

DRAFT CONCESSION AGREEMENT

For

**Development, Construction, Operation and Maintenance of
Municipal Solid Waste Management Project for GMADA
Cluster in Punjab**

BETWEEN

MUNICIPAL CORPORATION OF MOHALI

AND

_____ (“Selected Bidder”)

AND

DEPARTMENT OF LOCAL GOVERNMENT

(as confirming party)

September 2017

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CONCESSION AGREEMENT

THIS AGREEMENT made this __ day of _____ 2017__ at [●]

BETWEEN

MUNICIPAL CORPORATION OF GMADA, a statutory body constituted under the Punjab Municipal Act of year 1976, and having its office at [●], (hereinafter referred to as “**Concessioneing Authority**” which expression shall unless repugnant to the context thereof, include its successors and assigns) of the **FIRST PART**;

AND

_____ a company incorporated under the Companies Act, 2013, having its registered office at [●], India, represented by [●] duly authorized vide board resolution dated [●] hereinafter referred to as the "**Concessionaire**" (which expression shall, unless repugnant to the context or meaning thereof, mean and include its associate/group companies, successors and assigns) of the **SECOND PART**;

AND

....., a company incorporated under the Companies Act, 2013, having its registered office at [●], represented by [●] duly authorized vide board resolution dated [●], hereinafter referred to as the "Selected Bidder" (which expression shall, unless repugnant to the context or meaning thereof, mean and include successors and assigns) of the **THIRD PART**;

AND

DEPARTMENT OF LOCAL GOVERNMENT, GOVERNMENT OF PUNJAB having its Office at [●] (hereinafter referred to as the “**DoLG**” or “**Confirming Party**”, which expression shall mean and include its successors and assigns) of the **FOURTH PART**.

The Concessioneing Authority, the Concessionaire, the Selected Bidder and the Confirming Party are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS

- A. Urban Local Bodies (“**ULBs**”) are responsible for providing municipal and allied civic services in their respective city/town, which encompasses the collection, transportation, processing and disposal of Municipal Solid Waste (“**MSW**”) generated in their respective city/town. Most of the ULBs currently dispose their MSW by open dumping, which is an unscientific way of disposal of waste.
- B. The Ministry of Environment, Forests and Climate Change (“**MoEF&CC**”) under the aegis of Government of India (“**GoI**”), has formulated the Solid Waste Management Rules 2016, which makes it mandatory for every civic body to implement a scientific solid waste management system through which MSW/ Solid Waste is duly processed and only that waste, which is not suitable for recycling or processing is to be disposed off in a Sanitary Landfill Site (“**SLF**”).

- C. The Concessioneing Authority along with the ULBs mentioned at **Annexure 1** (“**Cluster ULBs**”) is desirous of establishing a suitable mechanism on regional basis to scientifically processing and disposal of MSW/ Solid Waste generated from the residential and other areas of the entire “**Cluster**” (as defined in **Annexure 1**), with a view to meet environmental regulations and for improvement in public health and hygiene.
- D. Based on the mandate given by the DoLG, IIDC Ltd., formerly known as IL&FS Infrastructure Development Corporation Limited (“**IIDC**”) has been advising Government of Punjab (“**GoP**”) for development of MSW management projects on Public-Private-Partnership (“**PPP**”) model, covering all corporation towns and other ULBs in Punjab, and for developing various projects on regional approach basis. The objective is to develop and implement a viable and environmentally sustainable MSW management system on Public Private Partnership (PPP) basis, to scientifically manage MSW and gainfully utilize it to produce compost, Refuse Derived Fuel (“**RDF**”) and/or power, and dispose-off the residual matter in an environmentally benign manner.
- E. For the aforesaid purpose, the DoLG/ Concessioneing Authority, has conducted a competitive bidding process. Following the process of competitive bidding, after evaluating the Proposals submitted by Bidders in response to its Request for Qualification cum Request for Proposal (RFQ cum RFP) dated _____, the DoLG/ Concessioneing Authority accepted the Proposal submitted by the Selected Bidder for developing and implementing the Project and communicated its acceptance to the Selected Bidder vide letter of intent dated ____ (the “**Letter of Intent**” or “**LOI**”)
- F. The Selected Bidder has incorporated the Concessionaire under the Companies Act, 2013, as a Special Purpose Company (SPC), pursuant to the award of the Concession, to develop and implement the Project.
- G. Following the issuance of the LOI, the Selected Bidder /Concessionaire within 3 (three) weeks of issuance of LOI , as a pre-condition to the execution of this Agreement, has made the payment of Project development Fee to IIDC Ltd.. and provided the Performance Security to the Concessioneing Authority. Following these payments, the Concessioneing Authority has agreed to award the implementation of the Project to the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement.
- H. The Concessionaire is hereby entering into this Concession Agreement with the Concessioneing Authority and DoLG, being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. **“Abandonment”** means the total cessation of activity in the Project by the Concessionaire and of its obligations under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the Construction Period, or
 - (ii) cumulative period of more than 45 (forty-five) days during the Construction Period
 - (iii) for a period defined in **Annexure 6** read with Annexure 18 during the Operations Period
- other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Concessioneing Authority;
- 1.1.2. **“Access Road”** means the motorable approach road for access to the Site(s) from public road;
- 1.1.3. **“Acceptance of Concession”** shall have the meaning ascribed thereto in **Article 2.1.5** ;
- 1.1.4. **“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.5. **“Additional Cost”** shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law;
- 1.1.6. **“Adjusted Equity”** –means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:
- a. on or before COD-P&D , the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
 - b. from COD-P&D and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD-P&D shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD-P&D to the extent of variation in WPI occurring between COD P&D and the Reference Date;
 - c. after the 4th (fourth) anniversary of COD-P&D , the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each

month following the 4th (fourth) anniversary of COD-P&D and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD- P&D and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

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 thereof shall be dealt with as if such conversion had not been undertaken;

- 1.1.7. **“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with **Article 8**;
- 1.1.8. **“Agreement”** or **“Concession Agreement”** means this agreement executed between the Concessionaire, Selected Bidder, Concessioneing Authority and DoLG including its schedules and Annexures and includes any amendments made hereto in accordance with the provisions hereof;
- 1.1.9. **“Annexures”** shall mean any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.10. **“Appellate Authority”** shall be as defined in **Annexure 13**;
- 1.1.11. **“Applicable Law”** shall mean all laws, acts, ordinances, rules, regulations, notification and guidelines in force and effect, including Solid Waste Management & Handling Rules 2016, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the period of subsistence of this Agreement and applicable to the Project;
- 1.1.12. **“Applicable Approvals”** or **“Applicable Permits”** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by either the Concessioneing Authority or by the Concessionaire in connection with the implementation of the Project. An indicative and partial list of such Applicable Approvals and responsibility thereof has been specified in **Annexure 7**. It is clarified that the Concessionaire shall be responsible for procuring all such Applicable Approvals at its cost and risk that may not listed in **Annexure 7** and hence are not specifically assigned to the Concessioneing Authority;
- 1.1.13. **“Appointed Date”** shall mean the date of execution of the Concession Agreement.
- 1.1.14. **“Arbitration Act”** shall mean the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.15. **“Associates”** shall mean any company (ies) which is (are) controlled by the company concerned. For the purpose of this definition, the term “control” means the power to direct the management or policies of such entity, directly or indirectly, through the ownership of shares or other securities, by contract or otherwise, provided that the

direct or indirect ownership of fifty one per cent (51%) or more of its voting share capital is deemed to constitute control of such entity, and “controlling” and “controlled” shall be construed accordingly;

- 1.1.16. **“Assured Quantity of MSW”** means the daily quantity of MSW to be supplied by the Concessioneing Authority at Receipt Point of Processing Facilities & Disposal Site in any Accounting Year. The Assured Quantity of MSW of Concession Authority for base year (year in which Bid Due Date falls) is **112 TPD**.
- 1.1.17. **“Base Tipping Fee(s)”** refers to the Tipping Fee(s) quoted by the Selected Bidder in its Financial Proposal, as set out in **Annexure 12**;
- 1.1.18. **“Bidder(s)”** shall have the same meaning as ascribed to it under the RFQ cum RFP issued by DoLG.
- 1.1.19. **“Concession Period”** or **“Term”** shall mean a period commencing from Appointed Date and extending till the Transfer Date, which shall, except for earlier termination of this Agreement, consist of a period of 25 years;
- 1.1.20. **“Change in Law”** shall have the meaning ascribed thereto in **Article 8.11**;
- 1.1.21. **“Cluster”** or **“GMADA Cluster”** shall have the meaning as ascribed to it in **Annexure 1**;
- 1.1.22. **“COD”** shall refer to Commercial Operation Date of the Plant COD-P&D
- 1.1.23. **“COD-P&D”** shall mean the date on which the Independent Expert issues the Processing & Disposal Facilities Completion Certificate, upon which the Concessionaire commences commercial operations of the Processing Facilities with respect to the MSW Area.
- 1.1.24. **“Compliance Date-P&D”** shall be the date on which Concessionaire and Concessioneing Authority fulfill their Conditions Precedent for P&D and upon which Concessionaire is authorized to commence the construction of the Processing Facilities.
- 1.1.25. **“Composting”** shall mean a controlled process involving microbial decomposition of organic matter;
- 1.1.26. **“Concession”** shall have the meaning as defined in Article 2.1;
- 1.1.27. **“Concessionaire Vehicles ”** means the vehicles accepted and bought by the Concessionaire for utilization in the Project out of the vehicles made available on as-is-where-is basis by the Concessioneing Authority at the rates as listed in **Annexure 23** ;
- 1.1.28. **“Conditions Precedent(s)”** shall mean Conditions Precedent –Conditions Precedent – P&D, as defined in Article \Article 2.2.3;
- 1.1.29. **“Compliance Period”** shall mean Compliance Period- P&D, and as defined in Article2.2.4 (b)
- 1.1.30. **“Construction Period”** shall mean the period commencing from the Compliance Date P&D to date of issuance of Project Facilities Completion Certificate;

- 1.1.31. **“Construction Requirements”** shall have the meaning ascribed thereto in **Annexure 3**;
- 1.1.32. **“Construction Works”** shall mean the works and things necessary for achieving construction completion and for commencing commercial operations of the Project in accordance with the provisions of this Agreement;
- 1.1.33. **“Contractor”** shall mean any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Construction Works and O&M Requirements;
- 1.1.34. **“CPCB”** shall mean the Central Pollution Control Board of Government of India
- 1.1.35. **“Daily Weight Sheet”** shall have the meaning given to the term in **Annexure 13**;
- 1.1.36. **“Dead Remains”** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.37. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- a. the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;
 - b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and
- 1.1.38. **“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 Agreements;
- 1.1.39. **“Detailed Project Report”** shall mean the project report as Part IV of RFP.
- 1.1.40. **“Dispute”** shall have the meaning ascribed thereto in Article 11.1(a) hereof;
- 1.1.41. **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in Article 11;
- 1.1.42. **“Development Costs”** shall mean the aggregate of the amounts spent by the Concessionaire in undertaking activities in relation to the implementation of the Project till the Date(s) of Commissioning which amounts shall include but not be limited to: (a) expenditure incurred by IIDC and its Associates for and in relation to the Project which have been charged/assigned to the Concessionaire (b) expenditure incurred in relation to preparation of all reports, studies and other papers relating to the Project and the Project Facilities, (b) expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Approvals, (c) fees of all

consultants (including IIDC), experts, accountants, lawyers, lenders and other independent persons hired in relation to the Project, (d) costs of maintaining offices of the Concessionaire that are attributable to the Project, (e) any payments made to Cluster ULBs or on behalf of Cluster ULBs in relation to the Concession or the Project and (f) costs of any Contractors appointed by the Concessionaire in relation to the implementation of the Project;

- 1.1.43. **“EIA”** means the Environment Impact Assessment for the Project;
- 1.1.44. **“Emergency”** shall mean conditions or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities;
- 1.1.45. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;
- 1.1.46. **“Engineered Sanitary Landfill Site”** or **“Sanitary Landfill Facility”** or **“Sanitary Landfill Site”** means the engineered sanitary landfill site to be developed, constructed and operated by the Concessionaire in conformance with the MSW Rules or any revision thereof, for disposal of Residual Inert Matter and Rejected Waste in accordance with the Scope of Work;
- 1.1.47. **“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, but does not include any grant from a Government Agency;
- 1.1.48. **“Estimated Total Project Cost”** shall be as given in Data Sheet placed at **Annexure 8**;
- 1.1.49. **“Event of Default”** shall have the meaning ascribed thereto in **Article 9.1** ;
- 1.1.50. **“Event of Default - Concessionaire”** shall have the meaning ascribed thereto in **Clause 9.1 (a)**;
- 1.1.51. **“Event of Default – Concessioneing Authority”** shall have the meaning ascribed thereto in **Clause 9.1 (b)**;
- 1.1.52. **“Excluded Waste”** means waste material of the nature that the Project Facilities are not designed or authorised to receive, manage, process and dispose which includes Hazardous Waste, Bio-Medical Waste, Dead Remains, industrial waste, e-waste, battery waste and radio-active waste;
- 1.1.53. **“First Appellate Authority”** shall be as defined in **Annexure 13**;
- 1.1.54. **“Financing Agreements”** or **“Financing Documents”** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project Facilities or any part thereof in line with this Agreement, for securing the debt provided;

- 1.1.55. **“Financial Proposal”** refers to the final quotation of the Selected Bidder that shall be placed at **Annexure 12**;
- 1.1.56. **“Financial Year”** shall be same as Accounting Year;
- 1.1.57. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in **Article 8**;
- 1.1.58. **“GoI”** shall mean the Government of India;
- 1.1.59. **“GoP”** shall mean the Government of Punjab, and includes its successors and assigns;
- 1.1.60. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the Project Facilities to be constructed, operated and maintained pursuant to the Project;
- 1.1.61. **“Government Agency”** shall mean GoI, GoP, DoLG, MCP, Cluster ULB’s or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.62. **“Hazardous Waste”** shall have the meaning as defined under The Hazardous Wastes (Management Handling and Transboundary Movement) Rules, 2008 and as amended thereto;
- 1.1.63. **“Independent Expert”** means any person, body or organization with requisite technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Concessing Authority at its own cost;
- 1.1.64. **“Land filling”** means the disposal of the Residual Inert Matter and Rejected Wastes at the Engineered Sanitary Landfill Site in accordance with the terms of this Agreement including MSW Rules;
- 1.1.65. **“Land Lease Agreement(s)”** shall include Project Site Lease Deed (s)
- 1.1.66. **“Lenders”** shall mean any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing any part of the Project as evidenced in Financing Documents;
- 1.1.67. **“MSW” or “Municipal Solid Waste” or “Solid Waste”** means and includes solid or semi solid domestic waste, sanitary waste, commercial waste, institutional waste, catering & marketing waste and other non residential waste, street sweepings, silt-removed or collected from the surface drains, horticulture waste, agriculture & dairy waste, treated bio-medical waste, generated by households, public services, agricultural activities, commercial establishments and industries located within the jurisdiction of Cluster ULBs, and shall include Organic Waste, but shall not include the Excluded Wastes;

- 1.1.68. **“MSW Rules”** means the Solid Wastes Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time;
- 1.1.69. **“MSW Supply Area”** means the residential and other areas presently under municipal boundaries of the Cluster ULB’s or any extension thereof during the Concession Period as described in detail in Annexure I;
- 1.1.70. **“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.71. **“Material Breach”** shall mean a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.72. **“Minimum Assured Quantity of MSW”** means 80% of the Assured Quantity of MSW.
- 1.1.73. **“O&M Requirements”** shall mean the requirements as to operation and maintenance of the Project Facilities set forth at **Annexure 3**;
- 1.1.74. **Obligated Quantity of MSW:** is the total of 120% of the Assured Quantity of MSW of respective Cluster ULB (including Concessioning Authority), in any particular year of operation during the Concession Period, as per **Annexure-1**.
- 1.1.75. **“Operations Period”** shall mean the period starting from COD-P&D till the date of expiry or earlier termination of the Concession Agreement
- 1.1.76. **“Organic Waste”** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.77. **“Other Cluster ULBs”** include the cluster ULBs as prescribed in **Annexure 1** and any other Cluster ULBs which may be included in GMADA cluster through notification by GoP from time to time , but does not include Concessioning Authority
- 1.1.78. **“P&D”** or **“Processing & Disposal”** refers to Processing & Disposal of MSW provided at Receipt Point in Processing & Disposal Facilities Site by the Concessioning Authority and Other Cluster ULB’s from COD P&D, as is more clearly defined in Scope of Works;
- 1.1.79. **“Performance Security”** shall mean the guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Selected Bidder (or the Concessionaire), in accordance with **Article 7.1** and of an amount indicated in the Data Sheet (**Annexure 8**) and in the format given at **Annexure 9**;
- 1.1.80. **“Person”** shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity;

- 1.1.81. **“Post Closure Activities”** shall mean the activities to be undertaken by the Parties after closure of Sanitary Landfill Site in accordance with the **MSW Rules** and Applicable Law;
- 1.1.82. **“Post Closure Period”** shall mean a period of twenty (20) years starting from the date of closure of the specific cell of the Sanitary Landfill Facility during which Post Closure Activities are to be undertaken.
- 1.1.83. **“Power Plant”** shall mean a power plant as may be developed in line with the policy of MNRE (Ministry of New and Renewable Energy), GoI, as applicable from time to time; or a power generating plant that will generate electricity by processing MSW.
- 1.1.84. **“Preliminary Notice”** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.85. **“Processing Facilities”** shall mean the infrastructure to be created for processing of MSW/ Solid Waste prior to its final disposal at Sanitary Landfill Site, as detailed in **Annexure 2**;
- 1.1.86. **“Processing & Disposal Facilities”** shall mean the Processing Facilities and Sanitary Landfill Unit;
- 1.1.87. **“Processing and Disposal Facilities Completion Certificate”** mean the certificate issued by the Independent Expert on completion of construction of Processing Facilities and Sanitary Landfill Facility in the form and manner as set forth at **Annexure 11**;
- 1.1.88. **“Processing & Disposal Facilities Site”** shall mean the land made available to the Concessionaire by the Concessions Authority under Processing & Disposal Facilities Site Lease Deed, for construction of the entire Project Facilities, details of which are placed at **Annexure 5 A**;
- 1.1.89. **“Processing & Disposal Facilities Site Lease Deed”** the lease deed executed between Concessionaire and the Concessions Authority substantially in the form set out in **Annexure 5B**, pursuant to which the Concessions Authority shall lease to the Concessionaire, the Processing & Disposal Facilities Site for a period co-terminus with Concession Period.
- 1.1.90. **“Project Agreements”** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project Facilities, including without limitation the Waste Supply (s), Processing & Disposal Facilities Site Lease Deed and Project Site Lease Deed;
- 1.1.91. **“Project”** means, processing and disposal of MSW for GMADA Cluster and for that purpose to design, develop, finance, construct, operate and maintain the Project Facilities, under and in accordance with the Scope of Works and Technical Specifications and other terms and provisions of the Concession Agreement and Waste Supply Agreement(s);
- 1.1.92. **“Project Assets”** means all tangible and intangible assets, movable and immovable assets relating to the Project Facilities including, but not limited to, (a) rights over the Processing Facilities & Disposal Site in the form of lease, sub-lease, Concession,

right-of-way or otherwise, (b) tangible assets such as the Project Facilities, foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, kilometre stones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, equipment, technology at the Processing & Disposal Facilities Site/relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, User Fee etc.; (d) the Applicable Permits relating to the Project and (f) insurance;

- 1.1.93. **“Project Development Fees”** is as defined in Article 7.2;
- 1.1.94. **“Project Engineer”** shall be any Engineer of the level of Executive Engineer or above as may be nominated/appointed by the Concessioneing Authority, who shall be the nodal person for supervision and monitoring of compliance by the Concessionaire with respect to the Construction Requirements and O&M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in **Annexure 10**;
- 1.1.95. **“Project Report”** shall mean the indicative project report for MC Mohali and for other Cluster ULBs, provided as Part IV along with the RFQ cum RFP
- 1.1.96. **“Project Facilities”** shall mean the physical infrastructure to be created by the Concessionaire to implement the Project as more particularly set out at **Annexure 2**;
- 1.1.97. **“Project Implementation Schedule”** is as set out at **Annexure 14**;
- 1.1.98. **“Project Facilities Completion Certificate”** shall mean the certificate issued by the Independent Expert/ Project Engineer on completion of construction of Project Facilities in the form and manner as set forth at **Annexure 11**;
- 1.1.99. **“Proposal”** shall have the same meaning as ascribed to it under the RFQ cum RFP issued by DoLG/ MCP.
- 1.1.100. **“Proprietary Material”** shall have the same meaning as ascribed to it under Article 12.1;
- 1.1.101. **“Public Road”** means a state or national highway or a road falling under the purview of PWD(B&R), Mandi Board or a public authority other than the Municipal Corporation/ Urban Local Body concerned.
- 1.1.102. **“Receipt Point”** means the place within the Processing Facilities & Disposal Site, specified in writing by Concessionaire and marked on a layout plan on or before the COD – P& D at which Concessioneing Authority shall be required to deliver the Solid Waste in accordance with the terms of this Agreement.
- 1.1.103. **“Refuse Derived Fuel” or “RDF”** means the solid fuel in the form of fluff or pellets/briquettes that is produced by separation and drying of combustible fractions of the MSW;
- 1.1.104. **“RDF Plant”** means the processing plant that will be constructed, operated and maintained as part of the processing facilities, for producing of RDF from MSW;

- 1.1.105. **“Residual Inert Matter”** means the inert matter left for final disposal in Sanitary Landfill Facility after processing of the MSW by one or more of the relevant Project Facilities;
- 1.1.106. **“Rupees or Rs”** refers to the lawful currency of the Republic of India;
- 1.1.107. **“Scope of Works”** is as defined in **Annexure 3**;
- 1.1.108. **“Scheduled Construction Completion Date”** means Scheduled Construction Completion Date – P&D as more particularly specified at **Annexure 14**;
- 1.1.109. **“Security Interest”** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;;
- 1.1.110. **“SPCB”** shall mean State Pollution Control Board particularly Punjab Pollution Control Board;
- 1.1.111. **“Substitution Agreement”** shall mean the agreement that may be executed between the Concessionaire, Concessioneing Authority and the Lenders, pursuant to which, in case of Default by the Concessionaire, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire’s roles and responsibilities under this Agreement.;
- 1.1.112. **“Selected Bidder”** shall mean M/s _____;
- 1.1.113. **“Tax”** shall mean and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.114. **“Technical Specifications”** are as defined in **Annexure 3**;
- 1.1.115. **“Termination”** shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- 1.1.116. **“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.117. **“Termination Notice”** shall mean the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.118. **“Termination Payments”** means the payments payable pursuant to Article 8.8 and 9.2(f) of this Agreement;
- 1.1.119. **“Third Party”** means any Person other than the Parties to this Agreement;
- 1.1.120. **“Tipping Fee(s)”** shall refer to Tipping Fee- P&D as defined in Article 7;
- 1.1.121. **“Tipping Fee Index”** refers to the index of escalation/reduction in Tipping Fee (s) during the Concession Period, and shall be used to compute the percentage rate of

variation in Tipping Fee from the Base Tipping Fee, to be calculated, as detailed in **Annexure 22**, applicable only in case of Positive Tipping Fee;

- 1.1.122. **“Tipping Fund” or “Tipping Fee Fund”** means a fund created by the Concessioning Authority jointly with the Concessionaire in accordance with **Annexure 13**;
- 1.1.123. **“Total Project Cost”** means the lower of the following:
- (a) the capital cost of the Project as set forth in the Financing Documents; or
 - (b) Estimated Total Project Cost;
- 1.1.124. **“Transfer Date”** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.125. **“Tests”** shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and generally conform to the nature of construction and operation as per Good Industry Practice;
- 1.1.126. **“ULB”** means Urban Local Body being a Municipal Corporation or a Municipal Council set up under the Punjab Municipal Corporation Act, 1976 or under the Punjab Municipal Act, 1911 ;
- 1.1.127. **“Vacant Possession”** means delivery to the Concessionaire of possession of the Processing and Disposal Facility Site(s) free from all Encumbrances and the grant of all easementary rights and all other rights appurtenant thereto;
- 1.1.128. **“Waste Generators”** shall mean all residential, commercial and industrial establishments generating MSW and located within municipal boundaries of all Concessioning Authority ;
- 1.1.129. **“Waste Supply Agreement(s)”** shall mean agreement(s) executed between the Concessionaire, Other Cluster ULBs and the Concessioning Authority for providing/suppling MSW for the purpose of processing and disposal of MSW from Other Cluster ULBs.
- 1.1.130. **“Weighbridge”** means the electronic weighbridge capable of performing the operations specified in of Scope of Work in **Annexure 3**.

1.2. Interpretation

- (i) The words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (ii) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (iii) the words “include” and “including” are to be construed without limitation;

- (iv) the headings of the Articles in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- (v) the Schedules and Annexures to this Agreement form an integral part of this Agreement and shall be interpreted accordingly;
 - (vi) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
 - (vii) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
 - (viii) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply

1.3. Priority of Documents

The documents forming part of bidding process leading to this Agreement shall be interpreted in the following descending order of priority:

- (a) This Concession Agreement;
- (b) Waste Supply Agreement (s)
- (c) Letter of Intent ;
- (d) Written clarifications issued to the bidders;
- (e) Written addenda to the RFQ cum RFP;
- (f) RFQ cum RFP;
- (g) The Selected Bidder’s Qualification, Technical and Financial Proposal;

ARTICLE 2

2. THE CONCESSION AND CONDITIONS PRECEDENT

2.1. THE CONCESSION

2.1.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, the Concessions Authority hereby irrevocably grants to the Concessionaire, and the Concessionaire hereby accepts exclusive right and authority, during the Concession Period, to investigate, study, design, engineer, procure, finance, construct, install, commission, operate and maintain the Project and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements granted under this Agreement.

2.1.2 Rights Associated with the Grant of Concession

Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall entitle the Concessionaire, without requiring any further authorization or authority from the Concessions Authority, to enjoy, the following rights, privileges and benefits in accordance with the provisions of this Agreement and Applicable Laws:

- a) to design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such Person as may be selected by it;
- b) upon achieving COD of Project Facilities, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- c) to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project; and
- d) to assign its rights, title or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including its right to receive Tipping Fee (if the same is positive), in favour of Lenders for securing the financial assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the Lenders are made aware of the same by the Concessionaire
- e) Provided that the Concessions Authority shall be informed by the Concessionaire as to the creation of any Security Interest in favour of the Lenders within a period of 14 (fourteen) days from the date such Security Interest comes into existence and provide to the Concessions Authority within such time, notarized true copies of any and all documents/agreements relating thereto.
- f) to use, appropriate, process entire MSW from the MSW Supply Area and Cluster ULBs Area and dispose-off the Residual Inert Matter and Rejected Waste in Sanitary Landfill Facility ;
- g) to execute Waste Supply Agreement(s) with the Other Cluster ULBs for the treatment and disposal of MSW generated in Cluster ULBs;

- h) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, electricity, , RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- i) to apply for and receive the fiscal incentives and benefits (as provided under Article 7.10 (b) accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative;
- j) to obtain the utilities required for enabling the construction of the Project Facilities, without any additional cost or charges, other than the applicable charges for the utilities;
- k) to exclusively hold, possess, control the Processing Facilities & Disposal Site , in accordance with the terms of the Concession Agreement and Processing Facilities Site Lease , for the purposes of the due implementation of this Project;
- l) to use the unutilised space available at the Project Facilities for display of advertisements under Applicable Laws against payment of applicable Taxes such as advertisement tax;
- m) to develop the Project Facilities, in accordance with terms of this Agreement, MSW Rules and Good Industry Practices;
- n) to adapt, upgrade the technology, from time to time, based on actual operations of the Processing Facilities, Good Industry Practices and the requirements of the Project;
- o) to suspend processing, and disposal of MSW, if required, for undertaking maintenance or repair of the Project Facilities subject to the provisions under **Annexure 18**.

2.1.3 Concession Period

The Concession is granted to the Concessionaire for the Concession Period which shall terminate upon the expiry of the Concession due to efflux of time or upon earlier Termination of this Agreement as per terms of this Agreement.

2.1.4 Renewal of Concession

The Concessioneing Authority may agree to renew or extend the Concession after the expiry of the initial Concession Period, for another period equal to the initial Concession Period or such other period as may be mutually agreed to and on such terms and conditions as mutually agreed upon. However any such extension should also lead to an extension of Land Lease Agreement(s) and Waste Supply Agreement (s) for an equal period. In case the parties are not able to mutually agree on common period for which the Concession needs to be extended, at least six months prior to the end of Concession Period, then the Concession shall not be extended further.

2.1.5 Acceptance of Concession

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

2.2. CONDITIONS PRECEDENT

2.2.1 Conditions Precedent

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement except under this Article 2.2 shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”). The obligations of a Party under this Article 2.2 shall be effective from the date of execution of this Agreement.

2.2.2 Conditions Precedent for P&D (CP-P&D)

2.2.2.1 Conditions Precedent for Concessing Authority-P&D (CP-P&D Concessing Authority)

The obligations of the Concessionaire hereunder for Processing & Disposal (“P&D”) are subject to the satisfaction in full of the following Conditions Precedent of the Concessing Authority. The Concessing Authority shall have:

- a. executed the Processing & Disposal Facilities Site Lease Deed and handed over vacant and unencumbered possession of the Processing & Disposal Facilities Site to the Concessionaire, if any required to be provided by the Concessing Authority in accordance with Annexure 5;
- b. facilitated the Concessionaire in terms of support and participation by its representative or sending follow-up letters to departments concerned for obtaining of all Applicable Approvals, if requested by the Concessionaire;
- c. In consultation with Concessionaire shall demarcate the Receipt Point at the Processing Site for delivery of MSW from COD P&D and will ensure the delivery of MSW from COD –P&D .
- d. created a “**Tipping Fund**” as per requirements of **Annexure 13**;
- e. deposited the money in “**Tipping Fund**” as per requirements of **Annexure 13**;
- f. appointed Project Engineer and Independent Expert as per Article 4;
- g. approved in consultation with the Concessionaire and/or Independent Expert the / Detailed Project Report (DPR) means design and detailed engineering for the Project Facilities in accordance with the provisions of **Annexure 19**, and provided copies thereof to the Concessionaire;
- h. facilitated and ensured the provision of Access Roads to the Processing & Disposal Facilities Site as per Good Industry Practices

2.2.2.2 Conditions Precedent for Concessionaire-P&D (CP-P&D Concessionaire)

The obligations of the Concessing Authority hereunder for Processing & Disposal (“P&D”) are subject to the satisfaction in full of the following Conditions Precedent of the Concessionaire. The Concessionaire shall have:

- a. executed Waste Supply Agreement with Other Cluster ULBs
- b. facilitated appointment of Independent Expert as per Article 4;
- c. provided the Concessing Authority notarised true copies of its board resolution authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- d. fulfilled all the pre-conditions to execution of this Agreement as mentioned in recital G of this Agreement;

- e. achieved Financial Closure i.e. procured and raised all the funds (debt, equity, grant etc.) necessary to finance the Construction Works – P&D as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;
- f. executed the Processing & Disposal Facilities Site Lease Deed(s) and taken over vacant and unencumbered possession of the Processing & Disposal Facilities Site from the Concessions Authority in accordance with **Annexure 5**
- g. got approved from the Concessions Authority the Detailed Project Report (DPR) means design and detailed engineering for the Project Facilities in accordance with the provisions of **Annexure 19**;
- h. received, at its own cost, water connection, power connection and other service connections to the Processing & Disposal Facilities Site
- i. obtained at its cost the Applicable Approvals set out in **Annexure 7** that are required to commence the Construction Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Approvals are in full force and effect;
- j. confirmed that all the representations and warranties of the Concessionaire/Selected Bidder set forth in the Proposal of the Selected Bidder and in this Agreement are true and correct.

Provided that upon request in writing by the Concessionaire, the Concessions Authority may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 2.2.

Fulfilment of all CP-P&D (Concessionaire), except for achievement of Financial Closure shall be the condition precedent for effectiveness of Financing Agreements

2.2.3 Satisfaction of Conditions Precedent

- a. Each Party shall make all reasonable endeavors at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent – P&D relating to it within a period of 120 (One Hundred & Twenty) days from the Appointed Date (the “**Compliance Period- P&D**”).
- b. The later of the date within such time when the Concessions Authority or the Concessionaire fulfils its Conditions Precedent (unless the Concessions Authority waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence “**Compliance Date – P&D**”).

2.2.4 Non-Compliance with Conditions Precedent

- a. In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and the Concessions Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- b. In the event this Agreement fails to come into effect on account of non fulfilment of the Concessionaire’s Conditions Precedent, the Concessions Authority shall forfeit and encash the Performance Security.

- c. In the event the Conditions Precedent for Concessioning Authority have not been satisfied within the stipulated time, then the Concessionaire shall have the option of either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for Concessioning Authority or (ii) terminate this Agreement, in which event, the Concessioning Authority shall pay to the Concessionaire, the Development Costs, duly certified by the Independent Expert. In case of extension of CP-P&D for Concessioning Authority beyond a period of 120 (One Hundred and Twenty) days from Appointed Date, the Concession Period shall be extended with an equivalent period
- d. In the event this Agreement fails to come into effect on account of the non-fulfilment of the Concessioning Authority's Conditions Precedent, the Concessioning Authority shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Concessioning Authority on the Concessionaire.
- e. Instead of terminating this Agreement as provided in this Clause 2.2.5 c, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent

ARTICLE 3

3. SITE(S)

3.1. Access to sites

- a. The Concessioneing Authority shall before the Compliance Date – P&D hand over or cause to be handed over to the Concessionaire the physical possession of the Processing & Disposal Facilities Site on an “as is where is basis” together with the necessary rights of way/way leaves free from Encumbrances, and along with the right, authority and license to implement the Project there at in accordance with the provisions of this Agreement.
- b. The Concessioneing Authority shall provide full details of boundaries of Processing & Disposal Facilities Site to the Concessionaire at the time of handing over of the possession of the Processing & Disposal Facilities Site to the Concessionaire.
- c. The Concessionaire hereby confirms and accepts the suitability of the condition, soil and location of the Processing & Disposal Facilities Site the EIA, the availability of goods, materials and things at the Processing & Disposal Facilities Site for implementation of the Project, as determined by it through its independent assessment, and hereby accepts the Processing & Disposal Facilities Site on an “as is where is basis” at its cost, risk and consequence.
- d. The Concessionaire acknowledges that prior to the execution of this Agreement, the Selected Bidder has after a complete and careful examination, made an independent evaluation of the local conditions, physical qualities of ground, subsoil and geology and all information provided by the Concession 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 Concession Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessioneing Authority in this regard.
- e. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Processing & Disposal Facilities Site save and except as set forth and permitted under this Agreement; provided, however, that nothing contained herein shall be construed or interpreted as a restriction on the right of the Concessionaire to appoint any Contractors for the performance of its obligations hereunder during the Construction Period.

3.2. Use of Processing & Disposal Facilities Site

The Concessionaire shall not use the Processing & Disposal Facilities Site for any purpose other than for the purposes of implementing the Project and purposes incidental thereto as permitted under this Agreement or as approved in writing by the Concessioneing Authority subject to the terms and conditions of the Processing & Disposal Facilities Site Lease Deed

3.3. Information about Processing & Disposal Facilities Site

The information about the Processing & Disposal Facilities Site set out in **Annexure 5** are provided by the Concessioneing Authority in good faith and with due regard to the matters for

which such information is required by the Concessionaire. The Concessioneing Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Processing & Disposal Facilities Site, which the Concessioneing Authority may now possess or may hereafter come to possess. Subject to this, Concessioneing Authority makes no representation and gives no warranty to the Concessionaire in respect of the suitability of the condition, soil and location of the Site for implementation of the Project and shall not be liable in any manner for the correctness or completeness of the information provided by it to the Concessionaire. The Concessionaire shall accept such information at its cost, risk and consequence.

3.4. Concessioneing Authority and Land ULBs' Property at Project Facilities Site

The Processing Facilities & Disposal Site shall be held and handled by the Concessionaire in trust for and on behalf of the Concessioneing Authority, consistent with the Applicable Laws, and in particular,

- (a) All debris generated during the construction or implementation of the Project shall be the property of the Concessionaire. The Concessionaire shall use or dispose of at its cost such Debris as it may deem fit.
- (b) All gold, silver, oil, minerals, precious stones, fossils, coins, articles of value or antiquity, and structures and other relics or remains, or things of geological or archaeological interest discovered on the Site(s) shall be the property of the Concessioneing Authority. The Concessionaire shall take reasonable precautions to prevent the Contractors and its labour and personnel and that of the Contractors from removing or damaging any such article or thing. The Concessionaire shall immediately upon discovery of such article or thing, inform the Concessioneing Authority and, which may issue instructions for dealing therewith.

ARTICLE 4

4. PROJECT ENGINEER AND INDEPENDENT EXPERT

4.1. Project Engineer

The detailed terms and conditions for appointment of Project Engineer and its rights, responsibilities and scope of works are specified in **Annexure 10**.

4.2. Independent Expert

The detailed terms and conditions for appointment of Independent Expert and its rights, responsibilities and scope of works during the Construction Period are specified in **Annexure 11**.

ARTICLE 5
5. THE CONCESSIONAIRE'S OBLIGATIONS

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

5.1. General Obligations of Concessionaire

The Concessionaire shall meet the Conditions Precedent for Concessionaire –P&D in timely manner. Further, the Concessionaire shall meet the following obligations at its cost during the Concession Period, and beyond the Concession Period in case of Post Closure Activities:

(a) Development and Implementation of Project-

- (i) investigate, study, design, develop, finance, construct, establish, operate and maintain the Project Facilities, including closure and Post Closure Activities and maintenance, in accordance with the provisions of this Agreement, Scope of Works, the terms of Applicable Approvals, the Applicable Laws and Good Industry Practice;
- (ii) process the Obligated Quantity of MSW as per the terms of this Agreement during the entire period of concession ;
- (iii) to adopt technology to process the Solid Waste, which is proposed in the Concessionaire's Bid submitted in response to the Request for Qualification cum for Proposal (RFQ cum RFP);
- (iv) submit Performance Security as per Article 7.1;
- (v) pay Project Development Fees as per Article 7.2;
- (vi) submit the DPR along with the detailed design and engineering/report as described in Annexure-3, obtain approval of Concessioning Authority and perform the P&D activities as per approved Plan
- (vii) prepare a surface and ground water, leachate and air emission monitoring programme in accordance with the Applicable Laws including PPCB requirements, MoEF guidelines and MSW Rules and comply with its requirements;
- (viii) deploy the requisite machinery, manpower, etc after the approval of DPR from the Concessioning Authority
- (ix) achieve agreed milestones within the time periods specified in the Project Implementation Schedule set out in **Annexure 14** and achieve COD – P&D within time period stipulated therein;
- (x) pay "Liquidated Damages" in line with **Annexure 15** for delays, if any, in achieving CODs as per Project Implementation Schedule (**Annexure 14**)
- (xi) operate and maintain the Project Facilities during the Concession Period, including closure and Post Closure Activities and maintenance, at its cost and expense, and in conformity with this Agreement including but not limited to the MSW Rules, Technical Specifications and Good Industry Practice;
- (xii) meet the Performance Parameters as stated in **Annexure 17** for Project Facilities
- (xiii) shall adhere to and comply with all the conditions and guidelines provided under D.O. No. Z -14013/3/2009-PHE II dated March 22, 2010 issued by Ministry of Urban Development, Government of India and set forth at **Annexure 24 B**;
- (xiv) demand, charge, collect, retain and appropriate the Tipping Fee (in case of Positive Tipping Fee) from the Concessioning Authority or pay the Tipping

- Fee (in case of Negative Tipping Fee) to the Concessioneing Authority at the rates set forth in **Annexure 12**;
- (xv) pay “Penalties” in line with **Annexure 18** for not meeting Performance Parameters as per **Annexure 17**;
 - (xvi) provide such facilities as may be required for the Project Engineer at the Processing & Disposal Facilities Site during his visits;
 - (xvii) arrange and access at its cost and expense all infrastructural facilities like water, electricity and goods, materials, consumables, things and services etc. as necessary for the implementation of the Project and make arrangements for back-up supply of power;
 - (xviii) be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the provisions of this Agreement, including the Technical Specifications and Good Industry Practice;
 - (xix) Shall install a suitable computerised system to capture vehicle no., type of vehicles, time of entry and weight of MSW carried by it during each entry and exit at the weighbridge. Weekly report shall be submitted to the Concessioneing Authority. The computerised system can be inspected or monitored as and when required.
 - (xx) Shall install, operate and maintain Weighbridge(s) at its own cost.
 - (xxi) shall maintain a website that provides detail of the Project in such reasonable detail as would enable awareness about the Project to any person accessing the website. Without prejudice to the generality of the foregoing, the Concessioneire shall provide, on its website, details of the quantity of MSW, liquid, solid and gaseous material discharged from the Project and update the information as to these quantities on a weekly basis;
 - (xxii) shall have minimum 51% (fifty one percent) of its issued and paid up equity capital from Selected Bidder or Lead Partner (in case of a consortium being Selected Bidder) during the Construction Period and 15 (fifteen) years following COD –P&D and shall have minimum 26% (twenty six percent) of its issued and paid up equity capital from Selected Bidder or Lead Partner (in case of a consortium being Selected Bidder) during the remaining term of the Agreement.
 - (xxiii) shall maintain the Consortium Member(s) (in case of a consortium) respective shareholding commitment , as provided in MOU as a part of its Proposal, during the Construction Period and at least for a period of 2 (two) years following the Commercial Operation Date of Processing and Disposal (COD –P&D)
 - (xxiv) shall allow the Concessioneing Authority to install, at the Concessioneing Authority’s cost, any equipment/system/software at the weigh-bridge facility or any other Project Facility which the Concessioneing Authority may feel necessary for monitoring those operations that affect the Concessioneing Authority’s interest in the Project.
 - (xxv) shall ensure that no such technology is used that is banned by Government of India
 - (xxvi) shall ensure moisture content of MSW shall be suitably addressed and other Performance Parameters are met in all seasons so as to meet the stipulations under Solid Waste Management Rules 2016.
 - (xxvii) shall execute Waste Supply Agreement with other Cluster ULB which would be included in GMADA cluster in future through notification by GoP
 - (xxviii) shall adhere to and comply with all the Model Action Plan for MSW Management in Punjab issued by National Green Tribunal (NGT) as annexed here as **Annexure 25**

- (xxix) make timely payment to the Concessioing Authority in accordance with the provisions of this Agreement in accordance with the provisions of Article 7.3 to 7.5 (in case the Tipping Fee is negative) and Annexure 13 hereof;

(b) Applicable Permits and Applicable Laws

- (i) obtain, maintain and periodically renew the requisite authorisation under the Applicable Laws and in particular the MSW Rules for establishing, managing and operating and maintaining the Project Facilities, including Post Closure Activities;
- (ii) obtain, maintain and periodically renew at its cost all Applicable Approvals, including environmental clearances, in conformity with the Applicable Laws and be in compliance therewith at all times;
- (iii) comply with the obligations at all times, under any approval or issued from time to time by any Government Authority, including without limitation the GoP, GoI (under the Environment Protection Act, etc), the PPCB and the CPCB, and not undertake any act, deed or thing that violates the terms and conditions of any approval, clearance or no-objection certificate granted by such authority in relation to the Project;
- (iv) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, intellectual property rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (v) be in compliance with the Applicable Laws, including without limitation those relating to municipal solid waste/ Solid Waste, materials and wastes, safety, health, sanitation, environment and labour, as amended from time to time, and the statutory and regulatory framework relating to the implementation of the Project and the establishment, operation and maintenance, including post closure maintenance of the Project Facilities. Without limiting the generality of the foregoing, the Concessionaire shall comply with the Environment (Protection) Act, 1986, Solid Waste Management Rules 2016, the Water Pollution Act, 1974, the Public Liability Insurance Act, 1991, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Air (Prevention and Control of Pollution) Act, 1981, the Motor Vehicles Act, 1988 and the rules framed there under by GoP or GoI, as the case may be.

(c) Liability

- (i) be the applicant, the authorized person, the occupier, the transporter (where applicable) and operator of the Project Facilities under and for the purposes of the Applicable Laws, including the MSW Rules. The Concessionaire accepts all liability and shall be liable under the Applicable Laws or otherwise for the implementation, operation and maintenance of the Project Facilities and indemnify and keep indemnified at its cost the Concessioing Authority and the Government Authorities from and against any liability arising due to its acts or deeds or lack of any of its acts or deeds either by itself or Persons claiming through or under it, for the Project;
- (ii) bear at its cost and consequence, all risks of loss of or damage to life, limb, personal injury, death, physical property and environment, in or around the Processing & Disposal Facilities Site(s) or in relation to implementation of project, which arise in connection with or in consequence of the performance of the Construction Works by the Concessionaire or Persons claiming

- through or under it. Concessionaire shall restore and/or compensate at its cost as the case may be for all such losses or damages;
- (iii) be liable for all cost overruns in the implementation of the Project, save and except as expressly provided herein;
 - (iv) be liable for its contracts with its Contractors, personnel, labour or any Third Party. The Concessions Authority shall not be liable in any manner in this behalf;
 - (v) be solely liable for any cost or price escalation resulting from fluctuation in the prices of goods, materials, consumables, things and services used in the construction and implementation of the Project and not be exempted from its obligation to implement the Project or compensated in any form on account of any such escalation;

The obligation set out in this Article 5.1(c) shall survive the expiration or prior termination of this Agreement

(d) Processing & Disposal Facilities Site

- (i) not to place or create nor to permit any Contractor or other Person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Processing & Disposal Facilities Site and Concessionaire Vehicles, or on any rights of the Concessions Authority therein;
- (ii) ensure that the Processing & Disposal Facilities Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (iii) confine its operations and activities to the Processing & Disposal Facilities Site and to any additional areas arranged by it at its cost and shall not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for a failure to do so;
- (iv) not undertake any act, deed or thing in derogation of or that violates the terms and conditions of the Processing & Disposal Facilities Site Lease Deed between the Concessionaire remove promptly according to Good Industry Practice from the Processing & Disposal Facilities Site all surplus construction machinery and material, litter, debris, waste water, rubbish and other debris and keep the Processing & Disposal Facilities Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Approvals;
- (v) be liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the site/ Project Facilities.

(e) Shifting of Utilities

Shift the utilities at, on, over or under the ground at the Processing & Disposal Facilities Site/ to an appropriate location or alignment. Such shifting of the utilities shall be carried out only if and to the extent the non-shifting thereof materially obstructs the implementation of the Project. The Independent Expert and Project Engineer shall at the request of the Concessionaire decide if the shifting of utilities is required or not. The cost of shifting underground utilities shall be borne by the Concessions Authority, while the cost of shifting of all other utilities shall be borne by the Concessionaire with a right to seek set off from the owner of such utilities as might be available under the Applicable Laws or contract. In the case of any delays in shifting of the utilities due to the owner of the utility or any Government Authority and provided such delay is not due to any default or negligence on the part of the Concessionaire or Persons claiming through or under it, there shall be a

commensurate extension of the Construction Period and the Concession Period as certified by the Concessions Authority.

(f) Personnel and Labour

- (i) appoint and retain the key personnel as required. In the event the Concessionaire is required by the Concessions Authority to remove or change any key personnel, it shall forthwith provide as replacement a Person of equivalent or higher qualifications acceptable to the Concessions Authority;
- (ii) provide the requisite training related to the handling and management of MSW/ Solid Waste to all persons (the labour and personnel of the Concessionaire, its Contractors, agents or otherwise) employed or working at the Project Facilities;
- (iii) make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement and be the primary employer, vis-a-vis the Concessions Authority in respect of such labour and personnel;
- (iv) be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project;
- (v) at all times be responsible for its employees and Contractors and the Concessions Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

(g) Contractors

- (i) may appoint Contractors on its behalf at its cost and risk to assist it in executing the Construction Works without in any way relieving the Concessionaire of its obligations as set out in this Agreement, provided such Contractors are capable of discharging the obligations under this Agreement for and on behalf of Concessionaire;
- (ii) ensure that its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained. The Concessionaire shall further ensure that its contracts with such Contractor contain appropriate provisions reflecting such Contractor's liability for timely completion of the Construction Works and for cost overruns etc., the payment of liquidated damages by them for delays, step in rights in favour of the nominee of Concessionaire and the provision of performance bonds or bank guarantees by them as security for the performance of their obligations there under;
- (iii) supervise, monitor and control the activities of Contractors under their respective Project Agreements.

(h) Reporting and Access

- (i) provide to the Concessions Authority reports on a regular basis in accordance with the provisions of **Annexure 16** hereof and as set forth elsewhere in this Agreement;
- (ii) provide all assistance to the Concessions Authority and the Independent Expert and access to the Processing & Disposal Facilities Site documents, materials and information as may reasonably be required by either of them for the performance of their respective functions, duties and services under

this Agreement, the Applicable Laws or otherwise; Provided that any failure on the part of the Concessioneing Authority to inspect any works shall not, in relation to such works, (a) amount to any consent or approval of the Concessioneing Authority or be deemed to be a waiver of any of the rights of the Concessioneing Authority under this Agreement; and (b) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

- (iii) shall also be liable to provide Monthly Weight Sheets (consolidated Daily Weight Sheets) to the Concessioneing Authority at the end of every calendar month.
- (iv) at all times, afford access to the Processing & Disposal Facilities Site to the authorized representatives of the Concessioneing Authority, the DoLG, the PPCB, the CPCB, and officers and representatives of any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions;
- (v) allow access to and use of the Processing & Disposal Facilities Site and Project Facilities for telegraph lines, electric lines, ducting or such other public purposes as any Government Authority may specify.

(i) Safety and Accidents

- (i) give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (ii) develop, implement and administer a surveillance and safety program for the Project Facilities, the Concessionaire's and Contractors' labour and personnel engaged in the provision of any services under any of the Project Agreements and goods and Persons in or within the proximity of the Processing & Disposal Facilities Site and including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (iii) take all reasonable precautions for the prevention of accidents and emergencies on or about the Processing & Disposal Facilities Site, including from fire, explosion, unplanned release of MSW etc. by installing fire fighting devices, alarms and communication systems and maintaining adequate water supply, safety equipment and materials at the Project Facilities. The Concessionaire shall liaison and maintain contact with Emergency response teams, hospitals, police, the fire department, taxi services etc. The Concessionaire shall provide all reasonable assistance and Emergency medical aid to accident victims;
- (iv) implement the environment management plan (EMP), the Safety, Health and Environment (SHE) programme and fire protection programme in accordance with the Good Industry Practice.

(j) Taxes

- (i) pay all charges, Taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, electric power, gas, telephone and other

utilities and consumables used in the implementation of the Project and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility;

- (ii) pay in a timely manner all Taxes, duties, levies, cess and charges including but not limited to income tax, sales tax, value added tax, excise duty, customs duty and octroi that may be levied, claimed or demanded from time to time by any Government Authority, including any increase therein effected from time to time by any Government Authority, in respect of the Project.

(k) Project Agreements

- (i) provide to the Concessioneing Authority notarised true copies of the duly executed Project Agreements to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements thereof within 15 (fifteen) days of the execution of such amendment etc.;
- (ii) comply with its obligations set out in the Project Agreements.
- (iii) Shall not amend the Project Agreement(s) without the prior consent of the Concessioneing Authority.

(l) Others

- (i) maintain insurances throughout the Concession Period in accordance with the provisions hereof;
- (ii) pay liquidated damages to the Concessioneing Authority for occurrences and at rates set forth in **Annexure 15** other than where such occurrences are caused by (a) the occurrence of an event of Force Majeure in accordance with Article 8 hereof or (b) a fundamental breach of the Agreement by the Concessioneing Authority or any other material act or omission by the Concessioneing Authority in contravention of its obligations under this Agreement;
- (iii) not carry out any business or undertake any project that is in competition, direct or indirect, with the Project/Project Facilities;
- (iv) upon the establishment of on-line waste management/tracking systems at the Project Facilities, the Concessionaire shall have such systems linked to the regional and/or central monitoring systems installed at the Concessioneing Authority, PPCB or other Government Authorities.

5.2. Additional Obligations of the Concessionaire during Construction Period

- (a) The Concessionaire shall prior to commencing the Construction Works
 - i. Submit to the Concessioneing Authority with due regard to the Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;
 - ii. Have requisite organization and designate and appoint suitable officers/ representatives, as it may deem appropriate to supervise the Project and to deal with the Government Agencies and to be responsible for all necessary exchange of information required pursuant to this Agreement;

- iii. Undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Implementation Schedule and to achieve Construction Completion under and in accordance with this Agreement.
- (b) The Concessionaire shall make its own arrangements for quarrying, if necessary, and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Approvals;
- (c) The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Concessions Authority, the Independent Expert or any Government Authority and ensure completion of construction of the Project in all respects in accordance with the provisions of this Agreement;
- (d) The Concessionaire shall commence commercial operations of the Processing & Disposal Facilities on achieving COD-P&D
- (e) The Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the Independent Expert to determine that Construction Works are being undertaken in accordance with the requirements.
- (f) The obligations related to construction activities and Conditions Precedent – Concessionaire (CP P&D Concessionaire) shall be applicable for any upgradation/ addition in Project Facilities that the bidder may decide to incorporate any time during the Concession Period.

5.3. Additional Obligations of the Concessionaire during Operations Period –

- a. The Concessionaire shall carry out the operations and maintenance of the Project Facilities at its own cost and risk in accordance with the provisions hereof and as per Solid Waste Management Rules 2016.
- b. The Concessionaire shall replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, spares, capital components of the Project Facilities etc. and undertake routine, periodic, preventive and major maintenance, repairs and replacements of machinery, equipment, consumables, capital components of the Project Facilities, structures etc. at its cost as necessary to carry out efficient operations and maintenance of the Project Facilities and to provide adequate service standards. The Concessionaire shall maintain the maintenance logs.
- c. The Concessionaire shall notify the Concessions Authority in writing about the authorization of the Project Facilities to process, and dispose MSW and keep copies of such notices as part of the operating records.
- d. The Concessionaire shall accept the MSW from the MSW Supply Area and area under the municipal boundaries of Other Cluster ULBs at the Receipt Point by Concessions Authority or by an agency authorised by the Concessions Authority.
- e. The Concessionaire shall not accept Excluded Waste as it does not have the requisite authorisation or capacity to handle, treat and dispose such waste.
- f. The Concessionaire shall prepare a Waste Analysis Programme (WAP) and be in compliance therewith. The WAP shall outline the verification procedures, including

specific sampling methods etc. necessary to ensure the environmentally sound management of the processing, and disposal of the MSW handled by the Project Facilities.

- g. The Concessionaire shall observe and comply with all the necessary caution and care in handling ignitable, reactive or incompatible wastes, including putting of sign boards and banning smoking in areas where such wastes are handled.
- h. The Concessionaire shall monitor the entrances to and exits from the Project Facilities, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary at or around the active areas.
- i. The Concessionaire shall implement corrective action as and when required to protect life, the environment, flora and fauna.
- j. The Concessionaire shall carry out the Closure and Post Closure maintenance of Sanitary Landfill Facility at the Site in conformity with the provisions of this Agreement, including the Technical Specifications, the Applicable Laws, the terms of Applicable Approvals and Good Industry Practice.
- k. The Concessionaire shall duly inform the Concessions Authority of the additional land requirement for Sanitary Landfill at least two years prior to the exhaustion of existing Sanitary Landfill and may request for additional land, if so desired.
- l. The Concessionaire shall provide to the Concessions Authority at their cost the assistance and facilitation, as may reasonably be requested by the Concessions Authority, in the classification, segregation and testing of MSW.
- m. The Concessionaire shall promptly and diligently repair, replace or restore the Project Facilities or part thereof which may be defective, destroyed, lost or damaged.
- n. Except as provided or authorized under this Agreement, the Concessionaire shall not, without the prior written consent of the Concessions Authority, remove or replace any asset comprised in the Project.

5.4. No Breach of Concessionaire's Obligations in Certain Circumstances

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- Non Political Event, subject to Article 8;
- Concessions Authority's Event of Default;
- Compliance with the written instructions of / from the Concessions Authority or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- Closure of the Project Facilities or part thereof with the approval of the Concessions Authority;
 - Orders of any court having competent jurisdiction.

ARTICLE 6

6. CONCESSIONING AUTHORITY'S OBLIGATIONS

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

6.1. Specific Obligations-

The Concessioning Authority shall:

- a) meet the Conditions Precedent for Concessioning Authority – P&D in timely manner or in extended time as may be agreed between the Parties.
- b) execute the Project Site (s) Lease Deed (s)/ Processing & Disposal Facilities Lease Deed;
- c) collect, transport and supply the Assured Quantity of MSW as per the Applicable Laws;

Provided that in the event, the Concessioning Authority fails to transport and supply the Quarterly Minimum Assured Quantity of MSW (which will be calculated for a quarter comprising of three months) and this has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Concessioning Authority shall compensate to the Concessionaire for shortfall in Quarterly Minimum Assured Quantity of MSW. Such compensation would be as per the following clause.

- (i) In case of Positive Tipping Fee, the compensation for shortfall in Quarterly Minimum Assured Quantity of MSW will be equivalent to the Tipping Fee on a per ton basis.

For an example, if the Quarterly Minimum Assured Quantity of MSW is 90 x 30 x 3 i.e. 8100 metric ton and there is shortfall of 20 metric ton, then the Concessionaire shall be compensated by an amount equal to Positive Tipping Fee x 20, i.e. if the Positive Tipping Fee is **Rs. 250 per metric ton**, then the compensation becomes Rs. 250 x 20, i.e. Rs. 5000 (five thousand).

- (ii) In case of Zero Tipping Fee or Negative Tipping Fee, the Concessionaire shall be compensated at the rate of **Rs. 300 (three hundred) for 1 MT** (one metric ton) of shortfall.

Further, in case the Concessioning Authority fails to supply the Assured Quantity of MSW for more than 4 days in any month and this has not occurred due to any Public Holiday (declared holidays of Govt. of Punjab including Sundays), or breach of this Agreement by the Concessionaire or due to Force Majeure, then on 5th day onwards, the Concessionaire will be compensated at the rate of **Rs. 100 (hundred) for 1 MT** (One metric ton) of shortfall for the number of applicable no-supply days. (no supply days means the number of applicable days in which the Authority fails to supply the Assured Quantity of MSW as per the conditions of RFP)

For an example, if the Assured Quantity of MSW is 112 TPD, then the Minimum Assured Quantity of MSW becomes 89.6 TPD (80% of 112) and Concessioning Authority has not been able to supply 89.6 TPD for 7 (seven) days (except Public Holidays or circumstances under Force Majeure or breach of this Agreement by Concessionaire) in any month, then Concessionaire shall be compensated by an amount equal to Rs. 89.6 x 7 x 100, i.e. Rs. 62,720/-.

- d) create “**Post Closure Performance Account**” as per provisions of Article 7.4 and **Annexure 13**;
- e) grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Concessioneing Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, which are within the administrative control/ powers of the Concessioneing Authority, the same shall be provided by the Concessioneing Authority within 15 (fifteen) days from receipt of request from the Concessionaire to make available such authorization, provided that the conditions that the applications / details submitted are complete and correct;
- f) without prejudice to the generality of Article 6.1 (a) above:
 - i. recommend and forward to the relevant authority/ministry/department, any application of the Concessionaire to obtain any Applicable Approval,
 - ii. facilitate the grant of the Applicable Approval with the relevant authority/ministry/department and assist the Concessionaire in getting necessary clearances from the relevant authorities / ministry/departments.
 - iii. ensure that the building plans for the Project Facilities at Processing & Disposal Facilities Site are duly and expeditiously approved by the concerned authorities under the Act / building by-laws / other relevant by-laws or regulations;
- g) ensure peaceful use of the Processing & Disposal Facilities Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from any Persons claiming through or under the Concessioneing Authority;
- h) make timely payment to the Concessionaire in accordance with the provisions of this Agreement in accordance with the provisions of Article 7.3 to 7.5 (in case the Tipping Fee is positive) and **Annexure 13** hereof;
- i) declare and maintain, or cause to declare and maintain, a no-development zone around the Processing & Disposal Facilities Site in accordance with Applicable Laws;
- j) provide additional land for development of additional Sanitary Landfill Facility/ Disposal Facility Site as close as possible to the existing Sanitary Landfill Facility, if during the Concession Period, the available Site for Sanitary Landfill Facility falls short of the actual landfill requirements;
- k) Arrange additional Site, within a radius of 25 Kms from existing Disposal Facility Site within a period **365 days** from the written intimation of the Concessionaire.
- l) pay an additional fee as may be mutually agreed with the Concessionaire, if reject/ Residual Inert Matter needs to be disposed off in a new Sanitary Landfill Site/ Disposal Facility Site, which is more than 25 Km away from the present Project Site(s) (Processing Facility Site and Sanitary Landfill Site), as the case may be because appropriate notations and entries to be made in the land records relating to the Site for Processing Facility and Sanitary Landfill Facility with the concerned Government Authorities so as to notify any Person dealing with such site or leasing/buying the land and property comprised in such site that the site shall be used for handling and disposal of MSW and that the usage of the site is restricted.

ARTICLE 7

7. SECURITIES, FEES, PAYMENTS & REVENUES

7.1. Performance Security

The Selected Bidder/Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to the Concessions Authority, a bank guarantee in favour of the Concessions Authority from a scheduled bank payable at Chandigarh in the form as set out in **Annexure 9, (“Performance Security”)** for a sum as indicated in Data Sheet (**Annexure 8**). The Performance Security shall be furnished by the Selected Bidder as per terms of the bid documents (along with acceptance of LoI) and the bank guarantee shall be valid for a period of ninety (90) days over and above the Construction Period.

On COD-P&D the Concessionaire shall furnish a Performance Security in form of a bank guarantee of reduced amount which shall be fifty percent (50%) of the amount of initial Performance Security. Against submission of such Performance Security, the earlier Performance Security shall be released by the Concessions Authority. The Concessionaire shall ensure that amount of the said Performance Security shall be escalated, every three years from the date of its issuance, by fifteen percent (15%) of the amount of subsisting Performance Security during that time.

The Performance Security shall be kept valid by replenishment or otherwise throughout the Concession Period in accordance with the above provisions. The renewal of the bank guarantee constituting the Performance Security, as and when required shall be done by the Concessionaire at least one (1) month prior to the date of expiry of the existing bank guarantee, failing which, the Concessions Authority shall be entitled to invoke the bank guarantee.

Provided that if the Agreement is terminated due to any event other than the Concessionaire Event of Default, the Performance Security if subsisting as on the Termination Date shall, subject to the Concessions Authority’s right to receive amounts at prevailing time if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire within thirty (30) days from the Termination Date

7.2. Project Development Fees

- (a) The Selected Bidder shall pay to IL&FS Infrastructure Development Corporation Limited (IIDC) or any person nominated by IIDC, a non-adjustable, non-refundable fees (“Project Development Fees”) equal to 4.5% (inclusive of all applicable taxes and duties) of the Total Project Cost and Project Structuring and Financing Fee (indicated in Data Sheet at Annexure 8).

The Project Development Fees shall be paid in three instalments viz.

- i. 80% (eighty percent) at the time of acceptance of Letter of Intent or latest by within 15 days of issue of Letter of Intent);
- ii. 10% at the end of 180 days from the Appointed Date ;
- iii. 10% (ten percent) on achieving COD – P&D.

The Selected Bidder/Concessionaire shall be required to submit two (2) bank guarantees payable at Chandigarh (format placed at **Annexure 9B**) each of value equal to ten percent (10%) of the Project Development Fees in favour of IIDC before the Appointed Date, which

shall remain in the custody of Project Engineer of the Concessioneing Authority. Such bank guarantees shall be returned only after IIDC confirms in writing to the Project Engineer that it has received the due payment from Selected Bidder/Concessionaire on account of Project Development Fees.

7.3. Tipping Fee

The Tipping Fee shall be positive or negative depending on the quotation (“**Financial Proposal**”) of the Selected Bidder that shall be placed at **Annexure 12** of this Agreement, on the Appointed Date. To clarify further, the Tipping Fee is termed to be positive when required to be paid by the Concessioneing Authority and negative when required to be paid by the Concessionaire.

In line with the Financial Proposal and details set out in **Annexure 13**, the Concessionaire shall submit to the Project Engineer a monthly statement (“**Monthly Fee Statement**”) providing the details, regarding payment to be received from or payment to be made to the Concessioneing Authority (“**Monthly Payment**”), as the case may be.

(a) Positive Tipping Fee

The Concessioneing Authority agrees and undertakes to pay to the Concessionaire, fee per ton of MSW (“**Positive Tipping Fee**”) for Processing and Disposal of MSW received at Receipt Point in Processing & Disposal Facilities Site from MSW Supply Area (“Tipping Fee – P&D”) after COD-P&D

OR

(b) Negative Tipping Fee

The Concessionaire agrees and undertakes to pay to the Concessioneing Authority fee per ton of MSW (“**Negative Tipping Fee**”) for the right and concession granted for Processing and Disposal of MSW received at Receipt Point in Processing & Disposal Facilities Site from MSW Supply Area (“Tipping Fee – P&D”) after COD-P&D

It is to be noted that Tipping Fee-P&D can be either positive or negative.

Mechanism of Payment during the Concession Period-

The Concessioneing Authority (in case of Positive Tipping Fee) or the Concessionaire (in case of Negative Tipping Fee) shall, within thirty (30) days from the date of receipt of the Monthly Fee Statement shall, in accordance with procedure laid out in **Annexure 13**,

- a.) Pay to the Concessionaire (in case of Positive Tipping Fee) or the Concessioneing Authority (in case of Negative Tipping Fee), an amount equal to 98.5 % of the total amounts payable as monthly payment – P&D in accordance with Article 7.3 as stated in such Monthly Fee Statement.
- b.) The Concessioneing Authority (in case of Positive Tipping Fee) or the Concessionaire (in case of Negative Tipping Fee) shall credit the balance amounts, which are equal to 1.5 % of the monthly payment – P&D, in a separate bank account in the name and style of “**Post Closure Performance Account**” maintained by the Concessioneing Authority for meeting the expenses related to Post Closure Activities.

7.4. Non Payment by the Concessing Authority (in case of Positive Tipping Fee) or Concessionaire (in case of Negative Tipping Fee) during Concession Period

- a) In case the monthly payments as prescribed in the previous clause are due from the Concessing Authority and the Concessing Authority does not pay the monthly payments in stated period of thirty (30) days, the monthly payments shall be duly released from Tipping Fund within a period of seven (7) days there from, and the Concessing Authority shall make good the deficit in Tipping Fund within seven (7) days of release if such payment from Tipping Fund;
- b) If Concessing Authority does not make good the deficit within seven (7) days of payment from Tipping Fund, the Concessionaire shall make representation to the First Appellate Authority. The First Appellate Authority shall advise the Concessing Authority to make good the deficit in Tipping Fund;
- c) If Concessing Authority does not make good the deficit within thirty (30) days of payment from the Tipping Fund, the Concessionaire shall make representation to the Appellate Authority. The Appellate Authority shall take necessary measures to ensure that the deficit in Tipping Fund is made good.

7.5. Mechanism of Payment during Post Closure Period

- a) The Concessionaire shall, at the time of Handing Over of Project Facilities to the Concessing Authority, nominate a Person (“**Beneficiary**”) as beneficiary of payments from Post Closure Performance Account pursuant to Termination of the Agreement
- b) For every year during Post Closure Period, the Concessing Authority shall pay to the Beneficiary an amount equal to 1.5 % of the initial balance available (inclusive of all taxes and duties, if any applicable) in Post Closure Performance Account as on the date of termination of this Agreement by efflux of Concession Period or otherwise. Such payments shall be made against written demand by the Beneficiary on yearly basis after deduction of applicable taxes and duties. Provided however, no payments from Post Closure Performance Account shall be made to the Selected Bidder / Concessionaire / Beneficiary, if the Agreement is terminated due to Concessionaire’s Default.
- c) It may be specifically noted that if any amount in Post Closure Performance Account is utilized to meet any of the obligations pertaining to Post Closure Activities, then such amount shall be first adjusted before allowing yearly payments to the Beneficiary.
- d) The remaining value of amount accumulated in Post Closure Performance Account, if any, shall be promptly released by the Concessing Authority within 60 (Sixty) days of end of Post Closure Period.

7.6. Terms of Payment

- (i) Any delay in making payment in accordance with Article 7.3 to 7.6 above shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at prevailing annual prime lending rate (“**PLR**”) of State Bank of India calculated for the duration of delay.
- (ii) All payments, whether by the Concessionaire or by the Concessing Authority, shall be made by way of demand draft or cheque payable at par in the city of Concessing Authority.

**7.7. Disbursement of Grant
(Deleted)**

7.8. Other revenue sources

Starting from COD-P&D and during the entire Concession Period, the Concessionaire shall be entitled to the following:

- a) Subject to the applicable laws, rule, regulation and government orders, the Concessionaire shall be entitled to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- b) The Concessionaires shall be entitled to receive 80% of the fiscal incentives and benefits accruing to the Project in respect of or on account of Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative. Concessioning Authority shall be entitled to receive the remaining 20% of the fiscal incentives and benefits .The required applications in this regard will have to be filed by the Concessionaire;
- c) The Concessionaire shall be entitled to use the unutilised space available at the Project Facilities for display of advertisements under Applicable Laws against payment of applicable Taxes such as advertisement tax etc. and retain, appropriate and utilise the revenue from such advertisements at its own discretion;

ARTICLE 8

8. FORCE MAJEURE

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 8.1, 8.2 and 8.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

8.1. Non-Political Event

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

- (i) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (ii) strikes or boycotts (other than those involving Contractors, or their respective employees/representatives, or attributable to any act or omission by any of them) interrupting supplies and services to the Project for a continuous period of 48 (forty eight) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 8.2;
- (iii) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire, by, or on behalf of such Contractor;
- (iv) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (a) its own failure to comply with any Applicable Law or Applicable Permits, or (b) on account of its own breach of any Applicable Law or Applicable Permit or of any contract, or (c) enforcement of this Agreement, or (d) exercise of any of its rights under this Agreement by the Government;
- (v) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a Site inspection; or .
- (vi) any event or circumstances of a nature analogous to any of the foregoing.

8.2. Indirect Political Event

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

- (i) an act of war (whether declared or undeclared), invasion, armed conflict or act by foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (ii) industry-wide or State-wide strikes or industrial action for a continuous period of 48 (forty eight) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- (iii) any civil commotion, boycott or political agitation which prevents collection of User Charges by the Concessionaire for an aggregate period exceeding 30 (thirty) days in an Accounting Year;
- (iv) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (v) any Indirect Political Event that causes a Non-Political Event; or
- (vi) any event or circumstances of a nature analogous to any of the foregoing.

8.3. Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) compulsory acquisition in national interest or expropriation of any Project Facilities or rights of the Concessionaire or of the Contractors;
- (b) unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit;
- (c) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (d) any event or circumstance of a nature analogous to any of the foregoing.

8.4. Duty to report Force Majeure Event

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

- a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 8 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

- c) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d) any other information relevant to the Affected Party's claim.

8.4.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

8.4.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 8.4.1, and, such other information as the other Party may reasonably request the Affected Party to provide.

8.5. Effect of Force Majeure Event on the Concession

Upon the occurrence of any Force Majeure Event prior to the Compliance Date – P&D the Compliance Period and Scheduled Construction Completion Date(s) shall be extended accordingly by a period equal in length to the duration of the Force Majeure Event.

If any Force Majeure Event occurs before COD-P&D, the Concession Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

If any Force Majeure Event occurs after COD-P&D and if the delivery of MSW is suspended, the Concession Period shall be extended by a period equal in length to the duration for which the collection of the delivery of MSW is suspended.

8.6. Allocation of costs arising out of Force Majeure

- (a) Upon occurrence of any Force Majeure Event prior to the Compliance Date – P&D the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (b) Upon occurrence of a Force Majeure Event after the Compliance Date –, P&D the costs incurred and attributable to such event and directly relating to the Project the ("**Force Majeure Costs**") shall be allocated and paid as follows:
 - i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - ii. upon occurrence of an Indirect Political Event, all Force Majeure Costs' attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Concessioneing Authority to the Concessionaire; and
 - iii. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Concessioneing Authority to the Concessionaire.

- (c) For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee, revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Proposal may be relied upon to the extent that such information is relevant.
- (d) Save and except as expressly provided in this Article 8, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, co-expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

8.7. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article 8, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

8.8. Termination Payment for Force Majeure Event

Upon occurrence of a Force Majeure Event resulting in Termination of the Agreement, the Concessioneing Authority shall make payments in line with the following, to the Concessionaire ("**Termination Payments**"):

- (i) If Termination is on account of a Non-Political Event, the Concessioneing Authority shall make a Termination Payment to the Concessionaire of an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover for assets under the Concessionaire's ownership.
- (ii) If Termination is on account of an Indirect Political Event, the Concessioneing Authority shall make a Termination Payment to the Concessionaire of an amount equal to:
 - a. Debt Due less Insurance Cover for assets under the Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall also be included in the computation of Termination Payments; plus
 - b. 110% (one hundred and ten per cent) of the Adjusted Equity.
- (iii) If Termination is on account of a Political Event, the Concessioneing Authority shall pay an amount that would be payable under Article 9.2 as if it were a Concessioneing Authority's Default.

8.9. Dispute resolution

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

8.10. Excuse from performance of obligations

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

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

8.11. Change in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
 - i. The enactment of any new Indian law;
 - ii. The repeal, modification or re-enactment of any existing Indian law;
 - iii. A change in the interpretation or application of any Indian law by a court of record;
 - iv. Any order, decision or direction of a court of record.

Provided that Change in Law shall not include:

- i. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - ii. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge;
 - iii. Any change in the rates of the Taxes.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, then Concessioneing Authority shall subsequently reimburse to the Concessionaire, 100% of such Additional Costs, provided such Additional Cost in any manner as may be mutually agreed upon by Parties.

- (c) If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the Concessions Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Concessions Authority.
- (d) Upon occurrence of a Change in Law, the Concessionaire may notify the Concessions Authority of the following:
 - (i) The nature and the impact of Change in Law on the Project
 - (ii) In sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost
 - (iv) The relief sought by the Concessionaire
- (e) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-article, the Concessions Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination by the Project Engineer/Concessions Authority of the quantum of the Additional Cost to be borne and paid by the Concessions Authority
- (f) The Concessions Authority shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties.

ARTICLE 9

9. EVENTS OF DEFAULT AND TERMINATION

9.1. Events of Default

“Event of Default” shall mean either the Concessionaire Event of Default or the Concessing Authority’s Event of Default or both as the context may admit or require.

(a) The Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("**Event of Default - Concessionaire**") when not caused by the Concessing Authority’s Event of Default or Force Majeure Event:

- (i) the Concessionaire has failed to achieve COD(s) beyond ninety (90) days of the respective Scheduled Construction Completion Date.
- (ii) the Concessionaire has failed to achieve Performance Parameters as specified in **Annexure 17**.
- (iii) the Concessionaire has caused Abandonment of the Project.
- (iv) the Concessionaire has failed to make any payments due to the Concessing Authority more than sixty (60) days have elapsed since such payment default.
- (v) the Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than sixty (60) days.
- (vi) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire.
- (vii) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.
- (viii) The equity holding of the Selected Bidder in the Concessionaire is not in line with Article 5.1 (a) at any point of time during the Concession Period.
- (ix) The Concessionaire has committed an Event of default as set out in **Annexure 6** and there has been failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements as evidenced by events of significance that resulted in prolonged interruptions of waste collection/ transportation/ processing/ disposal for the period specified in Annexure 6 and affected the Performance Parameters of any of the Project Facilities.

- (x) The Concessionaire has committed an Event of default as set out in **Annexure 15**.
- (xi) The maintenance of the Project Facilities or any part thereof has deteriorated to a level, which is below the acceptance level prescribed by the O&M Requirements, required in line with the nature of activity.
- (xii) There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations.
- (xiii) The Concessionaire shall not have renewed or obtained a clearances/ Licenses/No Objection Certificate's from the State Pollution Control Board (SPCB) or any other similarly empowered Government Agency which is due and to be required as per Solid Waste Management Rules 2016.
- (xiv) The Concessionaire has undertaken the activities at Site for any purpose unconnected or which is not incidental to the Project or related activities, unless otherwise permitted under this agreement.

(b) The Concessioneing Authority's Event of Default

Any of the following events shall constitute an event of default by the Concessioneing Authority ("**Event of Default - Concessioneing Authority**") when not caused by an Event of Default - Concessionaire or Force Majeure Event:

- (i) The Concessioneing Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within sixty (60) days of receipt of notice thereof issued by the Concessionaire
- (ii) The Concessioneing Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iii) The Concessioneing Authority has failed to make any payments due to Concessionaire and more than ninety (90) days have elapsed since such payment default;
- (iv) The Concessioneing Authority has failed to supply 60% of the Assured Quantity of MSW for a total of 120 (one hundred and twenty) days or more in a continuous period of 180 (one hundred eighty) days.

9.2. Parties Rights

- (a) Upon the occurrence of the Concessionaire Event of Default, the Concessioneing Authority shall without prejudice to any other rights and remedies available to it under this Agreement is entitled to terminate this Agreement.
- (b) Upon the occurrence of the Concessioneing Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement is entitled to terminate this Agreement:

9.3. Consultation Notice

Either Party exercising its right under Article 9.2 above, shall issue to the other Party and the Lenders a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the “**Consultation Notice**”).

9.4. Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) days or such extended period as they may agree (the “**Remedial Period**”) the Parties shall, in consultation with the Lenders Representative, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is an Concessionaire Event of Default, the Parties shall, in consultation with the Lenders Representative, endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances;

- (a) the change of management or control/ownership of the Concessionaire;
- (b) the replacement of the Concessionaire by a new Concessionaire (“Substitute Entity”) on terms no less favourable than those contained in this Agreement, proposed by Lenders Representative and the specific terms and conditions of such replacement which shall include:
 - (i) the criteria for selection of the Substitute Entity,
 - (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Substitute Entity,
 - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
 - (iv) assumption by the Substitute Entity of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders’ charge on the Concessionaire’s assets ,
 - (v) assumption by Substitute Entity of any amounts due to the Concessioneing Authority from the Concessionaire under this Agreement.

9.5. Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Agreement capable of performance, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

9.6. Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Article 9.4, the Consultation Notice shall be withdrawn by the Party that issued the same.

9.7. Step-in rights

The Concessionaire agrees that the Concessions Authority shall be entitled to administer, operate, maintain etc. the Project Facilities on the occurrence of an Concessionaire Event of Default. In the event of a Concessionaire Event of Default, the Concessions Authority may (but shall not be obliged to) operate, or procure and cause operation of the Commercial Facility upon the issue of the Termination Notice.

9.8. Termination due to Event of Default

(a) Termination Notice

If after the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Lenders have agreed upon any of the measures in accordance with Article 17.4, the either Party shall be entitled to terminate this Agreement on account of an Event of Default and shall do so by issue of a notice in writing (“Termination Notice”) to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall set out the following details:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than (forty five) 45 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof; and
- (iv) any other relevant information.

The Parties hereby agree that any Termination Notice shall also be sent to all Lenders by registered post/courier and a public notice of Default shall also be published in leading daily newspapers (of both English and the prevalent local language) of the city of Concessions Authority.

(b) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall, subject to the provision of the Financing Documents, Substitution Agreement (prescribed format in Annexure 24 A) (if any) and the rights of the Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- (ii) the Termination Payment, if any, payable by the Concessions Authority in accordance with the following Article 9.10 is paid to the Concessionaire on the Termination Date; and
- (iii) the Project Facilities are handed over to the Concessions Authority by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due from the Concessionaire to the Concessions Authority in accordance with Article 9.2(f).

(c) Withdrawal of Termination Notice

Notwithstanding anything inconsistency contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of

Default to the satisfaction of the other Party at any time before the actual Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice or as mutually agreed upon by both parties.

(d) Termination Payments

(i) Upon Termination of this Agreement on account of the Event of Default – Concessioneing Authority, the Concessioneaire shall be entitled to the following Termination Payments in addition to any other payment that may be due from the Concessioneing Authority and has accrued to the Concessioneaire prior to the Termination:

i. if the termination occurs prior to the COD - P&D then the Concessioneing Authority shall pay to the Concessioneaire, Termination Payment calculated as below:

Termination payment
= Debt due + 120% of Adjusted Equity on Termination Date

ii. if the termination occurs after COD - ,P&D then the Concessioneing Authority shall pay to the Concessioneaire, Termination Payment as below:

Termination payment
= Debt due + 150% of Adjusted Equity on Termination Date.

(ii) Upon Termination of this Agreement on account of the Event of Default - Concessioneaire, the Concessioneing Authority shall be liable to pay Termination Payment to the Concessioneaire, only to the extent of the following:

Only the Debt Due as on date of Termination (and not the Adjusted Equity or any part thereof).

(e) Termination Payments Procedure

Upon Termination of this Agreement for any reason whatsoever, if the Concessioneing Authority is required to make any Termination Payments pursuant to Article 8.8 or 9.9(d), the Concessioneing Authority shall make such Termination Payments to the Concessioneaire within ninety (90) days of Termination Date.

If the Concessioneing Authority fails to make Termination Payments to the Concessioneaire within ninety 90 days of Termination Date, the Confirming Party undertakes to make such Termination Payments to the Concessioneaire within sixty (60) days thereafter i.e. within (one hundred and fifty) 150 days of Termination Date. If Confirming Party makes the Termination Payment to the Concessioneaire, the rights of Concessioneing Authority under Article 9.4 can be accessed by the Confirming Party, which in turn can assign such rights at its own wish to any other Person, including, but not limited to the Concessioneing Authority.

9.9. Rights of the Concessing Authority on Termination

- a) Upon Termination of this Agreement for any reason whatsoever, the Concessing Authority shall upon making the Termination Payment, if any, to the Concessionaire and in accordance with the provisions of the Financing Documents, shall have the power and authority to:
- (i) enter upon and take possession and control of the Project Facilities forthwith free from any encumbrances; and
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Facilities or permit a limited number of representatives of the Concessionaire, as required for pending resolution of any issues thereto; and
 - (iii) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site and as identified by the Concessing Authority;
- b) Notwithstanding anything contained in this Agreement, the Concessing Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handover of the Project Facilities by the Concessionaire to the Concessing Authority shall be free from any such obligation.

9.10. Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of any Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 10

10. HANDOVER OF PROJECT FACILITIES

10.1. Ownership during the Concession Period

Without prejudice and subject to the Agreement, the ownership of the Project Facilities except Processing & Disposal Facilities Site including all improvements made therein by the Concessionaire, during the term of the Agreement, shall at all times remain with the Concessionaire during the Concession Period.

10.2. Condition Survey

- a. The Concessionaire agrees that on the service of a Termination Notice or 180 (one Hundred & eighty) days prior to the expiry of the Concession Period by efflux of time, it shall conduct or cause to be conducted by the Project Engineer under the supervision of the Concessioneing Authority, a survey (“**Condition Survey**”) of the Project Facilities to ascertain the condition thereof, verify compliance with the Concessionaire’s obligations under this Agreement and to prepare an inventory of the assets comprised in the Project
- b. If, as a result of the condition survey, the Concessioneing Authority shall observe/notice that the Project Facilities or any part thereof is not in the condition required thereof under this Agreement (except normal wear and tear) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in the requisite conditions well before the Termination Date.
- c. In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessioneing Authority may itself cause the condition survey and inventory of Project Facilities to be conducted. The Concessioneing Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities in the requisite condition.

10.3. The Concessionaire’s Obligations upon Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon termination due to a Force Majeure Event or Event of Default or expiry of the Concession Period by efflux of time.

- a. The Concessionaire shall subject to the provisions of this Agreement:
 - i. hand over to the Concessioneing Authority or its nominated agency free of cost the vacant and peaceful possession of the Project Facilities.
 - ii. hand over/transfer to the Concessioneing Authority all its rights, titles and interest in or over the assets comprised in the Project and the Project Assets (including movable assets which the Concessioneing Authority agrees to take over) which are required to be transferred to the Concessioneing Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

- iii. hand over to the Concessions Authority all documents, Proprietary Material, including as built designs, drawings, data, engineering, manuals and records relating to the Project Assets and Project Facilities.
 - iv. it is clarified that only the assets of the Concessionaire shall be taken over and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the Concessions Authority. The Concessionaire's employees shall be the Concessionaire's/responsibility even after the expiry of the Concession Period.
 - v. transfer or cause to be transferred/assigned to the Concessions Authority any Project Agreements which are (A) valid and subsisting, (B) capable of being transferred to the Concessions Authority and (C) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Concessions Authority.
 - vi. at its cost, transfer to the Concessions Authority all such Applicable Permits which the Concessions Authority may require and which can be legally transferred.
 - vii. at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Concessions Authority. In the event the Concessionaire fails to remove such objects within the stipulated time, the Concessions Authority may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
 - viii. handover the peaceful and vacant possession of Processing & Disposal Facilities Site to the Concessions Authority or its nominated agent/agency.
- b. All proceeds of insurance claims shall be deposited in a separate account and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto unless and until all dues of/damages payable to the Concessions Authority or any Government Authority or in respect of the Project Facilities have been cleared and no amounts payable/refundable to either of them by the Concessionaire pursuant to this Agreement are outstanding.
 - c. The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.
 - d. The Concessions Authority shall be entitled to encash any subsisting Performance Security/bank guarantee(s) provided by the Concessionaire or its parents, if the Termination is on account of Event of Default – Concessionaire.

10.4. Concessions Authority's Obligations

The Concessions Authority shall, subject to the Concessions Authority's right to encash Performance Security towards carrying out works/jobs listed under Article 10.2 and 10.3, which have not been carried out by the Concessionaire, or any outstanding dues, which may have accrued in respect of the Project during the Concession Period, duly discharge and

release to the Concessionaire any amounts / Performance Security due to the Concessionaire in accordance with the Agreement.

10.5. Divestment Certificate

- a. On the Termination Date the Project Engineer shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of Article 10.2 to 10.4 above, as the case may be. In the event the Project Engineer notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.
- b. Upon Termination (due to Force Majeure Event or Event of Default or expiry of the Concession Period by efflux of time), the divestment by the Concessionaire of all rights, title and interest in the Project, Project Assets and the Project Facilities shall be deemed to be complete on the Termination Date but no later than 30 (thirty) days thereafter, by when all the requirements of Articles 10.2 to 10.4 shall be fulfilled. The Concessions Authority shall upon fulfillment of the requirements of Articles 10.2 to 10.4 issue a certificate (the **"Divestment Certificate"**), with a copy thereof endorsed to the Concessions Authority, and the Confirming Party, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, the Project Assets and the Project Facilities and the vesting thereof in the Concessions Authority pursuant hereto.
- c. The Performance Security shall constitute security for the Concessionaire's obligation to fulfill the requirements of Articles 10.2 to 10.4.

ARTICLE 11

11. DISPUTE RESOLUTION

11.1. Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **Article 11.1 (b)** below.
- (b) Either Party may require such Dispute to be referred to the Municipal Commissioner, Amritsar Corporation and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to the First Level Appellate Authority or the Director, Department of Local Government, Punjab. If the Dispute remains unresolved beyond 30 days of its reference to the First Level Appellate Authority, either party may refer it to the Second Level Appellate Authority i.e. the Principal Secretary, Local Government. If the Dispute still remains unresolved after 45 days of such reference, the Dispute shall be referred to arbitration in accordance with the provisions of **Article 11.2** below.

11.2. Arbitration

(i) Procedure

Subject to the provisions of **Article 11.1**, any Dispute, which is not resolved amicably or by First and Second Level Appellate Authorities, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three (3) arbitrators, one (1) to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within thirty (30) days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

(ii) Place of Arbitration

The place of arbitration shall ordinarily be Chandigarh, however with mutual consent of the Parties, the arbitration hearings, if required, may be held elsewhere.

(iii) Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using Punjabi/other than English as language shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

(iv) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

11.3. Performance during Dispute

Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 12

12. INSURANCE

12.1. Insurance Cover

The Concessionaire shall, at its cost and expense, purchase and maintain effective from the Compliance Date and during the Concession Period such insurance policies as are necessary and customary (or may in the future become available) on commercially reasonable terms and reasonably required to be maintained consistent with projects and facilities of the size and type of the Project, including but not limited to the following:

- a. Builders'/contractors' all risk insurance;
- b. Erection insurance and/or break down insurance;
- c. Public liability insurance applicable for the Concession Period, Closure and Post Closure Period;
- d. Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws;
- e. Comprehensive Third Party liability insurance including injury or death to Persons who may enter the Site;
- f. Insurance policies related to any of the Concessionaire's obligations hereunder;
- g. Any other insurance that may be considered necessary by the Concessioneing Authority/GoP/Lenders of the Concessionaire, if any, to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) or otherwise, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (f).

12.2. Insurance Companies and Costs

- a. The Concessionaire shall insure all insurable assets comprised in the Project and/or the Project Facilities.
- b. The premiums payable on insurance coverage as indicated above, and for Concessionaire Vehicles, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.
- c. All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessioneing Authority, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- d. The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Concessioneing Authority, and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

12.3. Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessions Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

12.4. Application of Insurance Proceeds

All moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution or replacement of the Project Facilities or any part thereof, which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution or replacement to the extent possible in such manner that the Project Facilities or any part thereof, shall, after such repair or renovation or restoration or substitution or replacement be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

12.5. Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policies so as to keep the policies in force and valid throughout the Concession Period and furnish copies of the same to the Concessions Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) days' clear notice of cancellation is provided to the Concessions Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Concessions Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessions Authority in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessions Authority by exercising right of set off or otherwise from the Performance Security.

ARTICLE 13

13. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

13.1. Proprietary Material

- a. The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project Facilities/ Project, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and enure to the exclusive benefit of the Concessionaire.
- b. The Concessionaire, as beneficial owner, hereby grants to the Project and to the Concessioneing Authority a perpetual non-exclusive license to use such Proprietary Material. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the Concessioneing Authority for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- c. Nothing in this Article 13.1 shall be construed to grant the Concessioneing Authority or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

13.2. Confidentiality

- a. The Concessioneing Authority shall not at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project Facilities, Project, the Concessionaire and the Concessioneing Authority (including any information concerning the contents of this Agreement) except to its directors, officials, employees, Contractors, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.
- b. The Concessioneing Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.
- c. The Concessionaire shall ensure that all its directors, employees, Subcontractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non disclosure agreements reasonably required by the Concessioneing Authority, which have been duly approved by the Concessioneing Authority, with respect to the Project.
- d. The aforesaid provisions shall not apply to the following information:
 - i. already in the public domain otherwise than by breach of this Agreement;
 - ii. obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
 - iii. disclosed due to a court order or under any Act of GoI/GoP

13.3. Survival

The Concessionaire and the Concessioneing Authority accepts and confirms that the provisions of this Article 13 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 14

14. REPRESENTATIONS AND WARRANTIES

14.1. Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

14.2. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessions Authority that:

- (a) The Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project/Project Facilities. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;
- (b) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (c) there are no actions, suits, proceedings or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effects;
- (d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;

- (e) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (f) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Concessioneing Authority or to any Government Authority in relation to Applicable Approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (g) its shareholding pattern is in compliance with the requirements of this Agreement.

14.3. Representations and Warranties of Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it.

14.4. Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, the Technical Specifications, all the information and documents provided by the Concessioneing Authority or any Government Authority, the market and demand conditions, information relating to Concessioneing Authority and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 14.4(a) above and hereby confirms that the Concessioneing Authority, any Government Authority and their consultants and advisors shall not be liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.
- (c) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Concessioneing Authority, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
- (d) The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

14.5. Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 15

15. MISCELLANEOUS

15.1. Assignment and Charges

- (a) the Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of both the Concessioneing Authority and Lenders.
- (b) the Concessionaire shall not create nor permit to subsist any further Encumbrance over the Project Facilities except with prior consent in writing of the Concessioneing Authority and Lenders .
- (c) Restraint set forth in Articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) pledges/hypothecation of goods/stocks/moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of the Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.
- (d) the Concessionaire shall not create nor permit to subsist any further Encumbrance over the Processing & Disposal Facilities Site .

15.2. Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing PLR of State Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 15.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

15.3. Governing Law and Jurisdiction

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

15.4. Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

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

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

15.5. Survival

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

15.6. Amendments

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

15.7. Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties as well as DDR of the Region at their respective addresses given in the Data Sheet at **Annexure 8** or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

- (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

15.8. Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability

of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to Dispute Resolution under this Agreement or otherwise.

15.9. No Partnership

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

15.10. Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language and true translation into English language if other than English is used at the costs and expenses of the Party sending such communication, notice, documentation and proceedings.

15.11. Exclusion of Implied Warranties etc.

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

15.12. Counterparts

This Agreement may be executed in three (3) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

15.13. Liability for Review

Except to the extent expressly provided in this Agreement:

- a. no review, comment, certification, verification or approval by the Concessioneing Authority or an Independent Expert or any Government Authority of any Project Agreement, design, detailed engineering, or document, accounts, invoice etc. submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project Facilities nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. the Concessioneing Authority, its advisors or the Government Authorities shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in sub-article (a) above.

15.14. Unforeseen Event

Any event or condition that has not been explicitly covered under the provisions of this Agreement shall be resolved after discussion and mutual agreement between the Parties.

15.15. Liability and Indemnification

- a. The Concessionaire shall indemnify, defend and hold harmless (the “**Indemnifying Party**”) the Concessions Authority (the “**Indemnified Party**”) during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgements, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it of such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ; or (iv) as provided elsewhere herein.
- b. The Concessionaire shall be responsible for executing, performing and completing the Construction Works in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the execution of the Construction Works by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the Concessions Authority and its advisors in this behalf.
- c. The Concessions Authority/ Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the land comprised in the Site, and/or (ii) breach by Concessions Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.
- d. The Concessions Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project Facilities for any reason whatsoever.
- e. The Concessionaire shall keep the Concessions Authority indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the PPCB, and Third

Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the site(s) or in the employment of labour and personnel at the Project Facilities. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.

- f. Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements.
- g. The provisions of this Article 15.14 shall survive the expiration or prior termination of this Agreement.

IN THE WITNESS whereof the Parties have placed their respective hands and seals hereto on the day, month and year first herein above mentioned

SIGNED, STAMPED AND DELIVERED BY:
For CONCESSIONING AUTHORITY
_____ of Concessioning
Authority, duly authorized by the

SIGNED, SEALED AND DELIVERED BY:
For CONCESSIONAIRE
Director of Concessionaire, duly authorized by
the resolution of the Board of Directors passed at
its meeting held on _____

(Signature & Stamp)

(Signature & Seal)

SIGNED, SEALED AND DELIVERED BY:
For CONFIRMING PARTY
_____ of Confirming Party, duly authorized by the _____

(Signature & Seal)

IN PRESENCE OF

Sign:

Sign:

Name:

Name:

Address

Address