

Concession Agreement

for

**DEVELOPMENT OF WASTE TO ENERGY FACILITY
at Kakinada-Rajahmundry Cluster, Andhra Pradesh**

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PART I - PRELIMINARY

Recitals

Concession Agreement

THIS AGREEMENT is made on this [XXX] day of [XXX], Two Thousand and Twenty Five at [].

BETWEEN

1. NAME 1 (ULB1)
2. NAME 2 (ULB2)
3. NAME 3 (ULB3)
4. NAME 4 (ULB4)

[Insert Additional ULBs if applicable]

AND

The Swachh Andhra Corporation, Andhra Pradesh, (hereinafter referred to as “**the Confirming Party**”, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

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

The “ULB1” “ULB2”, “ULB3”, “ULB4”, [Insert additional ULBs if applicable] are hereinafter referred collectively as “**Participating ULBs**” and each of individually as “**Participating ULB**”, Confirming Party and Concessionaire are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS,

- By Seventy Fourth Amendment to the Constitution of India (with effect from 1st June 1993), Part IXA was inserted which inter-alia introduced the concept of local self-governance by urban local bodies (“**ULBs**” or “**Municipalities**”). Article 243W divested powers and responsibilities on the municipalities for performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule of the Constitution of India. Public health, sanitation conservancy and solid waste management have been provided as few of the activities in Twelfth Schedule which are required to be undertaken by Municipalities.
- The Ministry of Environment and Forests (MoEF) under the aegis of Government of India (GoI), has formulated the Solid Waste Management Rules 2016 (“**SWM Rules**”), which provides that every municipal authority shall within the territorial area of municipality, be responsible for implementation of SWM Rules and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of Municipal Solid Wastes (“**MSW Services**”). Accordingly, the ULBs are required to perform their obligatory duties within the provision of their respective Acts and also to provide MSW Services in accordance with SWM Rules and also to protect the environment and public health of their citizens and public in general.

- Andhra Pradesh State comprises of 110 urban local bodies including 13 Municipal Corporations and 17 Municipal Councils, covering a total area of 1,60,205 sq.km and an estimated population of 4,93,86,799 (as per Census 2011). In order to achieve economies of scale and for better coordination and implementation of the MSW Services, the Participating ULBs and APDISCOMs have designated the Authorized Representative to select and appoint a Concessionaire to develop the Project (as defined hereinafter), for enabling construction of a Municipal Solid Waste (MSW) to Energy Processing Facility, and perform, execute and implement the Project under and in accordance with the terms and provisions of this Agreement.
- The objective of the Project is to develop and implement a viable & environmentally sustainable MSW management system in Andhra Pradesh as a ‘model system’ for India. The Project would include, processing and disposal of the MSW through Waste to Energy Plant through DBFOT basis on a Public Private Partnership (PPP) model.
- In accordance with the Competitive Bidding Guidelines (as defined here under), the Authorized Representative, had initiated a competitive bidding process through issue of RFP for development of Waste to Energy facility.
- Pursuant to the said bidding process, {Selected Bidder /Consortium}, has been selected by the Authorized Representative, for processing of MSW and supply of electricity in bulk to APXPDCL for the Contracted Capacity of [XX] MW in accordance with the Power Purchase Agreement.
- After evaluation of the Bids received, the Authorized Representative had accepted the Bid of the {Selected Bidder /Consortium} and issued its Letter of Award No. [●] dated [●] to the Selected Bidder /Consortium requiring the forming of a Special Purpose Vehicle (SPV), hereby referred to as the Concessionaire and executing this Concession Agreement within 30 days of the date of Letter of Award.
- The Participating ULBs hereby appoint and authorise “NAME 1” [hereinafter referred to as Lead ULB] to represent all the Participating ULBs for discharging the rights and obligations of the Participating ULBs under this Agreement, which are required to be undertaken by all the Participating ULBs. All the Participating ULBs shall follow and be bound by the decisions of the Lead ULB. Accordingly, each Participating ULBs agrees that any decision, communication, notice, action or inaction of the Lead ULB on matters specified under this Agreement to be dealt with by the Lead ULB shall be deemed to have been on its/his behalf and shall be binding on each of the Participating ULB. The Concessionaire shall be *entitled to rely upon any such action, decision or communication or notice from the Lead ULB.*
- The Participating ULBs and Concessionaire hereto have agreed to enter into this Concession Agreement for execution of the Project on DBFOT basis subject to and on the terms, conditions and covenants set forth hereinafter.

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; and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules:

Access Road	the motorable approach road for the access to the site as detailed out in the Schedule 9.
Accounting Year	means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year. It is clarified that first accounting year shall be the period commencing from the COD and ending on the thirty-first day of March of the next calendar year.
Additional Cost	the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law in operation, management and implementation of the Project.
Adjusted Equity	<p>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 WPI, and for any Reference Date occurring:</p> <p>(a) On or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;</p> <p>(b) From COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “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 to the extent of variation in WPI occurring between COD and the Reference Date;</p> <p>(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three per cent)¹ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date</p> <p>(d) 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 Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made</p>
Affected Party	shall have the meaning set forth in Clause 25.1

¹ This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 25 year Concession Period shall be $100/300 = 0.333$ rounded off to two decimal points i.e. 0.33.

Agreement or Concession Agreement	means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement signed within 30 days of the Letter of Award
APXPDCL	means _____ [Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), Andhra Pradesh Central Power Distribution Corporation Limited (APCPDCL) and Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)] which has entered into a PPA with the Concessionaire
APDISCOMs	means Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), Andhra Pradesh Central Power Distribution Corporation Limited (APCPDCL) and Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)
Applicable Laws	means all laws, brought into force and effect by GOI or the GoAP including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement
Applicable Permits	means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement
Appointed Date	means the date on which Financial Close is achieved. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be
Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended and shall include modifications to or any re-enactment thereof, as may come in force from time to time
Associate or Affiliate	means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise)
Assured Quantity	The expected quantity of MSW that the ULB has to deliver at the Project Site on a daily basis measured in TPD
Authorized Representative	New and Renewable Energy Development Corporation of Andhra Pradesh Limited (NREDCAP), representing APDISCOMs and the Participating ULBs
Bank	means a bank incorporated in India and having a minimum net worth of INR 1,000 Crore (Rupees one thousand crore) or any other bank acceptable to Lenders, but does not include a bank in which any Lender has an interest

Bank Rate	means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect
Bid	means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof
CDM	Clean Development Mechanism
CERs	Certified Emission Reduction
Change in Law	means the occurrence of any of the following after the date of Bid: (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the date of Bid; (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid
Change in Ownership	means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium members, together with their Associates, in the total Equity to decline below 100% (one hundred percent) thereof during Construction Period and five years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be,) in the proportion of the equity holding of any Consortium member to the total Equity, if it occurs prior to completion of a period of five years after COD, shall constitute Change in Ownership;
Cluster	Collective group of Participating ULBs
COD or Commercial Operation Date	shall have the meaning set forth in Clause 15.1
Company	means the Company/ Consortium acting as the Concessionaire under this Agreement
Completion Certificate	shall have the meaning set forth in Clause 14.2
Completion Date	means the completion date to be notified by the Independent Engineers, on which the Completion Certificate or the Provisional Certificate, as the case may be, is deemed to have been given to the Concessionaire.
Composting	a controlled process involving microbial decomposition of organic matter
Concession	shall have the meaning set forth in Clause 3.1.1
Concession Period	means the period commencing from Financial Close date and ending on the Transfer Date.
Concessionaire	shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals

Concessionaire Event of Default	shall have the meaning set forth in Clause 28.1.2
Conditions Precedent	shall have the meaning set forth in Clause 4.1.1
Confirming Party	Swachh Andhra Corporation of Andhra Pradesh
Construction Period	shall mean the period beginning from the Appointed Date and ending on the COD
Construction Plan	As defined in Clause 9.3 of Schedule 9
Construction Requirements	collectively construction requirements for the Processing Facility and Scientific Landfill in line with minimum specifications given in the Background Documents and in the Schedule 9.
Construction Works	all works and things required to be constructed by the Concessionaire as part of the Project Facilities in accordance with this Agreement
Contractor	means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire
Contracted Capacity/ Quoted Capacity	Shall mean [insert capacity here] MW contracted with DISCOM for supply by the WtE Developer to DISCOM at the Interconnection Point from the Project.
Cure Period	<p>the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:</p> <p>(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;</p> <p>(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and</p> <p>(c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Participating ULBs or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Participating ULBs or the Independent Engineer to accord their approval</p>
Daily Reports	shall constitute the reports to be submitted daily as defined in the Schedule 15.1.1
Damages	shall have the meaning set forth in Sub-clause 1.2.1(w)
DBFOT	Design, Build, Finance, Operate and Transfer
Debt Due	<p>means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>(a) the principal amount of the debt provided by the 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 two years prior to the Transfer Date;</p> <p>(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had</p>

	<p>fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Participating ULBs Event of Default; and</p> <p>(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken</p>
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
Developer/ WtE Developer	shall mean the Concessionaire
Development Period	means the period from the date of this Agreement until the Appointed Date
Dispute	shall have the meaning set forth in Clause 35.1.1
Dispute Resolution Procedure	means the procedure for resolution of Disputes set forth in Article 35
Divestment Requirements	means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 29.1
Document or Documentation	means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form
Drawings	means all of the drawings, calculations and documents pertaining to the Project
Earnest Money Deposit	means the security provided by the Concessionaire to the Authorized Representative along with the Bid in a sum of INR 20,00,000 per MW of Contracted Capacity (Rupees Twenty Lakhs per MW), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Construction Performance Security
Effective Date	shall mean the date of signing of this Power Purchase Agreement (PPA) by Offtaker & the WtE Developer, the Concession Agreement by the Participating ULBs, Confirming Party and the WtE Developer (Concessionaire), after receiving APERC approval for tariff and handover of land to the Concessionaire, whichever is later
Encumbrances	means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities
EPC Contract	means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia,

	engineering and construction of the Project in accordance with the provisions of this Agreement
EPC Contractor	means the person with whom the Concessionaire will enter into an EPC Contract
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 shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component
Event of Default	shall have the meaning ascribed thereto in Clause 28.1.
Financial Close	means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements
Financial Default	shall have the meaning set forth in Schedule 18
Financial Model	means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein
Financial Package	means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any
Financing Agreements	means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2
Force Majeure or Force Majeure Event	shall have the meaning ascribed to it in Clause 25.1
GoI or Government	means the Government of India
GoAP	means the Government of Andhra Pradesh
Good Industry Practice	means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner
Government Agency	GoI, GoAP, the Participating ULBs or any governmental department, commission, board, body, bureau, agency, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over Concessionaire, the Site/Project Facilities or any portion thereof, for the

	performance of all or any of the services or obligations of Concessionaire under or pursuant to this Agreement.
Government Instrumentality	means any department, division or sub-division of the Government or the GoAP and includes any commission, board, Participating ULBs, agency or municipal and other local Participating ULBs or statutory body including Panchayat under the control of the Government or GoAP, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement
Hand Over of Project Facilities	shall have the meaning ascribed thereto in Article 21
Hazardous Waste	shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989
Indemnified Party	means the Party entitled to the benefit of an indemnity pursuant to Article 33
Indemnifying Party	means the Party obligated to indemnify the other Party pursuant to Article 33
Independent Engineer	shall have the meaning ascribed thereto in Article 20
Indirect Political Event	shall have the meaning set forth in Clause 25.3
Inspection Report	As defined in the Schedule 16
Insurance Cover	means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 23, and includes all insurances required to be taken out by the Concessionaire but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event
Intellectual Property	As defined in Patent Act, 1970
Land Lease Agreement	Shall means the agreement referred to in Clause 6.1.2(f) in form set out in Schedule 19.
Landfilling	the disposal of the Residual Inert Matter and process remnants at the Scientific Landfill designed with protective measures, against pollution of ground water, surface water, and air fugitive dust, windblown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion, in accordance with the terms of this Agreement.
Landfilling Weighbridge	Weighbridges installed at the entrance of the Scientific Landfill facility.
Lead ULB	as defined in the Recitals
Lead ULB Representative	means such person or persons as may be authorised in writing by the Lead ULB to act on its behalf under this Agreement and shall include any person or persons having Lead ULB to exercise any rights or perform and fulfil any obligations of the Lead ULB under this Agreement
Lenders	means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total

	Project Cost and who hold <i>pari passu</i> charge on the assets, rights, title and interests of the Concessionaire
Lenders' Representative	means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes
Material Adverse Effect	means a material adverse effect of any act or event on the ability of either 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 either Party
Material Breach	a breach by either 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
Monitoring Agency	Any agency authorised by the Lead ULB to monitor progress or adherence to construction or Operations & Maintenance requirements. This includes the Independent Engineer.
Monthly Reports	shall constitute the reports to be submitted monthly as defined in the Schedule 15.1.2.
MSW or Municipal Solid Waste or Solid Waste	Segregated MSW/ Non-hazardous MSW which shall not include Prohibited Waste
Nominated Company	means a company selected by the Lenders' Representative and proposed to the Participating ULBs for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement
Non-Political Event	shall have the meaning set forth in Clause 25.2
O&M	means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of services and facilities in accordance with the provisions of this Agreement, set forth in Clause 12.3
O&M Contract	means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations
O&M Contractor	means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire
O&M Expenses	means expenses incurred by or on behalf of the Concessionaire or by the Participating ULBs, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement
O&M Inspection Report	shall have the meaning set forth in Clause 19.2

O&M Plan	shall mean the plan referred to in Schedule 10, Clause 10.2(a)(ii)
O&M Requirements	the requirements as to operation and maintenance of the Project Facilities set forth in the Schedule 10
Obligated Quantity	100% of the Assured Quantity of MSW for the Cluster in the first Financial Year
Operation & Maintenance Manual or O&M Manual	shall have the meaning ascribed to it in Clause 16.2
Operation Period	means the period commencing from COD and ending on the Transfer Date
Organic Waste	such type of Waste that can be degraded by microorganisms
Panel of Chartered Accountants	shall have the meaning set forth in Clause 24.2.1
Participating ULBs	The identified beneficiary Urban Local Bodies (municipal corporations/councils) which have consented to participate in the Project and agreed to deliver MSW to the Concessionaire and have signed Concession Agreement with the Concessionaire. The Lead ULB is also a Participating ULB.
Participating ULBs Event of Default	shall have the meaning set forth in Clause 28.1.3
Participating ULBs Indemnified Persons	shall have the meaning set forth in Clause 33.1.1
Parties	means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually
Performance Security	shall have the meaning set forth in Clause 9.1
Performance Standards	Standards of operations as defined in the Schedule 12, Clause 12.1
Performance Standards and Damages	Standards of operations as defined in the Schedule 12, Clause 12.2
Plant	the apparatus and machinery for carrying on the activities required for the Project, fixed or movable, but excluding consumables and premises
Political Event	shall have the meaning set forth in Clause 25.4
Post Closure Activities	the activities to be undertaken by Concessionaire after closure of Scientific Landfill in accordance with the Standards and Specifications.
Post Concession Period	means the 15 year time period commencing from the expiry of the Concession Period; for taking up the Post Closure Activities.
Power Plant	a power generation plant that will generate electricity by processing MSW
Power Purchase Agreement (PPA)	Shall mean the binding agreement entered between the Concessionaire and the APXPDCL for sale of power for the Contracted Capacity
Preliminary Notice	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

Processing	processing of MSW by which it is transformed into new or recycled products by using Incineration/ Mass Burn technology in accordance to the standards set forth in the Background Documents, SWM Rules 2016 and Applicable Law
Processing Facility	the facilities established for processing of MSW into energy in accordance with the Background Documents and this Agreement.
Processing Input Weighbridge	Weighbridge installed at the entrance of the Processing Facility
Processing Output Weighbridge	Weighbridge installed at the exit of the Processing Facility
Prohibited Waste	means hazardous industrial waste, liquid non-hazardous waste, bio-medical waste (as defined under the Bio-Medical Waste Management Rules, 2016), construction and demolition waste (as defined under the Construction and Demolition Waste Management Rules, 2016) industrial waste, e-waste (as defined under the E-Waste (Management) Rules, 2016), waste from batteries (as defined under the Batteries (Management and Handling) Rules, 2001, radioactive waste (as defined under the Atomic Energy (Safe disposal of Radioactive Wastes) Rules, 1987), glass, metals, leather, rubber, sludge, sewage waste, ash, dirt, soil, silt, stones (from any sources), and other household waste that does not fall within the definition of MSW.
Project	the project for enabling construction of Processing Facility, processing and disposal of MSW in the Scientific Landfill and for that purpose to design, develop, finance, construct, operate and maintain the Plant, under and in accordance with the terms and provisions of this Agreement.
Project Agreements	means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement.
Project Assets	means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of Lease, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, roads and pavements, drainage works, electrical systems, communication systems and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project
Project Completion Schedule	means the progressive Project Milestones set forth in Schedule 5 for completion of the Project on or before the Scheduled Completion Date
Project Facilities	means all the amenities and facilities, (a) the Site (b) Processing Facilities and (c) Scientific Landfill (d) Waste to Energy Plant and the Associated Infrastructure, which need to be constructed, installed, operated and maintained by the Concessionaire in accordance with the terms of the Agreement (including the Standards and Specifications, and Applicable Laws).
Project Milestones	means the project milestones set forth in Schedule 5
Proposed Technology	shall have the meaning set forth in Clause 2.2

Provisional Certificate	shall have the meaning set forth in Clause 14.3
Punch List	shall have the meaning ascribed to it in Clause 14.3.1
RBI	means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, and its successors
RDF	the solid fuel in the form of fluff or pellets/ briquettes that is produced by drying and separation of combustible fractions from the MSW meeting the requirements of the boiler to generate electricity through the turbine that will be part of the Power Plant
Re., Rs., or Rupees or Indian Rupees or INR	means Indian Rupees, the lawful currency of India
Readiness Certificate	the certificate issued by Independent Engineer/ the Participating ULBs certifying, inter-alia, that Concessionaire has constructed all the facilities so as to enable receipt of Municipal Solid Waste Processing and Land filling, and the Concessionaire has obtained all approval necessary to receive the Municipal Solid Waste supplied by the Lead ULB.
RBI Reference Rate	means the Reserve Bank of India reference rate as available on https://www.fbil.org.in/ .
Request for Proposals or RFP	Request for Proposal document issued by the Authorized Representative for this Project
Residual Inert Matter	the waste matter obtained after Processing of the MSW by each of the relevant Processing Facilities
Safety Requirements	shall have the meaning set forth in Clause 18.1.1
Scheduled COD	As defined in Schedule 5
Scientific Landfill	prepared for Landfilling of the Residual Inert Matter in accordance to the Specification and Standards contained in the Background Documents, SWM Rules 2016 and Applicable Law
Scientific Landfilling	landfilling of Residual Inert Matter and process remnants in accordance to the Specification and Standards contained in the Background Documents and SWM Rules, 2016 and any amendments/ revision thereto till date.
Selected Bidder/Consortium	Means the bidder/consortium who has been issued the Letter of Award.
Scope of the Project	shall have the meaning set forth in Clause 2.1
Scheduled Completion Date	shall mean that date mentioned for completion of Construction Work in schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule 5;
Site or Project Site	As detailed in the Schedule 1
SPCB/APPCB	State Pollution Control Board: specifically, Andhra Pradesh Pollution Control Board.
Specifications and Standards	means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, and any modifications thereof, or

	additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Participating ULBs
State	means the State of Andhra Pradesh and “GoAP” means the government of Andhra Pradesh
Statutory Auditors	means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956/ 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 24.2.1
Subordinated Debt	means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date: (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken
Substitution Agreement	shall have the meaning set forth in Clause 31.3
Suspension	shall have the meaning set forth in Clause 27.1
SWM	Solid Waste Management
SWM Rules	means the Solid Waste Management Rules, 2016, issued by the MoEFCC on 8 April 2016, as may be amended from time to time
Taxes	means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income
Termination	means the expiry or termination of this Agreement and the Concession hereunder, as the case may be
Termination Date	the date specified in the Termination Notice as the date on which Termination occurs / comes into effect
Termination Notice	means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement

Termination Payment	means the amount payable by the Lead ULB to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the RBI Reference Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 120 (one hundred and twenty) days from COD, the Concessionaire shall notify to the Lead ULB, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Lead ULB, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost
Tests	means the tests set forth in Schedule 7 to determine the completion of the Project in accordance with the provisions of this Agreement
TPD	tonnes per day
Total Project Cost	means the actual capital cost of the Project upon completion of the Project
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
Vacant Possession	delivery to Concessionaire of the Site free from all Encumbrances and the grant of all easement rights and all other rights appurtenant thereto subject to and in accordance with the Land Lease Agreement.
Vesting Certificate	shall have the meaning set forth in Clause 29.4
Waste generators	all residential, commercial establishments, institutions and other sources located within the service area of the Participating ULBs and generating MSW as defined in SWM Rules, 2016 and any amendments/ revision thereto till date.
Waste Reports	shall have the meaning ascribed in the Schedule 15.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- (g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Andhra Pradesh are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “lakh” means a hundred thousand (1,00,000) and “crore” means ten million (10,000,000);
- (q) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Participating ULBs hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Lead ULB and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Lead ULB and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

PART II - THE CONCESSION

2. Scope of the Project

2.1 Scope of the Project

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

- (a) Construction and operation of MSW processing facilities and Waste to Energy Processing Facility for the Obligated Quantity of MSW during the Concession Period; however the Concessionaire may also have provision for adding extra capacity to the WtE Plant using the same or any other commercially proven technology to accommodate the growth in MSW potential in the coming years subject to mutual agreement of the Participating ULBs and the APDISCOMs.
- (b) Setup of Scientific Landfill and disposal of the process remnants and Residual Inert Matters
- (c) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

The scope of the Project shall also include any and all other activities that are ancillary to the above mentioned scope of the Project. Background document shall form part of the Scope of the project.

Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement including the Background Documents.

2.2 Processing Technology

The Participating ULBs desires that its MSW management system shall be a ‘model system’ for the Country, which would scientifically collect, transport, process and dispose of MSW, have maximum recycling and recovery, and create public awareness. Without prejudice to the generality of the foregoing, Concessionaire shall develop the Project Facilities using technology or technologies that it had proposed in its Bid to the RFP, adhering to SWM Rules, 2016, ensuring compliance with the judgement of the Honorary National Green Tribunal (NGT) pronounced on 22.12.2016, and any amendments/ revision thereto till date and in accordance with terms of this Agreement and Applicable Law (the “**Proposed Technology**”) which ensures:

- (a) the bio-degradable and recyclable content of the MSW are separated through a suitable Material Recovery Facility (the "MRF");
- (b) a suitable technology is used for Processing of the bio-degradable content of the MSW;

- (c) a suitable technology is used for Processing of combustible content of the MSW;
- (d) a suitable technology is used for recovering and processing recyclable content of the MSW
- (e) not more than 25% of the MSW received at the Processing Facility is disposed off in the Scientific Landfill
- (f) not less than 2% of waste measured at Processing Output Weighbridge shall be disposed off in the Scientific Landfill. For avoidance of doubt, the quantity of MSW measured at the Landfilling Weighbridge shall not be less than 2% of the MSW measured at the Processing Output Weighbridge

Further specifications are included in the Background Documents.

To award the Project, the Concessionaire must include the Material Recovery Facility (MRF) in the WtE Project facility.

Following the award of the Project, the Concessionaire is authorized to examine plans to set up RDF Processing Plant in the vicinity of the Participating ULBs. If Participating ULBs transport the RDF to the WtE Plant, the savings in the transportation cost as compared to the cost incurred in transporting MSW to the WtE Plant, shall be shared by the Participating ULBs with the Concessionaire subject to mutual agreement.

3. Grant of Concession

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Participating ULBs hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of 25 (twenty five) years commencing from COD, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - (b) 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;
 - (c) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
 - (d) upon commissioning of the Project Facilities, to manage, operate and maintain the same either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this agreement shall continue to vest with the Concessionaire;
 - (e) to transfer the Project Facilities to the Lead ULB at the end of the Concession Period or on Termination, in accordance with the provisions of this Agreement;
 - (f) to borrow or raise money or funding required for the due implementation of the Project and mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities except the Site and Landfill Site;
 - (g) to process MSW at the Plant, produce energy from Waste to Energy plant and dispose the process remnants and inert waste as per provisions of this Agreement, SWM Rules 2016 and Applicable Law;
 - (h) to, in accordance with the Applicable Law, store, use appropriate, market and sell or dispose all the components/ products of the MSW, including but not limited to electricity, methane, RDF, compost and to further retain and appropriate any revenues generated from the sale of such products/ end-products;
 - (i) to obtain the utilities required for enabling the construction of the Project Facilities;

- (j) exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement for the purposes of the due implementation of this Project;
- (k) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof; without permission of the Lead ULB

4. Conditions Precedents

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 22, 25, 35 and 38, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Conditions Precedent required to be satisfied by the Lead ULB shall be deemed to have been fulfilled when:
- (a) the Lead ULB shall have assisted the Developer to procure EIA and other approvals for the Project;
 - (b) the Lead ULB shall have handed over the land along with necessary clearances to the Concessionaire for the development of the Project as per the Clause 6.1.2(e);
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Construction Performance Security to the Lead ULB;
 - (b) Obtaining consent to establish from the Andhra Pradesh Pollution Control Board as per applicable rules and regulations including SWM Rules 2016
 - (c) procured all the Applicable Permits specified in Schedule 2 unconditionally and if subject to conditions, the all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (d) executed the Financing Agreements and delivered to the Lead ULB 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (e) delivered to the Lead ULB 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;
 - (f) delivered to the Lead ULB a confirmation from the Selected Bidder / each of the Consortium member, in original, of the correctness of their representations and Warranties set forth in Clause 7.1(m), Clause 7.1(n) and Clause 7.1(o).
 - (g) delivered to the Lead ULB the Operations Plan as per Schedule 11;
 - (h) delivered to the Lead ULB a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

Provided that upon request in writing by the Concessionaire, the Lead ULB may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Lead ULB may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required.

The Project Developer shall notify the Lead ULB in writing at least once a month on the progress made in satisfying the Conditions Precedent and shall promptly inform the Lead ULB when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Participating ULBs, or due to Force Majeure, the Lead ULB shall encash the Construction Performance Security at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security.

4.3 Damages for delay by the Lead ULB

In the event that (i) the Lead ULB does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Lead ULB shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security.

5. Obligations of the Concessionaire

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall be responsible to operate the Project Facilities such that it can process the Obligated Quantity of MSW throughout the Concession Period.
- 5.1.3 The Concessionaire shall be responsible to accept Obligated Quantity of MSW from Participating ULBs in the Cluster delivered every day at its Project Site.
- 5.1.4 The Concessionaire shall be responsible for generation of power from the Waste to Energy Plant and sell the power to APXPDCL as per the terms and conditions of the PPA.
- 5.1.5 Deleted
- 5.1.6 The Concessionaire shall be responsible for development and operation of Scientific Landfill and disposal of the process remnants and Residual Inert Matters at its own cost.
- 5.1.7 The Concessionaire shall comply with all the Applicable Laws and procure all the Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.8 Subject to the provisions of Clauses 5.1.1 and 5.1.7, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.9 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.3), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Participating ULBs in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (h) transfer the Project to the Lead ULB upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Lead ULB if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Lead ULB, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Lead ULB. For the avoidance of doubt, the Lead ULB acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 5.2.3 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Lead ULB to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Lead ULB does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Lead ULB and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Lead ULB an acknowledgment and undertaking, in a form acceptable to the Lead ULB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Lead ULB in the event of Termination or Suspension.

5.3 Environmental Compliance

The Concessionaire shall, at all times, ensure that all aspects of the Project Facilities and processes employed in the construction, operation and maintenance thereof shall conform with the laws pertaining to environment, health and safety aspects including rules such as SWM Rules 2016, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances as detailed in the Schedule 2.

5.4 Land Use

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

5.5 Processing of MSW

The technologies adopted to process the MSW shall be those proposed in the Concessionaire's Bid submitted in response to the Request for Proposal.

5.6 Post Closure Activities

The Concessionaire shall maintain the capped and closed portion of the landfill as per the technical requirements and standards, and Applicable Law.

5.7 Measurement of MSW

- 5.7.1 For measurement of MSW, Weighbridges will need to be constructed at the entry and the exit of the Processing Facility (the "**Processing Input Weighbridge**" and the "**Processing Output Weighbridge**" respectively) and at the entrance of the Landfilling facility (the "**Landfilling Weighbridge**") by the Concessionaire as per the Schedule 15.3.
- 5.7.2 The Concessionaire shall prepare Waste Reports as defined in Schedule 15 which shall be final and binding on the Parties.
- 5.7.3 Each consignment to Project Site shall be screened and weighed at the Weighbridge. Concessionaire shall also keep a record of weight and volume of each empty delivery truck, in order to determine the net weight of the consignment.
- 5.7.4 The Lead ULB as and when required shall depute a responsible person from the Lead ULB (the "**Lead ULB Representative**") to monitor the operations of the Weighbridges.
- 5.7.5 The Weighbridges shall be monitored and inspected regularly to ensure due calibration and accuracy and any errors shall be rectified immediately.

5.8 Maintenance of records and Operations Plan

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

5.9 Sale / Distribution of Compost / Manure / Energy

- 5.9.1 The Concessionaire may adopt such processes and methods as it considers necessary or expedient for processing of MSW at the Project Facilities, subject to complying with the provisions of the Concession Agreement, construction requirements, operation requirements and the Background Documents.
- 5.9.2 Subject to Clause 2.3, the Concessionaire is free to choose the processing technologies/options for Waste to Energy Plant in line with all applicable legislations including but not limited to the Background Documents and SWM Rules 2016 and is entitled to receive the revenues so generated through the products produced out of such processing like energy/power as per the PPA and other by-products like RDF, Compost, biogas, metals through its own marketing tie up.

5.10 Penalty for O&M Breach

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

5.11 Obligations relating to Change in Ownership

- 5.11.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Lead ULB.
- 5.11.2 For the Concessionaire formed for the purpose of implementing this Concession, the following is mandated
- (a) The Lead Member shall subscribe to 51% (fifty one percent) of Equity or more of the Concessionaire;
 - (b) Other Members of the Consortium (i.e. members other than the Lead Member) shall each subscribe to 10% (ten percent) of Equity or more of the Concessionaire.
 - (c) The Lead Member for a period of 5 (five) years from the COD of the Project, shall hold Equity not less than the higher of (i) 51% (fifty one percent) of the Equity of the Concessionaire; or (ii) 5% (five percent) of the Project cost;

- (d) Other Members of the Consortium (i.e. members other than the Lead Member) for a period of 5 (five) years from the COD of the Project, shall hold Equity not less than 10% (ten percent) of the Equity of the Concessionaire;
- (e) Consortium members collectively shall hold 100% (one hundred percent) of the issued and paid up Equity of the Concessionaire at all times until the fifth anniversary of the COD of the Project; and

5.11.3 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Lead ULB from national security and public interest perspective, the decision of the Lead ULB in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Lead ULB. For the avoidance of doubt, it is expressly agreed that approval of the Lead ULB hereunder shall be limited to national security and public interest perspective, and the Lead ULB shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Lead ULB shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.11.3:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity

of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.12 Employment of foreign nationals

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

5.13 Employment of trained personnel

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

5.14 Branding of Project

The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of '**Municipal Solid Waste (MSW) to Energy Processing Facility in Andhra Pradesh**'. The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders save and except as may be necessary in the normal course of business. The Concessionaire shall however, have right to utilise the name of the Project to exhibit technical and financial capability of the Concessionaire for bidding for other projects.

5.15 Sole purpose of the Concessionaire

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

6. Obligations of the Participating ULBs

6.1 Specific obligations of the Participating ULBs

- 6.1.1 The Lead ULB shall grant in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from the Lead ULB under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as sewerage, telecommunications or any other incidental services/utilities is required, the same shall be assisted by the Lead ULB within 90 (Ninety) days from receipt of request from Concessionaire to make available such authorization, subject to the conditions of the applications / details submitted being complete and correct.
- 6.1.2 (a) The Lead ULB agrees, for the purposes of the Financing Documents, to intimate to the Lenders by such notice as required under the Financing Documents:
- (i) Of the happening or likely happening of an Event of Default on the part of Concessionaire;
 - (ii) Of the termination of this Agreement by the Participating ULBs (including Lead ULB);
 - (iii) Of the occurrence, continuance and cessation of any force majeure cause; or
 - (iv) Other breach or default on the part of Concessionaire under this Agreement.
- (b) The Participating ULBs shall endeavour to conform to the commitment made to the National Green Tribunal with regard to transportation and delivery of Assured Quantity of MSW as laid down in Schedule 20 to the Project Site.
- (c) The Lead ULB shall declare and maintain, or cause to declare and maintain, a no-development zone of habitation around the Site in accordance with Applicable Laws.
- (d) The Lead ULB hereby agrees that if there are any financial benefits or otherwise excluding those mentioned in the Clause 6.1(xii) in the PPA in respect or on account of the Project, they shall accrue directly and exclusively to, Concessionaire alone and not to the Lead ULB and the Lead ULB hereby undertakes that it shall not claim or file an application claiming such benefits to the prejudice of Concessionaire. The Lead ULB agrees to facilitate the receipt of all such benefits by Concessionaire, whether on its own behalf or on behalf of the Participating ULBs and for the purpose to give all needed recommendations, no-objections, authorizations, etc.

- (e) The Lead ULB shall handover land to the Concessionaire as per the requirement, upon signing of a Land Lease Agreement in the form attached herewith as Schedule 19, for development of Municipal Solid Waste to Energy Processing Facility as per the Schedule 9, Clause 9.4 [*Schedule for Land Requirement*]. Accordingly, the land at the proposed locations shall be handed over to the Concessionaire within 60 (sixty) days from the signing of the Concession Agreement. The land for Scientific Landfill shall not be leased out to the Concessionaire. Only the land required for setting up of the Waste to Energy Plant shall be leased out.
 - (f) The Lead ULB and/ or Authorized Representative and/ or any other ULB in the Cluster authorized by Lead ULB shall extend support to the Selected Bidder/ Concessionaire in achieving Financial Close subject to the Concession Agreement and the Power Purchase Agreement without any change in the technical and commercial terms.
- 6.1.3 The Lead ULB will bear the cost of laying the water pipeline and cost of supplying the water.
- 6.1.4 The Participating ULBs will bear the cost of constructing the approach road.

6.2 General Obligations of the Participating ULBs

- 6.2.1 The Participating ULBs at its own cost and expense shall undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.2.2 The Participating ULBs agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (b) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

In addition to the above mentioned obligations, the Lead ULB has to discharge the following additional obligations:

- (a) upon written request from the Concessionaire and subject to Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in securing Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire and subject to the provisions of Clause 5.12, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.3 Transportation of MSW (Routing)

The Participating ULBs shall be solely responsible for transportation of Assured Quantity of MSW to the Project Site in line with the guidelines for transportation of MSW as mentioned in the Background Documents and Applicable Law. The transportation of MSW from the respective ULBs to the Project Site shall conform to the commitments made by the MA&UD department to the National Green Tribunal as attached in the Background Documents. The Participating ULBs shall adhere to operational standards for operation and maintenance of the transportation system, as per guidelines.

The Participating ULBs shall ensure that all vehicles used for transportation of MSW shall be fitted with automatic position identification systems using appropriate technology, which can enable the automatic tracking and recording of vehicle identification and movement data. This data shall be made available to the Concessionaire.

7. Representations and Warranties

7.1 Representations and Warranties of Concessionaire

Concessionaire represents and warrants to the Participating ULBs that:

- (a) It is duly organized, validity existing and in good standing under the laws of India;
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other actions under Applicable laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement will be legally binding, valid and enforceable obligations against it in accordance with the terms hereof;
- (f) It is subject to the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this jurisdiction or matter arising thereunder, including any obligation, liability or responsibility hereunder;
- (g) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (h) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of Concessionaire's 'Memorandum and Articles of Association' or any of the Applicable laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (i) There are no actions, suits, proceedings or investigations pending, or to Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (j) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (k) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

- (l) All its rights and interests in the Project shall pass to and vest in the Lead ULB on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act of deed on its part or act of the Lead ULB and that none of the Project Assets shall be acquired by it, subject to any agreement, under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement ;
- (m) Concessionaire agrees to indemnify and hold indemnified the Participating ULBs against all cost, expenses, and penalties arising out of:
 - (i) Operations of the Project Facilities under this Agreement.
 - (ii) Compliance with all labour laws and all possible claims and employment related liabilities of its staff employed in relation with the Project.
- (n) It shall at no time undertake or permit any Change in Ownership except as permitted under Clause 5.11.
- (o) The Consortium members and their Associates have the financial standing and the resources to fund the required Equity and to raise debt necessary for undertaking and implementing the Project in accordance with this Agreement.
- (p) Each Consortium member is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Participating ULBs to enter into this Agreement with the Concessionaire pursuant to LOA; and has agreed to unconditionally accept the terms and conditions set forth in this Agreement;
- (q) No representation or warranty by it contained herein or in any other document furnished by it to Participating ULBs or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (r) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Participating ULBs in connection therewith; and
- (s) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Participating ULBs

The Participating ULBs represents and warrants to Concessionaire that:

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

7.3 Obligation to Notify Change

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

8. Disclaimer

8.1 Disclaimer

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

PART III - DEVELOPMENT AND OPERATIONS

9. Performance Security

9.1 Performance Security for Construction Works

- 9.1.1 The Concessionaire shall, for due and punctual performance of its obligations during the Construction Period hereunder relating to the Project, deliver to the Lead ULB, one bank guarantee from a scheduled bank in the form as set out in Schedule 3., for a sum of INR 50,00,000 per of Contracted Capacity (Rupees Fifty Lakhs per MW). The Construction Performance Security in the form of performance bank guarantees has to be furnished by the Concessionaire within 30 (thirty) days of issuance of Letter of Award and before signing the Concession Agreement and the Construction Performance Security shall remain valid for a period of 120 days over and above the date of COD. Until such time the Construction Performance Security is provided and comes into effect, the Earnest Money Deposit shall remain in force and effect, and upon such provision of the Construction Performance Security pursuant hereto, the Authorized Representative shall release the Earnest Money Deposit to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Performance Security is not provided by the Concessionaire on or before the execution of this Agreement, the Lead ULB may direct Authorized Representative to encash the Earnest Money Deposit and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 9.1.3 The renewal of the Construction Performance Security, as and when required, is to be done by the Concessionaire at least one month before the date of expiry of the subsisting Construction Performance Security, failing which, the Lead ULB shall be entitled to invoke the Construction Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Construction Performance Security, if subsisting as on the Termination Date shall, subject to rights of the Lead ULB to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to Concessionaire within 30 days from the Termination Date.

9.2 Appropriation of Construction Performance Security for Construction Works

Upon occurrence of a Concessionaire Event of Default resulting in a delay of commissioning of the Project beyond the Commercial Operation Date, the Lead ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Construction Performance Security as Damages for such Concessionaire Event of Default in the following manner:

- (a) Delay beyond Scheduled COD up to forty (40) days –Lead ULB shall encash 20% of Construction Performance Security on per day basis proportionate to the Capacity not commissioned.
- (b) Delay beyond Scheduled COD up to eighty (80) days - Lead ULB shall encash 40% of the Construction Performance Security on per day basis proportionate to the Capacity not commissioned.
- (c) Delay beyond Scheduled COD up to one hundred and twenty (120) days – Lead ULB shall encash the remaining 40% of the Construction Performance Security on per day basis proportionate to the Capacity not commissioned.
- (d) In case the commissioning of Power Project is delayed beyond 120 days from the Scheduled COD, the Developer shall pay the ULB Liquidated Damages at rate of INR 2,00,000 per MW (Rupees Two Lakhs per MW) per day of delay for the Capacity not commissioned.

Upon such encashment and appropriation from the Construction Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Construction Performance Security, and in case of appropriation of the entire Construction Performance Security provide a fresh Construction Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Construction Performance Security as aforesaid failing which the Lead ULB shall be entitled to terminate this Agreement in accordance with Article 28. Upon replenishment or furnishing of a fresh Construction Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Event of Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Lead ULB shall be entitled to encash and appropriate such Construction Performance Security as Damages, and to terminate this Agreement in accordance with Article 28.

9.3 Release of Construction Performance Security

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

9.4 Performance Security for Operation and Maintenance Period

On achieving COD, the Concessionaire, to cover its liability arising from the breach of Performance Standards leading to payment of Damages as mentioned in the Schedule 12 or any breach of this Agreement or for the liability of defects and deficiencies arising after Termination, shall provide to the Lead ULB Operation Performance Security for a cumulative sum of INR 50,00,000 per MW Contracted Capacity (Rupees Fifty Lakhs per MW), in the form set forth in Schedule 4, to be modified, mutatis mutandis, for this purpose. The Operation Performance Security in the form of performance bank guarantee has to be furnished by the Concessionaire to the Lead ULB within 45 days of achieving COD. The Concessionaire shall keep the Operation Performance Security valid until one year after the expiry of the Concession Period.

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

9.5 Appropriation of Operation Performance Security during Operation and Maintenance Period

Upon the breach of Performance Standards that leads to payment of Damages or any breach of this Agreement or upon the liability of defects and deficiencies arising after the Termination, the Lead ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Performance Security for meeting the Damages levied or for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of Article 30. Upon such encashment and appropriation from the Operation Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Operation Performance Security, and in case of appropriation of the entire Operation Performance Security provide a fresh Operation Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Operation Performance Security as aforesaid failing which the Lead ULB shall be entitled to terminate this Agreement in accordance with Article 28. If there is no such encashment and appropriation from the Operation Performance Security is made, the Operation Performance Security shall be renewed annually in accordance with this Agreement, at least 30 days before the start of the Accounting Year, failing which, the Lead ULB shall be entitled to invoke the Operation Performance Security.

10. Project Site

10.1 Vesting of Site with Concessionaire

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

The Lead ULB will hand over land to the Concessionaire in accordance with Clause 6.1.2(e) upon achievement of Milestones for land transfer as set out in Schedule 9.

10.2 Rights, Title and Use of the Site

- (a) The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement.
- (b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Site. Save and except as otherwise permitted under this Agreement.
- (c) It is expressly agreed that the lease rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Lead ULB to terminate the Land Lease Agreement, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-leases, the lease rights in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- (d) The Concessionaire hereby irrevocably appoints the Lead ULB (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the lease rights granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Lead ULB.
- (e) It is expressly agreed that trees on the Site are property of the Lead ULB except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period. The Concessionaire shall allow access to and use of the Site for laying/ installing/ maintaining telegraph lines, electric lines, gas lines of the Gas Authority of India Limited or for such other public purposes as the Lead ULB may specify provided that such access or use shall not result in a Material Adverse Effect to the Concessionaire.
- (f) The Concessionaire accepts on an “as is where is” basis and undertakes to bear all risk arising out of the inadequacy or physical condition of the Site.

10.3 Possession of the Site

- 10.3.1 In order to handover the possession of the Site pursuant to Clause 4.1.2, the authorised representatives of the Lead ULB and the Concessionaire shall, on mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, building, structures, road network, trees, pipelines and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant and unencumbered possession of the Site has not been granted to the Concessionaire. Signing of the memorandum, as above, by the authorised representatives of the Parties shall, subject to the provision of Clause 10.1, be deemed to constitute a valid handover of possession of the Site to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that vacant and unencumbered possession of the Site in respect of those parts of the Site which have been set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant handover of possession being provided.
- 10.3.2 Without prejudice to the provision of Clause 10.3.1, the Parties hereto agree that on or prior to 60 (sixty) days from signing of the Concession Agreement, the Lead ULB has handed over vacant possession of land to the Concessionaire such that Appendix shall not include more than 20% (twenty percent) of the total area of the Site required to be handed over in accordance with Schedule 9.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Lead ULB and undertake its removal at its cost and expense.
- 10.3.4 The Lead ULB shall make best efforts to handover, no later than 60 (sixty) days from the date of signing the Concession Agreement, the possession of the land included in the Appendix, and in the event of delay for reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Financial Close date and the Scheduled COD date shall be extended by the duration of the delay in days.
- 10.3.5 Upon receiving the possession of the land included in the Appendix, the Concessionaire shall complete the Construction Work thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Completion Certificate shall not be affected or delayed on account of vacant possession of any part of Site was not handed over to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of delay or denial of such possession thereto. For avoidance of doubt, it is expressly agreed that Construction Work on all the land which has been handed over within 60 days from the date of signing the Concession Agreement shall be completed before the Scheduled Completion Date.
- 10.3.6 Subject to this Sub-clauses of this Clause 10.3, the Lead ULB hereby warrants that:
- (a) The Site has been acquired through the due process of law and belongs to and is vested in the Lead ULB and that the Lead ULB has full powers to hold, dispose of and deal with the

same; consistent and interlaid with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any person affected thereby.

- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the whole Site during the Concession Period.

10.4 Applicable Permits

The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements of the Project. The Lead ULB shall provide all necessary co-operation/ assistance for obtaining the permission. The Concessionaire shall be responsible to be in compliance with the terms and conditions subject to which Applicable Permits have been issued.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Access to the Participating ULBs and Independent Engineer

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

10.7 Geological and archaeological finds

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

11. Utilities, Associated Roads and Trees

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

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

11.4 Felling of trees

The Lead ULB shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Lead ULB, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Lead ULB and shall be disposed in such manner and subject to such conditions as the Lead ULB may in its sole discretion deem appropriate.

12. Development and operations of the Project

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

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

12.2 Project Implementation: Construction of Project Facilities

- 12.2.1 Unless otherwise permitted by the Lead ULB, no Construction Works shall begin until the Independent Engineer is in place and has assumed charge.
- 12.2.2 The Concessionaire shall adhere to the Construction Requirements and the Project Completion Schedule and achieve COD on or before the dates specified in this Schedule 5.
- 12.2.3 The Concessionaire shall adhere to all the Construction Requirements as per Schedule 9 and the Background Documents and shall adhere to the standards / guidelines for construction as per BIS, SWM Rules 2016 and other applicable standards / guidelines.
- 12.2.4 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability; but in either case, the Concessionaire shall solely responsible to meet the Construction Requirements.
- 12.2.5 The Concessionaire shall, before commencement of construction of Project Facilities;
 - (a) Have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Construction Works of Project, to interact with the Independent Engineer / the Lead ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (b) Construct, provide, incur day to day office running expenditure and maintain a reasonably furnished site office accommodation for the Independent Engineer / the Participating ULBs personnel, at the Project Site.

- 12.2.6 For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the Independent Engineer/ Lead ULB/ APXPDCL who either in person or through his representative may choose to be present during the conduct of such tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and keep the Independent Engineer / the Lead ULB/ APXPDCL informed.

If the Tests are successful and the Project Facilities can be safely and reliably opened for trial runs, the Independent Engineer / the Lead ULB shall issue Readiness Certificate.

- 12.2.7 The Independent Engineer/ the Lead ULB, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements, in case the same is not responded to within 7 (seven) days of such notice.
- 12.2.8 The Concessionaire shall construct the Project Facilities in accordance with the Project Completion Schedule set out in the Schedule 5. In the event that the Concessionaire fails to complete any of the activities / milestones (the “**Project Milestones**”) which would result in delayed commissioning, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Lead ULB, the Lead ULB shall encash the Construction Performance Security for construction works as per Clause 9.1.

12.3 Project Implementation: Operation and Maintenance

- 12.3.1 The Concessionaire shall operate and maintain the Project Facilities in accordance with the O&M Requirements.
- 12.3.2 The Concessionaire may undertake operations and maintenance of the Project Facilities by itself or after prior written consent of the Lead ULB, through a Contractor possessing requisite technical, financial and managerial expertise / capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- 12.3.3 The Concessionaire shall, for Operations and Maintenance;
- (a) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer / the Lead ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (b) construct, provide, incur day to day office running expenditure and maintain a reasonably furnished site office accommodation for the Independent Engineer / the Participating ULBs, at the Project Site.
- 12.3.4 For the purposes of determining that the Construction Works and Project Facilities are being maintained in accordance with the Construction Requirements and O&M Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Independent Engineer / the Lead ULB. The

Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

- 12.3.5 Conduct all Tests to ascertain compliance with Construction Requirements and O&M Requirements.
- 12.3.6 Suspend forthwith the whole or any part of the Operation and Maintenance activities upon receiving a written notice from the Independent Engineer / the Lead ULB, who may require the Concessionaire to suspend the activities in whole or part if in the reasonable opinion of the Independent Engineer, the operations are being carried on in a manner that is not in conformity with the O&M Requirements.
- 12.3.7 In the event the Concessionaire has failed to operate and maintain the Project in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the Lead ULB (the “**Notice to Remedy**”), the Lead ULB may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facilities, under the supervision of Independent Engineer, at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the Lead ULB on account of such operation and maintenance or repair and maintenance, and as certified by Independent Engineer, within 7 days of receipt of the Lead ULB claim therefore.
- 12.3.8 The Concessionaire shall be deemed to be in material breach of O&M Requirements if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:
- (a) There has been failure / undue delay in carrying out scheduled / planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
 - (b) The maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
 - (c) There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
 - (d) There has been persistent breach of O&M Requirements. For avoidance of doubt, persistent breach shall mean:
 - (i) Any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Engineer / the Lead ULB;
 - (ii) Recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer / the Lead ULB requiring the Concessionaire to remedy a breach, and
 - (iii) Repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise

Upon occurrence of any breach of O&M Requirements, the Lead ULB shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

12.4 Drawings

12.4.1 Preparation of Drawings

- (a) The Concessionaire may, subject to the Construction Requirements, adopt with or without modifications the drawings made available by the Lead ULB, if any, or adopt its own drawings, provided that the Concessionaire shall in any event be solely responsible for the adequacy of the drawings.
- (b) If the Concessionaire proposes any modifications to the drawings made available by the Lead ULB, if any, or submits alternate drawings or drawings in respect of any item for which no drawings are made available by the Lead ULB, the same shall be subject to review by the Independent Engineer as hereinafter provided in Clause 12.4.2.

12.4.2 Review of Drawings

- (a) The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the drawings as mentioned in the Schedule 6 to the Independent Engineer and the Lead ULB.
- (b) By forwarding the drawings to the Independent Engineer and the Lead ULB pursuant to the preceding Clause 12.4.2 (a), the Concessionaire shall be deemed to have represented that it has verified and determined that the drawings forwarded are in conformity with the Construction Requirements.
- (c) Within 15 days of receipt of the drawings, Independent Engineer shall review the same taking into account, inter-alia, comments of the Lead ULB, if any, thereon, and convey its comments / observations to the Concessionaire on the conformity of drawings with Construction Requirements. If the comments / observations of the Independent Engineer indicate that the drawings are not in conformity with the Construction Requirements, such drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised drawings, which shall be taken into account by the Concessionaire while finalising the drawings.
- (d) If, within the period stipulated in the preceding Clause 12.4.2 (c), the Independent Engineer does not respond to the drawings submitted to it by the Concessionaire shall be entitled to proceed with the Construction Works on the basis of such drawings submitted by it to the Independent Engineer, and intimate the same to the Lead ULB. The same should be highlighted in the periodic reporting by the Concessionaire.
- (e) Notwithstanding any review or failure to review by or the comments / observations of the Independent Engineer or the Lead ULB, the Concessionaire shall be solely responsible for

the adequacy of the drawings and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

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

13. Monitoring of Construction

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

- 13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The costs incurred on the Tests shall be borne solely by the Concessionaire.
- 13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

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

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Lead ULB may, by notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Work if, in the reasonable opinion of the Lead ULB, such work is unsafe and potential safety hazard.
- 13.5.2 The Concessionaire shall, pursuant to notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Participating ULBs and thereupon carry out remedial measure to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measure forthwith and make a report to the Lead ULB recommending whether or not such suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Lead ULB shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Lead ULB, and the procedure set forth in Clause 13.5.1 shall be repeated until the suspension hereunder is revoked.

13.6 Video recording

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

14. Completion Certificate

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the construction of Project Facilities, the Concessionaire shall notify the Independent Engineer of its intent to subject the Construction Works to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Lead ULB who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer.
- 14.1.2 All Tests shall be conducted in accordance with Schedule 7. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Construction Works with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Lead ULB copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Construction Works with Specifications and Standards.

14.2 Completion Certificate

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

14.3 Provisional Certificate

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

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Participating ULBs or due to Force Majeure, which would result in delayed commissioning, the Lead ULB shall encash the Construction Performance Security for construction works as per Clause 9.2.
- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Participating ULBs, shall entitle the Lead ULB to terminate this Agreement.
- 14.4.3 If the Concessionaire fails to complete the Punch List items within said period of 90 days, the Lead ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost incurred by the Lead ULB in completing the Punch List items, as certified by the Independent Engineer / the Lead ULB, shall be reimbursed by the Concessionaire to the Lead ULB within 7 days from the date of receipt of a claim in respect thereof from the Lead ULB.

14.5 Withholding of Provisional Certificate

- 14.5.1 If the Independent Engineer determines that the Construction Works or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Participating ULBs and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Lead ULB is of the opinion that the Construction Works is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Construction Works and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Lead ULB may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

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

15. Entry into Commercial Service

15.1 Commercial Operation Date (COD)

The Construction Works of the Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date which is notified on such Completion Certificate or the Provisional Certificate is issued by the Independent Engineer (the “**COD**”). The Project shall enter into commercial service on COD, whereupon the Concessionaire shall be entitled to receive the Obligated Quantity of MSW from the Participating ULBs and the Project shall be able to inject Contracted Capacity to Grid as per the APERC Grid Code as amended from time to time.

16. Operation and Maintenance

16.1 Operation & Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the operation & maintenance requirements set forth in Schedule 10 (the “**Operation & Maintenance Requirements**”).

16.2 Operation & Maintenance Manual

16.2.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve an operation and maintenance manual (the “**Operation & Maintenance Manual**”) for the Operation & Maintenance Requirements (Schedule 10), Safety Requirements (Schedule 13) and Good Industry Practice, and shall provide 5 (five) copies thereof to the Participating ULBs and 2 (two) copies to the Independent Engineer. The Operation & Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 16.2 shall apply, mutatis mutandis, to such revision.

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

16.3 Damages for breach of operation & maintenance obligations

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

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

16.3.2 The Damages set forth in Clause 16.3 may be assessed and specified forthwith by the Independent Engineer; provided that the Lead ULB may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

16.4 Lead ULB's right to take remedial measures

- 16.4.1 In the event the Concessionaire does not maintain and /or repair the Project Facilities or part thereof in conformity with the Operation & Maintenance Requirements or the Maintenance Manual, as the case may be, and fails to commence the remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or notice on this behalf from the Lead ULB or the Independent Engineer, as the case may be, the Lead ULB shall , without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measure at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery as aforesaid, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Lead ULB as Damages. For avoidance of doubt, the right of the Lead ULB under this Clause 16.4, shall be without prejudice to its rights and remedies provided under Clause 16.3
- 16.4.2 The Lead ULB shall have right, and the Concessionaire hereby expressly grants to the Lead ULB the right, to deduct and recover the costs and Damages specified in Clause 16.4.1, directly from the Construction Performance Security deposited with the Lead ULB.

16.5 Overriding powers of the Lead ULB

- 16.5.1 If in the reasonable opinion of the Lead ULB, the Concessionaire is in material breach of its obligations under this Agreement, and such breach is causing or likely to cause the Project to violate environmental norms or cause nuisance to the surrounding areas, the Lead ULB may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 16.5.2 If the Concessionaire fails to rectify or remove such hardship or danger, the Lead ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such remove such hardship at the risk and costs of the Concessionaire. The cost incurred by the Lead ULB in rectifying such default of the Concessionaire, as certified by the Independent Engineer / the Lead ULB, shall be reimbursed by the Concessionaire to the Lead ULB within 7 days from the date of receipt of a claim in respect thereof from the Lead ULB, failing which the Lead ULB shall have right to adjust and recover such cost against the Operation Performance Security deposited with the Lead ULB.
- 16.5.3 In the event of national emergency, civil commotion or any other Indirect Political Event specified in Clause 26.3, the Lead ULB may take over the performance of any or all of the obligations of the Concessionaire to the extent deemed necessary by it and exercise such control over the Project and give such direction to the Concessionaire as may be deemed necessary. It is agreed that the Concessionaire shall comply with such directions issued by the Lead ULB and shall provide necessary assistance and cooperation to the Lead ULB, on best effort basis, for performance of its obligations hereunder.

17. Variations in MSW Quantity

17.1 Effect of variations in MSW quantity

The Project is envisaged to process Obligated Quantity of MSW from all Participating ULBs in a Cluster throughout the life of the project.

In the event that the waste supplied exceeds the assured quantity, the Concessionaire shall process the excess waste without any rejection. Conversely, if the waste supplied is less than the assured quantity, the shortfall may be supplemented with waste procured from third parties at no additional cost to the Participating ULBs. The procurement, acceptance, and processing of this supplemental waste shall not, in any manner, hinder or impede the Concessionaire's obligations to receive, accept, and process the assured quantity delivered by the Participating ULBs in accordance with the terms of this Agreement.

17.2 Deleted

18. Safety Requirements

18.1 Safety Requirements

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

18.2 Expenditure on Safety Requirements

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

19. Monitoring of Operation and Maintenance

19.1 Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Participating ULBs and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the Operation & Maintenance Requirements, Operation & Maintenance Manual, and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Project Facilities at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Operation & Maintenance Requirements, Operation & Maintenance Manual, and Safety Requirements, and send a copy thereof to the Participating ULBs and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

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

19.4 Remedial measures

- 19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Participating ULBs within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Facilities into compliance with the Operation & Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project Facilities conforms to the Operation & Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in

conformity with the provisions of this Agreement, the Lead ULB shall be entitled to recover Damages from the Concessionaire in accordance with Clause 16.3 this Agreement. For avoidance of doubts, levy and recovery of Damages by the Lead ULB from the Concessionaire shall not absolve the Concessionaire for its obligation and the Participating ULBs shall be entitled to seek specific performance by the Concessionaire of its obligations under this Agreement.

20. Independent Engineer

20.1 Procedure for Appointment & Scope of Independent Engineer

- 20.1.1 Independent Engineer shall be a third party agency, appointed within 4 (four) months of this Agreement. The broad scope of nature of work of the Independent Engineer is set out in Schedule 16, but shall be refined after discussions between the Lead ULB and the Concessionaire.
- 20.1.2 The Lead ULB shall invite expressions of interest from consulting engineering firms or bodies corporate and thereupon shortlist 5 (five) qualified firms in accordance with pre-determined criteria. The Lead ULB shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Lead ULB to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Lead ULB within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Lead ULB shall, after considering all relevant factors, finalise and constitute a panel of 5 (five) firms and convey its decision to the Concessionaire. The Lead ULB shall in consultation with NREDCAP Limited will select one firm as Independent Engineer from the above list, based on a transparent competitive bid process and a Quality and Cost based approach shall be adopted for the same.
- 20.1.3 The Independent Engineer shall be appointed for the Concession Period. The initial term of the Independent Engineer shall extend up to 3 (three) years. On expiry of the aforesaid period, the Lead ULB may in its discretion renew the appointment, or appoint another firm from a fresh panel to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

20.2 Payments to Independent Engineer

The Lead ULB shall pay the Independent Engineer all fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively the “**Remuneration**”). However, the Lead ULB and Concessionaire shall share this expense equally on a 50:50 basis. The Lead ULB shall recover the pro-rated costs payable to the Independent Engineer as Remuneration from amounts payable to the Concessionaire. In case, the Developer does not pay the Lead ULB its share of remuneration of Independent Engineer, the Lead ULB shall have the right to encash the Construction Performance Security or the Operation Performance Security, as the case may be.

20.3 Replacement of the Independent Engineer

- 20.3.1 The Lead ULB may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.
- 20.3.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Lead ULB and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Lead ULB shall hold a tripartite meeting with the Concessionaire and Independent

Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Lead ULB and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the provisions of the Dispute Resolution set out in Clause 35.1. In the event that the appointment of the Independent Engineer is terminated hereunder, the Lead ULB shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.4 Authorised signatories

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

21. Handover of Project Facilities

21.1 Ownership during the Concession Period

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

- (a) That of all immovable assets including site and civil structures created for Processing Facility shall remain with the Project Developer till expiry of Concession Agreement or termination as permitted by the agreement.
- (b) That of all movable assets including equipment & machinery and vehicles shall remain with Concessionaire and in accordance with the Financing Documents and first prior charge to Lenders privileges.

21.2 Concessionaire's Obligations

21.2.1 Processing Facility

Concessionaire shall on the date of expiry of the Concession Period, hand back peaceful possession of the Project facilities to the Lead ULB free of cost and free from all encumbrances and in good operational condition.

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

21.2.2 Landfill

Upon service of the Termination Notice or at least 12 months before the expected expiry of the Landfill Life, the Parties jointly with the Independent Engineer shall, discuss and jointly prepare the closure plan for scientific closure of the Landfill, under the provisions of the prevailing Applicable Laws (“**Closure Plan**”).

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

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

21.3 The Lead ULB's obligations

The Lead ULB shall, subject to the Lead ULB's right to encash Operation Performance Security for getting executed the works / jobs listed under Clause 21.2 at Concessionaire cost and risk, and which have not been carried out by Concessionaire, or any outstanding dues, which may have accrued in respect of the Project during the Concession Period, duly discharge and release to Concessionaire bank Guarantees of the Concessionaire.

PART IV – Financial Covenants

22. Financial Close

22.1 Financial Close

- 22.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 6 (six) months from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Lead ULB in a sum calculated at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day of delay, or for a further period not exceeding 100 (one hundred) days, subject to payment of Damages specified in Clause 4.2; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 8 (eight) months shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Participating ULBs in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.
- 22.1.2 The Concessionaire shall, upon occurrence of Financial Close shall have provided to the Lead ULB, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

22.2 Termination due to failure to achieve Financial Close

- 22.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.
- 22.2.2 Upon Termination under Clause 22.2.1, the Authorized Representative shall be entitled to encash the Earnest Money Deposit and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Participating ULBs being in default of any of its obligations, it shall, upon Termination, return the Earnest Money Deposit forthwith along with the Damages due and payable under Clause 9. For the avoidance of doubt, it is expressly agreed that if the Earnest Money Deposit shall have been substituted by Construction Performance Security, the Lead ULB shall be entitled to encash therefrom an amount equal to Earnest Money Deposit.

23. Insurance

23.1 Insurance

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Concession Period all insurances in respect of the Project Facilities in accordance with the Good Industry Practices. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Participating ULBs as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Lead ULB shall be a co-insured and that the insurer shall pay the proceeds to insurance. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

23.2 Notice of the Lead ULB

No later than 45 (forty-five) days prior to commencement of the Construction Period and the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Lead ULB, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Clause 23. Within 30 (thirty) days of receipt of such notice, the Lead ULB may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

23.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Clause 23 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Lead ULB, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Lead ULB. The Concessionaire shall maintain a register of entry in order of premiums paid towards Insurance of the Project Facilities.

23.4 Remedy for failure to insure

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

23.5 Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Clause 23 shall include a waiver of any and all right of subrogation or recovery of the insurers thereunder against, inter alia, the Lead ULB, and its assigns, successor, underrating and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

23.6 Concessionaire's waiver

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

23.7 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire shall designate the Lead ULB as the beneficiary for the assets under ownership of the Lead ULB as per Clause 21.1 and may designate the Lenders as the beneficiaries for the assets under the Concessionaire ownership as per Clause 21.1 or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement to the extent possible in the same condition as it were prior to such damage or destruction, normal wear and tear accepted.

23.8 No Breach of Insurance Obligation

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

24. Accounts and Audit

24.1 Audited accounts

- 24.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including revenue from power sale and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Participating ULBs shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Participating ULBs for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 24.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Lead ULB its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

24.2 Appointment of auditors

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

24.3 Certification of claims by Statutory Auditors

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

24.4 Set-off

In the event any amount is due and payable by the Lead ULB to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Lead ULB of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

PART V - FORCE MAJEURE AND TERMINATION

25. Force Majeure

25.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 25.2, 25.3 and 25.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

25.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving contractors, or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 25.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to Concessionaire, by, or on behalf of such Contractor;
- (d) any judgment or order of any court competent jurisdiction or statutory Participating ULBs made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Participating ULBs;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

25.3 Indirect Political Event

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

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

25.4 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) change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 32 and its effect, in financial terms, exceeds the sum specified in Clause 32.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from Concessionaire or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political, Event and which does not result in any offsetting compensation being payable to Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

25.5 Duty to report Force Majeure Event

- 25.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 25 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.
- 25.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 14 (fourteen) 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.
- 25.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 25.5.2, and, such other information as the other Party may reasonably request the Affected Party to provide.

25.6 Effect of Force Majeure Event on the Concession

- 25.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 25.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:
- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (b) after COD, if the delivery of the MSW is suspended, the Concession Period shall be extended by a period equal in length to the period during which the collection of the delivery of the MSW is suspended.

25.7 Allocation of costs arising out of Force Majeure

- 25.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 25.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the; "**Force Majeure Costs**") shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the insurance cover for such Indirect Political Event, shall be borne by, and to the extent Force Majeure costs exceed such insurance cover, one half of such excess amount shall be reimbursed by the Lead ULB to Concessionaire; and
 - (c) Upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Lead ULB to Concessionaire.

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

- 25.7.3 Save and except as expressly provided in this Article 25, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereto.

25.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and-eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article 25, 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.

25.9 Termination Payment for Force Majeure Event

- 25.9.1 If Termination is on account of a Non-Political Event, the Lead ULB shall make a Termination Payment to Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover for assets under Concessionaire ownership. The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting.
- 25.9.2 If Termination is on account of an Indirect Political Event, the Lead ULBs shall make a Termination Payment to Concessionaire in an amount equal to:
- (a) Debt Due less Insurance Cover for assets under Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - (b) 110% (one hundred and ten per cent) of the Adjusted Equity

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

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

25.10 Dispute Resolution

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

25.11 Excuse from Performance of Obligations

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

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

26. Compensation for Breach of Agreement

26.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 26.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Lead ULB by way of compensation, all direct costs suffered or incurred by the Participating ULBs as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 26.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Participating ULBs.

26.2 Extension of Concession Period

Subject to the provisions of Clause 26.4, in the event that a material default or breach of this Agreement causes delay in achieving COD or leads to suspension, as the case may be, the Lead ULB shall extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

26.3 Compensation to be in addition

Compensation payable under this Article 26 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

26.4 Mitigation of costs and damage

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

27. Suspension of Concessionaire's Rights

27.1 Suspension upon Concessionaire Event of Default

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

27.2 Lead ULB to act on behalf of Concessionaire

- 27.2.1 During the period of Suspension, the Lead ULB shall be entitled to encash the Operation Performance Security for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.
- 27.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Lead ULB for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Lead ULB for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Lead ULB or any other person authorised by it under Clause 27.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

27.3 Revocation of Suspension

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

27.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Lead ULB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 27.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

27.5 Termination

- 27.5.1 At any time during the period of Suspension under this Article 27, the Concessionaire may by notice require the Lead ULB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 27.4, the Lead ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 28.
- 27.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 27.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Lead ULB upon occurrence of a Concessionaire Event of Default.

28. Events of Default and Termination

28.1 Events of Default

28.1.1 Event of Default shall mean either Concessionaire Event of Default or Participating ULB's (including Lead ULB's) Event of Default or both as the context may admit or require.

28.1.2 Concessionaire Event of Default

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

- (a) the Operation Performance Security has been encashed and appropriated in accordance with Clause 9.4 and the Concessionaire fails to replenish or provide fresh Operation Performance Security within 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Operation Performance Security in accordance with Clause 9.4, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Event of Default for which whole or part of the Operation Performance Security was appropriated;
- (c) the Concessionaire fails to achieve any of the Project Milestones due in accordance with respective Scheduled Project Milestone Date, as set in the Schedule 5 and continues in default for 180 (one hundred and eighty) resulting in delayed commissioning;
- (d) the Concessionaire has failed to achieve COD within 24 (twenty four) months from the Effective day;
- (e) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Participating ULBs;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire fails to accept the Obligated Quantity of MSW delivered at the Project Site by the Participating ULBs after COD for a period of 7 days consecutively provided neither the Plant is under maintenance nor Event of Default by APXPDCL has occurred as per terms and conditions of PPA
- (h) the Concessionaire is non-compliant to the Performance Standards as specified in the Schedule 12, Clause 12.2 and remains non-compliant such that it becomes an Event of Default;
- (i) the Concessionaire is in breach of the Operation and Maintenance Requirements or the Safety Requirements, as the case may be;

- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Lead ULB to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.11;
- (o) the Equity holding of the Concessionaire is not in line with Clause 5.11.1.
- (p) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (q) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (r) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (s) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Participating ULBs, a Material Adverse Effect;
- (t) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements

and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

- (iii) each of the Project Agreements remains in full force and effect;
- (u) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- (v) the Concessionaire submits to the Participating ULBs any statement, notice or other document, in written or electronic form, which has a material effect on the Participating ULBs's rights, obligations or interests and which is false in material particulars;
- (w) the Concessionaire has failed to make any payment to the Participating ULBs within period specified in this Agreement
- (x) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (y) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Participating ULBs.
- (z) The Concessionaire uses fuel other than MSW/ processed MSW for generation of energy

28.1.3 Participating ULBs Event of Default

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

- (a) The Participating ULBs is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire.

28.2 Termination due to Event of Default

28.2.1 Termination for Concessionaire Event of Default

- (a) Without prejudice to any other right or remedy which the Participating ULBs may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Participating ULBs shall, subject to the provisions of the “**Substitution Agreement**” (if any, with the Lenders, pursuant to which, in case of Default by Concessionaire, Lenders shall be allowed to take charge of Concessionaire's roles and responsibilities under this Agreement), be entitled to terminate this Agreement in the manner as set out under Sub-clause (b) of Clause 28.2.1. Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Sub-clause 28.1.2(t), the Lead ULB may terminate this Agreement by issue of Termination Notice in the manner set out under Clause 28.2.3.
- (b) If the Lead ULB decide to terminate this Agreement pursuant to preceding Clause (a), it shall in the first instance issue Preliminary Notice to Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, Concessionaire shall submit to the Participating ULBs in sufficient detail and if applicable the manner in which inter-alia it proposes to cure the underlying Event of Default or prevent the Event of Default from reoccurring (the “**Concessionaire Proposal to Rectify**”). The same shall be reasonably considered by the Participating ULBs. In case of non-submission of Concessionaire Proposal to Rectify within the said period of 30 days, the Lead ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting. In case Concessionaire has made a Proposal to Rectify within the period stipulated therefore, and the same is accepted by the Participating ULBs as reasonable, the Concessionaire shall be allowed a Cure Period of 60 (sixty) days. If, however the Concessionaire fails to remedy / cure the underlying Event of Default or the factors causing the Event of Default within such further period allowed, the Lead ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security, if subsisting. For the avoidance of doubt, the Participating ULBs, at its sole discretion, can reject the Concessionaire Proposal to Rectify if it feels that it is not adequate to cure the Event of Default or prevent the Event of Default from reoccurring.

28.2.2 Termination for Participating ULBs Event of Default

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

- (c) In case Participating ULBs Proposal to Rectify is forwarded to Concessionaire within the period stipulated therefore, the Participating ULBs shall have further period of 60 days to remedy / cure the underlying Event of Default. If, however the Participating ULBs fails to remedy / cure the underlying Event of Default within such further period allowed, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

28.2.3 Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Clause 28.2.1 or Clause 28.2.2, it shall issue Termination Notice setting out:

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

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

28.2.4 Obligation of Parties

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

- (a) Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities.
- (b) The Termination Payment, if any, payable by the Lead ULB in accordance with the Clause 28.2.6 is paid to Concessionaire on the Termination Date and
- (c) The Project Facilities are handed back to the Lead ULB by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to the Lead ULB

28.2.5 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.

28.2.6 Termination Payments

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

(a) Participating ULBs Event of Default:

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

Termination payment = Debt Due + 150% of Adjusted Value of the equity on Termination Date.

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

(b) Concessionaire Event of Default:

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

Upon Termination of this Agreement on account of Concessionaire Event of Default the Operation Performance Security, if subsisting, shall be invoked by the Lead ULB. The Concessionaire expressly agrees that Termination Payment under this Clause 28.2 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

28.3 Rights of the Participating ULBs on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, the Participating ULBs shall have the power to:
- (i) Enter upon and take possession and control of the Project Facilities, Plant, and Site, forthwith free from any encumbrances;
 - (ii) Prohibit Concessionaire and any person claiming through or under Concessionaire from entering upon dealing with the Project Facilities, Plant, and Site or permit as required for pending resolution of any issues to a limited number of representatives of Concessionaire.

- (b) Notwithstanding anything contained in this Agreement, the Participating ULBs shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by Concessionaire in connection with the Project, and the handover of the Project Facilities by Concessionaire to the Lead ULB shall be free from any such obligation.

28.4 Survival of Rights of Parties

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

29. Divestment of Rights and Interest

29.1 Divestment Requirements

29.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Lead ULB forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project and Project Facilities as specified in the Article 21, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including structures and equipment, of all defects and deficiencies so that the Project is compliant with the Operation and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Lead ULB free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Lead ULB may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Lead ULB, absolutely unto the Lead ULB or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Lead ULB or to its nominee.

29.1.2 Subject to the exercise by the Participating ULBs of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

29.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Operation and Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Operation and Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 30 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 29.

29.3 Cooperation and assistance on transfer of Project

- 29.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience, other members of the public or the lawful occupiers of any part of the Site.
- 29.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Lead ULB, its other concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 29.3.3 The Lead ULB shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 29.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

29.4 Vesting Certificate

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

29.5 Divestment costs etc.

- 29.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Lead ULB upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Lead ULB.
- 29.5.2 In the event of any dispute relating to matters covered by and under this Article 29, the Dispute Resolution Procedure shall apply.

30. Defects Liability after Termination

30.1 Liability for defects after Termination

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

PART VI - OTHER PROVISIONS

31. Assignment and Charges

31.1 Restrictions on assignment and charges

- 31.1.1 Subject to Clauses 31.2 and 31.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Lead ULB, which consent the Lead ULB shall not unreasonably withhold.
- 31.1.2 Subject to the provisions of Clause 31.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Lead ULB, which consent the Lead ULB shall not unreasonably withhold.

31.2 Permitted assignment and charges

The restraints set forth in Clause 31.1 shall not apply to:

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

31.3 Substitution Agreement

- 31.3.1 The Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Lead ULB and the Lenders' Representative, on behalf of Lenders, substantially in the form set forth in Schedule 18.
- 31.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Lead ULB shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

31.4 Assignment by the Lead ULB

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

32. Change in Law

32.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds INR 1 crore (Rupees one crore) in any Accounting Year, which has not been covered in Article 13.2 of the PPA, the Concessionaire may so notify the Participating ULBs and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Lead ULB to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Lead ULB shall pay the amount specified therein; provided that if the Participating ULBs shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 32.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

32.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds INR 1 crore (Rupees one crore) in any Accounting Year, the Lead ULB may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Lead ULB, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Lead ULB may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Lead ULB; provided that if the Concessionaire shall dispute such claim of the Participating ULBs, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

32.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 32 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

33. Liability and Indemnity

33.1 General indemnity

- 33.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Participating ULBs and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Participating ULBs Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Participating ULBs Indemnified Persons.
- 33.1.2 The Participating ULBs will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Participating ULBs in the land comprised in the Site, and/or (ii) breach by the Participating ULBs 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.

33.2 Indemnity by the Concessionaire

- 33.2.1 Without limiting the generality of Clause 33.1, the Concessionaire shall fully indemnify, hold harmless and defend the Participating ULBs and the Participating ULBs Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.
- 33.2.2 Without limiting the generality of the provisions of this Article 33, the Concessionaire shall fully indemnify, hold harmless and defend the Participating ULBs Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Participating ULBs Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent

rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Participating ULBs a licence, at no cost to the Participating ULBs, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

33.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 33 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

33.4 Defence of claims

- 33.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 33, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 33.4.2 If the Indemnifying Party has exercised its rights under Clause 33.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

33.4.3 If the Indemnifying Party exercises its rights under Clause 33.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 33.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

33.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 33, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

33.6 Survival on Termination

The provisions of this Article 33 shall survive Termination.

34. Rights and Title over the Site

34.1 Lessee rights

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

34.2 Access rights of the Participating ULBs and others

- 34.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Participating ULBs, Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their Participating ULBs, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- 34.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

34.3 Property taxes

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

34.4 Restriction on sub-letting

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

35. Dispute Resolution

35.1 Dispute resolution

- 35.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 35.2.
- 35.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

35.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Municipal Commissioner of Lead ULB and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 35.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 35.3.

35.3 Arbitration

- 35.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 35.2, shall be finally decided by reference to arbitration by a Board of Arbitrators. Such arbitration shall be held in accordance with provisions of Arbitration act and Arbitration shall be at capital of Andhra Pradesh state and the language of arbitration shall be English.
- 35.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 35 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Lead ULB agree and undertake to carry out such Award without delay.
- 35.3.3 The Concessionaire and the Lead ULB agree that an Award may be enforced against the Concessionaire and/or the Lead ULB, as the case may be, and their respective assets wherever situated.
- 35.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

35.4 Enforcement of Award

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

35.5 Performance during dispute

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

36. Disclosure

Nothing relating to the project agreements or the project shall be disclosed except as required under law.

37. Redressal of Public Grievances

37.1 Complaints Register

- 37.1.1 The Concessionaire shall maintain a public relations office at the Project Site and shall keep registers at the Project Site (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Plant Site. The Participating ULBs shall also maintain a Complaint Register at its Office, open to public access at all times for recording of complaints by the Complainant.
- 37.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 37.1.3 Without prejudice to the provisions of Clauses 37.1.1 and 37.1.2, the Participating ULBs may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

37.2 Redressal of complaints

- 37.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 37.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Participating ULBs and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Participating ULBs may, in its discretion, advise the Concessionaire to take such further action as the Participating ULBs may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Participating ULBs of its decision thereon, and if the Participating ULBs is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

38. Miscellaneous

38.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owned by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing prime lending rate of State bank of India per annum from the due date for payment hereof until the same is paid to or otherwise realized by the Party entitles 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 38.1 shall neither be deemed nor construed to authorized any delay in payment of any amount due by a party nor be deemed or construed to be a waiver of the underlying breach of payment obligation.

38.2 Governing Law and Jurisdiction

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

38.3 Waiver

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

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

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

38.4 Survival

Termination of this agreement shall not relive the Participating ULBs of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this agreement expressly limiting the liability of either party, shall not relieve either party of any obligations or liabilities for loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.

38.5 Amendments

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

38.6 Notice

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below;

If to Lead ULB:

Office of the Principal Advisor,

[Address of the Lead ULB]

If to Concessionaire:

/XXX

XXX

XXX]

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

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

38.7 Severability

If for any reason whatsoever any provision of this agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for invalid, unenforceable or illegal provisions, as nearly as is practicable, provided failure to agree upon any such provisions shall not be subject to dispute resolution under this agreement or otherwise.

38.8 No Partnership

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

38.9 Waiver of immunity

Each Party unconditionally and irrevocably:

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

38.10 Depreciation and Interest

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

38.11 Delayed payments

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

38.12 Exclusion of implied warranties etc.

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

38.13 Entire Agreement

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

38.14 Third Parties

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

38.15 Successors and Assigns

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

38.16 Language

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

38.17 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ULB1 by:

(Signature)

(Name)

(Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of ULB2 by:

(Signature)

(Name)

(Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of ULB3 by:

(Signature)

(Name)

(Designation)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, company Secretary / Authorised Officer who has countersigned the same in token thereof:

In the presence of:

1.

2.

SCHEDULES

1. Site of the Project

1.1 The Site

- 1.1.1 Site of the Project shall include the land, buildings, structures and road works as described in this Schedule.
- 1.1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by Lead ULB Representative and the Concessionaire, and such inventory shall form part of this Schedule 1

1.2 Sites for Waste to Energy Processing Facilities in Andhra Pradesh

- 1.2.1 Map of the Land for Waste to Energy Processing Facility is as shown below:

[map to be inserted]

1.3 Inventory of the Site

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

2. Applicable Permits

Refer Clause 4.1.3

2.1 Applicable Permits

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

S.No.	Approval/Clearance	Concerned Agency	Responsibility
1.	Prior environmental clearance	APPCB	Concessionaire
2.	Site authorization under SWM Rules	APPCB	The Lead ULB
3.	License in accordance with the rules and provisions of Labour (Regulation and Abolition) Act, 1970	MoLE	Concessionaire
4.	Consent to establish under Air and Water Act	APPCB	Concessionaire
6.	NOC from Andhra Pradesh Fire Services	Directorate of Fire Services	Concessionaire
7.	Disaster Management Plan	APSDMS	Concessionaire
8.	Vehicle Registration	RTO	Participating ULBs / Concessionaire
9.	Electricity Approval	APXPDCL	Concessionaire
10.	Power Purchase Agreement	APERC	APXPDCL/Concessionaire
11.	Airport Authority Clearance	ATC/AAI	Concessionaire
12.	Industrial Setup Approval	DoI	Concessionaire
13.	All drawings and document approval	The Lead ULB	Concessionaire
14.	Water Supply		The Lead ULB

Where;

APPCB- Andhra Pradesh Pollution Control Board

MoLE-Ministry of Labour and Employment

APSDMS -Andhra Pradesh Disaster Management Unit

RTO- Regional Transport Office

ATC-Airport Traffic Control, [Place]

AAI- Airport Authority of India

DoI- Directorate of Industries, Andhra Pradesh

3. Performance Security for Construction Requirements

Refer Clause 9.1

The Commissioner,

Lead ULB

WHEREAS:

- 1 (the “**Concessionaire**”) the “**Participating ULBs**” have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Participating ULBs has agreed to the Concessionaire undertaking Waste to Energy Processing facility at [*Place*] on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- 2 The Agreement requires the Concessionaire to furnish a Construction Performance Security to the Lead ULB, for an amount of INR _____ Crores² (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- 3 We, through our Branch at (the “**Bank**”) have agreed to furnish these Bank Guarantees by way of Construction Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Lead ULB, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Lead ULB shall claim, without the Lead ULB being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Lead ULB, under the hand of the Municipal Commissioner, the Lead ULB that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Lead ULB shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Lead ULB and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other Lead ULB or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Lead ULB shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption

² Where Guarantee Amount should be equal to INR 50,00,000 multiplied by the Contracted Capacity

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

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Lead ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Lead ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Lead ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Lead ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Lead ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Lead ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Lead ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee will remain in force until compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Lead ULB on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Lead ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Construction Performance Security will be valid for 120 days after COD.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Lead ULB in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Lead ULB that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period specified in Paragraph 8 above.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

4. Performance Security for Operation & Maintenance Requirements

Refer Clause 9.4

The Commissioner,

Lead ULB,

WHEREAS:

- 1 (the “**Concessionaire**”) and the (the “**Participating ULBs**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Participating ULBs has agreed to the Concessionaire undertaking Waste to Energy Processing facility at *[Place]* on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- 2 The Agreement requires the Concessionaire to furnish an Operation Performance Security to the Lead ULB, the cumulative amount of which is INR _____ Crores³ (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operation Period (as defined in the Agreement).
- 3 We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantees by way of Operation Performance Security.

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

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

³ Where Guarantee Amount should be equal to INR 50,00,000 multiplied by the Contracted Capacity

3. In order to give effect to this Guarantee, the Lead ULB shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Lead ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Lead ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Lead ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Lead ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Lead ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Lead ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Lead ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force in compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Lead ULB on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Lead ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Operation Performance Security will be valid from the Scheduled COD till one year after the expiry of the Concession Period.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Lead ULB in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Lead ULB that the envelope was so posted shall be conclusive.
11. This Guarantee shall remain in force till the period mentioned in Paragraph 8 above.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

5. Project Completion Schedule

Refer Clause 12.2.8

5.1 Project Completion Schedule

5.1.1 The milestones stated in the table below are tentative⁴ and Concessionaire can start some of the activities simultaneously to meet the Project Completion Schedule and achieve COD on or before the dates specified in this agreement.

Scheduled COD would be 24 months from the Effective date.

⁴ Note to Bidders: Project Milestone will be finalized prior to execution of the Concession Agreement

S.No.	Description	Months																							
		Financial Close						Construction Period																	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
1.	Preparation of all Project drawings & approval from the required approval authority or the Lead ULB appointed agency from Effective Date																								
2.	Obtain all applicable permits such as licenses, consents, permissions, NOCs & approvals from the concerned and Govt. agencies from Effective Date																								
3.	Complete provision of all the utilities such as water, power, internal roads, boundary wall, lighting facility, storm water drain at Processing Facility as per Manual of Design Input from Effective Date																								
4.	Complete construction of Processing and Scientific Landfill facilities at the site after completion of Sr.No.1, 2 and 3																								
5.	a) Plant installation, machinery including electrical, mechanical and instrumentation facilities/utilities at Processing Facility b) Deleted c) Completion of construction works for collection, storage and treatment of leachate, etc. after completion of Sr.No.1 and 2																								
6.	Testing period to monitor the plant, machinery and equipment and processing facility after the completion certificate received from Independent Engineer.																								
7.	Final commissioning with full load capacity after completion of Sr.No.6*																								

6. Drawings

Refer Clause 12.4

Sr. No.	Description
1.	Processing and Treatment Facility
a)	General layout and construction details such as fencing/boundary wall, building sectional view, etc
b)	Plantation and greenbelt area with species details
c)	Facilities drawing like internal roads, machinery, weigh bridges, maneuvering of vehicles, MRF, processing/ treatment, recycling, etc
d)	Utilities drawing such security arrangement, rest room, etc
e)	Electric supply, water supply, storm water drainage, leachate treatment, etc
f)	Any additional facilities drawing provided by Concessionaire such as rainwater harvesting, solar power or/wind power, etc
2.	Scientific Landfill
a)	General layout drawing and construction details such as fencing/boundary wall, landfill cells including sectional view, etc
b)	Facilities drawing such as weigh bridges, gas collection system, leachate treatment, etc
c)	Electrification, water supply (wherever applicable), storm water drainage, leachate treatment, etc

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

7. Tests

Refer Clause 14.1.2

7.1 Tests

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

8. Completion Certificate

Refer Clauses 14.2 and 14.3

8.1 Completion Certificate

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for Municipal Solid Waste (MSW) and Waste to Energy Processing Facility in Andhra Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule 7 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

8.2 Provisional Certificate

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for Municipal Solid Waste (MSW) and Waste to Energy Processing Facility in Andhra Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule 7 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

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

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

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

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

9. Construction Requirements

9.1 General

- 9.1.1 The facilities to be provided in the Municipal Solid Waste (MSW) and Waste to Energy Processing Facility, which is to be implemented by the Concessionaire as part of the Project, have been highlighted in this Schedule and as given in the Background Documents.
- 9.1.2 The Concessionaire shall adhere to all applicable rules, regulations, acts, guidelines, standards and laws which are applicable for this Project. Some of these important rules, regulations, acts, guidelines, standards, etc are as follows:
- (a) All applicable rules, regulations, acts, guidelines, standards and laws of Government of India and Government of Andhra Pradesh
 - (b) All applicable Indian Standards (IS)
 - (c) All applicable standards by the Bureau of Indian Standard (BIS)
 - (d) All norms of the Indian Road Congress (IRC)
 - (e) All norms of the National Building Code (NBC)
 - (f) Solid Waste Management Rules, 2016
 - (g) Environment (Protection) Act, 1986
 - (h) Environment (Protection) Rules, 1986
 - (i) EIA Notification, 2006 and amendments
 - (j) Guidelines and recommendation of Central Public Health & Environmental Engineering Organisation (CPHEEO), MoUD, GoI
 - (k) Electricity Rules, 2005
 - (l) Electricity Act, 2003
 - (m) Andhra Pradesh Energy Regulatory Commission (MERC) Guidelines-2004
 - (n) All applicable norms of the Central Electricity Authority (CEA)
 - (o) All applicable rules, regulations, acts, guidelines, standards of Central Pollution Control Board (CPCB) and Andhra Pradesh Pollution Control Board (APPCB)
 - (p) Motor Vehicle Act and Vehicle Emission Control
 - (q) Labour Laws – Minimum Wages, Contract Labour Abolition and Regulations

- (r) Construction standards by Andhra Pradesh Public Works Department and [Lead ULB] and any other GoM departments

9.2 Processing / Scientific Landfill facility

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

- (a) Location and Vicinity Maps: These shall show the site location and vicinity. The vicinity map should include the site boundary and all major roads, structures, industries, commercial and residential areas within a 2 km radius of the site.
- (b) Site Layout: These shall show locations and dimensions of all proposed site structures including roads, buildings, fencing, amenities, utilities, etc.
- (c) Construction Phasing Plan: These shall the ultimate use of the site in a planned phasing approach. Interfacing of construction and operation shall be noted. At a minimum, it shall require an overall drawing (recommended scale 1:100) as well as construction phase drawings (recommended scale 1:100) showing the construction phasing details. The construction phasing details shall include details on processing facility development, phasing of cells, leachate collection system, landfill gas collection system, roads, and all other components of the processing/ Scientific Landfill facility.
- (d) Layout Plans and Structural drawings: These shall be the layout plan and structural drawings for all the components of processing/ Scientific Landfill.
- (e) Evacuations and Grading Plans: These shall be the excavation and base grading for the landfill and cells and required earth work for construction. At a minimum over all drawing (recommended scale 1:100) as well other drawings (recommended scale 1:100) showing the excavation and grading plans shall be required.
- (f) Cell Construction Details: These shall show cell profiles with liner, leachate collection pipe, lateral drainage layer, ditches, access roads, final cover tie-in to the bottom liner at the edge of the fill area (recommended scale 1:100), etc as per Background Documents.
- (g) Leachate Management Plan: The Concessionaires shall provide a drawing (recommended scale 1:100) that shows the leachate collection, transport, and treatment system. This plan shall include all inverts of the collector pipes, transport pipes, manholes, tanks, etc. The Concessionaire shall be responsible for meeting all permitting requirements for leachate treatment.
- (h) Landfill Gas Management Plan: This plan shall show landfill gas migration control and monitoring measures and venting system (recommended scale 1:100).
- (i) Odour Control Management Plan: This plan shall show odour control mechanism and management plan (recommended scale 1:100).

- (j) Construction Details: These shall show liner anchorage details, leachate management and treatment system, roadways, other infrastructure, etc. (recommended scale 1:100).
- (k) Cross Sections: These shall show typical sections through the fill area, bottom cells, slide slopes, and final cover elevations. Detailed cross sections showing the construction of solid waste lifts and slopes (recommended scale 1:100).
- (l) The landfill site bottom composite liner of specifications shall comply with Municipal Solid Waste Rule and CPHEEO manual.

9.2.2 Quality Control

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

- (a) Continuous inspection and field supervision by qualified personnel provided by the Concessionaire.
- (b) Laboratory testing of construction materials.
- (c) Utilizing experienced Concessionaires and workers having a minimum of 5 years of experience in their profession or trades.
- (d) Conformance to manufacturer's installation QC procedures.

Facility Construction: The Concessionaire must construct the facilities in strict accordance with the approved design drawings by the Independent Engineer. They shall also be advised that any changes of the approved design would require approvals.

9.2.3 Construction Phasing Plan

- (a) For each phase, The Concessionaire shall prepare engineering drawings that will be presented to Independent Engineer for review and approvals.
- (b) The construction phasing plan shall demonstrate that the site has sufficient disposal capacity. The phasing plan shall show how interfacing of the landfill construction and operation would take place.
- (c) Concessionaire is responsible for providing appropriate engineering drawings (recommended scale 1:100) showing cell construction details including profile of the cell leachate collection pipes, lateral drawings layers, perimeter roads, and access roads and other important details. The final cover system shall be based on the recommendations of MoEF and CPHEEO Manual.
- (d) The office building shall be a permanent structure and shall be equipped with an office area for facility / landfill management and supervisory control and as per mentioned in the Background Documents.

- (e) The Concessionaire is responsible for design and construction of on-site utilities and facilities as per given in Background Documents.

9.2.4 On-Site Access Road

It is also required that the landfill design include an appropriate access road from the site entrance to the landfill working face. This access road shall be designed to accommodate vehicles having a minimum 40 ton gross weight. The access road shall be at a minimum of 15m wide to handle two-way transfer trailer traffic from the scale house to the face of the landfill. The access road shall be design and construct to include ditching and drainage.

9.2.5 Separation Barrier

It is required that the landfill design include provisions for a minimum 2 m separation between the maximum groundwater elevation and bottom of the landfill liner. The design shall include a separation barrier to ensure that water does not penetrate or destroy the integrity of the bottom and side slopes liners. Design documentation shall include details on the materials, permeability, strength, thickness and physical characteristics of the separation barrier.

9.2.6 Side Slope Liner

As a minimum service specification, it is require that the side slopes shall have a liner hydraulic barrier performance equal to that of the bottom liner. The Concessionaire shall responsible for the design of any side slope lining system required within the landfill design.

9.2.7 Site Access Road

Through the service specification, it shall require that the access road design allow for two-way traffic to and from the facilities and shall be design to accommodate vehicles having a minimum 40-ton gross weight.

9.2.8 Site Fencing

The processing / Scientific Landfill shall be fully secured by boundary wall and wire mesh fencing having a height of at least 2.4m above plinth area with top 0.6 m being barbed wire fencing with mild steel angles.

9.2.9 Storm Water Drainage and Rainwater Harvesting System

The Concessionaire shall design and implement a storm water drainage and rainwater harvesting system within the processing facility as per the Background Documents.

9.2.10 Lighting

The Concessionaire shall provide adequate lighting system to achieve the lux levels, specified in the Indian Standard Codes (latest versions) of SP-30 and IS 6665-1972 for the different working areas, achieve a minimum lux level of 20 for the working area and street lighting with permanent steel light posts for internal roads and access roads.

9.2.11 Green Belt

The Concessionaire shall provide a vegetative cover in a strip of minimum width 20 m for the Scientific Landfill of site boundary. The species of the trees for providing vegetative cover shall be approved by the Independent Engineer and as listed in EIA Report. The green cover requirements within the processing facility shall be minimum of 3 m wide along the site boundary. Garden/lawns wherever possible shall be created to improve the aesthetics.

9.3 Procedure

9.3.1 Before commencement of any construction activity, the Concessionaire shall finalize a construction plan for the Project (the “**Construction Plan**”) in consultation with the Independent Engineer. The Construction Plan shall, inter alia, include:

A detailed plan of implementation for putting up and operationalizing the Project, which shall specify at least four major milestones

- (a) Manpower deployment plan, including the designation of key personnel for the management and supervision of all Project-related activities. (This would include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, safety, environmental management, plant and equipment maintenance, procurement, materials management and quality control),
- (b) A broad method statement for key items (including earth works, concrete works, structural concrete work, and road works) setting out the methodology of construction, materials and construction equipment mobilization/ utilization plans;
- (c) Details of the quality assurance and quality control procedures and
- (d) Format of the Monthly Project Progress Report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly Project Progress Report).

Prior to commencement of any implementation/ construction, the Concessionaire shall also finalise in consultation with the Independent Engineer an appropriate schedule for submission of all the documents for review.

9.3.2 During Construction

The Concessionaire shall:

- (a) ensure that the construction of the Project is undertaken with no inconvenience to the traffic;
- (b) take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third-party rights and properties;
- (c) ensure adequate safety of the personnel deployed which would include measures such as the provision and maintenance of barricades, and illumination during night in consultation with the Independent Engineer;

- (d) adhere to the Construction Plan and O&M Plan
- (e) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Independent Engineer / Participating ULBs.

9.3.3 Positions and Levels

The Concessionaire shall be responsible for:

- a) The accurate setting-out survey control points, lines and levels of reference,
- b) The correctness of the positions, levels, dimensions and alignment of all components of the Project,
- c) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities,
- d) At any time during execution of the works, any error is noticed in the position, levels, dimensions or alignment of any component of the Project, the Concessionaire, on being asked to do so by the Independent Engineer, shall at his own cost, rectify such errors to the satisfaction of the Independent Engineer
- e) The checking of any setting-out or of any line or level by the Independent Engineer shall not in any way relieve the Concessionaire of his responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the works.

9.3.4 Tests

Various tests (“Tests”) would be undertaken for the Project as per the standards prescribed under Applicable Laws. Where no testing methods are specified by the said standards, details of the Tests to be carried out and specifications to be achieved for the respective works or part thereof shall be agreed upon with the Independent Engineer prior to implementation/construction.

9.3.5 Reporting Requirements and Documents to be provided

- (a) During the Construction Period, the Concessionaire shall submit to the Independent Engineer/ Lead ULB, Monthly Project Progress Reports (for each calendar month or part thereof) within 5 working days of the last day of the month.
- (b) The report shall review the progress made, identify slippages, if any, and Project the future activities to be undertaken (including rectifications), construction activities undertaken and would, inter alia, include all studies, surveys, investigations and test carried out.
- (c) The Concessionaire shall submit the copies of documents in the form of three hardcopies (printed) and two in electronic form.

9.4 Schedule for Land Requirement at the Proposed Site

Purpose of land hand over	Milestone for land transfer	Land (Hectare)
Construction of the Processing Facility and Green Belt	60 days from the signing of Concession Agreement	_____
Construction of Scientific Landfill	60 days from the signing of Concession Agreement	_____

10. Operation and Maintenance Requirements

10.1 General

The Concessionaire shall comply with the O&M requirements set out in this Schedule and describe in Background Documents. In doing so, the Concessionaire shall ensure that the Project is operated and maintained to the standards and specifications as set out in the Construction Requirements and also meet the other requirements, if any, set out in the Agreement.

In the design, planning and implementation of all works and functions associated with the operation and maintenance of the Project, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors, if any, agents and employees) in such manner, as will :

- (a) Ensure the safety of personnel deployed on and users of the Project or part thereof;
- (b) Keep the equipment and machinery employed for the Project from undue deterioration and wear
- (c) Permit unimpaired performance of statutory duties and functions of any Party in relation to the Project;

During the Concession Period, the Concessionaire shall, in respect of the Project, ensure that:

- (d) Applicable and adequate safety measures are taken
- (e) Adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project components, due to any of its actions, is minimised
- (f) Any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
- (g) Disturbance or damage or destruction to property of third party by operations of the Project or Project components is controlled/minimised
- (h) Data relating to the operation and maintenance of the Project is collected
- (i) All materials used in the operation, maintenance of any of the Project component shall meet the Construction Requirements;
- (j) The personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O&M Requirements.

10.2 Operations & Maintenance Manual and Plans

The Concessionaire shall finalise the O&M Plan and the O&M Manual for the Project in the manner as set out below:

- (a) Prior to making application for the Readiness Certificate for the Project the Concessionaire shall finalise in consultation with the Independent Engineer:
 - (i) The O&M Manual (including the formats for the reports to be submitted during the Operations Period and the Post Closure Period)
 - (ii) The O&M Plan for the first five years of operations and shall be modified for subsequent years
 - (iii) If applicable, the month-on-month maintenance schedule for each module of Waste to Energy plants for the first five years of the Concession Period.
- (b) Six weeks prior to the anniversary of COD each year, the Concessionaire shall submit to the Independent Engineer and Participating ULBs an annual O&M Plan for the next year of operations.

10.3 General Requirements

10.3.1 Installation of Close Circuit Cameras

The Concessionaire shall install a close circuit camera at Processing Facility Input and Output Weighbridges to record the vehicles being weighed. The camera shall record clearly the registration details of the vehicle and face of the vehicle driver along with time. At the end of each day a back-up copy of the close circuit camera recording of the day shall be produced on compact disc (CD).

10.3.2 Weighing of Vehicles at the Processing Facility -All incoming and outgoing vehicles to the Processing Facility shall be weighed, inspected and cleaned regularly.

10.3.3 Maintenance of Structures

The CC, RCC, Masonry, Steel and other structures with the Processing Facility shall be reported to the Independent Engineer shall be maintained in good conditions.

- (a) The CC, RCC, Masonry and other structures shall be checked for cracks and other deformations and shall be attended immediately
- (b) Periodic maintenance including plastering, cementing, painting, etc. shall be done for CC, RCC, Masonry and other structures periodically (atleast once in two years)
- (c) Periodic maintenance including welding, riveting, painting, etc. shall be done for steel structures periodically (atleast once in two years)

10.3.4 Maintenance of Utilities and Services

The utilities and services like water supply, wastewater collection and treatment, lighting, green belt, etc. within the Processing facility shall be attended immediately for any repairs and shall be maintain in good conditions.

10.3.5 Maintain Hygienic and Aesthetic Conditions

The MRF, Processing Facility shall be maintained hygienic and aesthetic conditions by taking proper measures as suggested by Independent Engineer/ Monitoring Agency.

10.3.6 Hazardous Waste Disposal

The Concessionaire shall dispose of the Hazardous Waste generated by the processing units of MSW and/or any other waste such as batteries, used oil in machineries, etc, under the Hazardous Waste (Management and Handling) Rules, 1989.

10.4 Cleaning and Maintenance Requirements

The Concessionaire shall plan and execute cleaning and maintenance procedures ensuring, that

- (a) The buildings, structures, seeded and planted areas, paved and un-paved traffic areas etc. are maintained clean and proper without damages, that may impede their functionality or appearance.
- (b) All moving or fixed equipment and machinery are maintained clean and in good working condition.
- (c) All service facilities, e.g. outdoor sewage system, leachate management system, etc., are inspected regularly, cleaned and maintained.
- (d) Every day at closing time the internal roads and other paved areas shall be inspected, and any spillage of MSW shall be collected and disposed of in the landfill cell currently in operation. If necessary the paved areas shall be swept using a sweeping machine. During dry periods dust emission shall be controlled by sprinkling the surfaces with water in connection with sweeping activities.

10.5 Monitoring Procedures

The monitoring at integrated facility shall be carried out during implementation/ Construction Period, Operation Period and Post Closure Period. The monitoring plan shall be prepared in accordance to the applicable Andhra Pradesh Pollution control Board (APPCB) requirements and as described in the Background Documents.

10.6 Management of Labour and Prevention of Accidents

The Concessionaire shall comply with all the provisions of the laws regarding deployment of labour under the contract; The Abolition of contract Labour Act, The Minimum wages Act, The Workmen's Compensation Act and the provisions of the SWM Rules 2016.

It shall be the liability and responsibility of the Concessionaire to implement the provisions of these acts. In addition to;

- (a) The Concessionaire shall not employ in connection with the work any person who has not completed 18 years of age.
- (b) The Concessionaire shall furnish to the Participating ULBs; information on the various categories of labour employed by him and the facilities given to the employees in the form prescribed for the purpose at such intervals as may be specified in the work specification.
- (c) The Concessionaire shall keep all records desired under the said labour laws and submit periodical returns to the respective statutory authorities.
- (d) The Concessionaire shall in respect of labour employed by him comply with provisions of the various labour Laws and the Rules and Regulations as applicable to them in regards to matters provided therein and shall indemnify Lead ULB in respect of all claims that may be raised against Lead ULB for non-compliance thereof by the Concessionaire.

The Concessionaire shall report and register all occurrences of;

- (e) Accidents involving risks for human health and security;
- (f) Other incidents connected with occupational health and security; and
- (g) Unscheduled interruptions to the planned operations including fires, explosions, break-down of vehicles, break-down of essential machinery & equipment, etc.

The reports shall be forwarded to the Participating ULBs & relevant authorities. The registered information shall be kept in the "Report Book". The accident and other incident record formats and record keeping procedure shall be approved by the Participating ULBs.

10.7 Facilities and Benefits for the Work Force Employed

The Concessionaire shall furnish the details of the work force employed for the work defined in this document – details of the workers including those for supervision before commencing the work.

Each person (including Supervisor) deployed on this work shall be provided the following facilities.

- (a) Uniform with ID approved by the Participating ULBs (visible distinctly at night)
- (b) Safety and protective gears

10.8 Training, Social Programmes and Public Grievances

- (a) Fortnightly/Monthly public awareness program details to be provided to the Participating ULBs by the Concessionaire one month prior to such program throughout the Concession Period
- (b) The Concessionaire shall provide community and training center within the Project Site wherein multiple employments related capacity building and training activities shall be undertaken and necessary skills shall be imparted.
- (c) The Concessionaire shall provide an employment opportunity based on training and skill assessment. The secondary employment and/or business opportunity shall be created through the facility operator or support services.
- (d) The Concessionaire shall provide training and awareness to labours at plant, which should be a continuous activity and maintain the records.
- (e) The Concessionaire shall setup MSW management and innovation center for every-one which will be useful to locals, students and others who would wish to work in this field.
- (f) The Concessionaire shall give prior importance to nearby population to get involved in the activities of horticulture, garden maintenance, energy management, etc at the Project Facilities.
- (g) The Concessionaire shall involve the NGOs, Govt. organizations, representative of local gram panchayats, Dist. Collector Officers, etc in consultation with the Participating ULBs for training and public awareness program.
- (h) The Concessionaire shall maintain health records of all the artisans and labour staff. The health record formats and record keeping procedure shall be approved by Lead ULB/concerned medical representative.
- (i) The Concessionaire should create a system to register public grievances and redressal system.

11. Operational Plan

(To be submitted by the Concessionaire)

The operational plans should include the following key points:

- a) Processing Facility
 - Number of processing lines and their operational plan for MRF
 - Number of processing lines and their operational plan for processing (Waste to Energy)
 - Machineries/equipments operational plan
 - Routine and breakdown maintenance plan
- b) Scientific Landfill facility
 - Daily operational plan for Landfill
 - Landfill Machineries/equipments operational plan
 - Maintenance plan for Machineries/equipments
 - Closure plan
- c) Environmental Management Plans
 - Monitoring plan
 - Quick response mechanism
 - Maintenance plan for plantation and green belt
 - Health and safety plan
 - Pollution control units and their operational plan
- d) Disaster Management Plan
- e) Month-on-month maintenance schedule of Waste-to-Energy plants, if applicable

12. Performance Standards and Damages

12.1 Performance Standards

12.1.1 The Concessionaire shall have the following requirements related to Operations and Maintenance of the Transfer Stations

- (a) The Concessionaire shall ensure that a calibration test of the weigh bridges at the Processing Facility and Scientific Landfill are carried out twice in a year starting from the appointed date and a copy of the calibration test result is submitted to authorize representative immediately after the test. Stamping of weighbridge shall be done through Weights and Measures Department (WMD), Govt. of Andhra Pradesh
- (b) Appointed agency/ project monitoring agency shall carry out an audit of the weigh bridge data maintained and made available by the Concessionaire at least once in every month starting from the appointed date and submit the result of such audit to Participating ULBs.

12.1.2 The Concessionaire shall have the following specific requirements related to Operations and Maintenance of the Processing Facility:

- (a) The Concessionaire shall ensure that the MSW Processing is in compliance with Municipal Solid Waste (Management and Handling) Rules 2016 and the terms and conditions of this Agreement
- (b) The Concessionaire shall ensure MSW is processed and power is generated from Waste to Energy Plant subject to no Event of Default by APXPDCL side as per terms and conditions of PPA
- (c) The Concessionaire shall ensure that the process of MSW should be continuous and will not emit smell, odor, and all precautionary measure shall be taken to ensure that such nuisance will not be created
- (d) The process remnants shall not be stored and shall be disposed off at Scientific Landfill immediately
- (e) The Concessionaire shall ensure that the quality of compost shall conform to compost quality standards and shall not be stored more than the shelf life. The Concessionaire shall ensure that the off-take arrangement of the produced compost is in place (in case composting is being adopted for processing)
- (f) The Concessionaire shall ensure that the Waste to Energy Plant is in compliance with the guidelines of Ministry of New and Renewable Energy, Government of India (in case waste to energy approach is being adopted for processing)
- (g) The Concessionaire shall ensure that proper pollution control measures are installed and operated for Proposed Technology used as per Background Documents

- (h) The Concessionaire shall free to sell products such as compost, organic manure, energy (power) and/ or other material recovered after processing the MSW, at the Project Facilities at such price and to such persons/organizations and using such marketing and selling arrangements and strategies as it may deem appropriate.
- (i) The Concessionaire shall process the recyclables materials such as plastics, paper, or other materials with as environmentally sound processing at the plant site.
- (j) The Concessionaire shall ensure that a calibration test of the weigh bridge is carried out twice in a year starting from the Appointed Date and a copy of the calibration test result is submitted to authorize representative immediately after the test. Stamping of weighbridge shall be done through Weights and Measures Department (WMD), Govt. of Andhra Pradesh
- (k) Appointed agency/ project monitoring agency shall carry out an audit of the weigh bridge data maintained and made available by the Concessionaire at least once in every month starting from the appointed date and submit the result of such audit to Participating ULBs/ Lead ULB.
- (l) The Concessionaire shall undertake to ensure that the remnant disposed in the Landfill does not exceed 25% of the total MSW received at the Processing Facility and also the quantity of MSW measured at the Landfilling Weighbridge shall not be less than 2% of the MSW quantity measured at the Processing Output Weighbridge
- (m) The Concessionaire shall be liable to Damages if it exceeds more than 25%.
- (n) The Concessionaire shall ensure that it maintains daily records of the quantities of MSW and submit the same to the Appointed agency/ project monitoring agency on a Monthly Basis, before the expiry of 2 (Two) working days from the end of the Month:
- (o) Quantity of MSW at the input of Processing Plant
- (p) Quantity of MSW received at the Scientific Landfill facility
- (q) The daily records of receipt of the MSW at Processing Facility /Scientific Landfill shall be maintained shift-wise by preparing respective data sheets
- (r) Appointed agency/ project monitoring agency shall review the records and certify the same within 3 (Three) working days of submission.
- (s) With effect from the COD, the Concessionaire shall not suspend at any time receiving of MSW at the the Processing Facility on any day during the Concession Period.

12.2 Damages

A key objective of the facility is to reduce the environmental impact of Municipal Solid Waste. The Performance Standards for which the Lead ULB has zero tolerance and violation of which could lead to termination are as described in the table below

Performance Standards	Acceptable Level	Cure Period	Penalty	Tracking mechanism	Event of Default
Processing Plant					
1) Suspension of MSW processing	Incidence in ≤ 16 shifts per year and ≤ 6 continuous shifts		Operation Performance Security at the rate of 0.2% each day's default	Daily Report	Event of Default in case >20 shifts per year or >8 continuous shifts
2) Total quantity of unprocessed MSW stored at the Processing Plant	≤ 20 days of MSW quantity (calculated from the 15 days trailing average)	7 days	Operation Performance Security at the rate of 0.2% each day's default	Daily Report	Event of Default in case not cured in the cure period
3) Noncompliance to compost quality standards, if applicable	No variation	180 days	Operation Performance Security at the rate of 0.1% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
Scientific Landfill					
4) Instances when MSW is found to be landfilled without processing	Nil	N/A	Operation Performance Security at the rate of 5% each day's default	Random checks	Event of Default for third instance in the concession period
5) Maximum percentage of MSW (inerts & process remnants) landfilled	$\leq 25\%$ of MSW quantity received at the Processing Facility	N/A	Operation Performance Security at the rate of 0.5% each day's default	Monthly Report	Event of Default in case 3 months of average MSW quantity landfilled exceeds 25% of the MSW quantity received*

Environmental Compliance and Other Compliance					
6) Noncompliance to air quality standards as mentioned in the Background Documents	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
7) Noncompliance to ground water quality standards as mentioned in the Background Documents	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
8) Noncompliance to any other applicable standards as mentioned in the Background Documents	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period

* Unless the 7-day trailing average of MSW quantity received at the Processing Input Weighbridge is greater than the Obligated Quantity

Additional Performance Standards and the associated penalty are described in the table below

Performance Standards	Acceptable Level	Penalty	Tracking mechanism
MSW Processing Plant			
1) Instances of downtime of weighbridges (at the Processing Plant) when standby arrangements are also not operational	Nil	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
2) Downtime of MRF	≤ 15 shifts	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
3) Downtime of any module of the Processing Plant	≤ 90 days	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
4) Instances when recyclables are sold in loose form	Nil	Operation Performance Security at the rate of 0.1% each day's default	Random checks

Scientific Landfilling			
5) Instances of downtime of weighbridges (at Scientific Landfill facility) when standby arrangements are also not operational	Nil	Operation Performance Security at the rate of 0.1% each day's default	Daily Report
6) Downtime of Scientific Landfill facility	Nil	Operation Performance Security at the rate of 0.1% each day's default	Daily Report

Note:

1. Duration of one shift is considered to be 8 hours

13. Safety Requirements

13.1 Safety Requirements

Concessionaire is responsible for maintaining an incident/hazard free work environment. In compliance with these provisions, the Concessionaire shall comply with the latest edition of the Contractor Safety Requirements and perform the following:

- (a) Concessionaire is expected to pre-plan all work to minimize the potential for personal injury and property damage.
- (b) Develop the plan in a Project specific nature, which is designed to anticipate and identify hazards before work begins. Know in advance what measures will be taken to eliminate hazards or adequately control the anticipated risks for each scope of work. This information shall include, but is not limited to: scope of work, sequence of activities, site specific fall protection, high angle rescue procedures, safety control methods, training records, competent persons, lead abatement, asbestos abatement and excavations. The planning does not stop at the pre-planning stage, but is a continuous process of assessment and evaluation. When changes occur or new hazards are identified during the course of the Project, the work should be suspended while the plan is revised.
- (c) Ensure all subcontractors, suppliers and vendors are informed of their obligations with regard to safety and of the Contractor Safety Requirements.
- (d) Plan and execute all work to comply with the stated objectives and safety requirements contained in the Contractor Safety Requirements, contract provisions, federal, state, and local laws and regulations, and standards.
- (e) Concessionaire or their contractors/subcontractors with 25 or more employees on a single shift will establish a fulltime position of a Contractor Safety Manager to perform safety inspections and training services. In addition, for every additional 100-job site employees added, an additional Safety Management Representative shall be required. In the event that the Contractor has less than 25 employees, the contractor shall appoint an onsite person who along with other concurrent duties shall serve as the Contractor's Safety Representative.
- (f) Concessionaire shall maintain its own orientation program for its employees that shall include as a minimum a review of (1) hazards present in the area in which they will be working and (2) the personal protective equipment and apparel the workers will be required to use or wear as specified under Occupational Safety and Health Administration (OSHA).

- (g) Concessionaire shall provide and maintain a chemical and flammable material storage area as described in the Contractor Safety Requirements. Be responsible for the control, availability and use of necessary safety equipment, including personal Protective equipment (PPE) and apparels for the Concessionaire employees.
- (h) Take an active part in all supervisory safety meetings, including the discussion of observed unsafe work practices or conditions and a review of any incidents and corrective actions. Additionally, encourage, solicit and follow up on safety related suggestions from Concessionaire employees.
- (i) Report all injuries and incidents in a timely manner in accordance with federal and/or state laws and regulations and the Contractor Safety Requirements.
- (j) Analyze all incidents and implement immediate corrective action.
- (k) Provide job supervisors with appropriate training materials to conduct weekly safety meetings and attend said meetings to evaluate their effectiveness.
- (l) Review safety meeting reports submitted by job supervisors and take necessary action to ensure that the job supervisors hold meaningful weekly safety meetings.
- (m) Implement safety-training programs for Contractor supervisors and employees applicable to their specific responsibilities.
- (n) Maintain list on-site of personnel available for first aid and emergency treatment for injured Contractor employees.
- (o) Concessionaire will be responsible for providing a safety orientation training session for all workers before they are allowed to begin work. The orientation safety training will be conducted by the authorized representative as suggested by Lead ULB and will include a summary of the Contractor Safety requirements/ Heads-Up Safety Training and awareness.
- (p) At a minimum Contractor representative to adequately train its employees according to applicable safety standards. This training may include but is not limited to: fall protection, fire watch, scaffolds, forklifts, excavation, ladders, confined space entry, respiratory protection, OSHA-PSM (Process Safety Management), grounding, shoring and traffic control etc.
- (q) In the event of a work-related incident resulting in a Contractor employee injury or near miss, Contractors shall notify their Appointed Representative immediately.
- (r) Contractors shall provide the appointed representative with an initial report of incident, in writing, within 24 hours of the accident. Hard copy or electronic formats are acceptable.

- (s) Contractors shall provide a completed accident investigation report within three (3) working days of the incident. In the event, their investigation requires more time to investigate due to the complexity of the incident, Contractors shall communicate to the appointed Representative in writing including intimation to higher authorities of Lead ULB. This communication shall include the issues causing the delay and an estimated investigation completion date.
- (t) All first aid injuries shall be documented for record keeping purposes. In the event a first aid case develops into a Contractor employee injury, accident reporting and investigation procedure be initiated as outlined previously.
- (u) In order to maintain a safe and healthy work environment in emergency situations, Concessionaire has developed this emergency action plan to help safeguard Contractor employees while working on ULB Sites. All Contractor employees will be trained in the use of this plan and informed of their role in implementing it during their required safety orientation training. This policy is mandatory and must be strictly followed by all Contractors and their personnel while working on Sites.
- (v) When notified of an emergency evacuation (an audible alarm/verbal announcement will be used by Concessionaire to alert employees of an evacuation), Contractors must immediately evacuate their personnel from the Project Site, perform a head count and report missing personnel to concerned in-charge of the facility and take appropriate steps for investigation. When evacuating any building, structure or job site, employees should utilize the nearest exit to them. Personnel will remain at the designated site until an all-clear is announced or further evacuation steps are ordered.
- (w) Concessionaire shall comply with the latest revision Safety Rules & Procedures Permit. Contractors shall provide adequate fire protection equipment in each of their storage areas, offices and other temporary structures.
- (x) Concessionaire is responsible for orienting employees on the specific safety rules that must be followed by all persons working on Project Facilities. Other personal protective equipment (PPE) is also required in accordance with the appropriate safety standards and equipment as set by the manufacture's specifications. A list of the minimum personal protective requirements is as follows:
 - (i) The Contractor shall be responsible for providing and ensuring the use of required personal protective equipment for its employees.
 - (ii) Approved hard hats, shall be worn at all times while on the Site. It is required that each Contractor use an American National Standards Institute (ANSI) approved hardhat.
 - (iii) Safety glasses, which meet applicable ANSI standards, are required at all times while on the Site and should include

approved side shields. Only clear safety glasses are allowed to be used inside buildings or enclosed structures. Shaded goggles or hoods may be used while welding or cutting requires. Prescription safety glasses with self-tinting capabilities may be worn on-site.

- (iv) PPE shall be worn while travelling from the security gate, while travelling through the plants, working outside or otherwise engaged in work at each station, except in areas specifically designated as PPE not required.
 - (v) Contractor's vendors and visitors will be required to meet these same standards.
- (y) Good housekeeping affects safety, quality and production. It is the responsibility of Concessionaire onsite to keep their work area clean. Concessionaire is responsible for trash and debris that is generated by their work. Trash and debris must be collected and placed in proper containers on a daily basis.
- (z) Trash shall not be randomly thrown off a floor or through openings in the floor. Trash chutes, trash boxes, or other approved means such as barricading and/or flagging shall be utilized.
- (aa) Safety requirement mentioned in the Environment Impact Assessment (EIA) Report shall be compliance.

14. Environmental and Social Standards

14.1 Environmental Standards

- (a) The Concessionaire shall follow all the environmental standards for processing and Scientific Landfill facility as per Municipal Solid Wastes (Management and Handling) Rules, 2016 and any amendments/ revision thereto till date. It shall also follow all those additional or stricter standards as defined in the Background Documents.
- (b) The Concessionaire shall meet the standards during the construction period as per the instruction or suggestion by the Independent Engineer from time to time based on the environmental standards applicable.
- (c) The Concessionaire shall meet the standards during the operation period as per the instruction or suggestion by the Appointed Agency/ Project Monitoring Agency from time to time as per the design requirement and applicable standards.
- (d) The Concessionaire shall form the Environmental Monitoring Cell (EMC) to review the effectiveness of environment management system during construction and operation phase of the Project Facilities. Independent Engineer shall be the Governing Participating ULBs over the EMC functions.
- (e) EMC shall follow the schedule for monitoring as given in Background Documents and shall meet regularly to review the effectiveness of the EMP (Environmental Monitoring Programme) implementation. The data collected on various EMP measures would be reviewed by EMC and if needed corrective action will be formulated for implementation purposes.
- (f) The Concessionaire through EMC shall co-ordinate all monitoring programmes at Project Site and data thus generated shall be regularly furnished to the state regulatory agencies. The Environmental Audit reports and review shall be prepared for the entire year of operations and shall be regularly submitted to regulatory authorities.
- (g) The Concessionaire shall setup a well-equipped laboratory for monitoring and analysis of environmental parameters for air quality, meteorology, water, wastewater, noise, groundwater, etc based on the overall monitoring requirement as given in Background Documents.
- (h) The Concessionaire shall follow the QA/QC procedures for all laboratory services and strive to get the certified laboratory status from quality point of view such as

ISO 9000 and other similar standards. The overall goal should also be to acquire the status of certified and recognized laboratory under MOEF, Government of India. The Concessionaire shall strive to get ISO 14001 certification for the entire facility.

- (i) The Concessionaire shall follow the environmental issues with management action along with responsibilities as mentioned in the following table.

Environmental Issues	Management Action	Implementation Responsibilities
Project Location		
Tree Clearance	<ul style="list-style-type: none"> EMC will prepare a detailed Transplantation and Plantation plan and monitoring the implementation 	Concessionaire
Energy Conservation Plan	<ul style="list-style-type: none"> EMC will prepare a detailed Energy Conservation plan and monitoring the implementation 	Concessionaire
Loss of local fauna	<ul style="list-style-type: none"> EMC to create plan as per EIA report and implement the same 	Concessionaire
Loss of trees & vegetation in the Project area	<ul style="list-style-type: none"> EMC will prepare a detailed plantation plan and monitoring the implementation the Participating ULBs to closely oversee the work of trees and vegetation removal or plantation 	the Participating ULBs / Concessionaire
Increase in the water requirement for domestic purpose	<ul style="list-style-type: none"> EMC to monitor and prevent the excess water consumption 	Concessionaire
Stress on the surrounding marine ecosystem	<ul style="list-style-type: none"> EMC will plan the earth movement in consultation with the Concessionaire and see to it that the mitigation measures are implemented by the contractor/ operator 	Concessionaire
Change in land use pattern	<ul style="list-style-type: none"> Preparation the landscaping and greenery plan 	Concessionaire
Loss of any archeological / cultural /historic site	<ul style="list-style-type: none"> The operator of the facility will be planned to eliminate any odour or pollution 	Concessionaire

Processing/ Implementation		
Air Pollution	<ul style="list-style-type: none"> ▪ The EMC would look into the action of the operator on regular basis 	Concessionaire
High dust level	<ul style="list-style-type: none"> ▪ The EMC would look into the action of the contractor on a regular basis ▪ the Participating ULBs through its monitoring agency can receive a feedback and direct the agency for corrective measures 	the Participating ULBs /Concessionaire
Sediment runoff	<ul style="list-style-type: none"> ▪ EMC will plan the excavation, etc in consultation with the contractor and see to it that the mitigation measures are implemented by the contractor 	Concessionaire
Safety of workers	<ul style="list-style-type: none"> ▪ EMC to monitor and ensure the security and safety of workers 	Concessionaire
Interference with the natural drainage of the local ecosystem	<ul style="list-style-type: none"> ▪ Possible changes in natural drainage system to be avoided ▪ Lead ULB to closely oversee any changes in natural drainage system 	the Participating ULBs /Concessionaire
Flooding in other low-lying areas	<ul style="list-style-type: none"> ▪ EMC to monitor the construction and layout plan 	Concessionaire
Noise Pollution	<ul style="list-style-type: none"> ▪ Make provision in the contract to limit the noise pollution ▪ EMC will monitor noise ▪ Low noise vehicles with proper maintenance and monitoring 	Concessionaire
Disposal of excavated material	<ul style="list-style-type: none"> ▪ EMC to monitor the quantity and disposal 	Concessionaire
Safety hazard during the erection and operation	<ul style="list-style-type: none"> ▪ Regular monitoring and reporting 	Concessionaire
Operation Phase		
Air pollution due to the MSW vehicles and processing plants	<ul style="list-style-type: none"> ▪ EMC to ensure the air pollution of facility meets the norms ▪ Regular noise monitoring and reporting 	Concessionaire
Increase in power consumption	<ul style="list-style-type: none"> ▪ EMC will prepare a detailed Energy Conservation plan and monitor the implementation with the operator of the facility 	Concessionaire

High air pollution along the various transport corridors leading to and away from the site	<ul style="list-style-type: none"> ▪ EMC will monitor pollution and inspection log of vehicles 	Concessionaire
Noise pollution due to the operational activities	<ul style="list-style-type: none"> ▪ EMC to monitor noise and give feedback for control 	Concessionaire
Noise pollution along the various transport corridors leading to and away from the landfill site	<ul style="list-style-type: none"> ▪ EMC to monitor the noise pollution 	Concessionaire
Solid waste management issues	<ul style="list-style-type: none"> ▪ EMC to monitor and report 	Concessionaire
Sewage/leachate treatment issues	<ul style="list-style-type: none"> ▪ to maintain the STP as per the standard prescribed norms. ▪ EMC to monitor the same 	Concessionaire
Periphery Development	<ul style="list-style-type: none"> ▪ the Participating ULBs initiatives to be communicated to Concessionaire for its implementation 	Concessionaire

14.2 Social Standards

- (a) The Concessionaire shall provide a separate clinic at the Project Site where people can approach for primary health advice
- (b) The Concessionaire shall provide community and training center within the Project Site wherein multiple employments related capacity building and training activities shall be undertaken and necessary skills shall be imparted.
- (c) The Concessionaire shall provide an employment opportunity based on training and skill assessment. The secondary employment and/or business opportunity shall be created through the facility operator or support services.
- (d) The Concessionaire shall provide training and awareness to labors at plant, which should be a continuous activity.
- (e) The Concessionaire shall setup MSW management and innovation center for everyone which will be useful to locals, students and others who would wish to work in this field.
- (f) The Concessionaire shall give prior importance to nearby population to get involved in the activities of horticulture, garden maintenance, energy management, etc at the Project Facilities.

15. Waste Reports

Refer Clause 5.7

15.1 Report for Processing Plant

15.1.1 Daily Report for other details of the Processing Facility

Date:			
Downtime of weighbridges (hrs):			
Downtime of MRF (hrs):			
Downtime of Processing Plant module (hrs):		Description of the module:	
Total quantity of MSW received:		100%	___ (tonnes)
Quantity of recyclable MSW recovered:		___%	___ (tonnes)
Quantity of biodegradable and combustible MSW:		___%	___ (tonnes)
Quantity of waste landfilled	Inert waste:		___% ___ (tonnes)
	Process remnants:		___% ___ (tonnes)
	Total (b):		___% ___ (tonnes)
Quantity of unprocessed MSW at the Processing Plant			___ (tonnes)
Quantity of MSW rejected:	___ (tonnes)	Reasons for the rejection:	
Amount of energy sold to APXPDCL		----- MU	

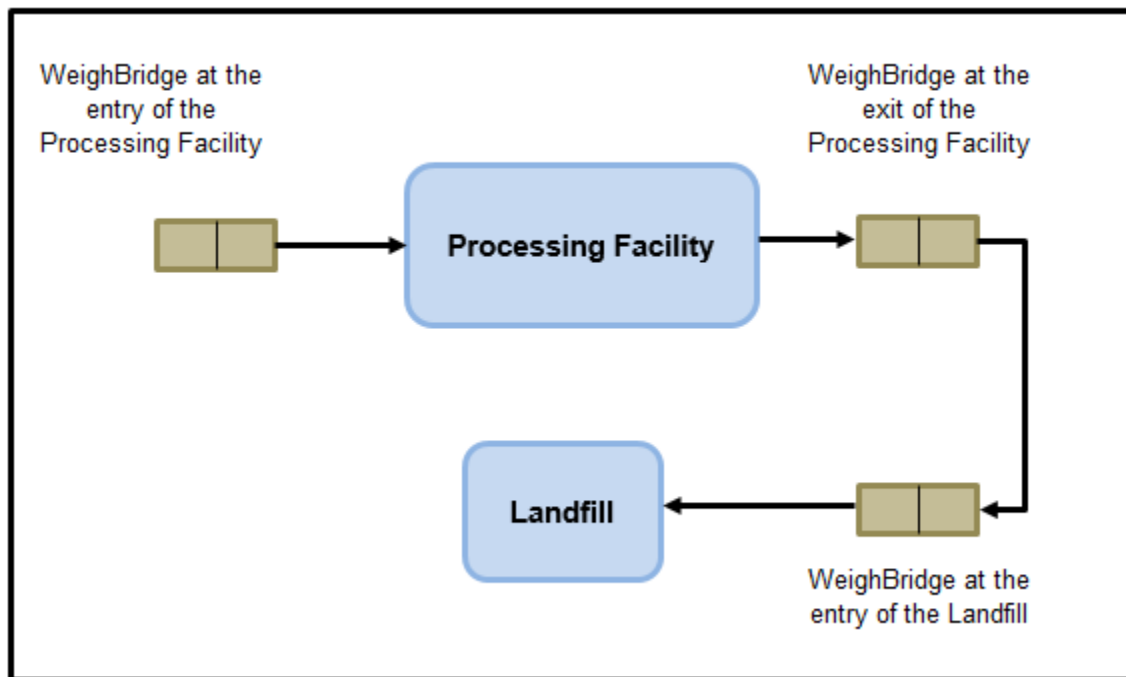
15.1.2 Monthly Report

Date from:		Date to:	
Total downtime of weighbridges (no of shifts):			
Total downtime of MRF (no of shifts):			
Downtime of each Processing Plant module (no of shifts):	S. No.	Module Description	Downtime
Total quantity of MSW received:		100%	___ (tonnes)
Total quantity of recyclable MSW recovered:		___%	___ (tonnes)
Total quantity of biodegradable and combustible MSW:		___%	___ (tonnes)
Total quantity of waste landfilled	Inert waste:	___%	___ (tonnes)
	Process remnants:	___%	___ (tonnes)
	Total:	___%	___ (tonnes)
Total quantity of unprocessed MSW at the Processing Plant			___ (tonnes)
Monthly Average quantity of MSW delivered at the Processing Plant			___ (tonnes)
Total quantity of MSW rejected:	___ (tonnes)	Reasons for the rejection:	
Note on compliance to applicable standards			

15.2 Consolidated Monthly Report

Monthly Waste Report		
Date from:	Date to:	
Total quantity of MSW received at the Processing Facility	100%	___ (tonnes)
Total quantity of waste landfilled	___%	___ (tonnes)
Total energy sold to APXPDCL		----- MU

15.3 Schematic Drawing of Weigh Bridges Locations



16. Scope of Work of Independent Engineer

Refer Clause 20.1

16.1 Role of the Independent Engineer

- (a) Review of Project drawings and milestones submitted by the Concessionaire in conformance with Schedule 5 and 6.
- (b) Review, inspection and monitoring of construction works as set out in Schedule 9.
- (c) Conducting tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Schedule 8.
- (d) Review, inspection and monitoring of operations and maintenance as set out in Schedule 10.
- (e) Determining as required under the Agreement the cost of any works or services or their reasonableness
- (f) Determining as required under the Agreement, the period or any extension thereof, for performing any duty or obligations
- (g) Assisting the parties in case of any dispute
- (h) Undertaking all other duties and functions in accordance with the Agreement
- (i) The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- (j) During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to the Participating ULBs and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- (k) The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- (l) The Independent Engineer shall undertake a detailed review of the Construction Milestones defined and submitted by the Concessionaire and send its comments/

observations to the Participating ULBs and the Concessionaire within 15 days of receipt.

- (m) Upon reference by the Participating ULBs, the Independent Engineer shall review and comment on the contracts entered into by the Concessionaire for the purpose of execution of this Agreement.
- (n) The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Participating ULBs and the Concessionaire within 7 days of receipt.
- (o) The Independent Engineer shall inspect Project Facilities **twice** in a month, preferably after receipt of the monthly progress report from the Concessionaire, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the Scope of the Project and the Specifications and Standards.
- (p) The Independent Engineer may inspect the Project Facilities more than 2 times in a month if any lapses, defects or deficiencies require such inspections.
- (q) For determining that the construction conforms to construction requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance.
- (r) In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 10 (ten) days the steps proposed to be taken to expedite progress, and the period within which the Project construction would be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Participating ULBs and the Concessionaire forthwith.
- (s) The Monitoring Agency during operation period shall review the monthly report furnished by the Concessionaire and shall submit its comments on the same to the Participating ULBs and to the Concessionaire within 7 days of the receipt of the report.
- (t) The Monitoring Agency during operation period shall inspect the Project Facilities and processes at least twice in a month and carry out tests as might be deemed necessary and furnish the observations of the inspection to the Concessionaire and to the Participating ULBs within 7 days of such Inspection.

- (u) The Monitoring Agency during operation period is authorized to conduct surprise checks on the Project Facilities and processes to ensure that they comply with the Project specifications.
- (v) The Monitoring Agency during operation period shall report the results of surprise checks to the Participating ULBs within 7 days of such checks.
- (w) The Monitoring Agency during operation period is authorized to require the Concessionaire to carry out such tests/ arrange to carry out such tests as it deems necessary and present the result and inferences of the same to the Participating ULBs.
- (x) In case any deficiency or maintenance requirement is observed by the Monitoring Agency during operation period during the inspection or tests, it shall report the same to the Participating ULBs along with the possible impact on the Project Facilities and the cost of rectification of the same.
- (y) The Monitoring Agency during operation period shall inspect the Project Facilities once the Concessionaire rectifies the defect and report the results of such inspection to the Participating ULBs.
- (z) The Monitoring Agency during operation period shall audit and certify the weighbridges located at the Processing Facility at least once a month and submit the results of such review to the Participating ULBs and the Concessionaire.
- (aa) The Monitoring Agency during operation period shall audit the MSW quantity supply data recorded at Processing Facility and Landfill site to ensure that the data reported by the Concessionaire is accurate and that the provisions of this agreement are conformed with. The Monitoring Agency during operation period is authorized to conduct surprise checks and tests for this purpose.

17. Vesting Certificate

- 1 The Commissioner, Lead ULB (the “**Lead ULB**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Participating ULBs and (the “**Concessionaire**”) for Waste to Energy Processing Facility in Andhra Pradesh on design, build, finance, operate and transfer (“DBFOT”) basis.
- 2 The Lead ULB hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 29.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Lead ULB shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Lead ULB, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20..... at [Place].

AGREED, ACCEPTED AND SIGNED
For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of the Lead ULB by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

18. Substitution Agreement

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

1. The [Lead ULB name], established under the _____ Act 1974, represented by its Municipal Commissioner and having its principal offices at [Address of Lead ULB] (hereinafter referred to as the “Lead ULB” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. LIMITED, a company incorporated under the provisions of the Companies Act, 1956/ 2013 and having its registered office at, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3.name and particulars of Lenders’ Representative and having its registered office at, acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- A. The Lead ULB has entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) for the Project on design, build, finance, operate and transfer basis (DBFOT), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Lenders have requested the Lead ULB to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Lead ULB has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

18.1 Definitions and Interpretation

18.1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of any breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956/ 2013, selected by the Lenders’ Representative, on behalf of Lenders, and proposed to the Lead ULB for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Sub-clause 18.3.2(a) of Clause 18.3.2; and

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually.

18.1.2 Interpretation

- (a) References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Lenders.
- (b) References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- (c) The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- (d) The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

18.2 Assignment

18.2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

18.3 Substitution of the Concessionaire

18.3.1 Rights of substitution

- (a) Pursuant to the rights, title and interest assigned under Clause 18.2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- (b) The Lead ULB hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

18.3.2 Substitution by the Lender upon occurrence of Financial Default

- (a) Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Lead ULB for its information and record. A Notice of Financial Default under this Clause 18.3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- (b) Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- (c) At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Lead ULB to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 27 of the Concession Agreement, and upon receipt of such notice, the Lead ULB shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a

Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Lead ULB may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Lead ULB may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Lead ULB expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

18.3.3 Substitution by the Lead ULB upon occurrence of Concessionaire Event of Default

- (a) Upon occurrence of a Concessionaire Event of Default, the Lead ULB shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- (b) In the event that the Lenders' Representative makes a representation to the Lead ULB within the period of 15 (fifteen) days specified in Sub-clause (a) of Clause 18.3.3, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Lead ULB shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Lead ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

18.3.4 Procedure for substitution

- (a) The Lead ULB and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Lead ULB under Sub-clause 18.3.3(b) of Clause 18.3.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Lead ULB under the Concession Agreement and towards the Lenders under the Financing Agreements.

- (b) To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Lead ULB for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Lead ULBs that all or any of such criteria may be waived in the interest of the Project, and if the Lead ULBs determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- (c) Upon selection of a Nominated Company, the Lenders' Representative shall request the Lead ULBs to:
 - (i) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (ii) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (iii) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- (d) If the Lead ULBs has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Lead ULBs, the Nominated Company shall be deemed to have been accepted. The Lead ULBs thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Lead ULBs, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 18.3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

18.3.5 Selection to be binding

The decision of the Lenders' Representative and the Lead ULBs in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Lead ULBs taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Lead ULBs and the

Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Lead ULBs or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

18.4 Project Agreements

18.4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

18.5 Termination of Concession Agreement

18.5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Lead ULBs to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Lead ULBs shall undertake Termination under and in accordance with the provisions of Article 28 of the Concession Agreement.

18.5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Lead ULBs is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Sub-clause 18.3.3(b) of Clause 18.3.3, the Lead ULBs may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

18.5.3 Realisation of Debt Due

The Lead ULBs and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim in accordance with the provisions of the Concession Agreement.

18.6 Duration of the Agreement

18.6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements.

18.7 Indemnity

18.7.1 General indemnity

- (a) The Concessionaire will indemnify, defend and hold the Participating ULBs and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- (b) The Participating ULBs will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Participating ULBs to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Participating ULBs, its officers, servants and agents.
- (c) The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

18.7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 18.7.1 or in respect of which it is entitled to

reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

18.8 Dispute Resolution

18.8.1 Dispute resolution

- (a) Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee of the Lead ULB, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- (b) The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Name of the Place] and the language of arbitration shall be English.

18.9 Miscellaneous Provisions

18.9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [Name of the Place] shall have jurisdiction over all matters arising out of or relating to this Agreement.

18.9.2 Waiver of sovereign immunity

The Participating ULBs unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty

or otherwise) from such proceedings shall be claimed by or on behalf of the Participating ULBs with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

18.9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

18.9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly Authorized Representatives of the Parties.

18.9.5 Waiver

- (a) Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly Authorized Representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

18.9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

18.9.7 Survival

(a) Termination of this Agreement:

- (i) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (ii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

- (b) All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

18.9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 18.8 of this Agreement or otherwise.

18.9.9 Successors and assigns

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

18.9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day,

or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

18.9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

18.9.12 Authorized Representatives

Each of the Parties shall by notice in writing designate their respective Authorized Representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such Authorized Representative by similar notice.

18.9.13 Original Document

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ULB1 by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED SEALED AND DELIVERED

For and on behalf of ULB2 by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED SEALED AND DELIVERED

For and on behalf of ULB3 by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED SEALED AND DELIVERED

For and on behalf of ULB4 by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[Insert Additional ULBs if applicable]

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

- 1.
- 2.

19. Land Lease Agreement

This LEASE AGREEMENT made on this ___ day of _____ in the year [●].

BETWEEN

[Name of the Lead ULB], established under the _____ Act, 1974 (Government of Andhra Pradesh) and having its registered office at [Address of the ULB] acting through the Commissioner (hereinafter referred to as “**Lead ULB**” or “**Lessor**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the ONE PART

AND

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

The Participating ULBs and Concessionaire are hereinafter referred to individually as the “Party” and collectively as the “Parties”

- A. The [ULB Name] comprises of XX urban local bodies including XX Municipal Corporations and XX Municipal Councils, covering a total area of XXXX sq.km and an estimated population of XXXX lakhs (in the year 2008).
- B. In order to achieve economies of scale and for better coordination and implementation of the MSW Services, the Participating ULBs have authorized the [Lead ULB] to develop the Project on their behalf, for enabling construction of Waste to Energy Processing Facility, processing of MSW and disposal of MSW at Scientific Landfill (“**Project**”).
- C. For this purpose Lead ULB has entered into a Concession Agreement dated [●] with the Concessionaire (“**Concession Agreement**”), on the same date as this Lease Agreement, for **25 years** under which Lead ULB has appointed the Concessionaire to perform, execute and implement the Project under and in accordance with the terms and provisions of Concession Agreement.
- D. For due implementation of the Project and to discharge its obligations under the Concession Agreement, Lead ULB is handing over to the Lessee (the “Concessionaire” under the Concession Agreement), by way of this Land Lease Agreement (“**Agreement**”), the Demised Premises (more particularly delineated in **Schedule A** hereto and shown in the site map attached thereto) for the purposes of performing, executing and implementing the Project including constructing, operating and maintaining the integrated MSW Processing Facility and Scientific Landfill, on the Demised Premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. This Agreement shall be co-terminus with the Concession Agreement and is to be read, for any interpretation; together with the provisions of the Concession Agreement.
2. The terms that are used but not defined in this Agreement shall have the same meaning as given to them in the Concession Agreement.
3. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the Lease Payment (“**Lease Payment**”) stipulated in Clause 4 below; the Lessor hereby demises to the Lessee, all the land (together with any physical structures existing thereon) which is described, delineated and shown in the Schedule A hereto (the "**Demised Premises**"), to hold the said Demised Premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof. The Lessor be entitled to handover possession of the Demised Premises in parts. The Term of this Agreement shall be co-terminus with the Concession Agreement. The Lessor hereby agrees and authorizes the construction, operation and maintenance of each of the Project Facilities on the Demised Premises in accordance with the terms of the Concession Agreement.
4. In consideration of the handover of the Demised Premises under this Agreement. The Lessor shall, from the COD, receive a Lease Payment payable per annum as per the following Table on or before the 10th day of the first month in each Accounting year. The Lease Payment per acre for the Demised Premises shall be as per Background Documents. All taxes, including the lease tax, in relation of the Lease of the Demised Premises shall be borne and paid by the Lessee.

Size of the land parcel leased out for setting up WtE Plant (in acres):

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	
Annual Lease payment (in INR/acre)																										
Annual Lease Payment (in INR)																										

5. The Demised Premises are being vested with the Lessee, under this Agreement, free from any Encumbrances (other than the existing physical structures thereon which has been inspected by the Lessee and agreed to be taken over in accordance with the terms of the Concession Agreement),

whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances under the Demised Premises which materially adversely affect its rights in relation to the Demised Premises the Project, it shall notify the Lessor, which shall, within twenty one (21) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within twenty one (21) days from the notice thereof, the Lessee may remove or cause to be removed such encumbrance and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.

6. The Demised Premises are being vested with the Lessee, under this Agreement only for the purposes of the Project including for the purposes of developing, establishing, designing, constructing, operating and maintaining the Plant, which the Lessor is desirous of being constructed, operated and maintained on the Demised Premises for the purposes of enabling the processing and disposal of MSW in accordance with the Concession Agreement. The Lessor hereby authorizes and consents to the receipt of consignments of Municipal Solid Waste, the storage and processing of Municipal Solid Waste to energy inside the Demised Premises and disposal of MSW at Scientific Landfill outside the Demised Premises.
7. The Lessor hereby authorizes the Lessee, to construct, erect, own, operate and maintain any superstructures, facility or any movable or immovable structures comprising each of the Project Facilities on the Demised Premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the Demised Premises as of the date of this Agreement. The Lessee hereby agrees that the construction, operations and maintenance of the each Project Facility at the Demised Premises and the receipt, storage and processing of Municipal Waste at the Demised Premises, being undertaken pursuant to the Concession Agreement granted by it and for the purposes of enabling the Participating ULBs to discharge their functions of managing, processing and disposing Municipal Waste.
8. The Lessee shall have the right to, after taking prior permission of the Lessor, vest with the Lenders the power to take over the control, possession and all rights and interests in relation to the Demised Premises by appointing a person, the Nominated Company, to replace the Lessee and undertake the construction, operation and maintenance of the Plant upon the occurrence of an Event of Default by the Lessee, as the case may be, under any of the Financing Agreements for the Project. The Lessor shall then assign / novate this Agreement in favour of the Nominated Company, which shall constitute an agreement between the Nominated Company and the Lessor on the terms and conditions of this Agreement as existing at the time of such assignment / novation.
9. The Lessor hereby authorises the Lessee to create any Encumbrance over the Project Facilities constructed on the Demised Premises (excepting the land) and this Agreement in favour of the Lenders for enabling financing of the construction, operation and maintenance of the Project. The Lessor agrees that it shall facilitate such agreement as may be required by the Lenders to enable financing of the Project and creation of the Encumbrance required by the Lenders.

- 10 Without prejudice to the terms of this Agreement, the Lessor shall be governed by the terms of any agreement that the Lenders may have entered into with the Lessor in respect of the Encumbrance over the Project Facilities (other than the land constituting the Site which shall not be mortgaged), any assets of the Project and this Agreement, created in favour of the Lenders. Only the lease rights for the land can be transferred to the Lenders.
11. The Lessor hereby covenants and assures the Lessee that:
- a) all the land comprising the Site is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Plant and the Project Facilities;
 - b) the Site is free from any encroachment or encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any Participating ULBs, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto;
 - c) Lessor is the lawful owner of the lands constituting the Demised Premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the Demised Premises for the Project;
 - d) subject to Clause 4, it shall not increase the lease payment due and payable by the Lessee under the provisions of this Agreement;
 - e) it shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demised Premises and all rights in relation thereto, including the creation of security interest in favour of the Lenders in accordance with the provisions of the Concession Agreement;
 - f) subject to terms of the Concession Agreement, it shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the MSW Processing Plant; (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use; by the Lessee of the Demised Premises and the Plant;
 - g) It shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Agreements;
 - h) there are no litigation, claim, demand or any proceedings (whether administrative, legal or quasi-judicial) pending before any Participating ULBs in respect of the Demised Premises or its use for the purposes of managing, processing and disposing MSW; and

- i) the Lessee shall have complete, lawful and uninterrupted, possession, control and use of the Demised Premises.
12. The Lessee hereby covenants with the Lessor as follow:
- a) That it shall implement the Project in accordance with the Concession Agreement; and
 - b) that it shall observe and perform all terms; covenants, conditions and stipulations of this Agreement.
13. The Lessor has lawful title, possession and control of all the lands constituting the Site and has the requisite right and Participating ULBs to lease the same to Lessee for the Term for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful Vacant Possession, enjoyment/ occupation and use of the Demised Premises throughout the Concession Period, without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person claiming through under or in trust for Lessor or from any third person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Person claiming right, title or interest to or in the Demised Premises or any part thereof or challenging the validity of the usage of the Demised Premises for the Project or challenging the validity of this Agreement, as also against any actions, proceedings, damages, losses and expenses caused to Lessee as a result or in consequence of any such claims or demands as aforesaid.
- 14.(a) Subject to Sub-Clause(b) and(c) below, no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part to, by any Party without prior written consent of the other Party and in the event of any assignment the assignee shall assume the duties and liabilities of the assignor
- (b) It is hereby specifically agreed that the Lessee shall, in the event of forming a limited company either as subsidiary company or jointly along with any other company or otherwise, be at liberty to assign and transfer the Plant, the Demised Premises and this Agreement or the rights and benefits hereof or duties hereunder to such newly formed limited company or any of its holding company for the time being and not in favour of such subsidiary company of the Lessee. The Lessee, shall; however, in such event obtain formal consent from the Lessor, which consent shall not be withheld by Lessor. Any assignment by the Lessee shall be subject to the condition that the assignee shall assume the duties and liabilities of the Lessee.
 - (c) The Lessor hereby agrees that the Lessee shall not require any prior approval of the Lessor for creating any Encumbrance, right, title, or interest over the Demised Premises (excepting land) and the Project Facilities under his ownership in accordance with the Concession Agreement in favour of the Lenders.

- (d) Lessor confirms that the Financing Documents may include suitable rights in favour of the Lenders for taking over the Demised Premises (excepting land) and the Plant for management, in enforcement of their security upon the happening of an event of default thereunder the Concession Agreement on the part of the Lessee.
15. The Lessor hereby assures and represents to the Lessee that the vesting of the Demised Premises under this Agreement shall be irrevocable for as long as the Concession Agreement remains in force and the Lessor shall not Terminate or seek to Terminate this Agreement except upon the expiry or early Termination of the Concession Agreement. The Parties hereby agree that on the expiry or Termination of the Concession Agreement, the Demised Premises shall be handed back to the Lessor in accordance with the provisions of the Concession Agreement and that this Agreement within 48 hours of termination or it shall be deemed to have been handed over.
16. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration in accordance with Article 36 of the Concession Agreement as per provisions of the Arbitration and Conciliation Act; 1996. The governing law of the arbitration shall be Indian law. The Lessor hereby recognizes that this is a commercial act being undertaken by the Lessor and that it hereby unconditionally and irrevocably waives any right of immunity, sovereign or otherwise from legal proceedings that may be initiated to enforce any provisions of this Agreement.

IN THE WITNESS WHEREOF the Parties have affixed therein and sealed to this Lease Agreement the day and year first hereinabove written: . .

SIGNED; SEALED AND DELIVERED
IN THE NAME AND ON BEHALF OF
THE LESSOR THROUGH:

SIGNED; SEALED AND DELIVERED
IN THE NAME AND ON BEHALF OF
The LESSEE THROUGH:

AUTHORISED SIGNATORY

AUTHORISED SIGNATORY

IN PRESENCE OF:

20. Assured Quantity of MSW from Participating ULBs

Assured MSW Quantity of each Participating ULB during 25 year period of Operations										
ULB Name	GCV (Kcal/kg)	Year 1	Year 2	Year 3	Year 4	Year 5	...	...	...	Year 25
ULB1	GCV ₁	A ₁	A ₂	A ₃	A ₄	A ₅	..	...	...	A ₂₅
ULB2	GCV ₂	B ₁	B ₂	B ₃	B ₄	B ₅	..	...	...	B ₂₅
ULB3	GCV ₃	C ₁	C ₂	C ₃	C ₄	C ₅	..	...	...	C ₂₅
ULB4	GCV ₄	D ₁	D ₂	D ₃	D ₄	D ₅	..	...	...	D ₂₅
Total Assured Quantity of MSW for the Cluster		T ₁ = A ₁ +B ₁ + C ₁ + D ₁	T ₂ = A ₂ +B ₂ +C ₂ + D ₂	...	...	...	...	...	...	T ₂₅ = A ₂₅ +B ₂₅ + C ₂₅ +D ₂₅
Obligated Quantity for the Cluster (Q _{ob})		100% * (A ₁ +B ₁ +C ₁ + D ₁)								

[Insert rows for additional ULBs]