical Capacity or Financial Capacity, ceases or will cease to be an Associate of the Bidder or such Member, then, such Bidder or Member shall seek the approval of the Authority for such occurrence. If the Authority is of the view that such occurrence is likely to affect the Technical Capacity or Financial Capacity of the Bidder adversely, then the Authority may disqualify the Bidder from participation in the Bid Process; or, if the Bidder has been declared as the Selected Bidder, withdraw the LOA or treat such occurrence as a Concessionaire event of default in accordance with the Agreement. While the Authority will not unreasonably withhold or delay such approval, the decision of the Authority will be final in this regard.

3.3 **Conflict of Interest**

3.3.1 A Bidder shall not have a conflict of interest (**Conflict of Interest**). A Bidder shall be considered to have a Conflict of Interest if the Bidder (and in case of a Consortium, any Member) or its Associate:

- (a) is under common Control with any other Bidder, its Member or Associate; or
- (b) has direct or indirect shareholding or other ownership interest in any other Bidder, its Member or its Associate; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or Associate in the other Bidder, its Member or Associate is less than [5% (five per cent)] of the subscribed and paid up share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund, sovereign wealth fund, multilateral institution or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act; or
- (c) is also a Member of another Bidder's Consortium; or
- (d) receives or has received any direct or indirect subsidy, grant, concessional loan, subordinated debt or other funded or non-funded financial assistance from any of the other Bidders or their Associate; or

- (e) has hired or appointed the same legal, financial or technical advisor as those hired by any of the other Bidders for this Project; or
- (f) has a relationship with any of the other Bidders, directly or through common third parties, that puts either one or both of them in a position to have access to each other's information that may influence the Bid of one or more of such Bidders, or influence the decisions of the Authority regarding the Bid Process; or
- (g) subject to Clause 25, submits more than one Bid for the Project (including through its Associates). This will result in the disqualification of all such Bids submitted by the Bidder and its Associates; or
- (h) has participated as a consultant or advisor in the preparation of the design of or technical specifications for the Project; or
- (i) has engaged any legal, financial or technical advisor of the Authority in relation to the Project for any matters related to or incidental to the Project. Provided that this disqualification shall not apply where such advisor was engaged by the Bidder, Member or its Associate but such engagement expired or was terminated [6 (six)] months prior to the issuance of this RFP or where such advisor is engaged by the Selected Bidder/Concessionaire [1 (one)] year after the COD or where such advisor provides any financial assistance to the Concessionaire for the Project.

3.4 **Fraud and Corrupt Practices**

- (a) Bidders and their respective officers, employees, agents and advisors are required to observe the highest standards of ethics during the Bid Process. Notwithstanding anything to the contrary contained in this RFP, the Authority may reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that a Bidder has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice in or affecting the Bid Process.
- (b) Without prejudice to the rights of the Authority under Clause 3.4(a) above, in the event that a Bidder is found by the Authority to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during the Bid Process, such Bidder will not be eligible to participate in any tender or request for qualification issued by the Authority for [5 (five)] years, from the date such Bidder is found by the Authority to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any of the activities mentioned above.
- (c) For the purposes of this Clause 3.4, the following terms will have the meanings given to them below:
 - (i) **corrupt practice** means: offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any Person connected with the Bid Process (for the avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or

indirectly, with the Bid Process or has dealt with matters relating to the Project or arising from it, before or after its execution, at any time prior to the expiry of [1 (one)] year from the date that such official resigns or retires from or otherwise ceases to be in the service of the Authority, will be deemed to constitute influencing the actions of a Person connected with the Bid Process);

- (ii) **fraudulent practice** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a Person to obtain a financial or any other benefit or to avoid an obligation;
- (iii) **coercive practice** means impairing or harming or threatening to impair or harm, directly or indirectly, any Person or the property of the Person to influence improperly the actions of a Person;
- (iv) **undesirable practice** means: (A) establishing contact with any Person connected or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid Process; or (B) having a Conflict of Interest (as defined in Clause 3.3); and
- (v) **restrictive practice** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating full and fair competition in the Bid Process.

3.5 Other Eligibility Criteria

- (a) If a Bidder, including any Member or its Associate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project, has been barred by the GoI, any state government, or any of their instrumentalities from participating in any project or being awarded any contract and the bar subsists on the Bid Due Date, then such Bidder will not be eligible to submit a Bid.
- (b) If a Bidder or any Member or its Associate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project has been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, then such Bidder will not be eligible to submit a Bid.
- (c) If a Bidder or any Member or its Associate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project is included as a debarred person pursuant to the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decisions of 9 April 2010 (www.crossdebarment.org), then such Bidder will not be eligible to submit a Bid.
- (d) If a Bidder or any Member or its Associate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project is included on any sanctions lists promulgated by the United Nations Security Council or its Committees, or any other recognized international sanctions list or has operations (directly or through any subsidiary) or carries out transactions that are not in compliance with the sanctions promulgated by the United Nations Security Council or its Committees, then such Bidder will not be eligible to submit a Bid

- (e) In the [3 (three)] Accounting Years immediately preceding the Bid Due Date, the Bidder, including any Member or its Associate whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project has not:
 - (i) failed to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Bidder or the Member or an Associate, as the case may be;
 - (ii) been expelled from any project or contract by the GoI or any state government, or its instrumentalities; or
 - (iii) had any contract terminated by the GoI or any state government, or its instrumentalities for breach by such Bidder or the Member or an Associate, as the case may be.
- (f) If a Bidder or Member or its Associate has entered into a contract for operation of the e-Procurement Portal, which is currently valid and subsisting, then such Bidder and its Associates will not be eligible to submit a Bid.

3.6 Additional Conditions of Eligibility

The Office Memorandum prescribes certain conditions of eligibility for Bidders from countries which share land borders with India, except those countries to which GoI has extended lines of credit or in which the GoI is engaged in development projects³⁴. The conditions of eligibility for such Bidders are as below:

- (a) Any Bidder from a country which shares a land border with India will be eligible to Bid in this tender only if such Bidder is registered with the registration committee constituted pursuant to the Office Memorandum, i.e., the competent authority.

In case of such Bidder being a Consortium, all Members of the Consortium should be registered with the competent authority.

- (b) For the purpose of this Clause 3.6, "Bidder from a country which shares a land border with India" means:
 - (i) an entity incorporated, established or registered in such a country; or
 - (ii) a subsidiary of an entity incorporated, established or registered in such a country; or
 - (iii) an entity substantially 'controlled' through entities incorporated, established or registered in such a country; or
 - (iv) an entity whose 'beneficial owner' is situated in such a country; or

³⁴ Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken by the Government of India are given on the website of the Ministry of External Affairs, Government of India.

- (v) an Indian (or other) agent of such an entity; or
 - (vi) a Consortium where any Member of the Consortium falls under any of the above provision of this sub-clause 3.6(b).
- (c) A "beneficial owner" for the purpose of sub-Clause 3.6(b) above will be the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a 'controlling ownership interest' or who exercises control through other means.

Explanation: (i) 'controlling ownership interest' for the purpose of sub-clause 3.6(c) means ownership or entitlement to more than twenty five percent of Equity of the company;

(ii) 'control' for the purpose of sub-clause 3.6(b) and sub-clause 3.6(c) shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

Where no natural person is identified, the beneficial owner is the natural person who holds the position of senior managing official.

- (d) For the purpose of sub-Clause 3.6(b), an agent is a person employed to do any act for another, or to represent another in dealings with any third person.
 - (e) All other provisions of the Office Memorandum (except para 11 of the Office Memorandum), whether or not expressly stated in this RFP, will be applicable to this tender and the aforesaid clauses will be interpreted in line with the Office Memorandum.
- 3.7 Bidders will provide such evidence of their continued eligibility as the Authority may request at any time during or after the Bid Process.
- 3.8 If a Bidder is a Consortium, then the term "**Bidder**" as used in Clause 3.3 and Clause 3.4 shall include each Member of such Consortium, and the term "**Associate**" as used in Clause 3.3 and Clause 3.5 shall include Associates of each Member of the Consortium.

4 QUALIFICATION CRITERIA

The Bidders should satisfy the following minimum technical criteria and financial criteria set out in Clause 4.1 and Clause 4.2 respectively to qualify for evaluation of the Financial Proposals:

4.1 Technical Criteria

To demonstrate its technical capacity and experience (**Technical Capacity**), the Bidder must have the following experience in order to be eligible to have its Financial Proposal evaluated:

- (a) Development/Design and Construction Experience
 - (i) In the [7 (seven)] years preceding the Bid Due Date, the Bidder shall have developed and/or designed and constructed at least:

- (A) [1 (one)] waste to electricity facility capable of handling and processing at least [*insert the quantity equivalent to 80% (eighty per cent) of the Design Capacity*] TPD of solid waste; or
- (B) [2 (two)] waste to electricity facilities capable of handling and processing at least [*insert the quantity equivalent to 50% (fifty per cent) of the Design Capacity*] TPD of solid waste each; or
- (C) [3 (three)] waste to electricity facilities capable of handling and processing at least [*insert the quantity equivalent to 40% (forty per cent) of the Design Capacity*] TPD of solid waste each,

in each case, as evidenced by a certification to be provided by the relevant government authority/client in the format set out in **Annex 5A**.

- (ii) Any waste to electricity facility that a Bidder seeks to rely on to demonstrate development/design and construction experience under Clause 4.1(a)(i) above should have been:

- (A) successfully operational for at least [365 (three hundred sixty five)] consecutive days in the [7 (seven)] years preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such facility(ies); and
- (B) developed or designed and constructed to comply with the emission standards set out in Table 1 of the Environmental, Health, and Safety Guidelines for Waste Management Facilities dated December 10, 2007,

in each case, as evidenced by a certification to be provided by the relevant government authority/client in the format set out in **Annex 5A** of the RFP.

(b) Operation and Maintenance Experience

- (i) In the [7 (seven)] years preceding the Bid Due Date, the Bidder shall have successfully operated and maintained either:

- (A) [1 (one)] waste to electricity facility capable of handling and processing at least [*insert the quantity equivalent to 80% (eighty per cent) of the Design Capacity*] TPD of solid waste; or
- (B) [2 (two)] waste to electricity facilities capable of handling and processing at least [*insert the quantity equivalent to 50% (fifty per cent) of the Design Capacity*] TPD of solid waste each; or
- (C) [3 (three)] waste to electricity facilities capable of handling and processing at least [*insert the quantity equivalent to 40% (forty per cent) of the Design Capacity*] TPD of solid waste each.

(ii) Any waste to electricity facility that a Bidder seeks to rely on to demonstrate O&M experience under this Clause 4.1(b) should have been:

- (A) successfully operated and maintained for any [365 (three sixty five)] consecutive days in the [7 (seven)] years preceding the Bid Due Date, in accordance with the relevant concession agreement or similar contract executed for such facility(ies); and;
- (B) operated and maintained to comply with the emission standards set out in Table 1 of the Environmental, Health, and Safety Guidelines for Waste Management Facilities dated December 10, 2007,

(collectively, the **O&M Capacity**),

in each case, as evidenced by a certification to be provided by the relevant government authority in the format set out in **Annex 5B**.

(c) It is clarified that:

- (i) the Bidder must demonstrate both development/design and construction experience specified in Clause 4.1(a) above and O&M experience specified in Clause 4.1(b) above to be technically qualified for evaluation of the Financial Proposals;
- (ii) to claim development/design and construction experience, the entity claiming experience should have been appointed as the principal contractor (i.e., the contractor hired directly by the owner of the project/entity developing the relevant waste to electricity facility) and any other subcontractor experience is not permitted for claiming Technical Capacity;
- (iii) the Bidder/Member may rely on the experience of its Associate(s) to demonstrate the Technical Capacity;
- (iv) if any project used to demonstrate Technical Capacity was undertaken by the Bidder or any Member through an unincorporated joint venture, consortium or partnership, that project will be considered as experience of the Bidder or Member for the purposes of this section only if the capital expended by the Bidder or Member or payments received by the Bidder or Member, prior to the Bid Due Date, was at least [26% (twenty six per cent)] of the total project/contract value, as evidenced by a statutory auditor's certificate;
- (v) in case of a Consortium, if the Consortium seeks to demonstrate development experience of waste to electricity facilities on the basis of more than 1 (one) such facility, then each of the waste to electricity facility should have been developed by the same Member;
- (vi) in case of a Consortium, the development experience of the waste to electricity set out in Clause 4.1(a), may be demonstrated by one Member and the O&M experience of the waste to electricity facilities, set out in Clause 4.1(b), may be demonstrated by a different Member;

- (vii) in case of a Consortium, if the Consortium seeks to demonstrate O&M experience of the waste to electricity facilities on the basis of more than 1 (one) such facility, then each of waste to electricity facility should have been operated and maintained by the same Member;
- (viii) if the Consortium is subsequently declared the Selected Bidder, then each Member of the Consortium whose experience was relied upon for the purposes of demonstrating that the Consortium has the Technical Capacity to undertake the Project must hold not less than [10% (ten per cent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD. Provided further that, the Member of the Consortium whose experience was relied upon for the purposes of demonstrating that the Consortium has the O&M Capacity to undertake the Project must hold not less than [10% (ten per cent)] of the total Equity Contribution and voting rights of the Concessionaire for the term of the Agreement.
- (ix) subject to Clause 18.2, for certificates claiming technical experience, that are issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the certificate is being issued. However, the certificates provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if they carry a conforming apostille certificate.

4.2 Financial Criteria

To demonstrate its financial capacity to undertake the Project (**Financial Capacity**), the Bidder must meet each of the financial qualification criteria specified in this Clause 4.2.

- (a) In the Accounting Year immediately preceding the Bid Due Date, the Bidder's net worth (as per the annual financial statements) should be at least INR [●]³⁵ (**Net Worth**), as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member), or of the Associate whose Financial Capacity is being relied upon.
- (b) The Bidder should have an average Annual Turnover of at least INR [●]³⁶ in the [3 (three)] Accounting Years immediately preceding the Bid Due Date (as per the annual financial statements) (**Average Annual Turnover**), as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member), or of the Associate whose Financial Capacity is being relied upon.
- (c) If the Bidder is a Consortium, then the Net Worth, as specified in Clause 4.2(a) above and the Average Annual Turnover, as specified in Clause 4.2(b) above, may be demonstrated cumulatively, i.e., the Consortium as a whole can meet the requirement. Provided that, if the Bidder is subsequently declared the Selected Bidder, then the Member(s) of the Consortium whose Net Worth and/or Average Annual Turnover was

³⁵ **Drafting Note:** The minimum Net Worth set out should be equal to [25% (twenty-five per cent)] of the total project cost (as set out in limb (c) of the definition of total project cost under the Agreement).

³⁶ **Drafting Note:** The minimum average Annual Turnover set out should be equal to [50% (fifty per cent)] of the total project cost (as set out in limb (c) of the definition of total project cost under the Agreement).

assessed for the purposes of demonstrating that the Consortium has the Financial Capacity to undertake the Project, must hold not less than [10% (ten per cent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD.

- (d) A Bidder is permitted to rely on the Net Worth and Average Annual Turnover of its Associate(s), either wholly or in part, for demonstrating its Financial Capacity. Provided that, if a Bidder is relying on the financial credentials of its Associate to demonstrate the Financial Capacity, the Bidder shall be required to submit a board resolution of the Associate(s) whose financial credentials are being relied upon by the Bidder, resolving to undertake to invest the entire Equity Contribution committed by the Bidder (or in case of a Consortium, resolving to undertake to invest the proportionate share in the Equity Contribution committed by the relevant Member) and to submit the bank guarantees required under the Project Agreements, in case the Bidder fails to do so.
- (e) The calculation of the Net Worth must be based on the unconsolidated audited annual accounts in case of a Bidder and, if relevant, an Associate. Provided that if a Bidder is relying on its Associate's experience, in accordance with Clause 4.2(d), where such Bidder Controls such Associate, then the Net Worth will be calculated based on the audited consolidated annual accounts of the Bidder.
- (f) The Net Worth and Average Annual Turnover requirement for demonstrating the Financial Capacity, both for Companies incorporated on or before [*insert cut-off date of incorporation*] as well as new Companies (i.e., those incorporated after [*insert cut-off date of incorporation*]), can also be met by the Bidder, as on the day not more than [7 (seven)] days prior to the Bid Due Date. In order to meet this requirement, the Bidder must submit a certificate from a chartered accountant certifying the Net Worth and Average Annual Turnover on the date not more than [7 (seven)] days prior to the Bid Due Date.

Provided that, if such Bidder is chosen as the Selected Bidder, the Bidder will submit the audited accounts for the period for which it submitted a chartered accountant certificate to certify the Net Worth and/or Average Annual Turnover prior to the Appointed Date. If the Net Worth and/or Average Annual Turnover according to such audited accounts does not meet the minimum Net Worth and/or Average Annual Turnover criteria, as the case may be, required in Clause 4.2 (a) and 4.2(b) respectively, then the Authority shall have the right to treat such event as a Concessionaire event of default and terminate the Agreement.

- (g) Subject to this Clause 4.2(g), the calculation of Net Worth and Average Annual Turnover must be based on the audited annual accounts of the Bidder for the preceding Accounting Years. If the annual accounts for the Accounting Year immediately preceding the Bid Due Date are not audited, the Bidder shall provide the provisional annual accounts for such Accounting Year. If the Bidder is unable to submit its provisional accounts for such Accounting Year, the Bidders may submit the audited annual accounts for the Accounting Year immediately preceding the last Accounting Year.

If the Bidder has submitted provisional annual accounts for the last Accounting Year or audited annual accounts for the Accounting Year immediately preceding the last Accounting Year in accordance with this Clause 4.2(g), the Bidder shall also submit an undertaking to the effect that:

- (i) if it is chosen as the Selected Bidder, the Bidder will submit the audited annual accounts for the Accounting Year immediately preceding the Bid Due Date prior to the Appointed Date; and
- (ii) the Net Worth and Average Annual Turnover as per such audited annual accounts shall meet the minimum Net Worth and Average Annual Turnover criteria required in Clause 4.2 (a) and 4.2 (b) respectively.

If the Selected Bidder has submitted provisional accounts for the Accounting Year immediately preceding the Bid Due Date or audited annual accounts for the Accounting Year preceding the last Accounting Year with its Bid and submitted the audited accounts for the last Accounting Year prior to the Appointed Date, and as per such audited annual accounts, the Selected Bidder does not meet the minimum Net Worth or Average Annual Turnover criteria as required in Clause 4.2 (a) or 4.2 (b), then the Authority shall have the right to treat such event as a Concessionaire event of default and terminate the Agreement.

- (h) For the purposes of demonstrating the Financial Capacity, if Bidders provide financial data in currency other than INR, they must provide the Net Worth and Average Annual Turnover equivalent in Indian Rupees, calculated using the RBI Reference Rate for the relevant currency against INR, prevailing as on [*insert date of RBI Reference Rate*].
- (i) The Bidder (and in case of a Consortium, any Member) or any Associate of the Bidder whose Financial or Technical Capacity is being relied upon is not affected by and has not been affected by any of the following events, conditions or circumstances in the [3 (three)] Accounting Years immediately preceding the Bid Due Date, as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member) or Associate:
 - (i) has not been categorized as a willful defaulter in accordance with the laws of the country of its incorporation; or
 - (ii) has not been admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016; or
 - (iii) has not entered into any compromise with its creditors, or been subject to proceedings for being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
 - (iv) has not been declared by a court or other competent authority as being unable to pay its debts, or having had the repayment of its debts suspended.
- (j) The Bidder (and in case of a Consortium, any Member or any Associate of the Bidder whose Financial or Technical Capacity is being relied upon) has not been convicted or otherwise being found responsible (or having any of its directors, partners, trustees,

officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:

- (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the relevant entity or any of its directors, partners, trustees, officers or managers; or
- (ii) resulted in the permanent or temporary suspension of the rights of the Bidder to provide any service or carry on any type of business or operations.

**SECTION III
INSTRUCTION TO BIDDERS**

PART A. GENERAL

5 SCOPE OF RFP

- 5.1 The Authority wishes to receive Bids in accordance with this RFP for award of the Project.
- 5.2 The RFP must be read as a whole. If any Bidder finds any ambiguity or lack of clarity in this RFP, the Bidder must inform the Authority at the earliest. The Authority will then direct the Bidders regarding the interpretation of the RFP. If any discrepancy, ambiguity, or contradiction arises between the terms of the RFP and the Agreement in relation to:
- (a) the Bid Process, the provisions of the RFP shall prevail; and
 - (b) the scope of services or any other terms or conditions of the Agreement, the provisions of the Agreement shall prevail.

6 ACKNOWLEDGEMENT BY THE BIDDER

- 6.1 It shall be deemed that by submitting the Bid, the Bidder has:
- (a) made a complete and careful examination of the RFP (including all instructions, forms, terms and specifications) and any other information provided by the Authority under this RFP and the Bidder acknowledges that its submission of a Bid that is not substantially responsive to the RFP in every respect will be at the Bidder's risk and may result in rejection of the Bid;
 - (b) received all relevant information requested from the Authority;
 - (c) accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority;
 - (d) satisfied itself about all things, matters and information, necessary and required to submit a Bid;
 - (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the RFP or ignorance of any matter in relation to the Project shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations or loss of profits or revenue from the Authority, or a ground for termination of the Agreement;
 - (f) satisfied itself regarding the suitability of the site conditions (including the identified substation) to undertake the Project;
 - (g) satisfied itself regarding the terms and conditions of the PPA and the adequacy of the [Feed-in Tariff] / [Quoted Tariff] for sale of electricity generated from the Project;³⁷

³⁷ **Drafting Note:** To be modified based on whether the project will be awarded through tariff-based bidding or a fixed feed-in tariff.

- (h) agreed to be bound by the undertakings provided by it under and in terms of this RFP; and
- (h) acknowledged and agreed to be bound by the Office Memorandum and its subsequent amendments and clarifications.

6.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or relating to the RFP or the Bid Process.

7 RIGHTS OF THE AUTHORITY

7.1 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (a) suspend the Bid Process and/or amend and/or supplement the Bid Process or modify the dates or other terms and conditions relating thereto;
- (b) consult with any Bidder in order to receive clarification or further information at any stage of the Bid Process;
- (c) retain any information, documents and/or evidence submitted to the Authority by and/or on behalf of any Bidder;
- (d) independently verify, disqualify, reject and/or accept any and all documents, information and/or evidence submitted by or on behalf of any Bidder;
- (e) reject any Bid, if:
 - (i) at any time, a material misrepresentation is made or uncovered;
 - (ii) the Bidder in question does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid; or
 - (iii) the Authority finds any Bid to be unreasonable, impractical or unviable.
- (f) accept or reject a Bid, annul the Bid Process and reject all Bids, at any time, without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons whatsoever to any Person, including the Bidders.

If the Authority annuls the Bid Process and rejects all Bids, it may in its sole discretion invite fresh Bids for the Project.

7.2 If the Authority exercises its right under this RFP to reject a Bid and consequently, the Preferred Bidder for the Project gets disqualified or rejected, then the Authority reserves the right to:

- (a) invite the qualified Bidder with the next best quote to match the quote offered by the Preferred Bidder (i.e., the Best Quote) and extend the validity of their Earnest Money Deposit (if required);
- (b) if such qualified Bidder matches the quote of the Preferred Bidder, then such qualified Bidder will be declared the Preferred Bidder;
- (c) if such qualified Bidder fails to match the Preferred Bidder's quote, then the Authority may take any such measures as it may deem fit in the sole discretion of the Authority, including: (i) inviting the qualified Bidder with the next best quote to match the Bid of the Preferred Bidder; or (ii) annulling the entire Bid Process.

7.3 If it is found during the Bid Process, at any time before signing the Agreement or after its execution and while it is in force, that one or more of the Qualification Criteria and/or the Eligibility Criteria have not been met by a Bidder or that the Bidder has ceased to meet them, or a Bidder has made material misrepresentations or has given any materially incorrect or false information, then such Bidder will be disqualified.

If such Bidder has been declared as the Selected Bidder and has already been issued the LOA or has entered into the Agreement, the LOA or the Agreement, as the case may be, shall be liable to be terminated, by a notice in writing from the Authority to the Selected Bidder.

7.4 Upon any disqualification, cancellation, or termination in accordance with this Clause 7, the Authority will not be liable in any manner whatsoever to the Bidder. Additionally, the Authority will have the right to forfeit and appropriate the Earnest Money Deposit or, as the case may be, appropriate an equivalent amount from the Performance Security if the Agreement has been executed, as a mutually agreed genuine pre-estimate of the loss suffered by the Authority as a result of such cancellation, disqualification, or termination. Such forfeiture will be without prejudice to any other right or remedy that the Authority may have under the RFP, the Agreement or applicable laws.

8 CLARIFICATIONS ON THE RFP

8.1 Clarifications and Queries

- (a) If a Bidder requires any clarification on or has any query in relation to the RFP, it should submit such query or request for clarification on the e-Procurement Portal or send such query or request for clarification to the Authority by e-mail to [*insert email ID*]. In case of any e-mail queries or clarifications, the subject of the e-mail must clearly bear the following subject: "[*Insert name of the Project*] Waste to Electricity Facility PPP Project: Clarifications and Request for Additional Information". All queries or clarification requests should be received on or before the date and time mentioned in the Bid Schedule.
- (b) The Authority shall make reasonable efforts to respond to the queries or requests for clarifications on or before the date mentioned in the Bid Schedule. However, the Authority reserves the right to not respond to any query or provide any clarification, in its sole discretion. The Authority's responses (including an explanation of the query but not identification of its source) will be made available to all the Bidders and shall be uploaded on the e-Procurement Portal.

- (c) The Authority may, on its own initiative, if deemed necessary, issue clarifications to all the Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of this RFP. Should the Authority deem it necessary to amend the RFP as a result of a request for clarification, it will do so following the procedure under Clause 9.
- (d) It shall be the responsibility of the Bidders to check the e-Procurement Portal for the response to the queries or requests for clarifications. the Authority may, but shall not be obliged to, communicate with the Bidders by e-mail, notice or any other means it may deem fit about the issuance of the clarifications.
- (e) Verbal clarifications and information given by the Authority or any other Person for or on its behalf shall not in any way or manner be binding on the Authority.

8.2 Pre-Bid Meeting and Site Visit

- (a) All interested Companies shall be invited to attend the Pre-Bid Meeting on the date, time and place mentioned in the Bid Schedule. The purpose of the Pre-Bid Meeting will be to clarify issues and answer questions on any matter relating to the RFP, the Bid Process and the Project.
- (b) All interested Companies may nominate up to [3 (three)] authorised representatives to participate in the Pre-Bid Meeting, by confirming the participation of its authorised representatives at the Pre-Bid Meeting at least [2 (two)] days prior to the date of the Pre-Bid Meeting. Such confirmation shall be sent by e-mail to: [*insert email-ID*].
- (c) During the course of the Pre-Bid Meeting, attendees will be free to seek clarifications and make suggestions to the Authority.
- (d) Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of an interested Company from participating in the Bid Process.
- (e) The Authority will also organize a Project Site visit on the day set out in the Bid Schedule. Bidders interested in participating in this Site visit must confirm their attendance at least [3 (three)] days prior to the date of the Site visit by sending an email to [*insert email-ID*]. A maximum of [3 (three)] representatives for each Bidder shall be allowed to attend the Project Site visit.
- (f) In addition to the Project Site visit organized by the Authority as set out in Clause 8.2 (e) above, the Bidders may also carry out such Project Site inspections as may be required to submit their Bids at any time prior to the Bid Due Date. The Authority shall facilitate such Project Site visits provided that the Bidder gives the Authority at least [2 (two)] days' prior written notice of its intention to visit the Project Site.
- (g) The Authority will organize an inspection of the Acceptable Waste on the day set out in the Bid Schedule. Interested Bidders must confirm their attendance at least [3 (three)] days prior to the date of the inspection by sending an email to [*insert email address*]. A maximum of [3 (three)] representatives for each Bidder shall be allowed to attend the inspection.

9 AMENDMENT OF THE RFP

- 9.1 Up until the date that is mentioned in the Bid Schedule, the Authority may, for any reason, whether on its own initiative or in response to a query raised or clarifications requested by a Bidder in writing, amend the RFP by issuing an Addendum or an amended RFP and amended draft Agreement.
- 9.2 All Addenda/amendments will be issued on the e-Procurement Portal.
- 9.3 The Bidders are required to read the RFP with any Addenda/amendments that may be issued in accordance with this Clause 9.
- 9.4 Each Addendum/amendment will be binding on the Bidders.
- 9.5 Any oral statements made by the Authority or its advisors regarding the Bid Process, the RFP or on any other matter, shall not be considered as amending the RFP.
- 9.6 The Authority will assume that the information contained in the Addendum/amendments will have been taken into account by the Bidder in its Bid. The Authority assumes no responsibility for the failure of a Bidder to submit the Bid in accordance with the terms of the Addendum/amendments or for any consequent losses suffered by the Bidder.

10 AVAILABILITY OF INFORMATION

- 10.1 The information relating to or in connection with the Project, the Bid Process and this RFP, including all notices issued by the Authority to all Bidders in accordance with this RFP; queries and responses or clarifications and any Addenda will be uploaded on the e-Procurement Portal.
- 10.2 All such information will be made available for review by the Bidders until the Bid Due Date.
- 10.3 If a Bidder faces any technical issue or technical error in accessing the e-Procurement Portal, the Bidder may seek assistance from the Authority by sending an e-mail request to [*insert e-mail ID*], at any time prior to the Bid Due Date.
- 10.4 The Authority will use its best endeavours to respond to a written e-mail request and resolve the technical issue or error or provide an alternative solution to the Bidder at its earliest convenience.

11 CORRESPONDENCE WITH BIDDERS

- 11.1 Save as expressly provided in this RFP, the Authority will not entertain any correspondence with the Bidders, whether in connection with the acceptance or rejection of their Bids or otherwise.

12 CONFIDENTIAL INFORMATION AND PROPRIETARY DATA

12.1 Proprietary Data

All documents and other information provided by the Authority or submitted by a Bidder to the

Authority will remain or become the property of the Authority, as the case may be. Bidders should not use any information provided by the Authority in connection with the Bid Process for any purpose other than for preparation and submission of their Bids.

12.2 Confidentiality Obligations of the Authority

The Authority will treat all information, submitted as part of a Bid as confidential and will require all those who have access to such material to treat it in confidence. The Authority may not divulge any such information or any information relating to evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;
- (b) such publication is made to any Person who is officially involved with the Bid Process or is a retained professional advisor advising the Authority or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the Authority or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

13 GOVERNING LAW AND JURISDICTION

13.1 Governing Law

The Bid Process, this RFP and the Bids shall be governed by, and construed in accordance with, the laws of India.

13.2 Exclusive Jurisdiction

The competent courts at [*insert name of city which should have exclusive jurisdiction*] shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid Process, this RFP and the Bids.

14 VALIDITY OF THE BIDS

14.1 The Bids shall remain valid for a period of [180 (one hundred and eighty)] days from the Bid Due Date. A Bid valid for a shorter period shall be rejected by the Authority as being non-responsive.

14.2 In exceptional circumstances, prior to the expiry of the Bid validity period, the Authority may request Bidders to extend the Bid validity period. A Bidder may choose to accept or reject the Authority's request for extension of the Bid validity period. If the Bidder agrees to an extension of the Bid validity period, the Bidder shall also extend the validity of the Earnest Money Deposit accordingly. If the Bidder does not accept the Authority's request for extension of the Bid

validity period, then the Authority will return the Earnest Money Deposit of such Bidder no later than [30 (thirty)] days after the expiry of the original Bid validity period.

PART B. EARNEST MONEY DEPOSIT AND PERFORMANCE SECURITY

15 EARNEST MONEY DEPOSIT

- 15.1 The Bidder shall furnish as part of its Bid, an earnest money deposit for the Project (**Earnest Money Deposit**). The Earnest Money Deposit shall be for an amount equivalent to INR [●]³⁸.
- 15.2 The Bidder shall provide the Earnest Money Deposit in the form of an unconditional, irrevocable, and on-demand bank guarantee issued by a Scheduled Bank. The bank guarantee for the Earnest Money Deposit shall be issued in favour of the "[insert name of the Authority]", represented by the [Commissioner/CEO/CO/EO/Chairman], the Authority payable at [insert the city where the Authority is located] and in the format set out in **Annex 8**.
- 15.3 The Earnest Money Deposit shall remain valid for a period of [30 (thirty)] days beyond the Bid validity period specified in Clause 14 (inclusive of claim period), as may be extended in accordance with Clause 14.2.
- 15.4 If any Bid is not accompanied by the bank guarantee for the Earnest Money Deposit, then such Bid shall be rejected by the Authority as non-responsive. Unless forfeited in accordance with Clause 15.5 below, the Earnest Money Deposit of the unsuccessful Bidders will be returned by the Authority no later than [30 (thirty)] days after the expiry of the Bid validity period (specified in Clause 14) or within [7 (seven)] days from the execution of the Agreement with the Selected Bidder, whichever is earlier.

The Earnest Money Deposit of the Selected Bidder will be returned upon the Selected Bidder furnishing the Performance Security in accordance with Clause 16. If the Earnest Money Deposit is scheduled to expire prior to the submission of the Performance Security by the Selected Bidder, then the Authority shall be entitled to drawdown the total amount available under the Earnest Money Deposit and retain such amount as cash security until such time that the Selected Bidder submits the Performance Security.

- 15.5 The Earnest Money Deposit shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and damages payable to the Authority, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:
- (a) if a Bidder engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as specified in Clause 3.4;
 - (b) if a Bidder is disqualified in accordance with, Clause 3.2 (*Lock-in Restrictions and Change in Control*), Clause 3.3 (*Conflict of Interest*), Clause 3.5 (*Other Eligibility Criteria*), and Clause 7.3 (*Rights of the Authority*);
 - (c) if a Bidder withdraws its Bid; or
 - (d) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:

³⁸ **Drafting Note:** Earnest Money Deposit should be an amount equal to [1% (one per cent)] of the total project cost (as set out in limb (c) of the definition of total project cost under the Agreement).

- (i) sign and return, as acknowledgement, the duplicate copy of the LOA, in accordance with Clause 30;
- (ii) furnish the Performance Security, in accordance with Clause 16;
- (iii) fulfil any other condition precedent to the execution of the Agreement; or
- (iv) fails to execute or cause the Concessionaire to execute the Agreement, in accordance with Clause 31.

16 PERFORMANCE SECURITY

- 16.1 The Selected Bidder shall furnish to the Authority a Performance Security of INR [●]³⁹, on or before the execution of the Agreement, to secure the obligations of the Concessionaire under the Agreement (the **Performance Security**).
- 16.2 The Selected Bidder shall provide the Performance Security in the form of an unconditional, irrevocable, and on-demand bank guarantee issued by a Scheduled Bank. The Performance Security shall be issued in favour of "[insert name of the Authority]", represented by the Commissioner, the Authority payable at [insert the city where the Authority is located] and in the format set out in the Agreement.
- 16.3 If the Selected Bidder fails to furnish the Performance Security in accordance with this Clause 16 on or before the execution of the Agreement, then the Authority shall have the right to appropriate the Earnest Money Deposit of the Selected Bidder which shall be forfeited in accordance with Clause 15.5(d)(ii).

³⁹ **Drafting Note:** The Performance Security should be in an amount equal to [10% (ten per cent)] of the total project cost (as set out in limb (c) of the definition of total project cost under the Agreement).

PART C. PREPARATION AND SUBMISSION OF BIDS

17 NUMBER OF BIDS

Subject to Clause 25, a Company shall be permitted to submit only 1 (one) Bid for the Project, either individually or as a Member of a Consortium. A Company applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be. A Company which submits or participates in more than 1 (one) Bid for the Project shall cause all the Bids with the Company's participation to be disqualified.

18 LANGUAGE OF BIDS AND CORRESPONDENCE

18.1 The Bid prepared by the Bidder and all correspondence and documents related to the Bid exchanged by the Bidder and the Authority shall be in English.

18.2 Any document furnished by the Bidder may be in another language, as long as such document is accompanied by an English translation, in which case, for purposes of interpretation of the Bid, the English translation shall take precedence. If any document submitted by a Bidder is in a local language, then the English translation must be certified by an advocate and notarised. If any document submitted by a Bidder is in a foreign language, then the English translation must be certified by the embassy/consulate/high commission of the relevant foreign country in India or the Ministry of Foreign/External Affairs or any other relevant ministry empowered to certify such English translations in the foreign country where the project is situated. Supporting materials which are not translated into English or certified/notarised in accordance with this Clause 18.2 may not be considered by the Authority.

19 BID DUE DATE

19.1 The Bid shall be submitted on or before the date, time and at the place specified in the Bid Schedule.

19.2 The Authority may, at its discretion and for any reason, extend the Bid Due Date for all Bidders by issuing an Addendum in accordance with Clause 9, in which case all rights and obligations of the Authority and the Bidders will thereafter be subject to the Bid Due Date as extended.

19.3 Bids received by the Authority after the specified time on the Bid Due Date will not be eligible for consideration and will be summarily rejected.

20 QUALIFICATION PROPOSAL

20.1 The Qualification Proposal submitted by a Bidder shall comprise the following:

- (a) bid letter in the format set out in **Annex 1**;
- (b) description of the Bidder/Members in the format set out in **Annex 2**;
- (c) power of attorney in the format set out in **Annex 3A**, executed by the Bidder or the Lead Member authorizing the signatory of the Bid to commit the Bidder;

- (d) certificate issued by the statutory auditor of the Bidder or Member, in the format set out in **Annex 4**, certifying the Net Worth and Average Annual Turnover of the Bidder or Member or Associate, as the case may be, and compliance with other financial qualification criteria specified in Clause 4.2;
- (e) if applicable, certificate issued by a statutory auditor certifying the relationship of the Bidder (or in case of a Consortium, the relevant Member) with the Associate(s) whose: (A) experience is being relied upon to demonstrate Technical Capacity; and/or (B) Net Worth and/or Average Annual Turnover is being relied upon to demonstrate Financial Capacity, in the format set out in **Annex 6**;
- (e) details of the waste to electricity facility(ies) for which the Bidder is claiming development/design and construction experience, certified by the relevant government authority/client in the format specified in **Annex 5A**;
- (f) if applicable, for each waste to electricity facility for which the Bidder is claiming design and construction experience, a certificate from the implementing agency (i.e., the government authority undertaking the project), certifying that the relevant facility has been successfully operational for at least [365 (three hundred and sixty five)] consecutive days in the [7 (seven)] years immediately preceding the Bid Due Date and confirming the details set out in rows 10, 11, and 12 of **Annex 5A**;
- (g) details of the waste to electricity facility(ies) for which the Bidder is claiming O&M experience, certified by the relevant government authority, in the format specified in **Annex 5B**;
- (h) if applicable, a certificate from its statutory auditor certifying the percentage of the cost (of the total project cost) expended/received by the Bidder or in case of a Consortium, the relevant Member, in developing the waste to electricity facility(ies) in the format set out in **Annex 7**;
- (i) bank guarantee for Earnest Money Deposit in the format set out at **Annex 8**;
- (j) unconsolidated audited annual accounts of the Bidder (including profit and loss statements) and Associate(s) (if applicable) for the Accounting Year immediately preceding the Bid Due Date. If the Bidder is relying on the Financial Capacity of an Associate where it Controls such Associate, then audited consolidated annual accounts of the Bidder should be submitted;
- (k) self-attested copies of the certificate of incorporation, memorandum of association and articles of association. If the Bidder is a Consortium, then each Member shall submit self-attested copies of its certificate of incorporation, memorandum of association and articles of association;
- (l) a UTR Receipt evidencing the transfer of INR [●] as the Bid Document Fee to the account of the [●] (as set out in Clause 2.7);
- (m) if required as per Clause 3.6 above, a certificate required under the Office Memorandum, in the format set out in **Annex 10**; and

- (n) if applicable, a board resolution of the Associate(s) whose financial credentials are being relied upon by the Bidder, resolving to undertake to invest the entire Equity Contribution committed by the Bidder (or in case of a Consortium, resolving to undertake to invest the proportionate share in the Equity Contribution committed by the relevant Member) and to submit the bank guarantees required under the Project Agreements, in case the Bidder fails to do so.

20.2 If the Bidder is a Consortium, then in addition to the documents set out above, it will be required to submit the following documents:

- (a) Power of attorney in the format set out at **Annex 3B**, executed by the Members of the Consortium authorizing the Lead Member of the Consortium to act on behalf of and commit the Consortium; and
- (b) Joint bidding agreement in the format set out at **Annex 9**.

21 FINANCIAL PROPOSAL

21.1 Bidders are required to populate the Financial Proposal format provided on the e-Procurement Portal with the applicable [[Grant] / [Processing Fee] / [Quoted Tariff⁴⁰]]⁴¹.

21.2 For the purposes of evaluating Financial Proposals only the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴² quoted by the Bidders will be considered.

21.3 If a Bidder quotes more than 1 (one) figure for the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴³, then the Financial Proposal of such Bidder will be deemed to be non-responsive.

22 COST AND CURRENCY OF BIDS

22.1 The Bidders will bear their own costs associated with or relating to the preparation and submission of their Bids, including copying, postage, delivery charges and expenses associated with any presentations which may be required by the Authority, or any other costs incurred in connection with or relating to their Bids, including any costs incurred on conducting any due diligence. All such costs and expenses will be borne by the Bidders and the Authority, and their employees and advisors will not be liable in any manner whatsoever for such costs and expenses, regardless of the conduct or outcome of the Bid Process.

22.2 All amounts in the Bid should be stated in Rupees.

23 SIGNING OF BIDS

23.1 Each Bidder (and in case of a Consortium, the Lead Member) must use the digital signature of its authorised signatory while uploading the soft copy of the Qualification Proposal to the e-Procurement Portal.

⁴⁰ **Drafting Note:** For the purpose of this draft, we have assumed that that the Preferred Bidder will be determined on the basis of the initial quoted tariff and that there will be no reverse bidding mechanism (which is usually adopted in recent renewable PPA tender documents). To the extent a reverse auction for the tariff is contemplated, appropriate provisions in relation to such process will need to be included in the draft.

⁴¹ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁴² **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁴³ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

24 MARKING, SEALING AND SUBMISSION OF BIDS

- 24.1 Each Bidder is required to upload a soft copy/scanned copy of its Qualification Proposal (including all the documents listed in Clause 20 above) on the e-Procurement Portal. The maximum file size of each file uploaded on the e-Procurement Portal by the Bidder as part of its Bid should not exceed [•] MB.
- 24.2 While uploading the Qualification Proposal on the e-Procurement Portal, Bidder must ensure that files containing the Qualification Proposal and scanned copies of the bank guarantee for the Earnest Money Deposit and the UTR Receipt for the Bid Document Fee are uploaded under the relevant heads in a PDF format. The Bidder shall be required to fill all mandatory forms and fields indicated in the e-Procurement Portal at the time of uploading the Qualification Proposal.
- 24.3 The Bidders should ensure the legibility of the documents uploaded to the e-Procurement Portal.
- 24.4 The Bidder shall upload the Qualification Proposal and populate the Financial Proposal format provided on the e-Procurement Portal sufficiently before the specified time on the Bid Due Date to avoid any technical issues or malfunction in the network caused by heavy traffic of Bidders on the Bid Due Date. The Authority will not be responsible for any failure, malfunction or breakdown of the electronic system during the e-procurement process.
- 24.5 The Bidder will receive a system generated acknowledgement of its Bid submission to confirm successful uploading of its Bid.
- 24.6 All Bids uploaded to the e-Procurement Portal will be encrypted and the encrypted Bids can only be opened by the authorised representatives of the Authority at or after the specified time on the Bid Due Date.
- 24.7 It is clarified that the Bidder will not be required to submit a hard copy of the Qualification Proposal (except for hard copies of the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20), or the Financial Proposal format provided on the e-Procurement Portal, in which the Bidders are required to quote their [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁴, and if a hard copy of the Qualification Proposal (except for hard copies of the original bank guarantee and the POAs) or Financial Proposal is submitted, then the Bid submitted by such Bidder shall be rejected as being non-responsive.
- 24.8 The Bid will contain no alterations, omissions or additions, unless such alterations, omissions or additions are signed by the authorised signatory of the Bidder/Lead Member. Any interlineations, erasures, or overwriting will be valid only if they are signed by the authorised signatory of the Bidder/Lead Member.
- 24.9 The hard copy of the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20 will be duly sealed in an envelope, which will be super-scribed as follows:

⁴⁴ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

**"[●] WASTE TO ELECTRICITY PPP PROJECT
BID - BANK GUARANTEE AND POWER OF ATTORNEY
DO NOT OPEN BEFORE SPECIFIED TIME ON BID DUE DATE"**

24.10 The sealed envelope containing the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20 will clearly indicate the name, address and contact details of the Bidder. If the envelope is not sealed, marked and submitted as instructed in this Clause 24, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

24.11 The hard copy of the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20 will either be hand delivered or sent by registered post acknowledgement due or courier to the address below:

Attention: [*name and designation of addressee*],
[*insert name of authority*],
[*insert address of authority*]

Please note that the hard copy documents submitted by a Bidder to any address other than the above-mentioned address will not be considered for evaluation. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and will be rejected.

24.12 The Authority will not be responsible for any delays, loss or non-receipt of Bids.

25 SUBSTITUTION AND MODIFICATION OF BIDS

25.1 No Bid can be substituted or modified by the Bidder on or after the Bid Due Date. If a Bidder submits a modified Qualification Proposal and/or Financial Proposal at any time prior to the Bid Due Date, then the Authority shall consider: (i) the Qualification Proposal submitted later in time; and (ii) the Financial Proposal with the Best Quote for the purpose of evaluation of Bids.

25.2 The Bidder may modify its Bid prior to the Bid Due Date by uploading a scanned copy of a letter addressed to [*name and designation of addressee*].

25.3 Any modification to the Bid or additional information supplied after the specified time on the Bid Due Date, unless such additional information has been expressly sought for by the Authority, will be disregarded.

25.4 No Bidder shall be allowed to withdraw its Bid at any time after its submission.

PART D. OPENING AND EVALUATION OF BIDS

26 OPENING OF BIDS

26.1 The Authority will open only those Bids that are submitted on or before the specified time on the Bid Due Date. If any Bid is received after the specified time on the Bid Due Date, it will be rejected and will be returned unopened to the Bidder.

26.2 The Authority will open the soft copy of the Qualification Proposals at the time, date and place specified in the Bid Schedule.

The Qualification Proposals will be opened in the presence of the Bidders whose designated representatives choose to be present. The Bidders can also view the summary of opening of Bids by logging on to the e-Procurement Portal.

26.3 The Authority will prepare a record of the opening of the Bids that will include, as a minimum, the names of the Bidders from whom Bids have been received. The Bidders' representatives who are present will be requested to sign the record. The omission of a Bidder's representative's signature on the record will not invalidate the contents and effect of the record.

26.4 Once all the Qualification Proposals have been opened, they will be evaluated for responsiveness and to determine whether the Bidders are qualified for opening of the Financial Proposals. The procedure for evaluation of the Qualification Proposals is set out in Clause 27.

26.5 Once the Qualification Proposals have been evaluated, all Bidders whose Qualification Proposals meet the Eligibility Criteria and the Qualification Criteria, will be informed of a date, time and place for opening of their Financial Proposals. The Financial Proposals will be opened in the presence of the representatives of the qualified Bidders that choose to be present. The procedure for evaluation of the Financial Proposals is set out in Clause 28.

26.6 The qualification of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bid Process or selection will be given.

26.7 Any information contained in a Bid will not in any manner be construed as binding on the Authority, its agents, successors or assigns; but will be binding on the Bidder.

27 DETERMINATION OF RESPONSIVENESS AND EVALUATION OF QUALIFICATION PROPOSALS

27.1 The Authority will examine the Qualification Proposals to determine whether they are complete, whether the documents have been properly signed, and whether the Qualification Proposals are generally in order. If any Bidder is found to be disqualified in accordance with the terms of the RFP or if any Qualification Proposal is found to be non-responsive or not meeting the Technical Capacity or the Financial Capacity, the Bid comprising such Qualification Proposal will be rejected by the Authority and not included for further consideration. No request for alteration, modification, substitution, or withdrawal shall be entertained by the Authority in respect of such Bid.

27.2 Prior to evaluation of the Qualification Proposals, the Qualification Proposals will be evaluated

to determine responsiveness to the RFP. A Qualification Proposal, shall be considered responsive only if:

- (a) the Qualification Proposal and all documents specified in Clause 20 are received in the prescribed formats;
- (b) the Bid is uploaded by the specified time on the Bid Due Date;
- (c) hard copies of the original bank guarantee for the Earnest Money Deposit and the POAs required under Clause 20 are received by the specified time on the Bid Due Date;
- (d) it is signed, marked and uploaded as stipulated in Clauses 23 and 24;
- (e) it contains all the information and documents (complete in all respects) as requested in this RFP; and
- (f) it does not contain any condition or qualification.

27.3 The Authority shall then evaluate and determine whether the Bidders who have submitted responsive Qualification Proposals satisfy the Eligibility Criteria and the Qualification Criteria set out at Clause 3 and Clause 4 respectively.

27.4 In order to determine whether the Bidder satisfies the Eligibility Criteria set out at Clause 3 and the Qualification Criteria set out at Clause 4, the Authority will review the documentary evidence of the Bidder's eligibility and qualifications submitted by the Bidder and any additional information which the Authority seeks from the Bidder.

27.5 Where any information provided by a Bidder is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid submitted by such Bidder.

27.6 Upon completion of evaluation of the Qualification Proposals, the Authority will notify the qualified Bidders and inform them of the date and time on which their Financial Proposals will be opened. The Financial Proposals of those Bidders who do not qualify will not be opened.

28 EVALUATION OF FINANCIAL PROPOSALS

28.1 The Authority shall open the Financial Proposals of only the qualified Bidders, within [15 (fifteen)] days from the date of notification of qualified Bidders, at the time to be notified and place specified in the Bid Schedule. If there is only 1 (one) qualified Bidder, the Authority may, at its sole discretion, decide to open this Bidder's Financial Proposal.

28.2 In the presence of the representatives of the qualified Bidders that choose to be present at the opening of the Financial Proposals, the Authority shall open the Financial Proposal of each qualified Bidder and announce the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁵ quoted by such Bidder.

⁴⁵ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

- 28.3 Following the opening of the Financial Proposals, the Authority shall evaluate the Financial Proposals for responsiveness. A Financial Proposal, shall be considered responsive only if:
- (a) the Bidder has populated the Financial Proposal format provided on the e-Procurement Portal, in accordance with the instructions provided on the e-Procurement Portal;
 - (b) the Financial Proposal is not affected by the condition specified in Clause 21.3 of this RFP.
- 28.4 The Authority shall notify a qualified Bidder whose Financial Proposal is found to be non-responsive, that such qualified Bidder's Financial Proposal shall not be considered for award of the Project.
- 28.5 The Authority shall, for each qualified Bidder that has submitted a responsive Financial Proposal, tabulate the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁶.
- 28.6 Once the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁷ for each qualified Bidder that has submitted a responsive Financial Proposal has been tabulated, the Authority shall rank the qualified Bidders based on the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁸. The qualified Bidder with the Best Quote will be the Preferred Bidder.
- 28.7 If the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁴⁹ quoted by 2 (two) or more qualified Bidders is the same, then such qualified Bidders will be asked to provide their best and final offer. The best and final offer quoted by the qualified Bidders should be lower than the original [[Grant] / [Processing Fee] / [Quoted Tariff]]⁵⁰ quoted by them and the qualified Bidder offering the most advantageous best and final offer, i.e., the Best Quote shall be the Preferred Bidder.
- 28.8 If the Preferred Bidder is disqualified or rejected for any reason whatsoever, then the procedure set out in Clause 7.2 shall follow.
- 28.9 The Authority may issue a letter to invite the Preferred Bidder for negotiations, provided such negotiations shall not result in any increase in the [[Grant] / [Processing Fee] / [Quoted Tariff]]⁵¹ initially quoted by the Preferred Bidder.

29 CLARIFICATION ON BIDS

- 29.1 To facilitate evaluation of the Bids, the Authority may, in its sole discretion, seek clarifications and/or any additional information from any Bidder regarding its Bid (including if the Bid is not signed, marked and sealed in accordance with Clauses 23 and 24). Such clarification(s) will be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all responses to such clarification(s) will be in writing. Any clarification submitted by a Bidder that is not in response to a request by the Authority will not be considered.
- 29.2 If a Bidder does not provide clarifications and/or any additional information sought under

⁴⁶ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁴⁷ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁴⁸ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁴⁹ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁵⁰ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

⁵¹ **Drafting Note:** To be selected based on whether the bidding criteria is Grant, Processing Fee or Quoted Tariff.

Clause 29.1 within the prescribed time, its Bid may be liable for rejection. If the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder will be barred from subsequently questioning such interpretation of the Authority.

PART E. AWARD OF PROJECT

30 LETTER OF AWARD (LOA)

- 30.1 After declaration of the Preferred Bidder, the Authority will, within [•] days, issue the LOA to the Preferred Bidder in duplicate:
- (a) declaring it as the Selected Bidder;
 - (b) accepting its Financial Proposal;
 - (c) requesting it to sign and return, as acknowledgement, a copy of the LOA within [15 (fifteen)] days of issuance of the LOA, indicating the date on which it will cause the Concessionaire to execute the Agreement, which in no event shall be later than [60 (sixty)] days from the date of the LOA;
 - (d) requesting it to submit the Performance Security in accordance with Clause 16; and
 - (e) requesting it to incorporate the Concessionaire to implement the Project.
- 30.2 If the Selected Bidder fails to return a duly signed copy of the LOA to the Authority within [15 (fifteen)] days of issuance of the LOA, then the Authority may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA, and forfeit the Earnest Money Deposit. If the Authority elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

31 EXECUTION OF THE CONTRACT

- 31.1 The Authority shall, within [15 (fifteen)] days of the acceptance of the LOA by the Selected Bidder provide the Selected Bidder with the final execution draft of the Agreement. The Concessionaire incorporated by the Selected Bidder or the Selected Bidder, as the case may be, shall execute the Agreement in the draft form provided by the Authority.
- 31.2 If the Selected Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Agreement provided by the Authority under Clause 31.1, the Authority may elect to disqualify the Selected Bidder and revoke the LOA issued to the Selected Bidder. If the Authority elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.
- 31.3 Subject to Clause 30.2, upon satisfaction of the conditions specified in Clause 30.1 and any other conditions specified in the LOA, the Concessionaire incorporated by the Selected Bidder or the Selected Bidder, as the case may be, shall execute the Agreement within [60 (sixty)] days from the date of issuance of the LOA.
- 31.4 If the Concessionaire or Selected Bidder, as the case may be, fails to execute the Agreement within the timeline specified in Clause 31.3, the Authority may, unless it consents to an extension, without prejudice to any of its rights under the RFP or law, disqualify the Selected Bidder, revoke the LOA and forfeit the Earnest Money Deposit. If the Authority elects to disqualify such Bidder and revoke the LOA, then the procedure set out in Clause 7.2 shall follow.

31.5 If the Authority fails to execute the Agreement within the timeline specified in Clause 31.3 or elects to revoke the LOA (other than due to reasons attributable to the Selected Bidder), then the Authority shall return the Earnest Money Deposit to the Selected Bidder within an additional [30 (thirty)] day period.

ANNEXES

ANNEX 1

FORMAT OF BID LETTER (on the letterhead of Bidder /Lead Member)

Date: [●]

Place: [●]

To,

[insert name and address of Authority]

Sub: **Bid for Development of a Waste to Electricity Facility at [insert location of Project] on a PPP basis**

Ma'am/Sir,

Please find enclosed our Qualification Proposal in respect of the above-mentioned project and complying with the Request for Proposal (**RFP**) issued by the [insert name of Authority] (**the Authority**) dated [●].

We hereby confirm the following:

1. The Qualification Proposal is being submitted by _____ *[name of the Bidder/Lead Member]*, who is the Bidder/Lead Member of the Consortium [comprising _____ *[mention the names of the entities who are Members]*]⁵², in accordance with the terms and conditions stipulated in the RFP.
2. We have examined in detail and have understood the terms and conditions stipulated for qualification of the Bidders in the RFP issued by the Authority. We agree and undertake to abide by all these terms and conditions. We acknowledge and agree to submission of an unconditional Bid.
3. We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Bidder for implementing the Project, and we certify that all information provided in the Bid and the Annexes is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
4. The information submitted with respect to our Qualification Criteria is complete, and strictly as per the requirements stipulated in the RFP. We would be solely responsible for any errors or omissions in our Bid.
5. We shall make available to the Authority any additional information it may require to supplement or authenticate the Bid.
6. We acknowledge the right of the Authority to reject our Bid without assigning any reason and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.
7. We acknowledge the right of the Authority to not award the Project without assigning any reason and we hereby waive, to the extent permitted by applicable law, our right to challenge the same on any account whatsoever.
8. We certify that in the [3 (three)] Accounting Years immediately preceding the Bid Due Date, we or any Member of our Consortium or any of our Associate(s) whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project has not been affected by any of the following circumstances:

⁵² **Drafting Note:** To be deleted for a single entity bidder.

- (i) having been categorized as a willful defaulter in accordance with the laws of the country of its incorporation;
 - (ii) having been admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016;
 - (iii) having entered into any compromise with its creditors, or been subject to proceedings for being wound up, or having its affairs administered or conducted by any court, administrator, receiver;
 - (iv) having been declared by a court or other competent authority as being unable to pay its debts or having had the repayment of its debts suspended; or
 - (v) having been convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for a breach of any laws or regulations which:
 - (a) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against us or any of our directors, partners, trustees, officers or managers; or
 - (b) resulted in the permanent or temporary suspension of our rights to provide any service or carry on any type of business or operations.
9. We certify that in the [3 (three)] Accounting Years immediately preceding the Bid Due Date, we or any Member of our Consortium or any of our Associate(s) whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project has not been affected by any of the following circumstances:
- (i) the imposition of a penalty by an arbitral or judicial authority or arbitration award or a judicial pronouncement against such Bidder or the Member or an Associate, as the case may be, on account of failure to perform any contract;
 - (ii) been expelled from any project or contract by the GoI or any state government, or its instrumentalities; or
 - (iii) had any contract terminated by the GoI or any state government, or its instrumentalities for breach by such Bidder or the Member or an Associate, as the case may be.
10. We certify that we or any Member of our Consortium or any of our Associate(s) whose Technical or Financial Capacity is being relied upon to qualify for award of the Project have not entered into a contract for operation of the e-Procurement Portal, which is currently valid and subsisting.
11. We certify that we or any Member of our Consortium or any of our Associate(s) whose Technical or Financial Capacity is being relied upon to qualify for award of the Project has not been barred by GoI or any state government, or its instrumentalities from participating in any project or being awarded any contract and no such bar subsists on the Bid Due Date.
12. We certify that we or any Member of our Consortium or any of our Associate(s) whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project has not been determined to be ineligible by the World Bank under the Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants.
13. We certify that we or any Member of our Consortium or any of our Associate(s) whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project are not included as a debarred person pursuant on the public sanctions list of any multilateral development bank that is party to the Agreement on Mutual Enforcement of Debarment Decisions of 9 April 2010 (www.crossdebarment.org).
14. We certify that we or any Member of our Consortium or any of our Associate(s) whose Technical Capacity or Financial Capacity is being relied upon to qualify for award of the Project are not included on any sanctions lists promulgated by the UN Security Council or its

Committees, or any other recognised international sanctions list and do not have operations (directly or through any subsidiary) or carry out transactions that are not in compliance with the sanctions promulgated by the UN Security Council or its Committees.

15. We declare that:
 - (a) we have examined and have no reservations to the RFP and do not seek any deviations to the RFP, including any Addendum issued by the Authority;
 - (b) we do not have any Conflict of Interest in accordance with Clauses 3.3 of the RFP;
 - (c) we have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 3.4 of the RFP, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority; and
 - (d) we hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP and submission of the Bid, no person acting for us or on our behalf has engaged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
16. We declare and confirm that we have read Clause 3.6 of the RFP and agree to comply with the eligibility requirements set out therein to participate in this tender. Accordingly, we have also enclosed all necessary certificates (including the certificate as per the format set out in **Annex 10**) in support of the aforesaid compliance under the Office Memorandum and the RFP. We undertake to agree and confirm that, in the event of us being declared as the Selected Bidder, if any of the statements or documents submitted in this regard are found to be false, incorrect or misleading, the Authority will be entitled to take appropriate action as it deems necessary.
17. We understand that the Authority may cancel the Bid Process at any time and that the Authority is neither bound to accept any Bid that it may receive nor to invite the Bidders to submit a Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 7 of the RFP.
18. The [Bidder/ Consortium of which we are the Lead Consortium Member]⁵³ satisfies the legal requirements and in our opinion by itself/along with its Members and Associates meets all the Qualification Criteria and Eligibility Criteria laid down in the RFP.
19. We declare that we and our Associates are not submitting separate Bids for the Project.
20. Subject to Clause 25 of the RFP, we declare that we are not submitting more than 1 (one) Bid for the Project.
21. We certify that in regard to matters other than security and integrity of the country, we or any Member [or our Associate(s)]⁵⁴ have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project.
22. We further certify that in regard to matters relating to security and integrity of the country, we or any Member [or our Associate(s)]⁵⁵ have not been charge-sheeted by any agency of the state or convicted by a court of law.
23. We further certify that no investigation by a regulatory authority is pending either against us or against any Member or against our CEO or any of our directors/managers/employees [or our Associate(s)]⁵⁶, which could have a material adverse effect on our ability to undertake the Project.

⁵³ **Drafting Note:** Strike out whichever is not applicable.

⁵⁴ **Drafting Note:** To be deleted if experience of the Associate has not been relied upon to meet technical Qualification Criteria.

⁵⁵ **Drafting Note:** To be deleted if experience of the Associate has not been relied upon to meet technical Qualification Criteria.

⁵⁶ **Drafting Note:** To be deleted if experience of the Associate has not been relied upon to meet technical Qualification Criteria.

24. We undertake that in case due to any change in facts or circumstances during the Bid Process, we attract the provisions of disqualification in terms of the provisions of the RFP, we shall inform the Authority of the same immediately.
25. In the event of us being declared as the Selected Bidder for the Project, we agree to incorporate a special purpose vehicle, which will enter into the concession agreement provided by the Authority. We agree not to seek any changes in or deviations from the aforesaid draft and agree to abide by the same.
26. We agree and undertake to abide by all the terms and conditions of the RFP.
27. We have studied the RFP and all the information carefully. We understand that except to the extent expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Bid Process including the award of the Project.
28. [A power of attorney, by all Members of the Consortium, appointing the Lead Member and authorizing the Lead Member to sign the Bid on behalf of all Members is included as part of the Bid.]⁵⁷
29. A Power of Attorney from the [Bidder/Lead Member]⁵⁸ authorizing the undersigned as the authorised representative, and signatory who is authorised to perform all tasks, including provide information, respond to queries, enter into contractual commitments on behalf of the Bidder etc., in respect of the Project is included as a part of the Bid.
30. We certify that we have the Technical Capacity and Financial Capacity to undertake the Project.
31. We agree and understand that the Bid is subject to the provisions of the RFP. In no case, we shall have any claim or right against the Authority if the Project is not awarded to us or our Bid is not opened.
32. We have submitted all the relevant information as per the formats specified in the RFP, along with the requisite Earnest Money Deposit and Bid processing fee.
33. Our Bid shall remain valid for a period of not less than [180 (one hundred and eighty)] days from the Bid Due Date.

For and on behalf of :

Signature :
(Authorised Representative and Signatory)

Name of the Person :

Designation :

⁵⁷ **Drafting Note:** To be deleted for a single entity bidder.

⁵⁸ **Drafting Note:** Delete Lead Member if the Bidder is a single entity.

ANNEX 2

DESCRIPTION OF THE BIDDER/MEMBERS (on the letterhead of Bidder /Lead Member)

1.
 - (a) Name:
 - (b) Country of Incorporation:
 - (c) Principal Address:
 - (d) Date of Incorporation and/or Commencement of Business:
2. Brief description of the Bidder including details of its main lines of business: [*Note. Such description shall not exceed [5 (five)] type-written pages.*]
3. Details of individual(s) who will serve as the point of contact/communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Telephone Number:
 - (e) E-mail Address:
 - (f) Fax Number:
4. In case of a Consortium:
 - (a) The information above (1-3) should be provided for all the Members of the Consortium.
 - (b) Additional information regarding each Member of the Consortium should be provided as per table below:

S. No.	Name of Member	Proposed percentage holding in the total Equity Contribution of the Concessionaire
1.		
2.		
3.		

ANNEX 3A

FORMAT OF POWER OF ATTORNEY AUTHORISING THE SIGNATORY OF THE BID

(on stamp paper)

Know all men by these presents, We [*name of the Company and address of the registered office*] do hereby irrevocably constitute, nominate, appoint and authorise Mr/ Ms (*name*),and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the **Attorney**) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for a Waste to Electricity Facility PPP Project being developed at [*insert the location of the Project*] by the [*insert name of Authority*] (**the Authority**), including but not limited to signing and submission of all Bid documents and other documents and writings, participate in investor consultations and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the Project and/or upon award of the Project to us and/or till the entering into of the concession agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE- NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For

.....
(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarised)
Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (1) *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- (3) *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.*

ANNEX 3B

FORMAT OF POWER OF ATTORNEY FOR APPOINTING LEAD MEMBER

(On requisite stamp paper)

Whereas the [*insert name of Authority*] (the **Authority**) has invited Bids from interested parties for the purpose of undertaking a project for the development of a Waste to Electricity Facility in [*insert location of Project*] on a PPP basis (the **Project**).

Whereas,,, and (collectively, the **Consortium**) being Members of the Consortium are interested in submitting a Bid for the Project in accordance with the terms and conditions of the Request for Proposal (**RFP**) issued by the Authority on [•], and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its implementation.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, having our registered office at, and having our registered office at, (hereinafter collectively referred to as the **Principals**) do hereby irrevocably designate, nominate, constitute, appoint and authorise having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the **Attorney**). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bid Process and, in the event the Consortium is awarded the Project, during the implementation of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of the Consortium's Bid for the Project, including but not limited to signing and submission of all Bid related documents and other documents and writings, participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/or upon award of the Project and/or till the concession agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For
(Signature)

.....
(Name & Title)

For
(Signature)

.....
(Name & Title)

Witnesses:

- 1.
- 2.

.....

(To be executed by all the Members of the Consortium)

(Notarised)
Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Instructions:

- (1) *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- (2) *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- (3) *For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by the Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.*

ANNEX 4

FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR FOR NET WORTH AND AVERAGE ANNUAL TURNOVER AND COMPLIANCE WITH OTHER FINANCIAL QUALIFICATION CRITERIA

(On the letter head of the statutory auditor of the Bidder/each Member of the Consortium/Associate (as applicable))

Based on the books of accounts of [*insert name of the Bidder/Member/Associate*] (**Bidder/Member**) and other published information authenticated by it, this is to certify that:

- (a) As on [*insert date*], the Bidder's/Member's/Associate's Net Worth is INR [●] (Rupees in words).

The Net Worth of INR [●] (Rupees in words) has been calculated in accordance with the computation set out below which is in accordance with the terms set out in the Request for Proposal (**RFP**) issued by the Authority on [●].

Net worth

= (paid up share capital)

Add:(reserves)

Add:(others, please specify)

Subtract: (revaluation reserves)

Subtract:(intangible assets)

Subtract:(miscellaneous expenditures to the extent not written off and carry forward losses)

Subtract:((others, please specify)

** Please note that the items in brackets should correspond to items as per the annual report so that it can be verified exactly how the net worth has been computed.*

- (b) As on [*insert date*], the average of the Bidder's/Member's/Associate's Annual Turnover over the last [3 (three)] Accounting Years immediately preceding the Bid Due Date is INR [●] (Rupees in words).

The Average Annual Turnover of INR [●] (Rupees in words) has been calculated in accordance with the terms set out in the Request for Proposal (**RFP**) issued by the Authority on [●].

- (c) The Bidder/Member is not affected by and has not been affected by any of the following events, conditions or circumstances in the [3 (three)] Accounting Years immediately preceding the Bid Due Date:

- (i) having been categorized as a willful defaulter in accordance with the laws of the country of its incorporation;
- (ii) having been admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016;
- (iii) having entered into any compromise with its creditors, or been subject to proceedings for being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or

- (iv) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended.

Name of the auditor:

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:

ANNEX 5A

**FORMAT OF DETAILS OF WASTE TO ELECTRICITY EXPERIENCE –
DEVELOPEMNT/DESIGN AND CONSTRUCTION**

1	Name of the Project		
2	Location		
3	Contracting Agency		
	Address Tel/ Email		
4	Nature of contract	<i>Please describe the nature of contract – DB/ DBO/ EPC/ DBOT/ DBFOT</i>	
5	Contract Commencement Date		
6	Nature of Experience – Development/Design and Construction		
7	If Party in an unincorporated JV, specify percentage of participation in the project	<i>[insert total contract amount/value]</i>	<i>[insert percentage of total amount expended/received by the Bidder/Member/Associate]</i>
8	Whether credit is being taken for the experience of an Associate (Yes/No)		
9	Design Parameters:⁵⁹	Waste Quantity Throughput – TPD:	
		Power - MW:	
		Net Calorific Value - Kcal/Kg:	
10	Month and Year of Construction Completion:		
11	Number of years of continuous successful operation in accordance with the relevant contract (from Month/Year to Month/Year):		
12	Performance – average of [365(three	Average throughput – TPD:	

⁵⁹ **Drafting Note:** If there are multiple lines of a waste to electricity facility of equal or varying capacity on the site, please fill data from rows 9 to 15 for each separately.

	hundred and sixty five)] consecutive days in the [7 (seven)] years preceding the Bid Due Date	Average Units of Power Evacuated – million units:	
13	Type of Incinerator		
14	Brief description of the technology:		
15	Key Vendors:	Grate	
		Boiler	
		Turbine	
		Generator	
		Flue Gas Treatment	
16	Emissions – in compliance with prescribed limits (please complete the data in the following table)		

CONTINUOUS EMISSION MONITORING (CEM) PARAMETERS⁶⁰		
Pollutant	Units	Plant Emission Limit
SO ₂ – Sulphur Dioxide	mg/Nm ³	
HCl – Hydrogen Chloride	mg/Nm ³	
HF – Hydrogen Fluoride	mg/Nm ³	
NO _x – Nitrogen Oxides expressed at NO ₂	mg/Nm ³	
CO - Carbon Monoxide	mg/Nm ³	
Pollutant	Units	Plant Emission Limit
SO ₂ – Sulphur Dioxide	mg/Nm ³	

STACK TEST PARAMETERS⁶¹		
Pollutant	Units	Plant Emission Limit
Hg- Mercury	mg/Nm ³	
Cd-Cadmium + Tl – Thallium	mg/Nm ³	
Pb – Lead	mg/Nm ³	

⁶⁰ Unless stated otherwise, emission levels associated with the best available techniques (BAT-AELs) for emissions to air given in these BAT conclusions refer to concentrations (mass of emitted substances per volume of waste gas) under the following standard conditions: dry gas at a temperature of 273,15 K and a pressure of 101,3 kPa, without correction for oxygen content, and expressed in µg/Nm³ or mg/Nm³.

For averaging periods of BAT-AELs for emissions to air, the following definitions apply.

Type of measurement	Averaging period	Definition
Continuous	Daily average	Average over a period of one day based on valid hourly or half-hourly averages.
Periodic	Average over the sampling period	Average value of three consecutive measurements of at least 30 minutes each.

Where continuous measurement is used, the BAT-AELs may be expressed as daily averages.

⁶¹ Average emission limit values (mg/Nm³) for the following heavy metals over a sampling period of a minimum of 30 minutes and a maximum of 8 hours

Sum of (As, Ni, Co, Pb, Cr, Cu, V, Mn, Sb)	mg/Nm ³	
Dioxins and Furans ⁶²	ng/Nm ³	
Total Particulate Matter as dust in stack	mg/Nm ³	
TOC – gaseous and vaporous organic substances, as total organic carbon	mg/Nm ³	

For and on behalf of : _____ Name of the person:
Signature : _____ Designation:
(Authorised Representative and Signatory)

GOVERNMENT AUTHORITY/CLIENT CERTIFICATION

I, _____ (name), holding the position of (designation of authorised officer/signatory of relevant government authority/client) at _____ (name of relevant government authority/client) hereby certify that the _____ (name of Bidder/Member/Associate) has developed/designed and constructed the [waste to electricity facility] for which information has been provided above in accordance with the terms of the contract executed for such [waste to electricity facility] and the information provided above is true and correct.

Signature
Name:
Designation:

Note:

- (1) *In case of development experience, details such as name, postal address, email address and contact details of the authority/implementing agency (i.e., concession grantor) should be provided. In case of design and construction experience, details such as name, postal address, email address and contact details of both the developer (i.e., the concessionaire) and the authority/implementing agency (i.e., the concession grantor) should be provided.*
- (2) *In case of design and construction experience, if the client is the developer of the relevant project (i.e., the concessionaire), then in addition to the client certificate in the format set out in this Annex 5A, the Bidder/Member/Associate shall also submit a certificate from the implementing agency (i.e., the government authority granting the concession), certifying the details set out in rows 10,11, and 12 of the table above.*
- (3) *In the event that credit is being taken for the experience of an Associate, the Bidder must also provide a certificate from the statutory auditor in the format set out at Annex 6.*
- (4) *If the project used to demonstrate the above waste to electricity facility was undertaken by the Bidder or any Member or Associate through an unincorporated joint venture, consortium or partnership, the Bidder must also provide a certificate from the statutory auditor in the format set out at Annex 7 certifying that the capital expended by the Bidder or Member or Associate or payments received by the Bidder or Member or Associate, prior to the Bid Due Date, was at least [26% (twenty six per cent)] of the total project/contract value.*
- (5) *Experience for any activity relating to a project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*

⁶² Average emission limit value (ng/Nm³) for dioxins and furans over a sampling period of a minimum of 6 hours and a maximum of 8 hours.

- (6) *The Bidder/Member may submit its details in format set out in this Annex 5A either for a single project or for multiple projects that cumulatively meet the development/design and construction experience, as set out in Clause 4.1(a)(i) of this RFP. In case of multiple projects, the Bidder/Member must provide details of such projects in separate tables, in accordance with the format set out in this Annex 5A, for each such project.*
- (7) *In the absence of any detail in the above format and/or the certificate(s) issued by the relevant government authority/client, the information would be considered inadequate and could lead to exclusion of the relevant project in determining whether the Bidder meets the Qualification Criteria.*

ANNEX 5B

FORMAT OF DETAILS OF WASTE TO ELECTRICITY EXPERIENCE – OPERATIONS & MAINTENANCE

1.	Name of the Project	
2.	Location	
3.	Contracting Agency Address Tel/ Email	
4.	Nature of contract	<i>Please describe the nature of contract – Government (Annuity, Hybrid Annuity, Processing/Tipping Fee + Power Revenue, Monthly O&M Contract), private (either O&M Agreement or privately owned) etc.</i>
5.	Ownership of the Project⁶³	
6.	Contract Commencement Date	<i>[insert dates of start of contract]</i>
7.	No. of Years of Continuous Operations (from Month/Year to Month/Year)	
8.	If Party in an unincorporated JV, specify percentage of participation in the project	<i>[insert total contract amount/value]</i>
		<i>[insert percentage of total contract amount expended/received by the Bidder]</i>
9.	Whether credit is being taken for the experience of an Associate (Yes/No)	
10.	Design Parameters:⁶⁴	Waste Quantity Throughput – TPD:
		Power – MW:
		Net Calorific Value – Kcal/Kg:
11.	Month/ Year of Commissioning:	
12.	Performance – average of last [1 (one)] year	Average throughput – TPD:
		Average Units of Power Evacuated –

⁶³ **Drafting Note:** To be provided where the Party is only contracted for the O&M services and does not have ownership interest in the Project.

⁶⁴ **Drafting Note:** If there are multiple lines of a waste to electricity facility of equal or varying capacity on the site, please fill data from rows 10 to 14 for each separately.

		Million units per month:	
13.	Type of Incinerator		
14.	Brief description of the scope of services:		
14.	Emissions – in Compliance with prescribed limits (please complete the data in the following table)	YES/ NO	

CONTINUOUS EMISSION MONITORING (CEM) PARAMETERS⁶⁵		
Pollutant	Units	Plant Emission Limit
SO ₂ – Sulphur Dioxide	mg/Nm ³	
HCl – Hydrogen Chloride	mg/Nm ³	
HF – Hydrogen Fluoride	mg/Nm ³	
NO _x – Nitrogen Oxides expressed at NO ₂	mg/Nm ³	
CO - Carbon Monoxide	mg/Nm ³	
Pollutant	Units	Plant Emission Limit
SO ₂ – Sulphur Dioxide	mg/Nm ³	

STACK TEST PARAMETERS⁶⁶		
Pollutant	Units	Plant Emission Limit
Hg- Mercury	mg/Nm ³	
Cd-Cadmium + Tl – Thallium	mg/Nm ³	
Pb – Lead	mg/Nm ³	
Sum of (As, Ni, Co, Pb, Cr, Cu, V, Mn, Sb)	mg/Nm ³	
Dioxins and Furans ⁶⁷	ng/Nm ³	
Total Particulate Matter as dust in stack	mg/Nm ³	
TOC – gaseous and vaporous organic substances, as total organic carbon	mg/Nm ³	

⁶⁵ Unless stated otherwise, emission levels associated with the best available techniques (BAT-AELs) for emissions to air given in these BAT conclusions refer to concentrations (mass of emitted substances per volume of waste gas) under the following standard conditions: dry gas at a temperature of 273,15 K and a pressure of 101,3 kPa, without correction for oxygen content, and expressed in µg/Nm³ or mg/Nm³.

For averaging periods of BAT-AELs for emissions to air, the following definitions apply.

Type of measurement	Averaging period	Definition
Continuous	Daily average	Average over a period of one day based on valid hourly or half-hourly averages.
Periodic	Average over the sampling period	Average value of three consecutive measurements of at least 30 minutes each.

Where continuous measurement is used, the BAT-AELs may be expressed as daily averages.

⁶⁶ Average emission limit values (mg/Nm³) for the following heavy metals over a sampling period of a minimum of 30 minutes and a maximum of 8 hours

⁶⁷ Average emission limit value (ng/Nm³) for dioxins and furans over a sampling period of a minimum of 6 hours and a maximum of 8 hours.

For and on behalf of :
Signature :
(Authorised Representative and Signatory)

Name of the person:
Designation:

GOVERNMENT AUTHORITY/CLIENT CERTIFICATION

I, _____ (name), holding the position of (designation of authorised officer/signatory of relevant government authority/client) at _____ (name of relevant government authority/client) hereby certify that the _____ (name of Bidder/Member/Associate) has operated and maintained the [waste to electricity facility] for which information has been provided above in accordance with the terms of the contract executed for such [waste to electricity facility] and the information provided above is true and correct.

Signature
Name:
Designation:

Note:

- (1) *The duration of the O&M experience must be at least [365 (three sixty five)] consecutive days in the [7 (seven)] years immediately preceding the Bid Due Date. The Bidder should provide certification from the relevant government authority (i.e., the implementing agency) or private entity as per the format provided above.*
- (2) *In the event that credit is being taken for the experience of an Associate, the Bidder must also provide a certificate from the statutory auditor in the format set out at Annex 6.*
- (3) *Experience for any activity relating to a project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*
- (4) *The Bidder/Member may submit its details in format set out in this Annex 5B either for a single project or for multiple projects that cumulatively meet the O&M experience, as set out in Clause 4.1(b) of this RFP. In case of multiple projects, the Bidder/Member must provide details of such projects in separate tables, in accordance with the format set out in this Annex 5B, for each such project.*
- (5) *In the absence of any detail in the above format and/or the certification by the relevant government authority or private entity, the information would be considered inadequate and could lead to exclusion.*

ANNEX 6

FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR FOR CERTIFYING AN ASSOCIATE

Based on the authenticated record of [*insert name of the Bidder/Member/Associate*], this is to certify that [more than 50% (fifty per cent) of the voting shares of [*name of the Bidder/Member/Associate*] is held, directly or indirectly, by [*name of Bidder/ Member/Associate*].

By virtue of the aforesaid, the latter exercises control over the former, who is an Associate.

[And/or]

[..... [*name of Bidder/Member/Associate*] has the power, directly or indirectly, to direct or influence the management and policies of (*Bidder/Member/Associate*) by operation of law, contract or otherwise]. By virtue of the aforesaid, the former exercises control over the latter, who is an Associate.]

[And/or]

[This is to certify that more than 50% (fifty per cent) of the voting shares of.....[*name of Bidder/Member/Associate*] and more than 50% (fifty per cent) of the voting shares of.....[*name of Bidder/Member/Associate*] are held directly or indirectly by.....[*name of Bidder/Member/Associate*]. Based on the above [*name of Bidder/Member/Associate*] and [*name of Bidder/Member/Associate*] are Associates by virtue of being under the common Control of the same Person.]

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the shareholding of the Bidder/Member and its Associate. In the event that Control is exercised by operation of law, the relationship may be suitably described and similarly certified herein.}

Name of the auditor:

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:

ANNEX 7

**FORMAT OF CERTIFICATE FROM THE STATUTORY AUDITOR TO CERTIFY
PAYMENTS MADE/RECEIVED**

*(On the letter head of the statutory auditor of the Bidder/each Member of the Consortium/Associate
(as applicable))*

Based on the books of accounts of [*insert name of the Bidder/Member/Associate*]
(**Bidder/Member/Associate**) and other published information authenticated by it, this is to certify that
of the [total project cost/contract value] for the [*insert name of project which Bidder is relying upon*
to demonstrate Technical Capacity] of INR [●],

[the capital expenditure incurred by the Bidder/Member/Associate until [*insert date*] is INR [●], which
is [●]% of the [total project cost/contract value]]

or

[the total payments received by the Bidder/Member/Associate until [*insert date*] is INR [●], which is
[●]% of the [total project cost/contract value]].

Name of the auditor:

Seal of the auditor:

Signature:

Name:

Membership Number:

Designation:

Date:

ANNEX 8

FORMAT OF BANK GUARANTEE FOR EARNEST MONEY DEPOSIT

(On stamp paper)

B.G. No. [___]

Dated:

1. In consideration of you, the [*insert name of the Authority*] (referred to as **the Authority**, which expression will, unless it is repugnant to the subject or context thereof include, its successors and assigns), represented by the Commissioner, the Authority having agreed to receive the Bid of [*insert name of Bidder*]/the Consortium, represented by [*Member*]⁶⁸ with its registered office at [*insert Address*] (referred to as the **Bidder** which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the development of a waste to electricity facility in [*insert location of the Project*] on a PPP basis (referred to as the **Project**), pursuant to the Request for Proposal dated [●] (referred to as the **RFP**) issued in respect of the Project and other related documents, we [*insert name of the Bank*] having our registered office at [●] and one of its branches at [●] (referred to as the **Bank**), at the request of the Bidder, do hereby in terms of Clause 15 of the RFP, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the RFP by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of [●] (referred to as the **Guarantee**) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder, if the Bidder fails to fulfil or comply with all or any of the terms and conditions contained in the RFP.
2. Any such written demand made by the Authority stating that the Bidder is in default of due and faithful compliance with the terms and conditions contained in the RFP will be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the RFP, for the following events:
 - (a) if a Bidder engages in corrupt, fraudulent, coercive or undesirable practice or restrictive practice as specified in Clause 3.4;
 - (b) if a Bidder is disqualified in accordance with, Clause 3.2 (*Lock-in Restrictions and Change in Control*), Clause 3.3 (*Conflict of Interest*), Clause 3.5 (*Other Eligibility Criteria*), and Clause 7 (*Rights of the Authority*);
 - (c) if, a Bidder withdraws its Bid; or
 - (d) if a Bidder is selected as the Selected Bidder and it fails, within the specified time limit, to:

⁶⁸ **Drafting Note:** Delete 'the Consortium represented by [*Member*]', if the Bidder is a single entity.

- (i) sign and return, as acknowledgement, the duplicate copy of the LOA;
- (ii) furnish the Performance Security;
- (iii) fulfil any other condition precedent to the execution of the Agreement; or
- (iv) fails to execute or cause the Concessionaire to execute the Agreement.

Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee.

4. This Guarantee shall be irrevocable and remain in full force for a period of [210 (two hundred and ten)] days from the Bid Due Date inclusive of a claim period of [30 (thirty)] days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and will continue to be enforceable till all amounts under this Guarantee have been paid.

If the Bidder is declared as the Selected Bidder, then the validity of the Guarantee of such Selected Bidder shall be extended until the date on which the Selected Bidder submits the Performance Security. The Guarantee of the Selected Bidder will be returned upon the Selected Bidder furnishing the Performance Security.

5. We, the Bank, further agree that the Authority will be the sole judge to decide as to whether the Bidder has failed to comply with the terms and conditions contained in the RFP including, those events listed at paragraph 3 above. The decision of the Authority that the Bidder is in default as aforesaid will be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.
6. The Guarantee will not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority will be entitled to treat the Bank as the principal debtor.
8. The obligations of the Bank under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the RFP or the Bid submitted by the Bidder.
9. The obligations of the Bank under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Bank from or prejudice or diminish its liability under this Guarantee, including (whether or not known to it, or the Authority):
 - (a) any time or waiver granted to, or composition with, the Bidder or any other person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions; or change in the Bidder, as the case may be;
 - (c) any variation of the RFP, so that references to the RFP in this Guarantee shall include each such variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of the Bidder or the Authority under the RFP or any unenforceability, illegality or invalidity of the obligations of the Bank under this Guarantee or the unenforceability, illegality or

invalidity of the obligations of any Person under any other document or guarantee or security, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity; and

- (e) any extension, waiver, or amendment whatsoever which may release a guarantor or surety (other than performance of any of the obligations of the Bidder under the RFP).
10. Any notice by way of request, demand or otherwise will be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
 11. We undertake to make the payment on receipt of your notice of claim on us addressed to [*name of Bank along with branch address*] and delivered at our above branch which will be deemed to have been duly authorised to receive the notice of claim.
 12. It shall not be necessary for the Authority to proceed against the Bidder before proceeding against the Bank and the Guarantee will be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the Bidder or any other person and which will, at the time when proceedings are taken against the Bank, be outstanding or unrealised.
 13. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
 14. The Bank represents and warrants that it has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
 15. For the avoidance of doubt, the Bank's liability under this Guarantee will be restricted to INR [●]. The Bank will be liable to pay the amount or any part of the Guarantee only if the Authority serves a written claim on the Bank in accordance with paragraph 11 of this Guarantee, on or before (indicate date falling [210 (two hundred and ten)] days after the Bid Due Date).
 16. Capitalised terms used but not defined herein shall have the meanings given to them in the RFP.

Signed and Delivered by.....Bank

By the hand of Mr./Ms. its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

In the presence of:

Name of the witness

Signature of the witness

Address of the witness

ANNEX 9

FORMAT OF JOINT BIDDING AGREEMENT

THIS JOINT BIDDING AGREEMENT ("JBA") is entered into on this [●] Day of [●] 201[●]

AMONGST

1. [●], with its registered office at (referred to as the **First Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

AND

2. [●], with its registered office at (referred to as the **Second Part** which expression will, unless repugnant to the context include its successors and permitted assigns);

[AND

3. [●], with its registered office at [●] (referred to as the **Third Part** which expression will, unless repugnant to the context include its successors and permitted assigns).]

The above-mentioned parties of the FIRST [and] [,] SECOND, [and] [,] [THIRD] are collectively referred to as the **Parties** and each is individually referred to as a **Party**.

WHEREAS

- (A) [*insert name of the Authority*] (referred to as **the Authority**), which expression will, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal dated [●] (the **RFP**) for selection of a Bidder for the development of a waste to electricity facility at [*insert location of the Project*] on a PPP basis (the **Project**).
- (B) The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP.
- (C) It is a necessary condition under the RFP that the Members will enter into a Joint Bidding Agreement and furnish a copy of it with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations

In this JBA, the capitalised terms will, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the **Consortium**) for the purposes of jointly participating in the Bid Process for the Project.

2.2 The Parties hereby undertake to participate in the Bid Process only through this Consortium and not individually and or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

3.1 The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it will incorporate a special purpose vehicle (**the Concessionaire**) under the Companies Act, 2013 for entering into the concession agreement with the Authority for undertaking the Project.

3.2 The Members of the Consortium undertake that they shall be jointly and severally responsible and liable for all matters arising out of or in relation to this RFP.

4. Role of the Parties

4.1 The Parties hereby agree that Party of the First Part will be the Lead Member of the Consortium and will have the power of attorney from all Parties and bind all Parties for and in conducting all business for and on behalf of the Consortium during the Bid Process and, if the Consortium is declared as the Selected Bidder, during the execution of the Project.

4.2 Party of the Second Part will be [].

[4.3 Party of the Third Part will be [].]

5. Shareholding in the Concessionaire

5.1 The Parties agree that the proportion of shareholding among the Parties in the Concessionaire will be as follows:

First Party:

Second Party:

[Third Party:]

5.2. The Parties undertake that:

(a) the First Party, acting as the Lead Member of the Consortium, will control the Concessionaire and subscribe for and 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;

(b) the [First, Second and the Third] Party shall cumulatively hold not less than (i) [51% (fifty one percent)] of the total Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD; and (ii) [26% (twenty six percent)] of the total Equity Contribution and voting rights of the Concessionaire during the remaining Concession Period; and

(c) the [Second and/or the Third] Party, whose [Technical Capacity and/or Financial Capacity] is being assessed, shall hold not less than [10% (ten percent)] of the total

Equity Contribution and voting rights of the Concessionaire until [2 (two)] years after the COD.

Provided that the [First or Second or the Third] Party who demonstrated O&M Capacity at the qualification stage shall continue to hold not less than [10% (ten percent)] of the total Equity Contribution and voting rights of the Concessionaire until the expiry or early termination of the Agreement, as the case may be.

5.3. The Parties undertake that they will comply with all equity lock-in requirements set out in this JBA and in the Agreement.

6. Representations of the Parties

Each Party represents to the other Parties as of the date of this JBA that:

- (a) such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this JBA;
- (b) the execution, delivery and performance by such Party of this JBA has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this JBA for the delegation of power and authority to execute this JBA on behalf of the Consortium Member is annexed to this JBA, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any law presently in effect and applicable to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable constitutional documents;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this JBA;
- (c) this JBA is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this JBA.

7. Termination

This JBA will be effective from the date hereof and will continue in full force for the entire duration of the Project in case the Project is awarded to the Consortium. However, in case the Consortium is not selected for award of the Project, the JBA will stand terminated upon return of the Earnest Money Deposit as per the RFP.

8. Miscellaneous

- 8.1 This JBA will be governed by the laws of India.
- 8.2 The Parties acknowledge and accept that this JBA will not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE FIRST PART by:	SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE SECOND PART by:
Signature) (Name) (Designation) (Address)	Signature) (Name) (Designation) (Address)
SIGNED, SEALED AND DELIVERED For and on behalf of the PARTY OF THE THIRD PART by:	
Signature) (Name) (Designation) (Address)	

In the presence of:

1

2.

Instruction:

The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required.

ANNEX 10

FORMAT OF CERTIFICATE AS PER OFFICE MEMORANDUM

(on the letterhead of Bidder /Lead Member)

Date: [●]

Place: [●]

To,
[insert name and address of Authority]

Sub: **Bid for Development of Waste to Electricity Facility at [●] on a PPP basis**

With reference to the Office Memorandum, we submit the following certificate to [insert name of the Authority].

Certificate for Bid

We have read the Clause regarding restrictions on procurement from a Bidder of a country which shares a land border with India. We, (Bidder's name) certify that we are not from such a country or, if from such a country, have been registered with the Competent Authority. We hereby certify that we fulfil all requirements in this regard and are eligible to be considered.

[Where applicable, evidence of valid registration by the Competent Authority to be attached].

Yours faithfully,

Dated this [insert date] day of [insert month]

Name and seal of the Bidder

(Signature, name and designation of the authorised signatory of the Bidder/Lead Member)

MODEL CONCESSION AGREEMENT

For

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

[•]

[Insert Title]

BACKGROUND AND DISCLAIMER¹

The Ministry of Housing and Urban Affairs (**MoHUA**) has signed an agreement with the International Finance Corporation (**IFC**), a member of the World Bank Group, to form a partnership to accelerate investment in the solid waste management sector in India. Through this partnership, IFC has assisted MoHUA in preparing a model concession agreement (**MCA**) and a model request for proposal (**RfP**, together the **Model Documents**) and a guidance note in relation to the Model Documents (**Guidance Note**) for use by urban local bodies for development of waste to electricity projects in India. The objective of preparing the Model Documents is to develop an enabling framework for private sector participation in the solid waste management sector. Urban local bodies are advised to refer to the Model Documents and the Guidance Note while preparing the bid documents for a tender process in relation to development of a waste to bio-methanation project.

IFC has appointed Trilegal as the legal consultant for drafting, revising, and finalizing the Model Documents and the Guidance Note. The Model Documents and the Guidance Note have been drafted and revised by Trilegal based on instructions, comments, feedback, and other information received from IFC and MoHUA.

MoHUA released the draft Model Documents on its website on 10 July 2023. Thereafter, comments were received from multiple stakeholders (including private players and government agencies) and the Model Documents have been revised accordingly, where necessary.

IFC, together with its consultants and advisors, does not guarantee the adequacy, correctness, completeness or reliability of the content included in the Model Documents or the Guidance Note and accepts no responsibility or liability for any omissions or errors (including, without limitation, typographical errors and technical errors) in the content whatsoever, or for any reliance thereon.

IFC, together with its consultants and advisors, makes no representation or warranty and will have no liability to any person, including any bidder, under any law, statute, rules or regulations or tort or otherwise for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of anything contained in the Model Documents or the Guidance Note, and any assessment, assumption, statement or information contained in these Model Documents or the Guidance or deemed to form part of the Model Documents or the Guidance Note.

The cost of developing the Model Documents and the Guidance Note, including professional fees paid to consultants and advisors, has been met through funding obtained from the European Union. The contents of the Model Documents and the Guidance Note do not necessarily reflect the views of the European Union.

¹ **Drafting Note:** This background and disclaimer section is for the benefit of MoHUA, any urban local body or other authority using or reviewing the Model Documents and the Guidance Note. This background and disclaimer section should be deleted prior to issuing the Model Documents to the bidders in a tender process.

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PART I – PRELIMINARY

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/]² 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/*]³ **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/Deemed 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

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

³ **Drafting Note:** To be deleted if Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement.

health, sanitation, conservancy, and solid waste management).

- 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, the 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 electricity facility which shall be capable of receiving and processing up to [●] TPD of Acceptable Waste at [*insert name of the area in which the Project is to be developed*] 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**)⁴ 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 (*defined below*) on the Site (*defined below*) 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 electricity which will then be supplied to [●] in accordance with the PPA (*defined below*).
- 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

⁴ **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.

of bidders)]⁵), 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 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.]⁶

[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 Appointed 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.]⁷
- 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 prior to execution if the Selected Bidder is a single bidder and not a consortium.

⁶ **Drafting Note:** To be deleted if the Selected Bidder has not incorporated the Concessionaire prior to execution of the Agreement.

⁷ **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

Acceptable Waste	[means source segregated dry 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), non-hazardous industrial solid waste, commercial waste, institutional waste, horticulture waste, agriculture and dairy waste, catering and market waste and food waste, paper, cardboard, wood, textiles, plastics, and excludes Prohibited Waste or any waste that exceeds the Maximum Permissible Density.]
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 WtE Facility (<i>defined below</i>), and which shall be notified to the Concessionaire at least [3 (three)] months prior to the Scheduled COD.
Acceptance Certificate	means the certificate issued (or deemed to be issued) by the Authority to the Concessionaire upon successful completion of the Trial Operations of the WtE 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 0.4 hectares.
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: $\text{Max}_{i=1}^t [(Equity Contribution - Equity Distribution)_i \times (1 + EIRR)^{(t-i)}], 0)$

Where,

t = total number of 12 (twelve) month intervals in the period from the Appointed 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

Illustration

If the term of the Agreement is 15 years and the termination occurs in year 5 and we assume the following:

t = 5

EIRR = 16%

Equity Contribution = INR 1,00,00,00,000

Equity Distribution = INR 10,00,00,000

Construction Period = 1 year

Then the Adjusted Net Equity shall be:

<i>Year 1</i>	<i>181.0639</i>
<i>Year 2</i>	<i>-15.609</i>
<i>Year 3</i>	<i>-13.456</i>
<i>Year 4</i>	<i>-11.6</i>
<i>Year 5</i>	<i>-10</i>
	<i>130.399</i>

Therefore, if termination of the Agreement occurs in year 5, the Adjusted Net Equity is INR 130,39,90,000.

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 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, the SWM Rules and laws concerning any environmental, social, labour, health and safety or security risks of the type contemplated by the Performance Standards.

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 [•].

Applicable Tariff

means the [Quoted Tariff of the Selected Bidder, as adopted by the Appropriate Commission]⁸ or the [Feed-in Tariff or the Revised Feed-in Tariff, as may be applicable]⁹.

Appointed Date

means the date on which all the Conditions Precedent have been satisfied, or waived, by the Parties in accordance with this Agreement.

Appropriate Commission

means [*insert name of relevant State Electricity Regulatory Commission*].

Arbitration Act

means the Indian Arbitration and Conciliation Act, 1996, as amended from time to time.

Article

means an article of this Agreement.

⁸ **Drafting Note:** To be retained if the project is being awarded through tariff based bidding.

⁹ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

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, waste storage facility, waste segregation facility, transmission infrastructure for evacuation of electricity until the Interconnection Point, 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 Event of Default	has the meaning ascribed to it in Clause 28.3.
Authority Related Parties	<p>means any of the following:</p> <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. <p>For the avoidance a doubt, ‘Authority Related Parties’ does not include the Concessionaire.</p>
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(a).
Availability Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the WtE 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]¹⁰, 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 qualification and award of the Project.

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

¹⁰ **Drafting Note:** To be deleted if the bidding process is structured as a single stage bidding process with two sub-stages.

- (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; or (ii) any change in Applicable Law resulting solely in a change in the tariff under the PPA.

Clause	means a clause of this Agreement.
COD Certificate	means the certificate issued (or deemed to be issued) by the Authority to the Concessionaire after issue (or deemed issue) of the Acceptance Certificate and satisfaction of the conditions set out in Clause 17.1(a), evidencing the date on which the WtE 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.
[Compensatory Tariff	has the meaning ascribed to it in Clause 22.5(a).
Compensatory Tariff Statement	has the meaning ascribed to it in Clause 22.5(a).] ¹¹
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	has the meaning ascribed to it in Clause 28.1.

¹¹ **Drafting Note:** Square bracketed portion to be deleted if a tariff was quoted by the bidders as the bidding criteria.

Default

[Concessionaire Payments means the payments to be made by the Authority to the Concessionaire in the form of [the Grant]¹² [and/or] [the Processing Fee]¹³ [and Compensatory Tariff, if applicable in accordance with this Agreement]¹⁴.]

Concessionaire Related Parties means any of the following:

- (a) the Selected Bidder or Associates of the Selected 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 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

¹² **Drafting Note:** To be deleted if only Processing Fee is payable.

¹³ **Drafting Note:** To be deleted if only Grant is payable.

¹⁴ **Drafting Note:** Square bracketed portion to be deleted if the project was awarded through tariff based bidding.

requirements of this Agreement.]¹⁵

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 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% (fifty percent) 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.

[Control Period

Means the period ending on [•], i.e, the control period notified by the Appropriate Commission, during which waste to electricity projects commissioned shall be entitled to receive the Feed-in Tariff for the electricity generated from such projects.]¹⁶

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

means the guaranteed Acceptable Waste that the Authority shall

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.

¹⁶ **Drafting Note:** Square bracketed portion to be deleted if a tariff was quoted by the bidders as the bidding criteria.

Waste Quantity

supply to the Concessionaire during each day of the O&M Period as set out in Clause 18.5(b).

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,

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]¹⁷; 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

¹⁷ **Drafting Note:** To be deleted if no Grant is payable.

Project is [●] and the Total Project Cost is [●] [and the Grant is [●]]¹⁸, the Debt Due will be capped at [●].

Debt Service	means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing 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 WtE 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, based on the Technical Specifications, as approved by the Authority in accordance with Clause 14.2(c).
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 Damage	means the liquidated damages payable by the Concessionaire to Authority for a failure of the WtE 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

¹⁸ **Drafting Note:** To be deleted if no Grant is payable.

14.2(b).

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.
Emission Guarantee	has the meaning ascribed to it in Clause 21.1(d).
Emission Liquidated Damages	means the liquidated damages payable by the Concessionaire to Authority for a failure of the WtE Facility to achieve the Emission Guarantee, which are to be calculated in accordance with Schedule [●].
EMP	means an environmental management plan to be prepared by the Concessionaire in accordance with Applicable Laws and the Performance Standards 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 or any Associate of any shareholder 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(i).

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.

ESIA

means the environmental and social impact assessment to be undertaken for the Project in accordance with the Applicable Laws and the Performance Standards.

ESIA Report

means a report in relation to the ESIA undertaken for the Project.

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.

[Feed-in Tariff

Means INR [●] per kWh, i.e., the tariff determined by the Appropriate Commission for procurement of power from waste to electricity projects commissioned within the Control Period.]¹⁹

¹⁹ **Drafting Note:** To be deleted if the project will be awarded through tariff based bidding and retained if a fixed feed-in tariff for waste to energy plants is available in the state, which will be payable to the concessionaire.

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)] ²⁰ 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 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.

²⁰ **Drafting Note:** Delete Member(s) if the Selected Bidder is a single entity.

Forced Unavailability

means an interruption of or a reduction in the availability of the WtE 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 waste that exceeds the Maximum Permissible Density to the Concessionaire; or
- (e) a Force Majeure Event; or
- (f) instructions issued by the Offtaker or a Government Authority to the Concessionaire to curtail the production of electricity from the WtE Facility, provided that such instructions are not attributable to the Concessionaire's failure to operate the WtE Facility in accordance with the Agreement, the PPA, and/or Applicable Laws.
- (g) suspension of supply of water or power by [the municipal authority/relevant the entity responsible for water supply]²¹ beyond [48 (forty eight)] 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

²¹ **Drafting Note:** Include the entity responsible for power supply.

maintenance of waste to energy facilities in India of the type and size similar to the Project Facilities and includes good international industry practices as defined in the Performance Standards.

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.

[Grant²²

means an amount equal to INR [●] [quoted by the Selected Bidder in its Financial Proposal]²³, 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 in accordance with the terms of this Agreement.]

[Gross Revenue

means all pre-tax revenues from the sale of the electricity by the Concessionaire.]

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.

²² **Drafting Note:** To be deleted if no Grant is payable.

²³ **Drafting Note:** Language in square brackets to be retained only when the Grant is the bidding parameter.

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 Majeure Events	has the meaning ascribed to it in Clause 26.1(b)(ii).
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.
Interconnection Point	means the point located at [●], as described in more detail in Schedule [●], at which the WtE Facility shall connect with the [distribution/transmission] grid owned and operated by [●].
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(g).
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.
LC	has the meaning ascribed to it in Clause 22.6.
Lead Member	[means the Member nominated by the Members of the Selected Bidder

to act as the lead member in accordance with the RFP.]²⁴

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 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 Residual Inert Matter Liquidated Damages, the Throughput Liquidated Damages, the Discharge Liquidated Damages, and the Emission Liquidated Damages.
LOA	has the meaning ascribed to it in Recital H.
[LRP	has the meaning ascribed to it in Clause 14.4(i) and shall be prepared in accordance with Applicable Laws and the Performance Standards.] ²⁵
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.
Maximum Permissible Density	has the meaning ascribed to it in Clause 18.6(c)(iii).
Member	[means, where the Selected Bidder is a consortium, a member of the Selected Bidder.] ²⁶
Milestone Completion Certificate	means, in respect of any Project Milestone, a certificate issued by the Authority in accordance with Clause 16.1(b), to certify that such Project Milestone has been achieved in accordance with the requirements of this Agreement.
[Minimum Escrow Balance	has the meaning ascribed to it in Clause 24.2(a).]
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

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

²⁵ **Drafting Note:** To be included only if there is any displacement of people due to the Project or if any waste pickers are facing loss of revenue due to a grant of license over the Site to the Concessionaire or diversion of waste to the WtB Facility.

²⁶ **Drafting Note:** To be deleted if the Selected Bidder is not a Consortium.

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 [●]).

MLD	means million litres per day.
MoEFCC	means the Ministry of Environment, Forest and Climate Change, GoI.
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 (including water) 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 Period	means the period commencing on the 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 Clause 18.13.

Offtaker

means [insert name of the distribution utility that will execute the PPA with the Concessionaire].

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 in the array of Parties.

Payment Certificate

has the meaning ascribed to it in [Clause 22.3(c)(vi),] [Clause 22.4(d)(i)]²⁷ and Clause 22.5(f).

Performance Security

has the meaning ascribed to it in Clause 9.1.

Performance Standards

means the IFC Performance Standards on Environmental and Social Sustainability dated 1 January 2012 available at <http://www.ifc.org/performancestandards> and Environmental, Health, and Safety Guidelines on Waste Management Facilities dated December 10, 2007, available at [*insert relevant web page link*].

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.

PPA

means the power purchase agreement to be entered into between the Offtaker and the Concessionaire, or any other power purchase agreement subsequently executed by the Concessionaire for sale of power generated from the WtE Facility in accordance with Clause 28.2 (g).

²⁷ **Drafting Note:** References to be modified depending on whether a Grant and/or Processing Fee are payable.

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 WtE 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 [●] (Scope of Work).
[Processing Fee	has the meaning ascribed to it in Clause 22.4(a).
Processing Fee Statement	has the meaning ascribed to it in Clause 22.4(a).] ²⁸
Prohibited Waste	[means hazardous industrial waste, liquid non-hazardous waste, , 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), glass, metals, leather, rubber, sludge, sewage waste, ash, dirt, soil, silt, stones (from any sources), and other household waste that does not fall within the definition of Acceptable Waste.]
Project	has the meaning ascribed to it in Recital A.
Project Agreements	means this Agreement, the Financing Documents, the EPC Contract, the O&M Agreement, the PPA, connection agreement for evacuation of power at the Interconnection Point, 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 Execution Plan	means a project execution plan prepared in accordance with Clause 14.2(a).

²⁸ **Drafting Note:** To be deleted if no Processing Fee is payable.

Project Facilities	means the WtE Facility and the Associated Infrastructure, which need to be constructed, installed, operated and maintained by the Concessionaire in accordance with this Agreement (including the Technical Specifications, Applicable Laws and the Performance Standards), 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, as proposed by the Construction Plan and approved by the Authority in accordance with Clause 14.3, and 'Project Milestone' shall mean any one of them, as the context may require.] ²⁹
Proposed Technology	means combustion or such other proven technology(ies) in compliance with the SWM Rules, proposed to be used by the Concessionaire to develop the WtE Facility, as specified by the Concessionaire in its Bid and Designs and Drawings.
[RAP	has the meaning ascribed to it in Clause 14.4(i) and shall be prepared in accordance with Applicable Laws and the Performance Standards.] ³⁰
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.
Reference Period	has the meaning ascribed to it in Clause 18.7(b).
Reserve Fund	has the meaning ascribed to it in Clause 24.3(b).
Residual Inert Matter	means the waste matter produced after processing of the Acceptable Waste at the WtE Facility.
Residual Inert Matter Guarantees	has the meaning ascribed to it in Clause 21.1(e).

²⁹ **Drafting Note:** To be deleted if no Grant is payable to the Concessionaire.

³⁰ **Drafting Note:** To be included only if there is any displacement of people due to the Project or if any waste pickers are facing loss of revenue due to a grant of license over the Site to the Concessionaire or diversion of waste to the WtB Facility.

Residual Inert Matter Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the WtE Facility to achieve the Residual Inert Matter Guarantees, which are to be calculated in accordance with Schedule [●].
[Revised Feed-in Tariff	has the meaning ascribed to it in Clause 14.7(h).] ³¹
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 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.
Sampling Plan	means the plan required to be prepared by the Concessionaire and approved by the Authority and the Independent Engineer in accordance with Clause 18.8, for the sampling and testing of waste delivered to the Concessionaire.
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 [24 (twenty four)] months from the Appointed 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 WtE 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 WtE Facility, as the case may be.

³¹ **Drafting Note:** Square bracketed portion to be deleted if a tariff was quoted by the bidders as the bidding criteria.

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.
Scope of Work	means the scope of work for construction and O&M of the Project Facilities as set out in Schedule [·].
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
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 1 of Schedule [•]], on which the Concessionaire shall develop the Project Facilities.
Site Contamination Report	means a report dated [•] prepared by [•] in accordance with the terms of the RFP that sets out the baseline level of contamination (if any) at the Site prior to handover of the Site to the Concessionaire.
SLF	means the sanitary landfill identified by the Authority for safe and scientific disposal of the Residual Inert Matter.
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	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:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the 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 [●].

Supplemental Waste

has the meaning ascribed to it in Clause 18.5(f).

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.

SWM Services

has the meaning ascribed to it in Recital B.

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)] ³² 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 Clause 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 WtE Facility to achieve the Throughput Guarantee, which are to be calculated in accordance with Schedule [●].
Total Casualty	means any fire or other casualty that results in physical damage to the WtE Facility (or any part thereof), to the extent that the total cost of repairing, replacing or restoring the damaged portion of the WtE 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 WtE Facility (or any part thereof).
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 Financial Package;

³² **Drafting Note:** Delete Member(s) if the Selected Bidder is a single entity.

- (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.

Trial Operations

means the operation of the WtE Facility on a trial basis for a period of not less than [4 (four)] months from the date on which the Trial Operations Commencement Notice is issued for the WtE 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.

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 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 and rejection 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.

WtE Facility

means the waste to electricity 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.

PART II – THE CONCESSION

ARTICLE 2

2. SCOPE OF THE PROJECT

- 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, Performance Standards, Technical Specifications, Designs and Drawings, 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, Performance Standards, Technical Specifications, Designs and Drawings, the O&M Plan, the EMP, the OHS Plan, the Sampling Plan, the Waste Acceptance and Rejection Plan, and Good Industry Practices to ensure compliance with the KPIs; and
 - (c) sale of the electricity generated from the WtE Facility in accordance with the terms of the PPA and delivery of the Residual Inert Matter 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

3.1 Concession

On and from the Appointed 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 WtE 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 to generate electricity;
- (j) transport the Residual Inert Matter to the Delivery Point;
- (k) with reasonable assistance from the Authority, obtain the utilities required for enabling the construction of the Project Facilities;
- (l) [develop and maintain a buffer zone (including a green area) around the WtE Facility in accordance with Applicable Laws;]
- (m) sell any recyclable waste materials it can recover from the Acceptable Waste/Residual Inert Matter at such price and to such person as it deems fit;
- (n) deliver the electricity generated from the WtE Facility at the Interconnection Point in accordance with the terms of the PPA;
- (o) 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;
- (p) [receive the Concessionaire Payments, subject to compliance with the terms and performance of the obligations under this Agreement;]³³
- (q) 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 [25 (twenty five)] years from the COD (the **Concession**

³³ **Drafting Note:** To be deleted if no Grant / Processing Fee is payable to the Concessionaire.

Period) during which 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 WtE 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.
- (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; and
 - (iii) the aggregate amount paid by the Concessionaire to the Authority during the Concession Period towards Liquidated Damages under the Agreement is not more than [15% (fifteen per cent)] of the amount of the Performance

Security or no more than [5 (five)] incidents of a Concessionaire Event of Default have occurred during the entire Concession Period. For the purpose of this Clause 3.5(c)(iii), the aggregate amount of Liquidated Damages paid by the Concessionaire to the Authority during the Concession Period shall be calculated at present value, which shall be taken as on the Execution Date.

- (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.

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 (*Project Execution Plan, DPR and 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 (**Appointed 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 Appointed 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 Project Execution Plan and submit the Project Execution Plan to the Authority and the Independent Engineer for their approval in accordance with Clause 14.2(a);
- (c) [prepare the DPR and submit the DPR to the Authority and the Independent Engineer for their approval in accordance with Clause 14.2(b);]

- (d) [prepare the Construction Plan and submit the Construction Plan to the Authority and the Independent Engineer for their approval in accordance with Clause 14.3;
- (e) conduct the ESIA and submit the ESIA Report to the Authority and the Independent Engineer for their approval in accordance with Clause 14.4(a);]
- (f) obtain all Concessionaire Applicable Permits that are required for achieving Financial Close and for commencement of construction of the Project Facilities (including in-principle approval for evacuation of power generated from the WtE Facility at the Interconnection Point and 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;
- (g) [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 WtE Facility;]³⁴
- (h) 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;
- (i) achieve Financial Close and submit [3 (three)] 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;
- (j) execute the PPA with the Offtaker for supply of electricity generated from the WtE Facilities at the Applicable Tariff;
- (k) [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);]³⁵

³⁴ **Drafting Note:** To be deleted if the Selected Bidder is entering into the Concession itself (and not through an SPV).

³⁵ **Drafting Note:** This Condition Precedent to be deleted if the Selected Bidder is not a Consortium.

- (l) submit to the Authority certified true copies of the constitutional documents of the Concessionaire;
- (m) 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;
- (n) 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;
- (o) if [the Selected Bidder/a Member/Associate]³⁶ 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]³⁷ 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]³⁸ met the Financial Capacity specified in the RFP as of the Bid Due Date;
- (p) if [the Selected Bidder/a Member/Associate]³⁹ 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]⁴⁰ met the Financial Capacity specified in the RFP as of the Bid Due Date; and
- (q) submit to the Authority a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire.

³⁶ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³⁷ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³⁸ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

³⁹ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

⁴⁰ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

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 Clause 10;
- (b) subject to Clause 4.2(b), review and approve the Project Execution Plan in accordance with Clause 14.2(a);
- (c) subject to Clause 4.2(c), review and approve the DPR in accordance with Clause 14.2(b);
- (d) subject to Clause 4.2(d), review and approve the Construction Plan in accordance with Clause 14.3;
- (e) subject to Clause 4.2(e), review and approve the ESIA Report in accordance with Clause 14.4;
- (f) obtain all approvals and consents, required for the Authority to enter into this Agreement;
- (g) 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, and which are designed to accommodate vehicles with a minimum gross weight of 40 (forty) tonnes;
- (h) [open the Escrow Account and fund the Escrow Account with an amount equivalent to the Minimum Escrow Balance;]⁴¹
- (i) provide an LC from a Scheduled Bank in accordance with Clause 22.6;
- (j) facilitate the Offtaker in executing the PPA with the Concessionaire at the [Quoted Tariff] / [Feed-in Tariff]⁴² and obtaining the approval for [adoption of the Quoted Tariff and]⁴³ for procurement of power from the Concessionaire under the PPA at the [Quoted Tariff] / [Feed-in Tariff]⁴⁴ from the Appropriate Commission;
- (k) facilitate the Concessionaire in obtaining all Concessionaire Applicable Permits if

⁴¹ **Drafting Note:** To be deleted if no Grant or Processing Fee is payable.

⁴² **Drafting Note:** To be selected depending on whether a tariff was quoted by the bidders as the bidding criteria.

⁴³ **Drafting Note:** To be retained if the project is being awarded through tariff based bidding.

⁴⁴ **Drafting Note:** To be selected depending on whether a tariff was quoted by the bidders as the bidding criteria.

requested by the Concessionaire, including permits in relation to connectivity at the identified substation, supply of water for the operations of the Project Facilities, and environmental protection and conservation; and

- (l) ensure that any physical infrastructure required to enable the supply of electricity and water to the Site is made available at the battery limit of the Site (as identified in Schedule [•]), provided that the Concessionaire shall remain liable to obtain the connections for electricity and water supply and pay for the use of such utilities.

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**).⁴⁵
- (b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the Scheduled CP Completion Date due to:

⁴⁵ **Drafting Note:** Scheduled CP Completion Date to be confirmed.

- (i) a Force Majeure Event;
- (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 [365 (three hundred sixty-five)] 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 Appointed 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 % (zero point two percent)] 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% (zero point two percent)] 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 Appointed 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 Project Execution 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 Project Execution Plan, the DPR, the ESIA 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 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, the Project Execution Plan, the DPR and the ESIA

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 percent)] 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, the Project Execution Plan, the DPR, the ESIA 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 the soft copies of the Construction Plan, the Project Execution Plan, the DPR, the ESIA 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, Performance Standards, Applicable Permits, the O&M Plan, the Waste Acceptance and Rejection Plan, the Sampling 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, Performance Standards, Applicable Permits, the O&M Plan, the Waste Acceptance and Rejection Plan, the Sampling 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) obtain, maintain and comply with all Applicable Permits necessary for the interconnection of the WtE Facility at the Interconnection Point and evacuation of power in accordance with the PPA;
- (f) cause timely completion of the transmission system until the Interconnection Point, for synchronization of the WtE Facility with the grid, Trial Operations and evacuation of power from the COD in accordance with the PPA;
- (g) perform and fulfil all obligations under the Financing Documents;
- (h) 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;
- (i) 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;

- (j) ensure that the WtE Facility is capable of handling and processing Acceptable Waste up to its Design Capacity on a daily basis;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) 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;
- (o) obtain and maintain adequate insurances as per this Agreement;
- (p) provide and maintain a buffer zone around the WtE Facility;
- (q) [procure and maintain an adequate supply of water for the construction, operation and maintenance of the Project Facilities;]
- (r) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (s) 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 Electricity Facility in [*insert the location*]".
- (b) Notwithstanding the name of the Project set out in Clause 5.6(a), the Concessionaire shall have the right to:
 - (i) brand the Project or any part thereof in any manner that advertises, displays or reflects the name or identity of the Concessionaire or its shareholders; and
 - (ii) utilize the name of the Project to exhibit technical and financial capability of the Concessionaire when bidding for other projects,

provided that, any such branding of the Project or utilization of the name of the Project is subject to the Concessionaire expressly stating that the Project was developed on a PPP basis with the Authority.

5.7 **Obligations relating to Information**

- (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]⁴⁶ in the Concessionaire is as follows:

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

⁴⁶ **Drafting Note:** Delete Member if the Selected Bidder is a single entity.

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.]⁴⁷

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
 - (C) the Members, whose Technical Capacity or Financial Capacity was assessed for the purpose of qualification, shall individually hold not less than [10% (ten 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 [10% (ten 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

⁴⁷ **Drafting Note:** This paragraph may be deleted if the Selected Bidder is a consortium.

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.]⁴⁸

- (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.

⁴⁸ **Drafting Note:** This paragraph may be deleted if the Selected Bidder is a single entity.

ARTICLE 6

6. OBLIGATIONS OF THE AUTHORITY AND THE CONFIRMING PARTY

6.1 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, provide access road(s) to the Site which are capable of being used throughout the year (including during the monsoon season), 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 WtE Facility;
- (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 Certificates 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 [•]% of the Design Capacity of the WtE Facility), which is not utilized at the WtE Facility is diverted to an alternate location;
- (q) ensure that no Prohibited Waste or waste that exceeds the Maximum Permissible Density is delivered to the Concessionaire and if any such waste is delivered at the Site, then cause such 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;]⁴⁹
- (u) [make the Processing Fee payments, after approval of the Processing Fee Statement, in accordance with Article 22;]⁵⁰ and
- (v) [make the Compensatory Tariff payments, after approval of the Compensatory Tariff Statement, in accordance with Article 22.]⁵¹

6.2 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; and
- (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.

6.3 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.

⁴⁹ **Drafting Note:** To be deleted if no Grant is payable.

⁵⁰ **Drafting Note:** To be deleted if no Processing Fee is payable.

⁵¹ **Drafting Note:** To be deleted if the tariff was a bidding criteria.

- (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

7. REPRESENTATIONS AND WARRANTIES

7.1 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.

7.2 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*]⁵² 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]⁵³ 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;

⁵² **Drafting Note:** Insert the relevant State Government.

⁵³ **Drafting Note:** To be deleted if the Selected Bidder is a single entity.

- (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*]⁵⁴ 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.

7.3 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*]⁵⁵, 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.

⁵⁴ **Drafting Note:** Insert the relevant State Government.

⁵⁵ **Drafting Note:** Insert the relevant State Government.

7.4 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 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

8. DISCLAIMER

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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

ARTICLE 9

9. PERFORMANCE SECURITY AND O&M SECURITY

- 9.1 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 [•]⁵⁶ (i.e., an amount equal to [10% (ten per cent)] 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.
- 9.2 The Performance Security shall remain valid for a period until [30 (thirty) days] after the COD.
- 9.3 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 [•]⁵⁷ (i.e., an amount equal to [5% (five per cent)] of the Total Project Cost) (**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.
- 9.4 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.
- 9.5 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.
- 9.6 If the O&M Security is not renewed by the expiry of the 11th (eleventh) month of the relevant

⁵⁶ **Drafting Note:** The Performance Security should be in an amount equal to [10% (ten per cent)] of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost).

⁵⁷ **Drafting Note:** The O&M Security should be in an amount equal to [5% (five per cent)] of the Total Project Cost (as set out in limb (c) of the definition of Total Project Cost).

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.

- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.11 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.
- 9.12 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.
- 9.13 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.
- 9.14 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.
- 9.15 Subject to Clause 28.5(d), within [30 (thirty)] 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 terminated 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.

- 9.16 Subject to Clause 28.5(d), 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.

ARTICLE 10

10. PROJECT SITE

10.1 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 electricity 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.

10.2 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, the DPR and conducting the ESIA.
- (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.

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

- (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).

10.4 **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]⁵⁸ 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.

10.5 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

⁵⁸ **Drafting Note:** To be deleted if no Grant is payable and, therefore, there are no Project Milestones.

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.

10.6 Site Related Covenants

The Concessionaire agrees and undertakes that:

- (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.

10.7 **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

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1 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.

11.2 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.

11.3 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.

11.4 **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.

ARTICLE 12

12. FINANCING SUPPORT, SUBSTITUTION AGREEMENT AND SECURITY

12.1 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.

12.2 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.

12.3 Security Creation

- (a) The Concessionaire shall be entitled to create Security over all of its rights, title and interests in and to this 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

13. INDEPENDENT ENGINEER

13.1 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 [•].
- (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 Project Execution Plan, the DPR, Technical Specifications, Designs and Drawings, EMP, OHS Plan, Waste Acceptance and Rejection Plan, Sampling 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.

13.2 **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.]⁵⁹

13.3 **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

⁵⁹ **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.*"

- (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.

13.4 **Authorised Signatories**

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

14. CONSTRUCTION PERIOD

14.1 Commencement and Duration

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

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Appointed 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.

14.2 Project Execution Plan, DPR, Designs and Drawings

- (a) Project Execution Plan
 - (i) Within [2 (two)] months from the Execution Date, the Concessionaire shall prepare and submit to the Authority and the Independent Engineer a Project Execution in accordance with the requirements set out in Schedule [•]. The Project Execution Plan shall include details of the execution strategy for the Project, manpower deployment, environment, health and safety standards, estimated timelines for procurement of equipment and materials and construction of the Project and a Site mobilization plan.
 - (ii) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Project Execution Plan to the Concessionaire, or notify the Concessionaire of their approval of the draft Project Execution Plan, within [60 (sixty)] days from the date of receipt of the draft Project Execution Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Project Execution Plan if the Authority or the Independent Engineer identifies any deficiencies or shortcomings in the draft Project Execution Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Project Execution Plan (including any plan included within the Project

Execution Plan) 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 Project Execution Plan to address any such comments, shortcomings or deficiencies identified by the Authority and the Independent Engineer. Thereafter, the Concessionaire shall submit the revised Project Execution Plan 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 Project Execution Plan 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 Project Execution Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Project Execution Plan to the Authority.

- (iii) The Concessionaire shall design, engineer and construct the Project Facilities strictly in accordance with the approved Project Execution Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Project Execution 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 Project Execution 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 Project Execution Plan in accordance with this Clause 14.2(a).
- (iv) Notwithstanding any approval of the Project Execution 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 Project Execution Plan and complying with the requirements of this Clause 14.2(a).

(b) Detailed Project Report

- (i) Within [4(four)] 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, mass and energy balances, tentative equipment list (including evacuation infrastructure until the Interconnection Point), demand assessment, technical feasibility, process flow diagrams, process and instrumentation diagram, order of magnitude costs and 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(b)(i) shall continue until the DPR is approved by the Authority and the Independent Engineer in accordance with this Clause 14.2(b)(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(b).
 - (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(b).
- (c) 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 WtE Facility, an authorisation under the SWM Rules for setting up the WtE Facility, approvals for grid connection and commissioning certificates from the Offtaker or the relevant Governmental Authority, and a consent to operate for the operation of the Project Facilities.

- (ii) Within [•] months from the Appointed 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(c)(iii) shall continue until the Designs and Drawings are approved by Authority and the Independent Engineer in accordance with this Clause 14.2(c)(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(c). 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).

(d) Use of Proposed Technology

- (i) The Concessionaire shall design and develop the WtE 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 WtE Facility.]⁶⁰
- (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

⁶⁰ **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.

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 WtE 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.
- (vi) The Concessionaire shall be permitted to undertake any upgradation or augmentation of the Proposed Technology with the prior approval of the Authority, provided that, such upgradation or augmentation is at no additional cost to the Authority and does not, in any manner, increase the financial liability of the Authority under this Agreement. If such upgradation or augmentation of the Proposed Technology requires the Authority to bear any additional costs or increases the Authorities financial liability under this Agreement in any manner, the Concessionaire may seek a Variation in accordance with Article 31.

14.3 Construction Plan

- (a) Within [4 (four)] 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 [4 (four)] proposed Project Milestones for disbursement of the Grant and the specific activities to be performed by the Concessionaire to achieve the Project Milestones]⁶¹;
 - (ii) 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]⁶² achieve the COD by the Scheduled COD;

⁶¹ **Drafting Note:** To be deleted if no Grant is payable.

⁶² **Drafting Note:** To be deleted if no Grant is payable.

- (iii) 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
 - (iv) 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 by 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.

14.4 Environment and Occupational Health and Safety Related Obligations

- (a) Within [30 (thirty)] 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, the Performance Standards, 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 Appointed 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). Provided that, if the Authority or the Independent Engineer fail to approve the EMP and/or OHS Plan at least [30 (thirty)] days prior to the Scheduled COD, then the delay in approval of the EMP and/or OHS Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations in accordance with Clause 17.1.

Provided further that, if the Authority or Independent Engineer revert with comments, modifications or suggestions on the draft EMP and/or OHS Plan after the COD, the Concessionaire shall be required to respond to or incorporate such modifications in accordance with this Clause 14.4(e), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. 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 the 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, the Performance Standards, Applicable Permits and Good Industry Practices in the execution of the Project. Subject to Clause 14.7(b) and 14.4(e), 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.]⁶³
- (i) [The Authority shall, within [●] months of the Execution Date, prepare and implement a Livelihood Restoration Plan (**LRP**) and Resettlement Action Plan (**RAP**). The LRP and RAP shall set out the policies, guidelines and procedures to be followed by the Authority in undertaking the resettlement and livelihood restoration of persons

⁶³ **Drafting Note:** To determine on a project-by-project basis if a biodiversity assessment is required.

affected by the construction and O&M of the Project Facilities in accordance with the approved ESIA, Applicable Laws, the Performance Standards, Applicable Permits and Good Industry Practices.]⁶⁴

14.5 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 Project Execution 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). Provided that, if the Authority or the Independent Engineer fail to approve the Subcontractor management plan at least [30 (thirty)] days prior to the Scheduled COD, then the delay in approval of the Subcontractor management plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations in accordance with Clause 17.1. Provided further that, if the Authority or Independent Engineer revert with comments, modifications or suggestions on the draft Subcontractor management plan after the COD, the Concessionaire shall be required to respond to or incorporate such modifications in accordance with this Clause 14.5(a), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. Within [7 (seven)] days from the approval of the

⁶⁴ **Drafting Note:** To be included only if there is any displacement of people due to the Project or if any waste pickers are facing loss of revenue due to a grant of license over the Site to the Concessionaire or diversion of waste to the WtB Facility.

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 [25% (twenty-five per cent) of the Total Project Cost] 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 [25% (twenty-five per cent) of the Total Project Cost] with an approved Subcontractor do not need to be separately approved by the Authority.
- (c) The Concessionaire shall provide a copy of each proposed Subcontract of a value above [25% (twenty-five per cent) of the Total Project Cost], 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.

14.6 **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 Project Execution Plan, the DPR and other provisions of this Agreement, and the PPA.

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]⁶⁵ [so as to ensure that the WtE Facility achieves the 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 Project Execution Plan, the DPR, the EMP, OHS Plan, Applicable Laws, the Performance Standards, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications, the Performance Standards, 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 WtE Facility is capable of handling and processing the Acceptable Waste up to the Design Capacity; and
 - (v) 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 and Performance Standards 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 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,

⁶⁵ **Drafting Note:** The square bracketed portion to be deleted if no Grant is being paid to the Concessionaire.

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 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.

14.7 **Construction Timelines**

- (a) The Concessionaire shall comply with the DPR, the Project Execution Plan, 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 WtE Facility achieves the 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,]⁶⁶ 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 or Offtaker in granting or renewing any Applicable Permit (including the commissioning certificate under the PPA), 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 10.5;
- (vi) any delay by the Authority in providing comments or approving the Designs and Drawings in accordance with the process and timelines set out in Clause 14;
- (vii) 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;
- (viii) 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);
- (ix) delay by the Authority in issuing the [Milestone Completion Certificate in accordance with Clause 16.1(b)]⁶⁷ [Construction Completion Certificate in accordance with Clause 16.1(a)]⁶⁸;
- (x) delay by the Independent Engineer in issuing the Trial Operations Commencement Notice in accordance with Clause 16.1(b);

⁶⁶ **Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

⁶⁷ **Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

⁶⁸ **Drafting Note:** The square bracketed portion to be deleted if a Grant is being paid to the Concessionaire.

- (xi) [delay in operationalization of the substation at which the electricity generated from the WtE Facility is proposed to be injected at the Interconnection Point or]⁶⁹ unavailability of the transmission system for evacuation of power beyond the Interconnection Point;
- (xii) undue delay by Authority in obtaining any Applicable Permit required to be obtained by it under this Agreement; or
- (xiii) [delay by the Authority of more than [30 (thirty)] days beyond the due date in making payment of the Grant to the Concessionaire in accordance with the terms of this Agreement;]⁷⁰
- (xiv) 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 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.

⁶⁹ **Drafting Note:** The square bracketed portion to be deleted in the substation identified for evacuation of power generated from the WtE Facility (as notified by the Authority in the bid document) is operational at the time of execution of this Agreement.

⁷⁰ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

- (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.
- (h) [Notwithstanding anything else contained in this Clause 14.7, if a Delay Event causes the Scheduled COD to be delayed beyond the Control Period for the Feed-in Tariff, then unless the Control Period is extended or a tariff equal to or higher than the Feed-in Tariff is approved by the Appropriate Commission for the succeeding control period (**Revised Feed-in Tariff**), the Authority may, at its sole discretion, agree to bear the positive difference between the Feed-in Tariff and the Revised Feed-in Tariff, failing which this will be treated as an Authority Event of Default in accordance with Clause 28.3.]⁷¹

14.8 Delay Liquidated Damages

- (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]⁷² 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]⁷³ Scheduled COD, at the rate of [0.1 (zero point one percent)]% of the Performance Security, up to [6 (six)] months from the [relevant Scheduled Project Milestone Completion Date, or, as the case may be, the]⁷⁴ Scheduled COD (collectively, the

⁷¹ **Drafting Note:** Square bracketed portion to be deleted if a tariff was quoted by the bidders as the bidding criteria.

⁷² **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁷³ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

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

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,]⁷⁵ the 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.]⁷⁶
- (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.]⁷⁷
- (e) The Parties acknowledge that the Delay Liquidated 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.
- (f) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle the Authority from claiming any Delay Liquidated 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]⁷⁸ for the delay in achieving the COD by the Scheduled COD.
- (g) [If the Concessionaire fails to complete the works for a Project Milestone within [6 (six)] months of the Scheduled Project Milestone Completion Date or]⁷⁹ 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.
- (h) 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 WtE Facility, or from any of its other duties, obligations or

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

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

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

⁷⁸ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁷⁹ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

responsibilities under the Agreement.

- (i) The Concessionaire shall pay any Delay Liquidated Damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Authority.

ARTICLE 15

15. MONITORING OF CONSTRUCTION

15.1 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

15.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the construction of the Project Facilities at least once a month and make a report of such inspection (the **Inspection Report**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of 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.

15.3 Tests

- (e) 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.

- (f) 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.

15.4 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.

15.5 Video Recording

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 Appointed Date and thereafter, no later than [15 (fifteen)] days after the close of each quarter.

ARTICLE 16

16. COMPLETION CERTIFICATE

16.1 Completion of Works

- (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, the Project Execution 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.]⁸⁰

(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.

⁸⁰ **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.

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:
- (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.]⁸¹

(b) Tests on Completion

- (i) Upon issuance of the [Milestone Completion Certificate for the last Project Milestone]⁸² / [Construction Completion Certificate]⁸³ 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**

⁸¹ **Drafting Note:** To be deleted if there is no Grant and corresponding Project Milestones.

⁸² **Drafting Note:** To be deleted if no Grant is payable.

⁸³ **Drafting Note:** To be deleted if Grant is payable and there are Project Milestones.

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 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 WtE Facility in accordance with the Technical Specifications, to determine whether the WtE 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 generation of electricity in accordance with this Agreement. The Concessionaire shall undertake the Trial Operations of the WtE Facility for a minimum period of [•] months from the date on which the Trial Operations of the WtE Facility commence.
 - (ii) At least [30 (thirty)] days prior to commencement of the Trial Operations, the Concessionaire shall notify the Authority of the schedule for supply 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 WtE 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 WtE 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 generated from the WtE Facility 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 over a consecutive period of [7 (seven)] days, then the Trial Operations shall be deemed to have been successfully completed and the Acceptance Certificate shall be deemed to have been issued to the Concessionaire under Clause 16.1(c)(xiv).
- (iv) During the Trial Operations, the Independent Engineer shall monitor the performance of the WtE Facility on a regular basis and shall have the right to test the compliance of the WtE Facility with the KPIs, Technical Specifications, Designs and Drawings, Applicable Laws, Performance Standards and Applicable Permits.
- (v) Within [•] days of the issuance of the [Milestone Completion Certificate for the last Project Milestone ⁸⁴]/ [Construction Completion Certificate ⁸⁵], 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 WtE Facility as a part of the Trial Operations to demonstrate that the WtE 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.

⁸⁴**Drafting Note:** The square bracketed portion to be deleted if a Grant is not being paid to the Concessionaire.

⁸⁵**Drafting Note:** The square bracketed portion to be deleted if a Grant is being paid to the Concessionaire.

- (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 WtE 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 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 Independent Engineer's notice under Clause 16.1(c)(xi), in each case due to reasons not attributable to the Concessionaire, then the Acceptance Certificate shall be deemed to be issued to the Concessionaire.

- (xiv) 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

17. ENTRY INTO COMMERCIAL SERVICE

17.1 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, subject to fulfilment of the conditions set out below:
- (i) the Authority having issued (or deemed to have issued) the Acceptance Certificate;
 - (ii) the Concessionaire having provided and maintained a buffer zone around the WtE Facility;
 - (iii) the Concessionaire having obtained all Applicable Permits necessary for operation of the WtE 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) and necessary for the interconnection of the WtE Facility at the Interconnection Point and evacuation of power in accordance with the terms of the PPA;
 - (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 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 Offtaker having issued a commissioning certificate in accordance with the terms of the PPA; and
 - (viii) the Concessionaire having submitted the O&M Security to the Authority.

- (b) [If the Authority fails to issue the COD Certificate to the Concessionaire within [15 (fifteen)] days from the date of the issue of the COD Conditions Completion Notice, without reason, then the COD Certificate shall be deemed to be issued on the [16th (sixteenth)] day from the date of the COD Conditions Completion Notice.
- (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.
- (d) Within [60 (sixty)] days from the COD of the Project Facilities, the Concessionaire shall: (i) notify the Authority of the actual capital cost of the Project; and (ii) 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 the Authority.

ARTICLE 18

18. OPERATIONS AND MAINTENANCE PERIOD

18.1 Commencement and Duration

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.

18.2 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, the Performance Standards, 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). Provided that, if the Authority or the Independent Engineer fails to approve the O&M Plan at least [10 (ten)] days prior to Scheduled COD, then the delay in approval of the O&M Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations. If the Authority or Independent Engineer responds with comments, modifications or suggestions on the draft O&M Plan after the COD, the Concessionaire shall be required to address such modifications in

accordance with this Clause 18.2(b), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. 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 (or where the O&M Plan has not been approved prior to the COD, in accordance with the draft O&M Plan submitted to the Authority until the O&M Plan is approved). The Concessionaire shall not deviate from or make any amendment to the approved O&M Plan without the prior written approval of the Authority.
- (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. Subject to Clause 18.2(b), 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.

18.3 Waste Acceptance and Rejection Plan

- (a) At least [60 (sixty)] days prior to the Scheduled COD, the Concessionaire shall prepare and submit a Waste Acceptance and Rejection Plan for the WtE Facility. The Waste Acceptance and Rejection Plan shall specify the procedures to be followed by the Parties in relation to the delivery, acceptance and rejection of waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point, including rejection of Prohibited Waste and/or waste that exceeds the Maximum Permissible Density.
- (b) The Waste Acceptance and Rejection Plan shall set out the methodology that the Concessionaire proposes to use when inspecting, testing, processing and rejecting waste that is delivered at the Receipt Point.
- (c) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Waste Acceptance and Rejection Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Waste Acceptance and Rejection Plan within [30 (thirty)] days from the date of receipt of the draft Waste Acceptance and Rejection Plan from the Concessionaire. The Authority may require the

Concessionaire to amend or modify the draft Waste Acceptance and Rejection Plan if the Authority or the Independent Engineer identify any deficiencies, inaccuracies or shortcomings in the draft Waste Acceptance and Rejection Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Waste Acceptance and Rejection Plan from the Authority or the Independent Engineer, then the Concessionaire shall modify the draft Waste Acceptance 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 and Rejection Plan and submit the revised Waste Acceptance 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 and Rejection Plan is approved by the Authority and the Independent Engineer in accordance with this Clause 18.3(c). Provided that, if the Authority or the Independent Engineer fails to approve the Waste Acceptance and Rejection Plan at least [10 (ten)] days prior to the Scheduled COD, then the delay in approval of the Waste Acceptance and Rejection Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations in accordance with Clause 17.1. Provided further that, if the Authority or Independent Engineer responds with comments, modifications or suggestions on the draft Waste Acceptance and Rejection Plan after the COD, the Concessionaire shall be required to address such modifications in accordance with this Clause 18.3(c), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. The Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the approved Waste Acceptance and Rejection Plan to the Authority.

- (d) The Concessionaire shall revise the Waste Acceptance 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 and Rejection Plan (or where the Waste Acceptance and Rejection Plan has not been approved prior to the COD, in accordance with the draft Waste Acceptance and Rejection Plan submitted to the Authority until the Waste Acceptance and Rejection Plan is approved). 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 and Rejection Plan (or where the Waste Acceptance and Rejection Plan has not been approved prior to the COD, in accordance with the draft Waste Acceptance and Rejection Plan submitted to the Authority until the Waste Acceptance and Rejection Plan is approved).

- (f) Notwithstanding any approval of the Waste Acceptance 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 and Rejection Plan. Subject to Clause 18.3(c), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the Waste Acceptance and Rejection Plan and complying with the requirements of this Clause 18.3.

18.4 **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, the Performance Standards, and the terms of Applicable Permits;
 - (iii) ensures the Project Facilities are capable of handling Acceptable Waste up to [•]% of the Design Capacity and processing Acceptable Waste up to its Design Capacity on a daily basis;
 - (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 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 the terms of the PPA;
 - (xii) maintains the safety and security of personnel, material and property at the Site, in accordance with the approved EMP, OHS Plan, Applicable Laws, Performance Standards and Applicable Permits;
 - (xiii) [is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Project Facilities;] and
 - (xiv) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EMP, OHS Plan, Applicable Laws, the Performance Standards 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;
 - (ii) provide the Authority and the Independent Engineer with reasonable access to the Site during office hours to monitor and inspect the Project Facilities;
 - (iii) 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;
 - (iv) install meters required for measuring the total number of units of electricity generated delivered by the WtE Facility at the Interconnection Point and ensure that the meters installed are calibrated once every [year] during the O&M Period in accordance with Applicable Law, Good Industry Practices and the Technical Specifications and bear all costs for installation, testing, calibration, maintenance, renewal and repair of meters installed; and

- (v) 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.

18.5 Delivery of Acceptable Waste

- (a) 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 WtE Facility, in accordance with the Acceptable Waste Delivery Schedule notified by the Authority to the Concessionaire.
- (b) The Acceptable Waste supplied by the Authority on any day shall not be less than [•] TPD (the **Daily Guaranteed Acceptable Waste Quantity**).
- (c) 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.
- (d) The Concessionaire shall receive and accept all quantities of Acceptable Waste delivered by the Authority at the Receipt Point subject to the following:
 - (i) on any day during the O&M Period, the Concessionaire shall not be required to accept any quantities of Acceptable Waste in excess of [110% (one hundred and ten percent)] of the Design Capacity; and
 - (ii) the aggregate quantity of Acceptable Waste delivered during any consecutive [7 (seven)] day period not exceeding [*insert a quantity equivalent to [105% (one hundred and five per cent)] of the Design Capacity multiplied by 7 (seven)*] tons; and
 - (iii) 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, provided that, the Concessionaire shall have the right to accept Supplemental Waste in accordance with Clause 18.5(f).
- (e) The Authority shall ensure that the waste delivered to the Concessionaire at the Receipt Point on any day of the O&M Period does not include Prohibited Waste and does not exceed the Maximum Permissible Density.

- (f) If the Acceptable Waste delivered by the Authority is less than the Daily Guaranteed Acceptable Waste Quantity for any [7 (seven)] days or more in a month during the O&M Period, the Concessionaire shall have the right to issue a notice to the Authority (the **Supplemental Waste Notice**) seeking the Authority's consent for the procurement of supplemental waste from third parties that the Concessionaire may process at the Project Facilities (the **Supplemental Waste**) on any day during the O&M Period. The Authority shall respond to the Concessionaire's notice within [5 (five)] working days of receipt of the Supplemental Waste Notice, and either approve or reject the Concessionaire's request to procure Supplemental Waste. If the Authority fails to notify its approval or **rejection** within [5 (five)] working days of receipt of the Supplemental Waste Notice, then the Authority shall be deemed to have approved the Concessionaire's request to procure Supplemental Waste. If the Concessionaire's request under the Supplemental Waste Notice is approved, or deemed approved, the Concessionaire shall have the right to procure, accept and process Supplemental Waste at the Project Facilities, subject to the following conditions:
- (i) the quantity of Supplemental Waste procured by the Concessionaire on any day during the O&M Period shall not exceed the Shortfall Quantity on any day in the preceding month during the O&M Period;
 - (ii) any approval or deemed approval for procuring Supplemental Waste shall expire on the date on which the Authority reasonably demonstrates, over a consecutive period of [2 (two)] months during the O&M Period, that it has supplied Acceptable Waste equal to the Daily Guaranteed Acceptable Waste Quantity to the Concessionaire;
 - (iii) the Supplemental Waste is procured at no additional cost to the Authority;
 - (iv) procuring, accepting, and processing of the Supplemental Waste does not, in any manner, hamper, impede or prevent the Concessionaire from complying with its obligations to receive, accept and process all quantities of Acceptable Waste delivered by the Authority in accordance with the terms of this Agreement;
 - (v) procuring, accepting, and processing of the Supplemental Waste by the Concessionaire shall be at its own risk and cost and shall not relieve the Concessionaire from complying with any of its obligations under the Agreement (including its obligations to comply with the KPIs); and
 - (vi) the Concessionaire shall always prioritize accepting and processing of the Acceptable Waste delivered by the Authority over any Supplemental Waste procured by the Concessionaire at all times during the O&M Period.

- (g) If any approval or deemed approval for procuring Supplemental Waste expires in accordance with Clause 18.5(f)(ii) and the Authority subsequently delivers Acceptable Waste less than the Daily Guaranteed Acceptable Waste Quantity for any [7 (seven)] days or more in a month during the O&M Period, the Concessionaire shall have the right to issue another Supplemental Waste Notice to the Authority and the process set out in Clause 18.5(f) shall apply in such a situation.

18.6 **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 WtE Facility. The Receipt Point shall be equipped with adequate facilities for video surveillance, a server room, electronic display unit, and Weighbridge shall be duly calibrated as per BIS norms and duly certified by the Weights and Measures Department.
- (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 and enter such information into the electronic database:
 - (A) date of entry into the Site;
 - (B) registration number of the truck;
 - (C) time of entry into the Site;
 - (D) gross weight of the truck;
 - (E) tare weight of the truck (from the electronic database);
 - (F) weight of the waste received;

- (G) volume of the truck (from the electronic database);
- (H) volume of the truck occupied by the waste in the consignment;
- (I) density of the waste received; and
- (J) zone/circle/ward from which the waste has been collected and delivered to the Concessionaire.

(c) Visual Inspection and Density Verification 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 on the truck to determine if any Prohibited Waste has been delivered.
- (ii) If, upon such visual inspection of a consignment of waste prior to unloading, the Concessionaire 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.
- (iii) Once a truck carrying a consignment of waste has been weighed at the Weighbridge, if it is determined that the consignment has a density greater than:
 - (A) 550 kg/m³, in case of an open truck; or
 - (B) 850 kg/m³, in case of a compactor truck, (the **Maximum Permissible Density**),

then the said consignment shall be rejected and shall not be allowed to unload. The Concessionaire shall promptly (and in any event within [•] hours of delivery of the relevant consignment of waste that exceeds the Maximum Permissible Density) notify the Authority of the rejection of such consignment of waste, along with details of the truck carrying the consignment of waste, details of who supplied the consignment of waste and such other details as the Authority may require.

(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

and density verification prior to unloading, then, subject to the Concessionaire's right to reject the entire consignment of waste in accordance with Clause 18.6(c)(ii) or (iii) 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, then the Concessionaire shall have the right to reject the entire consignment of waste, subject to an inspection by the Independent Engineer in accordance with Clause 18.6(d)(v) below.
- (iii) The Concessionaire shall physically set aside the rejected consignment of waste, for inspection by the Independent Engineer.
- (iv) 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 such consignment of waste, along with details of the truck carrying the consignment of waste, details of who supplied the consignment of waste and such other details as the Authority may require.
- (v) Upon receipt of a notice from the Concessionaire under Clause 18.6(d)(iv) above, 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 waste delivered does not include Prohibited Waste, then the Concessionaire shall be required to accept the waste for processing, and handling at the WtE 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 includes Prohibited Waste, then the Authority shall (or shall cause the C&T Contractors to) remove such consignment of waste from the Site within [•] hours of inspection of such waste by the Independent Engineer. If the Authority chooses to accept the Concessionaire's determination of Prohibited Waste (and not require the Independent Engineer to undertake a separate inspection), then the Authority shall cause the consignment of waste 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 rejected consignment of waste from the Site, including additional costs incurred by the Concessionaire to load the consignment of waste onto trucks, shall be borne by Authority.

- (vi) In handling any Prohibited Waste that has been delivered to the Site, the Concessionaire shall comply with the Waste Acceptance and Rejection Plan, the EMP, the OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits.

(e) Calculation of the Acceptable Waste Delivered

- (i) After inspection, verification, and unloading of the waste, the Concessionaire shall weigh the empty truck. The Concessionaire shall record the weight of the empty truck and the time of exit of the truck in the format to be approved by the Authority as part of the Waste Acceptance 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 empty truck will be treated as the weight/volume of the total waste unloaded at the Receipt Point (the **Total Unloaded Waste**).
- (iii) Subject to the Concessionaire's right to reject the consignment of waste after unloading in accordance with Clause 18.6(d)(ii) or (iii) above, the aggregate of the Total Unloaded Waste quantities in a day will be treated as the weight/volume of Acceptable Waste actually received by the Concessionaire for processing at the WtE Facility on such day (the **Daily Acceptable Waste Quantity**).
- (iv) The Daily Acceptable Waste Quantity will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance 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 each day for 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.

18.7 **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 [30% (thirty per cent)] of the Average Per Ton Gross Revenue (the **Guaranteed Waste Liquidated Damages**), such that:

Guaranteed Waste Liquidated Damages = Shortfall Quantity *multiplied by* ([0.30 (zero point three zero)] 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, provided that, if the Shortfall Quantity arises within the first [3 (three) months] after the COD then the reference period shall be

the period between the COD and the day immediately preceding the day on 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.

18.8 Sampling Plan and Testing of and Residual Inert Matter

- (a) At least [60 (sixty)] days prior to the Scheduled COD, the Concessionaire shall prepare and submit a draft Sampling Plan for the testing of the Residual Inert Matter generated from the WtE Facility, which shall be in accordance with the Technical Specifications, EMP, OHS Plan, Applicable Laws, Performance Standards, and Applicable Permits. The Sampling Plan shall specify the periodicity of testing, number of samples to be drawn and other procedures to be followed by the Parties in relation to the sampling and testing of the Residual Inert Matter.
- (b) The Authority and the Independent Engineer shall review and provide comments, if any, on the draft Sampling Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Sampling Plan within [30 (thirty)] days from the date of receipt of the draft Sampling Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Sampling Plan if the Authority or the Independent Engineer identify any deficiencies, inaccuracies or shortcomings in the draft Sampling Plan. If the Concessionaire receives any

comments, suggestions or instructions to modify the draft Sampling Plan from the Authority or the Independent Engineer, then the Concessionaire shall modify the draft Sampling 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 Sampling Plan and submit the revised Sampling Plan to the Authority and the Independent Engineer for their approval. The process set out in this Clause 18.8(b) shall continue until the Sampling Plan is approved by the Authority and the Independent Engineer in accordance with this Clause 18.8(b). Provided that, if the Authority or the Independent Engineer fail to approve the Sampling Plan at least [10 (ten)] days prior to Scheduled COD, then the delay in approval of the Sampling Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations. Provided further that, if the Authority or Independent Engineer responds with comments, modifications or suggestions on the draft Sampling Plan after the COD, the Concessionaire shall be required to address such modifications in accordance with this Clause 18.8(b), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. The Concessionaire shall submit 4 hard copies and 1 soft copy on a USB drive of the approved Sampling Plan to the Authority.

- (c) The Concessionaire shall revise the Sampling Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.8(b) will apply as is to the approval of the revised plan.
- (d) The Concessionaire shall, before transporting any Residual Inert Matter to the Delivery Point, test the Residual Inert Matter for unburned combustible matter and such other characteristics as set out in Schedule [●]. The Concessionaire shall ensure that it conducts any testing of the Residual Inert Matter strictly in accordance with the Sampling Plan.
- (e) The Concessionaire shall record the results of the tests conducted on samples Residual Inert Matter in the format to be approved by the Authority and the Independent Engineer as part of the Sampling Plan, which shall be certified by the Independent Engineer.
- (f) Subject to Clause 18.8(b), the Concessionaire shall not be entitled to any additional costs or time for preparing the Sampling Plan or for testing samples of the Residual Inert Matter (whether on or off Site), prior to its disposal at the Delivery Point.

18.9 Delivery of Residual Inert Matter

- (a) The Concessionaire shall procure the trucks and other vehicles required for the transportation of the Residual Inert Matter 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 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:
 - (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 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 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 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 the Authority instructs the Concessionaire to deliver the Residual Inert Matter 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.

18.10 Sale of Electricity and Recyclable Materials

- (a) Sale of Electricity
 - (i) The Concessionaire shall sell the electricity generated from the WtE

Facilities to the Offtaker in accordance with the PPA, Applicable Laws, Applicable Permits and Good Industry Practices, at the Applicable Tariff.

- (ii) [Subject to Clause 14.7(h),]⁸⁶ if after the COD, the Applicable Tariff is reduced for any reason except a default or breach of the terms of the PPA by the Concessionaire, the Authority may, at its sole discretion, agree to bear the positive difference between the Applicable Tariff and the reduced tariff under the PPA, failing which the reduction in tariff will be treated as a Direct Political Force Majeure Event in accordance with Clause 26.1(b)(iii).
- (iii) If, for reasons not attributable to the Concessionaire, the Offtaker either suspends offtake of power under the PPA or fails to offtake the entire quantum of electricity generated from the WtE Facilities in accordance with the PPA, the Concessionaire shall have the right to sell the quantities of power not taken by the Offtaker to any third party (including on the power exchange). For the period of such suspension or reduced offtake, the Authority shall compensate the Concessionaire for the difference between the average tariff realised by the Concessionaire for the preceding [3 (three)] months and the actual tariff (if any) received by the Concessionaire during the period of suspension or reduced offtake, as the case may be. If such suspension or reduced offtake continues for more than [15 (fifteen)] consecutive days and the Concessionaire is unable to sell such power to third parties despite its best efforts, the suspension or reduction in offtake, as the case may be, will be treated as a Direct Political Force Majeure Event in accordance with Clause 26.1(b)(iii).
- (iv) If the Offtaker is in breach of its payment obligations under the PPA for a continuous period of [3 (three) months], the Concessionaire shall have the right to suspend delivery of power to the Offtaker subject to the terms of the PPA. Upon such suspension, the Concessionaire shall have the right to supply power generated from the WtE Facilities to third parties (including a power exchange). If the payment default continues for more than [15 (fifteen)] consecutive days and the Concessionaire is unable to sell such power to third parties despite its best efforts, the Offtaker's default under the PPA will be treated as a Direct Political Force Majeure Event in accordance with Clause 26.1(b)(iii).

(b) Sale of Recyclable Materials

- (i) The Concessionaire shall be free to sell or otherwise dispose of any recyclable materials it can recover from the Acceptable Waste delivered to it at the Receipt Point, at such price and to such person as it deems fit and the proceeds of such sale shall be retained by the Concessionaire.

⁸⁶ **Drafting Note:** To be deleted if the project is awarded through tariff based bidding.

- (ii) The Concessionaire shall maintain records and submit reports to the Authority of the revenue collected from the sale of recyclable materials. 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 proceeds from the sale of recyclable materials.

18.11 Utilities

- (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 provided that, the Authority shall ensure that any physical infrastructure required to enable the supply of electricity and water to the Site is made available at the battery limit of the Site (as identified in Schedule [•]).
- (b) [The Concessionaire shall be responsible for arranging for the supply of at least [•] MLD of secondary treated water for use in the operation of the WtE Facility during the O&M Period, provided that the Authority shall provide reasonable assistance to the Concessionaire in obtaining water supply for the WtE Facility. The charges for any water supplied to the Concessionaire for utilization at the WtE Facility shall be as per the tariff to be notified by [*municipal authority / insert relevant entity for water supply*] ⁸⁷ and the Concessionaire shall be responsible to pay all such charges directly to [*municipal authority / insert relevant entity for water supply*] ⁸⁸.]
- (c) Notwithstanding anything contained in this Clause 18.11, if [*municipal authority / insert relevant entity for water supply*] ⁸⁹ fails to supply adequate quantities of secondary treated water to the Concessionaire for use in the operation of the WtE Facility, the Concessionaire shall be responsible for arranging an alternate source of water in order to ensure the continuous operations of the WtE Facility and the Concessionaire shall be entitled to claim any additional costs in such cases from the Authority.

18.12 Design Capacity Utilization

- (a) During each day of the O&M Period, the Concessionaire shall ensure that the WtE 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

⁸⁷ **Drafting Note:** Include the municipal authority / entity responsible for the water supply.

⁸⁸ **Drafting Note:** Include the municipal authority / entity responsible for the water supply.

⁸⁹ **Drafting Note:** Include the municipal authority / entity responsible for the water supply.

Engineer) as soon as it becomes aware that the quantity of Acceptable Waste received at the Receipt Point is more than the quantities of Acceptable Waste that the Concessionaire is required to accept in accordance with Clause 18.5(d).

- (c) If the quantity of Acceptable Waste received at the Receipt Point is more than the quantities of Acceptable Waste that the Concessionaire is required to accept in accordance with Clause 18.5(d), as a result of which the Concessionaire is unable to accept the Acceptable Waste at the WtE 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 WtE Facility at any time during the O&M Period.

18.13 Maintenance and Repair of the WtE Facility

- (a) During the O&M Period, the Concessionaire shall operate and maintain the Project Facilities and repair any damage to the Project Facilities either by itself, or through an approved Subcontractor, such that:
 - (i) the Project Facilities shall be operated and maintained in accordance with the O&M Plan, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice, the recommendations of the technology providers and the maintenance standards provided by the original equipment manufacturers;
 - (ii) the Project Facilities and all equipment, components and parts are in good working condition (subject only to wear and tear and Force Majeure);
 - (iii) the Project Facilities are capable of achieving their useful economic life in accordance with the Designs and Drawings;
 - (iv) any equipment, components or parts of the Project Facilities, including the Weighbridges, combustion chambers, transmission infrastructure, electricity meters, etc., that are damaged or worn out or, in the Concessionaire's judgement, no longer practicable to repair as a result of normal wear and tear shall be replaced by the Concessionaire at its cost;
 - (v) the Project Facilities shall be subject to Scheduled Maintenance in accordance with the Scheduled Maintenance Programme; and

(vi) the Project Facilities shall be capable of meeting the KPIs

(the **O&M Standards**).

- (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 WtE Facility, specifying the Scheduled Maintenance periods for the WtE Facility and the impact of such Scheduled Maintenance periods on the Availability of the WtE 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 WtE 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 WtE 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) If at any time during the O&M Period, the WtE 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 WtE 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.

- (g) If at any time during the O&M Period, the WtE 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 WtE 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.

18.14 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 and the Performance Standards, 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.

18.15 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 [25% (twenty-five per cent) of the Total Project Cost] 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

19. SAFETY REQUIREMENTS

19.1 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**).

19.2 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.

19.3 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, the Performance Standards, 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.

19.4 **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

20. MONITORING OF OPERATION AND MAINTENANCE

20.1 Monitoring and Reporting

(a) Environmental Monitoring

- (i) The Concessionaire shall operate the Project Facilities and process the Acceptable Waste at the WtE Facility strictly in accordance with the O&M Plan, EMP, the Waste Acceptance and Rejection Plan, OHS Plan, SWM Rules, other Applicable Laws, the Performance Standards, 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 WtE 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 WtE Facility in accordance with the EMP, O&M Plan, Performance Standards 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 WtE Facility, the Concessionaire shall install and maintain an online monitoring system as part of the Project Facilities, in accordance with the Technical Specifications, the Performance Standards and Applicable Laws to monitor compliance with the KPIs.

(b) Metering

The Concessionaire shall:

- (i) install meters required for measuring the total number of units of energy delivered by the WtE Facility at the Interconnection Point;
- (ii) ensure that the meters installed are calibrated once every [year] during the O&M Period in accordance with the PPA, Applicable Laws, Good Industry

Practices and the Technical Specifications; and

- (iii) bear all costs for installation, testing, calibration, maintenance, renewal and repair of meters installed.

(c) 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 and Rejection Plan, recording the details specified in Clause 18.6(b) at the end of each day (i.e., on or before [●] hours every day);
- (vi) daily report on the quantum of electricity in kWh produced from the WtE Facility and scheduled for delivery to the Offtaker in accordance with the PPA, at the end of each day (i.e., on or before [●] hours every day);
- (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 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, the terms of this Agreement 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.

20.2 **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.

20.3 **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 carry out, or cause to be carried out, tests specified by it. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests to the Independent Engineer. The costs incurred on the Tests shall be borne solely by the Concessionaire.

20.4 **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 WtE 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 WtE Facility until the Concessionaire demonstrates to the satisfaction of the Authority that it can and will resume normal operation and maintenance of the WtE 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 WtE Facility, provided that, any revenue earned from the O&M of the WtE 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 WtE Facility).

ARTICLE 21

21. KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

(a) Availability Guarantee

- (i) The Concessionaire shall ensure that the Availability of the Project Facilities for each month during the O&M Period shall be [85% (eighty five percent)] (the **Availability Guarantee**).

The '**Availability**' of the Project Facilities will be determined as a ratio of the number of hours in a month 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 such month, 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);
- (C) a suspension in power supply under the PPA, for reasons attributable to the Concessionaire; or
- (D) 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 in any month during 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 on a monthly basis during the O&M Period and will be payable by the Concessionaire within [7 (seven)] days from the end of the month in which the Concessionaire has failed to achieve the Availability Guarantee.
- (b) Throughput Guarantee
- (i) The Concessionaire shall ensure that it accepts all quantities of Acceptable Waste delivered by the Authority at the Receipt Point, subject to Clause 18.5(d). On any day during the O&M Period, if the Concessionaire is unable to accept quantities of Acceptable Waste equivalent to [•]⁹⁰ 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;
 - (B) an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire; or
 - (C) any act or omission of the Authority or the Offtaker or any of their nominated contractors as a result of which the Concessionaire is unable to operate the WtE Facility in accordance with the terms of this Agreement.
 - (iii) The Throughput Liquidated Damages payable by the Concessionaire for its

⁹⁰ **Drafting Note:** The minimum amount of Acceptable Waste that the Concessionaire is required to accept on any day of the O&M Period should be equal to 100% of the Design Capacity of the WtE Facility.

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 WtE Facility is operated as a zero liquid discharge facility throughout the O&M Period (**Discharge Guarantee**). For every incident of liquid discharge from the WtE 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. Provided that, if any statutory penalties are levied on the Concessionaire on account of any liquid discharge from the WtE Facility, then such statutory penalties shall be deducted from the Discharge Liquidated Damages payable by the Concessionaire under this Agreement.

(d) Emission Guarantee

The Concessionaire shall ensure that the emissions from the operation of the WtE Facility shall not exceed the limits specified in Schedule [●]⁹¹ (**Emission Guarantee**). If the emissions from the operation of the WtE Facility exceed the limits specified in Schedule [●], then the Concessionaire will be given demerit points in accordance with Schedule [●]. If the number of demerit points exceed [75 (seventy five)] in any year of the O&M Period, then the Concessionaire shall be liable to pay the Emission Liquidated Damages calculated in accordance with Schedule [●].

The Emission 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. Provided that, if any statutory penalties are levied on the Concessionaire on account of emissions from the operation of the WtE Facility, then such statutory penalties shall be deducted from the Emission Liquidated Damages payable by the Concessionaire under this Agreement.

⁹¹ **Drafting Note:** The schedule should specify limits for emissions in accordance with applicable EU standards, i.e., Annex VI: Technical provisions relating to waste incineration plants and waste co-incineration plants, as available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0075&qid=1697723319749>.

(e) Residual Inert Matter Guarantees

(i) Quality of Residual Inert Matter

The Concessionaire shall ensure that the total combustible matter in the Residual Inert Matter generated as a result of processing the Acceptable Waste in any month at the WtE Facility shall not exceed [5% (five per cent)] of the weight of the total Residual Inert Matter. If the total combustible matter in the Residual Inert Matter exceeds [5% (five per cent)] of the weight of the total Residual Inert Matter generated in such month, the Concessionaire shall pay the Residual Inert Matter Liquidated Damages calculated in accordance with Schedule [●].

(ii) Quantity of Residual Inert Matter

The Concessionaire shall ensure that the Residual Inert Matter generated as a result of processing the Acceptable Waste in any month at the WtE Facility shall not exceed [25% (twenty five per cent)] of the weight of Acceptable Waste accepted by the Concessionaire in such month. If the quantity of Residual Inert Matter in any month exceeds [25% (twenty five per cent)] of the of the weight/volume of Acceptable Waste accepted by the Concessionaire in such month, then the Concessionaire shall be liable to pay the Residual Inert Matter Liquidated Damages calculated in accordance with Schedule [●].

The guarantees described above in Clause 21.1(e)(i) and (ii) with respect to the quality and quantity of the Residual Inert Matter are referred to collectively as the **Residual Inert Matter Guarantees**.

The Residual Inert Matter 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.

- (f) 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.

- (g) Within [7 (seven)] days from the end of each quarter, the Concessionaire shall be required to provide a report on compliance of the WtE Facility with the KPIs (prepared in accordance with Clause 20.1(c)(viii) above), which should indicate the periods during which the WtE 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

ARTICLE 22

22. [GRANT] [PROCESSING FEE]

22.1 [In consideration of the works and services required to be performed by the Concessionaire for designing, financing, 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 Financial Proposal), subject to, and in accordance with, the provisions of this Article 22 (**Grant**).

22.2 The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and 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.

22.3 **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 Financial Proposal, 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) 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.]

22.4 [Processing Fee⁹²

- (a) As consideration for accepting, handling, and processing of 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 Acceptable Waste accepted 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 (**Processing Fee Statement**) setting out the quantities of Acceptable Waste delivered by the Authority at the Receipt Point during the preceding month, along with copies of the daily weight-sheets for the Acceptable 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 22.4(c) 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

⁹² **Drafting Note:** If the bidding parameter for the Project is a processing 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 22.4 relating to the payment of the Processing Fee and the Clauses shall be renumbered accordingly. If no Processing Fee is payable, then this Clause 22.4 should be deleted and subsequent clauses re-numbered accordingly. Provided that, if both a Grant and a Processing Fee are payable then both provisions should be retained and the invoicing process as set out for the Grant and the Processing Fee will continue given that payments for each are required to be made at different stages.

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.

- (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 (**Dispute Resolution**).
- (g) A certificate issued by the Authority in accordance with Clause 22.4(d)(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 22.4(d) or upon receipt of instructions from the Concessionaire in accordance with Clause 22.4(h), 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.]

22.5 [Compensatory Tariff

- (a) If the Authority opts to compensate the Concessionaire for the positive difference between the Feed-in Tariff and the Revised Tariff in accordance with Clause 14.7(h), then the Concessionaire shall, within [10 (ten)] days from the end of a billing cycle under the PPA, submit a statement (**Compensatory Tariff Statement**) to the Authority setting out the amount of compensatory tariff payable by the Authority to the Concessionaire which shall be an amount equal to the positive difference between the Feed-in Tariff and the Revised Tariff multiplied by the number of units of electricity supplied to the Offtaker in accordance with the PPA, as evidenced by the immediately preceding invoice raised by the Concessionaire to the Offtaker (**Compensatory Tariff**).
- (b) The Compensatory Tariff Statement shall be accompanied by an Invoice setting out the total amounts payable by the Authority towards the Compensatory Tariff.
- (c) Within [30 (thirty)] days of receipt of an Invoice from the Concessionaire pursuant to Clause 22.5(b) 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 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.
- (d) 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.

- (e) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 34.
- (f) A certificate issued by the Authority in accordance with Clause 22.5(c)(i) shall be referred to as a **Payment Certificate**.
- (g) 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.
- (h) Immediately upon receipt of a Payment Certificate from the Authority in accordance with Clause 22.5(c) or upon receipt of instructions from the Concessionaire in accordance with Clause 22.5(g), 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.
- (i) 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.]⁹³

22.6 Letter of Credit

- (a) On or before the Appointed 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

⁹³ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

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)]⁹⁴, [Clause 22.4(i)]⁹⁵ or [Clause 22.5(h)]⁹⁶, 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.

22.7 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, 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

⁹⁴ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being payable to the Concessionaire.

⁹⁵ **Drafting Note:** Square bracketed portion to be deleted if no Processing Fee is being payable to the Concessionaire.

⁹⁶ **Drafting Note:** Square bracketed portion to be deleted if the project was awarded through tariff based bidding.

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.

22.8 Taxes and Royalties

- (a) The [Grant]⁹⁷ [and] [Processing Fee]⁹⁸ [and] [Compensatory Tariff]⁹⁹ payable are inclusive of all Taxes.
- (b) The Authority may deduct from the [Grant]¹⁰⁰ [and] [Processing Fee]¹⁰¹ [and] [Compensatory Tariff]¹⁰² 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) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Subcontractor for the construction of the Project Facilities and furnish proof of payment of such royalties to the Authority along with the Invoices for the Concessionaire Payments.
- (e) 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.
- (f) 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.
- (g) Any Taxes payable in relation to the Site shall be borne by the Authority.

⁹⁷ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

⁹⁸ **Drafting Note:** Square bracketed portion to be deleted if no Processing Fee is being payable to the Concessionaire.

⁹⁹ **Drafting Note:** Square bracketed portion to be deleted if the project was awarded through tariff based bidding.

¹⁰⁰ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

¹⁰¹ **Drafting Note:** Square bracketed portion to be deleted if no Processing Fee is being payable to the Concessionaire.

¹⁰² **Drafting Note:** Square bracketed portion to be deleted if the project was awarded through tariff based bidding.

22.9 **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.

22.10 **Right of Set-Off**

The Concessionaire shall not be entitled to retain or set off any amount due to the Authority by it, 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

23. ACCOUNTS AND AUDIT

23.1 Audited Accounts

- (a) The Concessionaire shall maintain books of accounts recording all its receipts (including receipt of Applicable Tariff under the PPA 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.

23.2 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.

23.3 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

24. ESCROW ACCOUNT

24.1 Escrow Account

Prior to the Appointed 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]¹⁰³ [and/or] [Processing Fee]¹⁰⁴ in accordance with this Agreement.

24.2 [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 Appointed Date, and from the Appointed 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;¹⁰⁵ [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 equal to the estimated Processing Fee due and payable to the Concessionaire for a period of 3 (three) months,]¹⁰⁶
- (the **Minimum Escrow Balance**).
- (b) If at any time after the Appointed 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.

¹⁰³**Drafting Note:** The square bracketed portion to be deleted if no Grant is payable to the Concessionaire.

¹⁰⁴**Drafting Note:** The square bracketed portion to be deleted if no Processing Fee is payable to the Concessionaire.

¹⁰⁵**Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire.

¹⁰⁶**Drafting Note:** Square bracketed portion to be deleted if no Processing Fee is being paid to the Concessionaire.

- (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 Appointed Date, the balance in the Escrow Account falls below the 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.]¹⁰⁷

24.3 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 electricity 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

¹⁰⁷ **Drafting Note:** Square bracketed portion to be deleted if no Grant or Processing Fee is being paid to the Concessionaire under this Agreement.

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.]

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24.4 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.

¹⁰⁸ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

- (b) The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.4 above, except with the prior written approval of the Authority/Confirming Party.
- (c) The Authority/Confirming Party shall have the right, and the Concessionaire hereby expressly grants to the Authority/Confirming Party 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/Confirming Party. Any demand from the Authority/Confirming Party 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.

24.5 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 30.5.

(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

25. INSURANCE

- 25.1 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.
- 25.2 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.
- 25.3 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 WtE 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.
- 25.4 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.
- 25.5 The Concessionaire shall, within [30 (thirty)] days of the Appointed 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.

25.6 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.

25.7 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.
- (e) 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.
- (f) 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.
- (g) 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

ARTICLE 26

26. FORCE MAJEURE

26.1 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; and
 - (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.
- (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) non-performance resulting from normal wear and tear; or
- (E) 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) any orders or injunctions issued by the relevant Government Authority, including the National Green Tribunal, which require the Concessionaire to suspend the construction or O&M of the Project Facilities provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and
- (G) 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.
- (A) 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;
- (B) 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;
- (C) 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;
- (D) 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

- (E) 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) failure by the Offtaker to offtake and/or pay for the electricity generated by the WtE Facilities for reasons not attributable to the Concessionaire, in accordance with Clause 18.10(a)(ii), (iii) and (iv);
 - (F) termination of the PPA due to an Offtaker default; and
 - (G) 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

- (ii) 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.

26.2 **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.

26.3 **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.

26.4 **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.

26.5 **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.

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

- (a) Upon occurrence of a Force Majeure Event prior to the Appointed 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 Appointed 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:
 - (i) 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;
 - (ii) 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;
 - (iii) 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.

26.7 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 [180 (one hundred and eighty)] 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 [180 (one hundred and eighty)] 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 WtE Facility is affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the [180 (one hundred and eighty)] days' period stipulated for a Non-Political Force Majeure Event;
- (ii) if the WtE Facility is affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the WtE 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 [120 (one hundred and twenty)] 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 [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.

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

If a Direct Political Force Majeure Event continues for a period of [90 (ninety)] 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 [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.

- (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.

26.8 **Effect of Force Majeure Event on the Concession Period**

- (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

27. SUSPENSION OF THE CONCESSIONAIRE'S RIGHTS

27.1 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 re-commence 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 WtE Facility, provided that, any revenue earned from the O&M of the WtE 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 WtE Facility); and

- (B) 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, mobilize the personnel employed by it or its Subcontractor in order to resume the construction or O&M services of the relevant Project Facility as soon as reasonably practicable, and once the works or services have resumed, 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.

27.2 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, the Performance Standards, Applicable Permits, the Construction Plan, the Project Execution Plan, the DPR, the EMP, OHS Plan, the O&M Plan, the Waste Acceptance 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 WtE Facility, provided that, any revenue earned from the O&M of the WtE 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 WtE Facility); and
 - (B) 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, mobilize the personnel employed by it or its Subcontractor in order to resume the construction or O&M services of the relevant Project

Facility as soon as reasonably practicable, and once the works or services have resumed, 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

28. EVENTS OF DEFAULT

28.1 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:

- (a) [the Concessionaire fails to complete the works for a Project Milestone within [6 (six)] months of the Scheduled Project Milestone Completion Date;]¹⁰⁹
- (b) the Concessionaire fails to achieve the COD within [6 (six)] months of the Scheduled COD other than on account of a Delay Event;
- (c) the Concessionaire fails to pay the Delay Liquidated Damages within the timelines specified in this Agreement;
- (d) a failure to achieve the KPIs which results in the Concessionaire's aggregate liability for Liquidated Damages pursuant to Article 21 to exceed [●];
- (e) 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;
- (f) 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;
- (g) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
- (h) failure of the Concessionaire to submit and maintain a valid Performance Security

¹⁰⁹ **Drafting Note:** To be deleted if no Grant is being paid to the Concessionaire.

in accordance with Clause 9.1 or a valid O&M Security in accordance with Clause 9.3;

- (i) breach by the Concessionaire of its obligations under Clauses 12.3 (*Security Creation*), 10 (*Project Site*) or 35.12 (*Assignment*);
- (j) breach of the Concessionaire's obligations under Clause 5.10 (*Change in Ownership*);
- (k) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- (l) failure of the Concessionaire to comply with any Applicable Law;
- (m) failure of the Concessionaire to obtain and maintain Insurance Cover in accordance with Clause 25.2;
- (n) failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan in accordance with Clause 14.4(f);
- (o) 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;
- (p) 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);
- (q) the Concessionaire abandons the construction and operation of the Project Facilities without the prior written consent of the Authority; or
- (r) termination of the PPA due to a Concessionaire default;
- (s) the breach of the Concessionaire's obligations under any of the Project Agreements that has or may have a Material Adverse Effect.

28.2 Termination Notice upon occurrence of a Concessionaire Event of Default

- (a) Without prejudice to the other provisions of this Agreement but subject to Clause 28.2(g) below, 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.
- (g) Notwithstanding anything contained in this Clause 28.2, if a Concessionaire Event of Default under Clause 28.1(r) occurs, then the Concessionaire shall have the right to identify alternate offtaker(s), including third parties, for consumption of the electricity generated from the WtE Facilities. If the Concessionaire is able to identify such alternate offtaker(s) within [60 (sixty)] days from the date of termination of the PPA such that it can continue to operate the WtE Facilities at the Design Capacity, the Authority shall not issue a Termination Notice under Clause 28.2(a) above and the Concessionaire Event of Default shall be deemed to have been cured.

28.3 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) 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; or (ii) the LC;]¹¹⁰ from the Confirming Party pursuant to Article 22;
- (d) a breach by the Authority of Clause 35.12(b) (*Assignment*);
- (e) a suspension of the construction or O&M of the Project Facilities by the Authority

¹¹⁰ **Drafting Note:** Square bracketed portion to be deleted if no Grant/ Processing Fee is to be paid to the Concessionaire under this Agreement.

in breach of Clause 27.2;

- (f) if the Daily Acceptable Waste Quantity is less than the Daily Guaranteed Acceptable Waste Quantity for [7 (seven)] consecutive days or more during the O&M Period;
- (g) any representation made or warranties given by Authority under this Agreement being found to be false or misleading in any material respect.

28.4 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.

28.5 Consequences of termination of the Agreement post the Appointed 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 Appointed 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 WtE 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) the Authority shall return the Performance Security in accordance with Clause 9.15 or the O&M Security in accordance with Clause 9.16, as the case may be, within [30 (thirty)] days from the date of the Termination Notice;
- (e) 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
- (f) 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 the Offtaker 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 the Offtaker (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 the Offtaker, 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

28.6 **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

29. TERMINATION COMPENSATION

29.1 The Parties acknowledge that no termination payment shall be payable by either Party in case of a termination of this Agreement prior to the Appointed 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 Appointed Date.

29.2 Termination Compensation for Termination post the Appointed Date

(a) For an Authority Event of Default

If the Agreement is terminated after the Appointed 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] and¹¹¹ [Compensatory Tariff]¹¹²;
- (ii) Debt Due as on the date of Termination Notice;
- (iii) Adjusted Net Equity;

LESS

- (iv) 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 Appointed 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

¹¹¹ **Drafting Note:** References to the Grant and/or Processing Fee to be deleted / retained depending on whether any Grant and/or Processing Fee is payable under the Agreement.

¹¹² **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

certified], [Processing Fee] and¹¹³ [Compensatory Tariff]¹¹⁴;

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

29.3 Termination Compensation for Termination due to a Force Majeure Event

(a) Non-Political Force Majeure Event

If the Agreement is terminated as a result of a Non-Political Force Majeure Event after the Appointed 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] and¹¹⁵ [Compensatory Tariff]¹¹⁶;
- (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 amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 30.2).

¹¹³ **Drafting Note:** References to the Grant and/or Processing Fee to be deleted / retained depending on whether any Grant and/or Processing Fee is payable under the Agreement.

¹¹⁴ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

¹¹⁵ **Drafting Note:** References to the Grant and/or Processing Fee to be deleted / retained depending on whether any Grant and/or Processing Fee is payable under the Agreement.

¹¹⁶ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

(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] and¹¹⁷ [Compensatory Tariff]¹¹⁸;
- (ii) Debt Due as on the date of Termination Notice;
- (iii) Adjusted Net Equity;

LESS

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

29.4 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.

29.5 **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.

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

¹¹⁷ **Drafting Note:** References to the Grant and/or Processing Fee to be deleted / retained depending on whether any Grant and/or Processing Fee is payable under the Agreement.

¹¹⁸ **Drafting Note:** To be retained if the project is being awarded on the basis of an agreed feed-in tariff.

ARTICLE 30

30. DIVESTMENT OF RIGHTS AND INTEREST

30.1 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.

30.2 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.

30.3 **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.

30.4 The provisions of this Article 30 shall survive the termination of this Agreement.

30.5 **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.

PART VI – OTHER PROVISIONS

ARTICLE 31

31. VARIATION

31.1 Both the Authority and the Concessionaire may, at any time during the Concession Period, propose a Variation to the Scope of Work, Technical Specifications, Proposed Technology, and/or the Designs and Drawings.

31.2 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,]¹¹⁹ 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]¹²⁰ 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

¹¹⁹ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

¹²⁰ **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

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 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]¹²¹, Scheduled Completion Date and/or payment of additional amounts, if any, set out in the Variation Order.

31.3 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 Project Execution 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:

¹²¹**Drafting Note:** To be deleted if no Grant is payable.

- (i) the need for a Variation;
 - (ii) the additional work required;
 - (iii) adjustment to the Construction Plan, [the Scheduled Project Milestone Completion Date]¹²² 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 do 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

¹²² **Drafting Note:** Square bracketed portion to be deleted if no Grant is being paid to the Concessionaire under this Agreement.

Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.

- (h) No Variation shall invalidate this Agreement.

ARTICLE 32

32. CHANGE IN LAW

32.1 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.

32.2 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.

32.3 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.

32.4 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

33. INDEMNITY

33.1 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:
 - (i) any environmental pollution, contamination or health hazard at or below the Site (including contamination of the land, water, environment and air quality and/or any findings of pollutants, chemical waste, hazardous waste, minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest) that existed at the Site prior to handover of the Site to the Concessionaire, provided that, such environmental pollution, contamination or health hazard is not identified in the Site Contamination Report and is not attributable to any act or omission of the Concessionaire; or
 - (ii) any environmental pollution, contamination or health hazard caused by the delivery of any Prohibited Waste to the Site after the handover of the Site to the Concessionaire.
- (e) The Authority shall not, directly or indirectly, bring or cause to be brought any action, demand, claim, or other proceedings against the Concessionaire in connection with any pre-existing contaminations and findings at the Site identified

in the Site Contamination Report.

- (f) The provisions of this Article 33 shall survive the termination of this Agreement.

ARTICLE 34

34. DISPUTE RESOLUTION

34.1 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 [•].

34.2 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.

34.3 **Survival**

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

ARTICLE 35

35. MISCELLANEOUS

35.1 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.

35.2 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.

35.3 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.

35.4 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.

35.5 **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 [•].

35.6 **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.

35.7 **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.

35.8 **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.

35.9 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.

35.10 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.

35.11 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.

35.12 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.

35.13 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.

35.14 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

35.15 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.

35.16 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.

35.17 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:

 TRILEGAL

WASTE TO ELECTRICITY – MODEL RFP AND CONCESSION AGREEMENT

Prepared by IFC and Trilegal for MoHUA

October 2023

Overview of Presentation

01 | Background

02 | Model RFP

03 | Model Concession Agreement

BACKGROUND

Mandate from MoHUA



Key Objectives

- Developing circular waste management solutions
- Standardized documents for ULBs
- Positive impact on urban and rural cleanliness
- Tapping into wealth generation potential from waste
- Boost power production in the state

Pre-Tendering Activities

- Activities to be completed before using the model documents:
 - Pre-feasibility assessment for the proposed project
 - Finalising the bid parameters
- Model RfP and MCA prepared to cater to different transaction structures that may be adopted depending on the revenue streams and the bid parameter
- Using the model documents:
 - The relevant bid parameters, i.e., Grant, Processing Fee or Quoted Tariff, should be retained basis footnotes left in the model documents
 - A fixed Grant, fixed Processing Fee or fixed Feed-in Tariff may also be set out in the RfP at the outset in addition to the bid parameter
 - Quantities of Acceptable Waste that the Authority guarantees, and the quantity of Acceptable Waste that the Concessionaire needs to accept should be assessed and included in the model document
 - Estimated Total Project Cost should be assessed and included in the model document
 - Quantum of liquidated damages for failure to meet key performance indicators should be assessed and included in the model document
 - PPA should be finalized with the Offtaker and annexed to the RFP
 - Site Contamination Report to be prepared

MODEL RFP

PROJECT SCOPE, STRUCTURE AND BID PROCESS

AUTHORITY'S SCOPE

- Grant license for the project site
- Ensure delivery of Acceptable Waste to the Concessionaire
- Identify location for disposal of residual waste

CONCESSIONAIRE'S SCOPE

- Design, construct, operate and maintain the WtE Facility
- Accept and process Acceptable Waste
- Dispose off residual inert matter
- Produce and sell electricity in accordance with the PPA

PROJECT STRUCTURE

- **Grant based model:** Authority to pay Concessionaire a grant as a capital subsidy
- **Processing fee model:** Authority to pay Concessionaire a per ton fee for processing waste
- **Quoted Tariff based model:** Concessionaire to bid basis tariff payable by the Offtaker

BID PROCESS



01
Issue of RFP, Concession Agreement and Project IM



02
Issue of Site Contamination Report, waste inspection, Project site visit and pre-bid meeting



03
Response to bidder queries and issuance of revised RFP / Concession Agreement



04
Submission of bids (including qualification bid and financial bid)



05
Opening of qualification bids and notification to eligible bidders



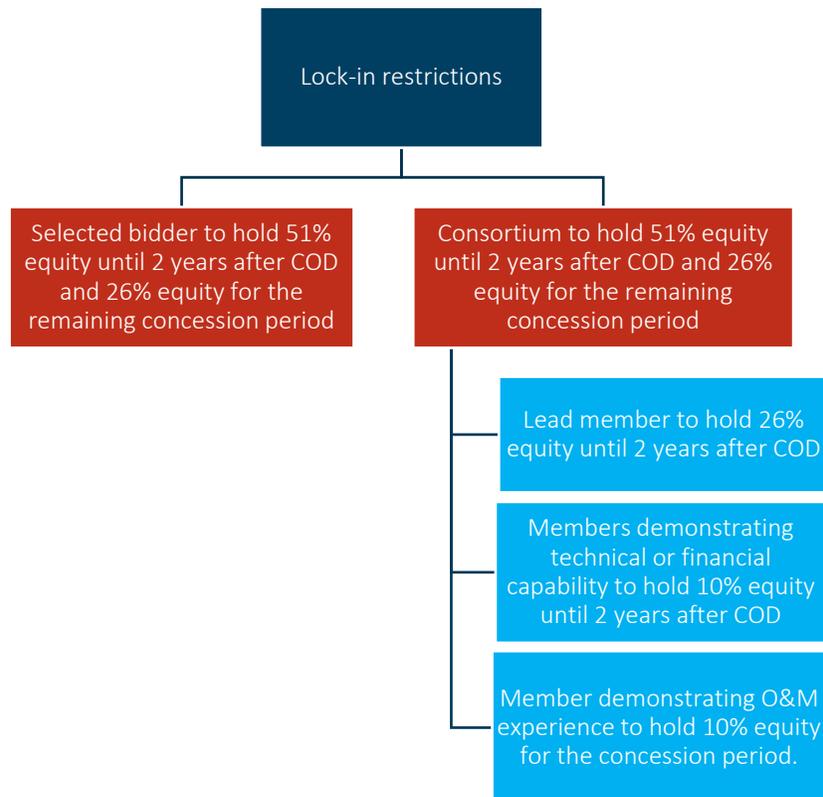
06
Opening of financial proposal and notification to selected bidder



07
Issue of LoA

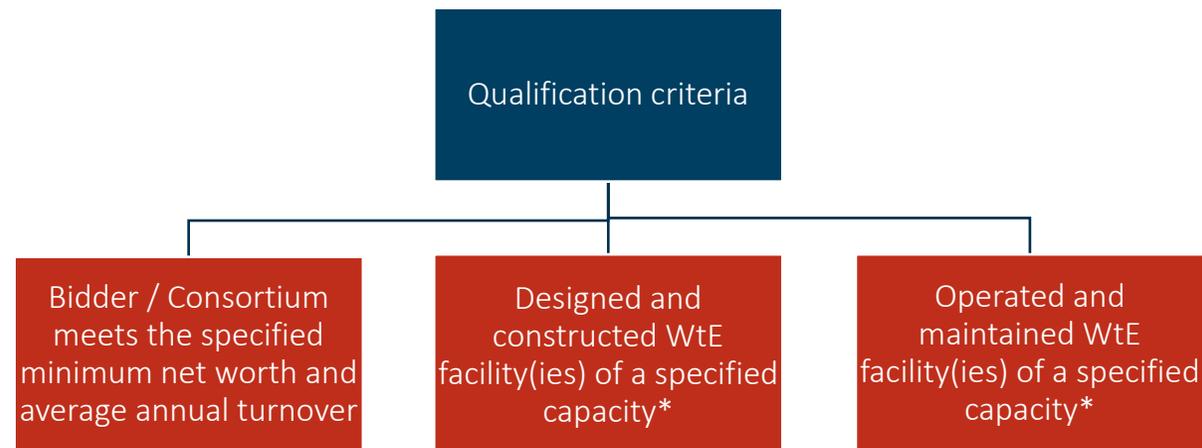
ELIGIBILITY CONDITIONS

- Bidder may be a Company or Consortium (not exceeding 3 members)
- No conflict of interest, fraud or corrupt practices.
- Lock-in restrictions:



QUALIFICATION CRITERIA

- Technical criteria – relevant design and construction experience and O&M experience for 365 consecutive days in the seven years preceding the bid date
- Financial criteria – minimum net worth test and a minimum average annual turnover test



*Capacity to be a percentage of the design capacity of the relevant Project. The experience requirement is: (i) 1 WtE facility capable of handling and processing at least 80% of the design capacity; (ii) 2 WtE facilities capable of handling and processing at least 50% of the design capacity each; or (iii) 3 WtE facilities capable of handling and processing at least 40% of the design capacity each.

FINANCIAL PROPOSAL

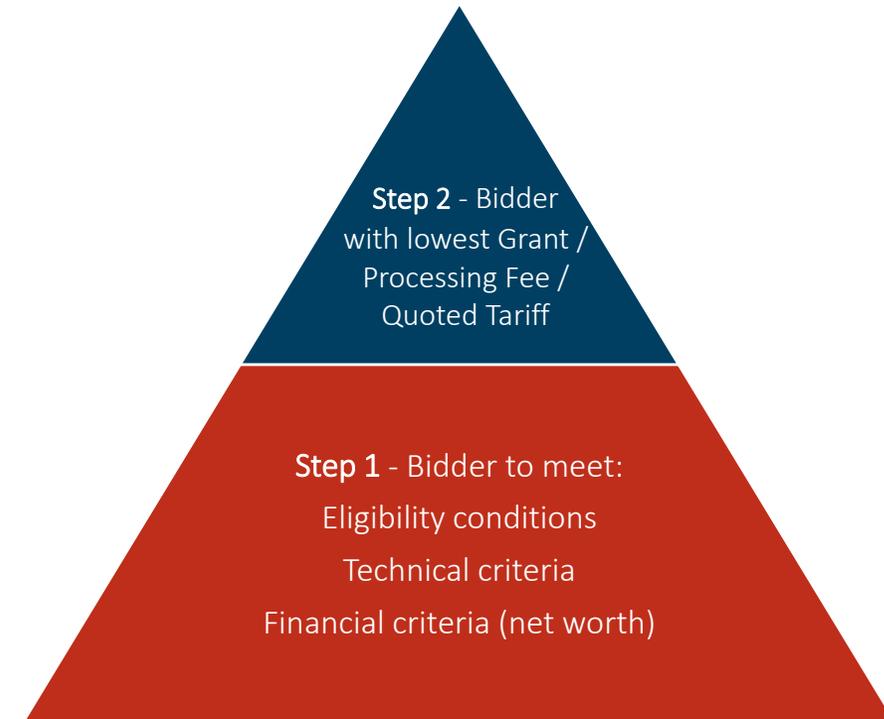
- Bidder to populate the format on the e-procurement portal for the financial proposal
- Bidder to quote Grant required or Processing Fee required or the Quoted Tariff, which will be subject to adoption by the relevant State Electricity Regulatory Commission
- Only soft copies of documents to be uploaded other than bank guarantees and POA

PERFORMANCE SECURITY

- Bidder to submit earnest money deposit in the amount specified in the RfP in the form of a bank guarantee

EVALUATION OF BIDS

- Bidder to meet the qualification criteria
- Bidder with the lowest quoted Grant / lowest quoted Processing Fee / lowest Quoted Tariff will be the selected bidder



MODEL CONCESSION AGREEMENT

CONCESSION AGREEMENT - OVERVIEW



Delivery of Waste

Authority to deliver the Daily Guaranteed Acceptable Waste Quantity – failing which:

- monthly LDs linked to average 3 months revenue for shortfall quantity
- 7 days in a month – right to request supplementary waste from third parties
- 7 consecutive days – event of default



Acceptance of Waste

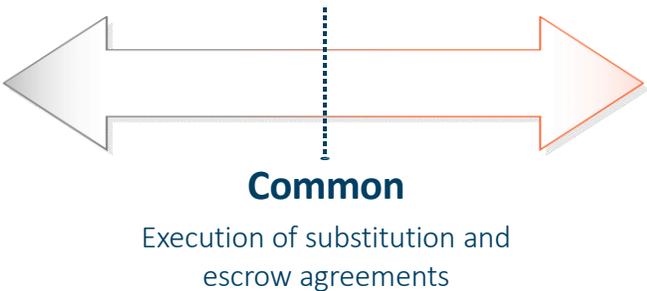
Concessionaire to receive and accept Acceptable Waste subject to:

- 100% of the design capacity per day
- Not more than 105% of cumulative design capacity in a week
- Delivery by Authority or its C&T contractors

CONDITIONS PRECEDENT

Concessionaire CPs

- Providing **performance security**
- Preparing the **Project Execution Plan, DPR, and Construction Plan**
- Environmental and Social Impact Assessment (**ESIA**)
- Obtaining applicable **permits** for construction and financial close
- Achieving **financial close** and submitting financing package
- Submission of documents with respect to shareholding, constitutional documents, legal opinion on capacity, audited financial statements, etc.



Authority CPs

- Granting **right of way**, free of encumbrances
- Reviewing and **approving** the Project Execution Plan, DPR, Construction Plan and ESIA report
- Approval of **power procurement and tariff** by the SERC
- Obtaining applicable **permits** required to execute CA and facilitating the concessionaire in obtaining permits
- Providing **access roads**, capable of transportation of equipment and materials to the site
- Opening and funding the **escrow account** and providing LC
- Ensuring availability of **physical infrastructure for utilities**.

SCOPE OF CONCESSION AND KEY OBLIGATIONS

CONCESSIONAIRE



AUTHORITY



PAYMENTS, PAYMENT SECURITY AND REVENUE || TRILEGAL

PAYMENTS

Tariff payments to be made by the Offtaker to the Concessionaire under the PPA – either basis the Quoted Tariff (if tariff is a bid parameter) or basis a fixed Feed-in Tariff (if tariff is not a bid parameter)

TARIFF



GRANT

Capital support to be paid by the Authority in instalments during the Concession Period, upon satisfactory completion of the Project Milestones

PROCESSING FEE

Processing fee to be paid by the Authority per ton of Acceptable Waste accepted by the Concessionaire after COD (on a monthly basis)

PAYMENT SECURITY

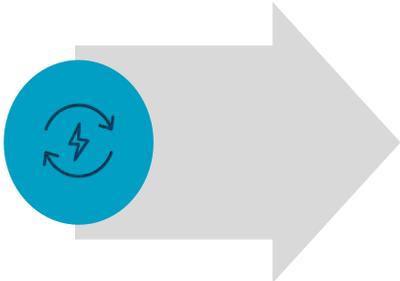
- Payments through Escrow Account 
- Minimum Escrow Balance 
- Letter of Credit 
- Delay Interest 

SOURCE OF REVENUE

ELECTRICITY

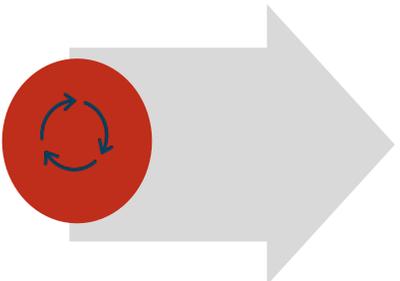
Tariff payments from the Offtaker under the PPA

KEY PERFORMANCE INDICATORS



Availability Guarantee

85% monthly, subject to exclusions like unscheduled outage, suspension and emergency



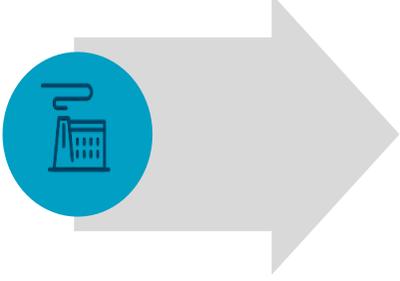
Throughput Guarantee

Minimum quantity of waste to be handled, subject to forced unavailability and emergency



Discharge Guarantee

WtE Facility to be operated as a zero liquid discharge facility throughout the O&M Period



Emission Guarantee

Emissions from operations should not exceed specified limits; liquidated damages payable basis a demerit points system



Residual Inert Matter Guarantees

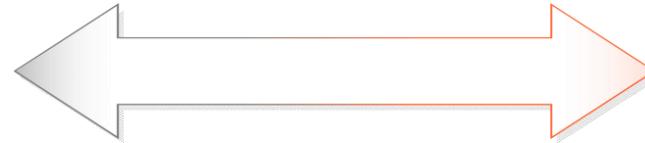
Quality: total combustible matter in Residual Inert Matter to not exceed **5%**;
Quantity: total Residual Inert Matter generated to not exceed **25%**.

- Liquidated damages for failure to comply with KPIs
- Payment on a monthly basis
- A KPI Adherence Report needs to be submitted on a quarterly basis

EVENTS OF DEFAULT

Concessionaire Events of Default

- Delays in construction
- Failure to pay Delay Liquidated Damages
- Failure to achieve KPIs if LD cap is breached
- Insolvency related events
- Failure to comply with any Applicable Law, or EMP/OHS Plans



Authority Events of Default

- Failure to grant access
- Failure to pay undisputed amounts
- Failure to deliver guaranteed daily waste quantity for 7 days
- Breach of obligations which has a material adverse effect

TERMINATION COMPENSATION

Authority default and Political Force Majeure Events

- (i) Accrued and undisputed amounts payable to the Concessionaire towards the Grant for Project Milestones completed and certified* or the Processing Fee*;
- (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 (including LDs).

Concessionaire default and Non-Political Force Majeure Events

- (i) Accrued and undisputed amounts payable to the Concessionaire towards the Grant for Project Milestones completed and certified* or the Processing Fee*;
- (ii) [85%] of Debt Due as on the date of Termination Notice;
LESS
- (i) Any other amounts due and payable by the Concessionaire (including LDs).

TRILEGAL



The information contained in this may address a specific requirement for the recipient and must not be construed as advertisement or solicitation in any form or manner.

For more information,
please visit our website
WWW.TRILEGAL.COM