

[Draft] Waste Supply Agreement

BETWEEN

MUNICIPAL COUNCIL of [please insert]

AND

{XYZ.....WASTE MANAGEMENT LIMITED}

AND

MUNICIPAL CORPORATION OF)
(As confirming party)

{..... 2017}

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THIS AGREEMENT made this__ day of_____ 2017__ at [.....]

BETWEEN

[_____], a statutory body constituted under the [_____], and having its office at [.....], represented by its [_____] duly authorised on its behalf (hereinafter referred to as “**Authority**” which expression shall unless repugnant to the context thereof, include its successors and assigns) of the **FIRST PART**;

AND

{**XYZ WASTE MANAGEMENT LIMITED**}, a company incorporated under the Companies Act, 2013 and having its Registered Office at [.....](hereinafter referred to as “**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

MUNICIPAL CORPORATION OF, a statutory body constituted under the Punjab Municipal Corporation Act 1976, and having its office at [.....], (hereinafter referred to as the “**Concessions Authority**” which expression shall unless repugnant to the context thereof, include its successors and assigns) as the confirming party to this Agreement.

The Authority, Concessionaire and the Concessions Authority are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS

- A. The Concessions Authority along with the ULBs mentioned at **Annexure 1** (“**Cluster ULBs**”) are desirous of establishing a suitable mechanism on regional basis to scientifically processing and disposal of Municipal Solid Waste (MSW) generated from the residential and other areas of the “**Cluster**” (as defined in **Annexure 1**), with a view to meet environmental regulations and for improvement in public health and hygiene. The objective is to develop and implement a viable and environmentally sustainable MSW management system on PPP/BOOT 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.
- B. For the aforesaid purpose, theMunicipal Corporation, other Cluster ULBs and Department of Local Governance, Government of Punjab (“**DoLG**”), 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, Patiala Municipal Corporation, other Cluster ULBs and DoLG 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**”, copy attached as **Annexure-8**)
- C. 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.
- D. The Concessionaire has signed the Concession Agreement dated [_____] with the Concessions Authority, DoLG and the Selected Bidder for the development and implementation of the Project for the Cluster and a copy of which is annexed hereto to form part of this Agreement.
- E. As per the requirements of the Concession Agreement, the Concessionaire is required to enter into separate agreement with Other Cluster ULBs for receiving the MSW at Processing Facilities, processing and scientific disposal of the waste Therefore the Concessionaire hereby enters into this Waste Supply Agreement with the Authority and Concessions Authority on the terms, conditions and covenants hereinafter set forth in this Agreement.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

I. 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. **“Acceptance of Authorisation”** shall have the meaning ascribed thereto in **Clause 2.1.5** ;
- 1.1.2. **“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.3. **“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with **Article 6**;
- 1.1.4. **“Agreement”** or **“Waste Supply Agreement”** means this agreement executed between the Concessionaire, Authority and Concessing Authority including its schedules and Annexures and includes any amendments made hereto in accordance with the provisions hereof;
- 1.1.5. **“Annexures”** shall mean any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.6. **“Appellate Authority”** shall be as defined in **Article 8** ;
- 1.1.7. **“Applicable Law”** shall mean all laws, acts, ordinances, rules, regulations, notification and guidelines in force and effect, including MSW (M&H) Rules 2000, 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;
- 1.1.8. **“Applicable Approvals”** 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 Authority or by the Concessionaire in connection with this Agreement. An indicative and partial list of such Applicable Approvals and responsibility thereof has been specified in **Annexure-4**. 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-4** and hence are not specifically assigned to the Authority;
- 1.1.9. **“Appointed Date”** shall mean the date of execution of the Concession Agreement.
- 1.1.10. **“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;
- 1.1.11. **“Assured Quantity of MSW”** means the daily quantity of MSW to be supplied by the Authority at Receipt Point of Processing Facilities & Disposal Site in any Accounting Year as per **Annexure-1**
- 1.1.12. **“Authorisation Period”** or **“Term”** shall mean a period commencing from Appointed Date and extending till the Transfer Date;
- 1.1.13. **“Authority Supply Area”** means the area covered the under municipal boundaries of the Authority;

- 1.1.14. **“Base Tipping Fee(s)”** refers to the Tipping Fee(s) quoted by the Selected Bidder in its Financial Proposal, as set out in **Annexure-2**;
- 1.1.15. **“Bidder(s)”** shall have the same meaning as ascribed to it under the RFQ cum RFP issued.
- 1.1.16. **“Construction & Demolition (C&D) Debris” or “Debris”** means solid waste resulting from construction, re-modeling, repair, renovation or demolition of Structures or from land clearing activities. **“Structures”** for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. Debris includes, but are not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminum and other non-hazardous metals used in construction of structures;
- 1.1.17. **“Change in Law”** shall have the meaning ascribed thereto in **Article 8.11**;
- 1.1.18. **“Cluster” or “GMADA MSW Cluster”** shall have the meaning as ascribed to it in **Annexure 1**;
- 1.1.19. **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.
- 1.1.20. **“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.
- 1.1.21. **“Authorisation ”** shall have the meaning as defined in Article 2.1;
- 1.1.22. **“Conditions Precedent(s)”** shall mean Conditions Precedent – P&D or as defined in Clause 2.2.2;
- 1.1.23. **“Compliance Period”** shall mean Compliance Period – P&D as defined in Clause 2.2.4 (a)
- 1.1.24. **“CPCB”** shall mean the Central Pollution Control Board of Government of India
- 1.1.25. **“Daily Weight Sheet”** shall have the meaning given to the term in **Annexure 13**;
- 1.1.26. **“Dispute”** shall have the meaning ascribed thereto in **Clause 6.1(a)** hereof;
- 1.1.27. **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in **Article 6**;
- 1.1.28. **“Event of Default”** shall have the meaning ascribed thereto in **Clause 5.1**;
- 1.1.29. **“Event of Default - Concessionaire”** shall have the meaning ascribed thereto in **Article 5.1 (a)** ;

- 1.1.30. **“Event of Default – Authority”** shall have the meaning ascribed thereto in **Clause 5.1 (b)**;
- 1.1.31. **“First Appellate Authority”** shall be as defined in **Clause 6.1** ;
- 1.1.32. **“Financial Proposal”** refers to the final quotation of the Selected Bidder that shall be placed at **Annexure-3**;
- 1.1.33. **“Financial Year”** shall be same as Accounting Year;
- 1.1.34. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in **Article 4**;
- 1.1.35. **“GoI”** shall mean the Government of India;
- 1.1.36. **“GoP”** shall mean the Government of Punjab, and includes its successors and assigns;
- 1.1.37. **“MSW”** or **“Municipal Solid Waste”** means solid waste generated by households, public services, agricultural activities, commercial establishments and industries located within the jurisdiction of Cluster ULBs, and shall include solid waste, and Organic Waste, but shall not include the Excluded Wastes;
- 1.1.38. **“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;
- 1.1.39. **“MSW Supply Area”** means the entire area covered under municipal jurisdiction of the Authority or any extension, as may be notified by GOP from time to time thereof during the Concession Period;
- 1.1.40. **“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);
- 1.1.41. **“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;
- 1.1.42. **“Minimum Assured Quantity of MSW”** means 80% of the Assured Quantity of MSW.
- 1.1.43. **“Other Cluster ULBs”** include the cluster ULBs as prescribed in Annexure 1 and any other Cluster ULBs which may be included in GMADA MSW Cluster through notification by GoP from time to time , but does not include Concessioneing Authority
- 1.1.44. **“P&D”** or **“Processing & Disposal”** refers to Processing & Disposal of MSW collected from Authority Supply Area, as is more clearly defined in Scope of Works;
- 1.1.45. **“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;
- 1.1.46. **“Power Plant”** shall mean a power plant as may be developed in line with the policy of MNRE, GoI, as applicable from time to time;

- 1.1.47. **“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;
- 1.1.48. **“Project”** means collection, transportation, processing and disposal of MSW for the GMADA MSW 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);
- 1.1.49. **“Project Report”** shall mean the detailed project report for SAS Nagar (Mohali) MC and for cluster ULBs and provided with the RFQ cum RFP.
- 1.1.50. **“Proposal”** shall have the same meaning as ascribed to it under the the RFQ cum RFP issued by DoLG/MC Mohali.
- 1.1.51. **“Proprietary Material”** shall have the same meaning as ascribed to it under Clause 12.1;
- 1.1.52. **“Rupees or Rs”** refers to the lawful currency of the Republic of India;
- 1.1.53. **“SPCB”** shall mean State Pollution Control Board particularly Punjab Pollution Control Board;
- 1.1.54. **“Selected Bidder”** shall mean M/s _____;
- 1.1.55. **“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;
- 1.1.56. **“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.57. **“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;
- 1.1.58. **“Third Party”** means any Person other than the Parties to this Agreement;
- 1.1.59. **“Tipping Fee(s)”** shall refer to Tipping Fee- P&D, as the context may require and as defined in **Article 4**;
- 1.1.60. **“Tipping Fee Index”** refers to the index of escalation/reduction in Tipping Fee (s) during the Authorisation Period, and shall be used to compute the percentage rate of variation in Tipping Fee from the Base Tipping Fee, to be calculated for every year of the Authorisation Period, as detailed in **Annexure-3**;
- 1.1.61. **“Tipping Fund” or “Tipping Fee Fund”** means a fund created by the Authority in accordance with **Annexure-6**;
- 1.1.62. **“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 ;
- 1.1.63. **“Waste Generators”** shall mean all residential, commercial and industrial establishments generating MSW and located within Authority Supply Area;

1.2. Interpretation

- (i) The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement. Expressions which have not been defined in this Agreement and or Concession 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 drafting and preparation thereof, shall not apply.

ARTICLE 2

2. THE AUTHORISATION AND CONDITIONS PRECEDENT

2.1. THE AUTHORISATION

2.1.1 Grant of Authorization

Subject to and in accordance with the terms and conditions set out in this Agreement, the Authority hereby irrevocably grants to the Concessionaire, and the Concessionaire hereby accepts exclusive right and authority, during the Authorisation Period to receive, process & scientifically dispose of the MSW as per MSW Rules.

2.1.2 Rights Associated with the Grant of Authorization

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

- a) upon achieving COD P&D of Project Facilities, to manage, operate and maintain the same, with respect to the MSW from Authority Supply Area, either itself or through such Person as may be selected by it;
- b) to use, appropriate, process entire MSW from the Authority Supply Area and dispose-off the Residual Inert Matter and Rejected Waste;

2.1.3 Authorization Period

The Authorisation is granted to the Concessionaire for the Authorisation Period which shall terminate upon the expiry of the Authorisation due to efflux of time or upon earlier Termination of this Agreement as per terms of this Agreement. The Authorisation Period shall commence from the Appointed Date and shall be co-terminus with the Concession Period.

2.1.4 Renewal of Authorization

In the event of extension of the Concession Period by the Concessions Authority, the Authority shall agree to renew or extend the Authorisation after the expiry of the initial Authorisation Period, for another period equal to the Concession Period.

2.1.5 Acceptance of Authorization

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

ARTICLE 3

OBLIGATIONS OF PARTIES

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:

3.1 General Obligations of Concessionaire

Further, the Concessionaire shall meet the following obligations at its cost during the Authorisation Period, and beyond the Authorisation Period in case of Post Closure Activities:

(a) Development and Implementation of Project

- (i) operate and maintain the Project Facilities with respect to the handling and management of MSW which shall be delivered by the Authority from the Authority Supply Area, 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) operate and maintain the Project Facilities during the Authorisation 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;
- (iii) demand, charge, collect, retain and appropriate the Tipping Fee (in case of Positive Tipping Fee) from the Authority or pay the Tipping Fee (in case of Negative Tipping Fee) to the Authority at the rates as per the Financial Proposal.
- (iv) provide such facilities as may be required for the Nodal Officer at the Processing & Disposal Facilities Site during his visits;
- (v) Shall weight the MSW as per the authorized weighing system by the Authority.
- (vi) shall allow the Authority to install, at the Authority's cost, any equipment/system/software at the weigh-bridge facility or any other Project Facility, which the Authority may feel necessary for monitoring those operations that affect the Authority's interest in the Project.

(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, 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, the MSW Rules, 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 liable for its contracts with its Contractors, personnel, labour or any Third Party. The Authority shall not be liable in any manner in this behalf;
- (ii) 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;

(d) Contractors

- (i) may appoint Contractors with the approval of Authority on its behalf at its cost and risk to assist it in executing the Operation and Maintenance 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 due performance of the Operation and Maintenance 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.

(e) Reporting and Access

- (i) provide to the Authority reports on a regular basis in accordance with the provisions of **Annexure-7** hereof and as set forth elsewhere in this Agreement;
- (ii) provide all assistance to the Authority and the Independent Expert and access to the 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 Authority to inspect any works

shall not, in relation to such works, (a) amount to any consent or approval of the Authority or be deemed to be a waiver of any of the rights of the 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) at all times, afford access to the Processing & Disposal Facilities Site to the authorized representatives of the 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;
- (iv) allow access to and use of the Processing & Disposal Facilities Site for telegraph lines, electric lines, ducting or such other public purposes as any Government Authority may specify.
- (v) shall also be liable to provide Monthly Weight Sheets (consolidated Daily Weight Sheets) to the Authority at the end of every calendar month.

(f) Safety and Accidents

- (i) develop, implement and administer a surveillance and safety program for the Project Facilities falling under Authority Supply Area, 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, 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;
- (ii) 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;
- (iii) implement the environment management plan (EMP), the Safety, Health and Environment programme (SHE) and fire protection programme in accordance with the Good Industry Practice.

(g) 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, MSW collection and disposal, 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, Goods and Service Tax, 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.

3.2 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;
- Authority's Event of Default;
- Compliance with the written instructions of / from the Concessioneing Authority or 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 Concessioneing Authority;
- Orders of any court having competent jurisdiction.

3.3 Authority's Obligations

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

3.3.1 Specific Obligations

The Authority shall:

- a) make timely payment to the Concessionaire in accordance with the provisions of this Agreement.
- b) In coordination with Concessionaire the Authority shall facilitate the public awareness campaign through appropriate means such as road shows, pamphlets distribution, etc;
- c) collect, transport and supply the Assured Quantity of MSW as per the Applicable Laws;

Provided that in the event, the 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 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 Assured Quantity of MSW is 10 TPD and Quarterly Minimum Assured Quantity of MSW is 10x30 x3 i.e. 900 metric ton and there is shortfall of 10 metric ton, then the Concessionaire shall be compensated by an amount equal to Positive Tipping Fee x 10, i.e. if the Positive Tipping Fee is **Rs. 250 per metric ton**, then the compensation becomes Rs. 250 x 10, i.e. Rs. 2500 (Two thousand and five hundred).

- (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 Concessioneing 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 10 TPD, then the Minimum Assured Quantity of MSW becomes 8 TPD (80% of 10 TPD) and Authority has not been able to supply 8 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. $8 \times 7 \times 100$, i.e. Rs. 5600 /-.

ARTICLE 4

4 SECURITIES, FEES, PAYMENTS & REVENUES

4.1 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-2** 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 Authority and negative when required to be paid by the Concessionaire.

In line with the Financial Proposal (copy attached as **Annexure-2**), the Concessionaire shall submit to Authority a monthly statement (“**Monthly Fee Statement**”) providing the details, regarding payment to be received from or payment to be made to the Authority (“**Monthly Payment**”), as the case may be.

(a) Positive Tipping Fee

The Authority agrees and undertakes to pay to the Concessionaire, fee per ton of MSW (“**Positive Tipping Fee**”) for following activities:

- (i) Processing and Disposal of MSW received from Authority Area after COD-P&D (“Tipping Fee –P&D”)

OR

(b) Negative Tipping Fee

The Concessionaire agrees and undertakes to pay to the Authority fee per ton of MSW (“**Negative Tipping Fee**”) for the right and concession granted for:

- (i) Processing and Disposal of MSW received from Authority after COD-P&D (“Tipping Fee –P&D”)

4.2 Mechanism of Payment during the Authorisation Period

The Authority (in case of Positive Tipping Fee) or the Concessionaire (in case of Negative Tipping Fee) shall make **50% payment within 14 days** of submission of Monthly Fee Statement without any verification and rest of the payment will be made after proper verification within next **14 days**.

- a.) Authority shall pay to the Concessionaire (in case of Positive Tipping Fee) or the Authority (in case of Negative Tipping Fee), an amount equal to 98.5% of the total amounts payable as Monthly Payment as stated in such Monthly Fee Statement.

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.

4.3 Non Payment by the Authority (in case of Positive Tipping Fee) or Concessionaire (in case of Negative Tipping Fee) during Authorisation Period

- a) In case the monthly payments as prescribed in the previous clause are due from the Authority and the 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 therefrom, and the Authority shall make good the deficit in Tipping Fund within seven (7) days of release if such payment from Tipping Fund;
- b) If 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 Authority to make good the deficit in Tipping Fund;
- c) If 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.

4.4 Terms of Payment

- (i) Any delay in making payment in accordance with Article 7.2 to 7.4 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 Authority, shall be made by way of demand draft or cheque payable at par in the city of Authority.

ARTICLE 4

FORCE MAJEURE

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 Effect of Force Majeure Event on the Authorisation

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

Provided that any extension of Authorisation Period pursuant to this Article cannot be beyond the Concession Period.

4.10 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.

4.11 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.

4.12 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.

4.13 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 with respect to the MSW from Authority Supply Area, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, then 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 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 Authority.
- (d) Upon occurrence of a Change in Law, the Concessionaire may notify the 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 Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination by the Nodal Officer/Authority of the quantum of the Additional Cost to be borne and paid by the Authority
- (f) The 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 5

5 EVENTS OF DEFAULT AND TERMINATION

5.1 Events of Default

“Event of Default” shall mean either the Concessionaire Event of Default or the 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 Authority’s Event of Default or Force Majeure Event:

- (i) The Concessionaire has failed to make any payments due to the Authority more than sixty (60) days have elapsed since such payment default.
- (ii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than sixty (60) days.
- (iii) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire.
- (iv) 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.
- (v) The equity holding of the Selected Bidder in the Concessionaire is not in line with Clause 5.1 (a) of the Concession Agreement at any point of time during the Authorisation Period.
- (vi) The Concessionaire has committed an Event of default as set out below 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 below and affected the Performance Parameters of any of the Project Facilities situated at the Site.
- (vii) The Concessionaire shall not have renewed or obtained a clearances/ Licenses/NoC’s from the State Pollution Control Board (SPCB) or any other similarly empowered Government Agency which is due and to be required as per Applicable Laws. .
- (viii) The Concessionaire has undertaken the activities at Processing & Disposal Facilities Site for any purpose unconnected or which is not incidental to the Project or related activities, unless otherwise permitted under this agreement.

(b) The Authority's Event of Default

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

- (i) The 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 Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iii) The Authority has failed to make any payments due to Concessionaire and more than ninety (90) days have elapsed since such payment default;

5.2 Parties Rights

- (a) Upon the occurrence of the Concessionaire Event of Default, the 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 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:

5.3 Consultation Notice

Either Party exercising its right under Clause 5.2 above, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the "**Consultation Notice**").

5.4 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 mutual consultation, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default.

5.5 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.

5.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived the Consultation Notice shall be withdrawn by the Party that issued the same.

5.7 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, 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. 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; and
- (iii) any other relevant information.

The Parties hereby agree that, in case of issuance of Termination Notice, 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 Authority.

(b) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities situated at the Site.

(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.

5.8 Effect of Termination of Concession Agreement

In the event Concession Agreement is terminated before the expiry of the Concession Period due to any reason whatsoever, this Agreement shall also stand terminated with immediate effect.

5.9 Consequences of termination

- (a) On termination of this Agreement pursuant to clause 5.8 above, the Concessionaire shall cease to have all the rights, entitlements, authority and privilege with respect to the receiving, processing and disposal of the MSW from Authority.
- (b) On termination of this Agreement pursuant to any provision, other than clause 7.9, of this Agreement the Concessionaire shall cease to have all the rights, entitlements, authority and privilege with respect to the processing and disposal of the MSW from Authority. However, subject to clause 9.9 of the Concession Agreement, the Concessionaire shall remain in the possession of the Processing & Disposal Facilities Site and any of the Project Facilities situated at the Processing & Disposal Facilities Site and continue with the implementation of the Project with respect to the

Concessions Authority and Other Cluster ULBs (except for the Authority) in accordance with the Concession Agreement and respective Waste Supply Agreements.

5.10 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 shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

RTICLE 6

6 DISPUTE RESOLUTION

6.1 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 **Clause 6.1 (b)** below.
- (b) Either Party may require such Dispute to be referred to the Commissioner / Regional Deputy Director 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 **Clause 6.2** below.

6.2 Arbitration

(i) Procedure

Subject to the provisions of **Clause 6.1**, 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 [_____], 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.

6.3 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 7

7 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

7.1 Confidentiality

- a. The 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 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 Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.
- c. The Concessionaire shall ensure that all its directors, employees, Subcontractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non disclosure agreements reasonably required by the Authority, which have been duly approved by the Authority, with respect to the Project.
- d. The aforesaid provisions shall not apply to the following information:
 - i. 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

7.2 Survival

The Concessionaire and the Authority accepts and confirms that the provisions of this Article 9 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 8

8 REPRESENTATIONS AND WARRANTIES

8.1 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.

8.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the 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 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.

8.3 Representations and Warranties of Authority

The 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.

8.4 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/Authority or any Government Authority, the market and demand conditions, information relating to Cluster ULBs 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 10.4(a) above and hereby confirms that the Concessioneing Authority/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/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.

8.5 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 9

9 MISCELLANEOUS

9.1 Assignment and Charges

The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except in accordance with the provisions of the Concession Agreement.

9.2 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 Clause 9.2 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.

9.3 Governing Law and Jurisdiction

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

9.4 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.

9.5 Survival

Termination of this Agreement shall not relieve the Concessionaire or the 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.

9.6 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.

9.7 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-5** 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 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.

9.13 Liability for Review

Except to the extent expressly provided in this Agreement:

- a. no review, comment, certification, verification or approval by the Concessioneing Authority, 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/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.

9.14 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.

9.15 Liability and Indemnification

- a. The Concessionaire shall indemnify, defend and hold harmless (the “**Indemnifying Party**”) the Authority (the “**Indemnified Party**”) during the Authorisation 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 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.

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

- d. The Concessionaire shall keep the Authority indemnified during the Authorisation 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.

- e. 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.

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 AUTHORITY

_____ of Authority, duly authorized by the _____

(Signature & Stamp)

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 & Seal)

SIGNED, SEALED AND DELIVERED BY:

For CONFIRMING PARTY

_____ of Confirming Party, duly authorized by the _____

(Signature & Seal)

IN PRESENCE OF

Sign:

Name:

Address

Sign:

Name:

Address