

**DRAFT CONCESSION AGREEMENT**

**For**

**Municipal Solid Waste Management (Processing and Disposal) in XXX ULBs on a  
Decentralized Based Approach in the State of Punjab under DBOT**

**BETWEEN**

-----**(Name of ULB)**

**AND**

-----**(Selected Bidder)**

**AND**

**Department of Local Government, Punjab**

-

September, 2017

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# CONCESSION AGREEMENT

(For Municipal Solid Waste Management)

THIS AGREEMENT is entered into on this -----day of -----2017 at -----  
by and between:

1) **Municipal Corporation/Urban Local Body/Municipal Council**-----, a statutory body constituted under the Punjab Municipal Corporation Act, 1976, represented by having its office at-----, (hereafter referred as Concessioneing Authority” which expression shall, unless excluded by or repugnant to the context or meaning thereof, mean and include its administrators, successors and assigns); **OF THE FIRST PARTY;**

**AND**

2) -----Company/ Partnership Firm, incorporated/ registered under the -----, (VETTING IF NOT A COMPANY) having its registered office at -----, represented by its -----(Designation), -----(name) (hereinafter referred to as the “Concessionaire”, which expression shall, unless excluded by or repugnant to the context or meaning thereof, mean and include its administrators, successors and assigns) of **THE SECOND PARTY;** (Note: if the selected bidder is a single entity and not consortium)

**OR**

(In case of consortium)

3) -----Company Limited, a company exclusively incorporated under the Companies Act 2013 for implementation of the Project, also known as Special Purpose Vehicle (SPV), having its registered office at-----, represented by its (Designation) (name) (hereinafter referred as “Concessionaire”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of **THE SECOND PARTY;**

**AND**

4) Department of Local Government, Government of Punjab having its office at ----- represented by -----(hereinafter referred to as the “DoLG” or “Confirming Party” which expression shall mean and include its successors and assigns) **OF THE THIRD PARTY.**

The MC/Municipality/ULB, the DoLG and the Concessionaire are collectively referred to as the 'Parties' and severally as the 'Party' as the context requires.

**WHEREAS:**

**A. Background:** The Swachh Bharat Mission (SBM) emanates from the vision of the Government articulated in the address of The President of India in his address to the Joint Session of the Parliament on 9<sup>th</sup> June 2014 - *"We must not tolerate the indignity of homes without toilets and public spaces littered with garbage. For ensuring hygiene, waste management and sanitation across the nation, a "Swachh Bharat Mission" was launched. This will be our tribute to Mahatma Gandhi on his 150<sup>th</sup> birth anniversary to be celebrated in the year 2019"*. SBM is being implemented by the Ministry of Urban Development (MoUD) and the Ministry of Drinking Water and Sanitation (MoDWS) Government of India for urban and rural areas respectively. Further, the main objectives of the Mission are: Elimination of open defecation, Eradication of Manual Scavenging – Modern and Scientific Municipal Solid Waste Management, To effect behavioral change regarding healthy sanitation practices, Generate awareness about sanitation and its linkage with public health, Capacity Augmentation for ULBs and to create an enabling environment for private sector participation in CAPEX (Capital Expenditure) and OPEX (Operation and Maintenance Expenditure).

**B. Swachh Bharat Mission:** In line with SBM (Urban) vision, Government of Punjab (GoP) has launched the Swachh Bharat Mission with a goal of achieving clean and healthy sanitation practices by 2019 to provide quality hygienic services to the residents. As a part of SBM goals towards disposal of Municipal Solid Waste in modern & scientific methods, GoP intends to take up solid waste management in the ULBs as listed in the RFP, under Public-Private Partnership (PPP) Mode, that have low quantum of waste generation with appropriate technologies and methods for treatment, disposal and management of solid waste.

**C. Objectives:** In pursuance of the said objective, PMIDC a company established by the Government of Punjab under the Section 25 of Companies Act 2013, the State nodal agency for the purpose of SBM. The listed ULBs have authorized, through appropriate Resolutions, to undertake bid process for selection of the bidders to implement the Project. ULB shall be responsible for payment of processing fee, providing the site, monitoring and supervision of the implementation of the Project by the Selected Bidder as provided herein.

**D.** For the aforesaid purpose, accordingly, PMIDC has invited Request for Proposal (RFP), containing the terms and conditions for selection of the bidders and implementation of the project, from the competent and eligible parties having adequate technical experience and financial

capabilities. After due evaluation of the proposals (bids) received, the Second Party has been selected for award of the Project, and the Letter of Award (LOA) No.----- dated-----was issued containing the terms and conditions for entering into this Agreement for implementation of the Project. The Second Party having consented to the LOA, requested the First Party to enter into the Agreement. Following the issuance of the LOA, the Selected Bidder /Concessionaire as a pre-condition to the execution of this Agreement, has provided the Performance Security to the Concessioneing Authority. Simultaneously, the First and Second Parties entered into a Demarcated Land Lease Agreement respecting the Land proposed to be leased for the Project (Processing and Landfill Site). The Lease Agreement and this Agreement are coterminous.

**E.** The concessionaire is hereby required to enter into the Concession Agreement with the Concessioneing Authority and DoLG, being these presents to record the terms, conditions and covenants of the Concession.

**F.** The Selected Bidder has incorporated the Concessionaire under the Companies Act, 2013, as a Special Purpose Company (SPC), pursuant to the award of the Concession, to develop and implement the Project.

**G.** Now therefore, in consideration of the foregoing and respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## Article 1-Definitions and Interpretation

### 1.1 Definitions

The following terms/expressions beginning with capital letter, unless the content otherwise requires, shall have the meaning as defined hereunder. The terms/expressions not defined hereunder shall have the meaning as explained/described under the relevant provisions in this Agreement.

**“Abandonment”** means the total cessation of activity in the Project by the Concessionaire and of its obligations under the Agreement for a:

- i. continuous period of more than 15 (fifteen) days during the Construction Period, or
- ii. cumulative period of more than 45 (forty-five) days during the Construction Period
- iii. for a above timelines period prescribed in the Agreement during the Concession Period other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Concessioning Authority;

**“Access Road”** means the motorable approach road for access to the Site(s) from Public Road;

**“Acceptance of Concession”** shall have the meaning ascribed thereto;

**“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;

**“Act”** means the Environment (Protection) Act, 1986 (29 of 1986) as amended up-to-date;

**“Additional Cost”** shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law;

**“Agreement”** means this Agreement including its Appendices and Annexures.

**“Aerobic composting”** means a controlled process involving microbial decomposition of organic matter in the presence of oxygen;

**“Anaerobic digestion”** means a controlled process involving microbial degradation of organic matter in absence of oxygen;

**“Appointed Day”** means the date of signing of this Agreement by the Parties or the date of handing over the Project Site to the Concessionaire, whichever is later;

**“Arbitration Act”** shall mean the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;

**“Authority”** shall mean Urban Local Body ("ULB");

"**Authorization**" means the permission given by the Andhra Pradesh Pollution Control Board to the Operator of a solid waste management facility for processing and disposal of solid waste;

"**Base Tipping Fee(s)**" refers to the Tipping Fee(s) quoted by the Selected Bidder in its Financial Proposal, as set out in **Annexure 8 of RFP**;

"**Bidder**" means the Selected Bidder and the Third Party hereto;

"**Bio-degradable waste**" means any organic material that can be degraded by micro-organisms into simpler stable compounds;

"**Bio-methanation**" means a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich gas;

"**Book value**" of an asset is the value at which the asset is carried on a balance sheet and calculated by taking the cost of an asset minus the accumulated depreciation.

"**City**" means the municipal area under the ULB jurisdiction;

"**COD-P&D**" means the date on which the Project Engineer or expert issues the Processing & Disposal Facilities Completion Certificate, upon which the Concessionaire commences commercial operations of the processing facilities with respect to the MSW area;

"**Concessionaire**" shall mean the Selected Bidder which enters into this Concession Agreement in pursuance of the LOA issued to and accepted by it and the Second Party hereto;

"**Concession Agreement**" shall mean this agreement entered between the Authority and the Concessionaire pursuant to the LOA;

"**Concession Period**" is as defined herein

"**Combustible waste**" means non-biodegradable, non-recyclable, non-reusable, non hazardous solid waste having minimum calorific value exceeding 1500 Kcal/kg and excluding chlorinated materials like plastic, wood pulp, etc;

"**Compliance Date-P&D**" shall be the date on which Concessionaire and Concessing Authority fulfill their Conditions Precedent for P&D and upon which Concessionaire is authorized to commence the construction of the processing facilities;

"**Composting**" means a controlled process involving microbial degradation of organic matter;

"**Consortium**" shall mean the entities having submitted the RFP

"**Damages**" shall mean the damages payable by either Party to the other as set forth herein;

"**Deficiency of Service**" shall mean continuous shortcomings and failure to adhere with submitted design of construction of Processing and Disposal facility, shortcoming in machinery and manpower deployed and non-processing of MSW continuously for 3 days.

"**Disposal**" means final and safe disposal of post processed residual solid waste and inert street sweepings and silt from surface drains on land as specified in Schedule I of the SWM Rules, 2016



and also as per the MSWM Manual 2016 to prevent contamination of ground water, surface water, ambient air and attraction of animals or birds;

**"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 in relation to this Project;

**"Domestic hazardous waste"** means discarded paint drums, pesticide cans, CFL Bulbs, tube lights, expired medicines, broken mercury thermometers, used batteries, used needles and syringes and contaminated gauges, etc., generated at the household level;

**"Emergency"** shall mean conditions or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities;

**"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;

**"Engineered Sanitary Landfill Site"** or **"Sanitary Landfill Facility"** or **"Sanitary Landfill Site"** means the engineered sanitary landfill site to be developed, constructed and operated by the Concessionaire at one of the Site(s), in conformance with the Solid Waste Management Rules 2016 or any revision thereof, for disposal of Residual Inert Matter and Rejected Waste in accordance with the Scope of Works;

**"Estimated Total Project Cost"** shall be as per the requested information at **Annexure 8-A of RFP**;

**"Excluded Waste"** means waste material of the nature that the Project Facilities are not designed or authorised to receive, manage, process and dispose which includes Hazardous Waste, Bio-Medical Waste Dead Remains and radio-active waste;

**"Facility"** means MSW Waste Management Facility wherein the solid waste management processes namely segregation, recovery, storage, collection, recycling, processing, treatment or safe disposal are carried out;

**"Fine"** means penalty imposed on waste generators or operators of waste processing and disposal facilities for non-compliance of the directions contained in these rules;

**"Form"** means forms appended to the Solid Waste Management Rules, 2016

**"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of

facilities similar to the Project Facilities to be constructed, operated and maintained pursuant to the Project;

**“Government Agency” “Authority (ies)”** shall mean GoI, GoP, DLG, ULBs or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**"Handling"** includes all activities relating to sorting, segregation, material recovery, collection, secondary storage, shredding, baling crushing, loading, unloading, transportation, processing and disposal of solid waste;

**"Inerts"** means wastes which are not-biodegradable, recyclable or combustible street sweeping or dust and silt removed from surface drains;

**“Landfilling”** means the disposal of the Residual Inert Matter and Rejected Wastes at the Engineered Sanitary Landfill Site in accordance with the terms of this Agreement including MSW Rules;

**“Land Lease Agreement(s)”** shall include Project Site Lease Deed (s)

**"Leachate"** means the liquid that seeps through solid waste or other medium and has extracts of dissolved or suspended material from it;

**“Lenders”** shall mean any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing any part of the Project as evidenced in Financing Documents;

**"Letter of Award (LOA)"** means the letter issued by the authority to the Selected Bidder containing the terms and conditions in conformity with the RFP for entering into this Agreement;

**"Letter of Intent" or "LoI"** means the letter issued by the authority to the shortlisted Bidder inviting their acceptance for undertaking and executing the Project in conformity with the terms and conditions as set forth in the Agreement;

**"Liquidated Damages"** shall mean any loss/losses caused or sustained by ULB, due to non performance of any of its obligations by the Concessionaire or performance or carrying out of any act expressly or impliedly prohibited by the Authority as per the terms and conditions of the Agreement;

**"Local Authority"** shall mean "ULB".

**"Municipal Authority"** shall mean Urban Local Body ("ULB").

**“MSW” or “Municipal Solid Waste” or “Solid Waste”** means and includes solid or semi solid domestic waste, sanitary waste, commercial waste, institutional waste, catering & marketing waste

and other non residential waste, street sweepings, silt-removed or collected from the surface drains, horticulture waste, agriculture & dairy waste, treated bio-medical waste, generated by households, public services, agricultural activities, commercial establishments and industries located within the jurisdiction of ULB, and shall include Organic Waste;

**“MSW Rules”** means the Solid Waste Management Rules, 2016 framed by the Government of India in the Ministry of Environment Forest and Climate Change and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time;

**"Non-biodegradable waste"** means any waste that cannot be degraded by micro-organisms into simpler stable compounds;

**"Operation & Maintenance"** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of the Agreement;

**"Operation & Maintenance Period"** means the period commencing from the date of commencement of the operation of the process and ending on the last day of the Concession Period unless terminated earlier;

**"Operator of a Facility"** means primarily the Concessionaire or his authorized agency to undertake all or any operations with the prior approval of the Authority at its discretion. In such case the concessionaire shall continue to be responsible to discharge his obligations as per the Agreement

**"Parties/Party"** means the parties to the Agreement collectively and "Party" shall mean any of the parties to the Agreement individually;

**"Performance Security"** means the guarantee submitted by the Concessionaire for due performance of its obligations by the Concessionaire in accordance with the Agreement.

**“Project”** means all the activities envisaged to be carried out by the Concessionaire in accordance with the Agreement;

**“Project Site”** means Processing and Disposal site in Annexure 5 of Concession Agreement where the Concessionaire shall carry out the operations in accordance with the Agreement;

**“Processing”** means any scientific processes by which segregated solid waste is handled for the purpose of reuse, recycling or transformation into new products.

**“Processing Facility(ies)”** shall mean the infrastructure to be created for processing of MSW and its final disposal at Sanitary Landfill Site, as detailed in **Annexure 2**;

**“Processing & Disposal Facilities”** shall mean the Processing Facilities and Sanitary Landfill Facility;

**“Processing and Disposal Facilities Completion Certificate”** mean the certificate issued by the Project Engineer or Expert on completion of construction of Processing Facilities and Sanitary Landfill Facility in the form and manner prescribed by the authority;

**“Processing and Disposal Facilities Site”** shall mean the land made available to the Concessionaire by the Concessioneing Authority under Processing & Disposal Facilities Site Lease Deed, for construction of the entire Project Facilities

**“Processing Facilities Site Lease Deed”** the lease deed executed between Concessionaire and the Concessioneing Authority substantially in the form set out in **Annexure 5B**, pursuant to which the Concessioneing Authority shall lease to the Concessionaire, the Processing Facilities Site for a period co-terminus with Concession Period

**“Project Engineer or Expert”** shall mean the person appointed by Concessioneing Authority to monitor the project as per the Concession Agreement.

**"Request for Proposal (RFP)"** means invitation of bids setting forth technical and commercial terms and conditions, of the bid and includes this document, the Concession Agreement and all the Annexure and appendices attached to RFP; and modifications made thereto and issued by PMIDC.

**“SPCB”** shall mean State Pollution Control Board particularly Punjab Pollution Control Board;

**“Selected Bidder”** shall mean M/s-----;

**“Recycling”** means the process of transforming segregated non-biodegradable solid waste into new material or product or as raw material for producing new products which may or may not be similar to the original products;

**“Residual solid waste”** means and includes the waste and rejects from the solid waste processing facilities which are not suitable for recycling or further processing;

**“Sanitary land filling”** means the final and safe disposal of residual solid waste and inert wastes on land in a facility designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, greenhouse gas emissions, persistent organic pollutants slope instability and erosion;

**"Segregation"** means sorting and separate storage of various components of solid waste namely biodegradable wastes including agriculture and dairy waste, non-biodegradable wastes including recyclable waste, non-recyclable combustible waste, sanitary waste and non-recyclable inert waste, domestic hazardous wastes, and construction and demolition wastes;

**"Selected Bidder"** shall mean the Bidder to whom the LOA has been issued and the Third Party hereto.

**"Service provider"** means the public agencies who provide services like water, sewerage, electricity, telephone, roads, drainage etc.;

**"Solid waste"** means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste, and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in Rule 2 of the SWM Rules, 2016;

**"Sorting"** means separating various components and categories of recyclables such as paper, plastic, cardboards, metal glass, etc. from mixed waste as may be appropriate to facilitate recycling;

**"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 expressly approved by the Authority;

**"SPV"**(in case of Consortium,) means an exclusive company to be incorporated by Selected Bidder under the provisions of the Companies Act 2013, pursuant to issuance of the LOA, for implementation of the Project as per the Concession Agreement and the Third Party herein.

**"Storage"** means the temporary containment of solid waste after collection at secondary waste depots or any material recovery facilities or bins for onward transportation of the waste to the process or disposal facility; storage would also mean storage space for compost;

**"Tipping Fee Index"** refers to the index of escalation/reduction in Tipping Fee (s) during the Concession Period, and shall be used to compute the percentage rate of variation in Tipping Fee from the Base Tipping Fee, to be calculated as detailed in **Annexure 13**;

**"Tipping Fund" or "Tipping Fee Fund"** means a fund created by the Concessions Authority jointly with the Concessionaire in accordance with **Annexure 6**;

**"Taxes"** means any Indian Taxes including Good and Service Tax, 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, or Municipal Authority but excluding any interest, penalties and other sums in relation thereto imposed on any account what so ever and includes any such duties and impositions in case of imports for setting up and operation of facility;

**"Termination"** means early termination of the Agreement in accordance with the Agreement but shall not, unless the context otherwise requires, include the expiry of the Concession Agreement due to efflux of time in the normal course.

**"Total Project Cost"** means the lower of the following:

- a) The capital cost of the Project as set forth in the Financing Documents; or

b) Estimated Total Project Cost;

**“Transportation”** means conveyance of solid waste either treated, partly treated or untreated from a location to another location in an environmentally sound manner through specifically designed and covered transport system so as to prevent the foul odour, littering and unsightly conditions;

**“Treatment”** means the method, technique, or process designed to modify, chemical or biological characteristics or composition of any wastes so as to reduce its volume and potential to cause harm;

**“Waste generator”** means and includes anybody that generate solid waste under SWM Rules 2016 and Municipal Rules

**“Weighbridge”** means the electronic weighbridge capable of performing the operations specified in **Annexure 7**

## 1.2 Interpretation

In the Agreement unless the context otherwise requires:

- i. The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- ii. A reference to any gender includes the other gender;
- iii. A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
- iv. The terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed;
- v. A reference to a "writing" or "written" includes printing, typing, lithography, scanned and other means of reproducing words in a visible form;
- vi. Any date or period set forth in the Agreement shall be such date or period as may be extended pursuant to the terms of this Agreement;
- vii. The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Article,
- viii. In case of any inconsistency between the terms mentioned in the Agreement and the literary term, the meaning best construed in furtherance of the objectives of this Agreement shall prevail.
- ix. Where there is a discrepancy between amount in figures and in words, the latter shall prevail.
- x. Where the context otherwise requires ULB includes PMIDC and vice-versa.

### **1.3 Precedence**

The documents forming part of this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict between them, be in the order they are set out:

- a) This Concession Agreement
- b) Letter of Award
- c) Letter of Intent
- d) The Bid submitted by the Concessionaire
- e) The RFP (Bid Document)

### **1.4 Public Interest**

The Project is in public interest.

### **1.5 Essence of time**

Time is the essence of the Agreement in implementation of the Project (construction, operation and maintenance).

## **Article 2 Agreement, Annexure and Appendices**

The following documents shall be deemed to form and be read and construed as part of this Agreement:

- A. Annexure-1: Scope of Work
- B. Annexure-2: Special Conditions
- C. Annexure-3: Time Frame for Execution of Works
- D. Annexure-4: Other Conditions
- E. Annexure-5: Detailed Project Report
- F. Annexure-6: Terms & Conditions of Consortium and SP
- G. Annexure-7: Details of the land.
- H. Annexure-8: ABCDEC
- I. Annexure-9: ABCDEC
- J. Annexure-10: ABCDEC
- K. Annexure-11: ABCDEC
- L. Annexure-12
- M. Annexure-13



## **Article 3 The Concession and Conditions Precedent**

### **3.1 Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement the ULB hereby grants and authorizes the Concessionaire to design, build operate and transfer the Project and its Facilities and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (“**the Concession**”) and on expiry of the Concession Period to hand over the Project Site to ULB with all structures, fixtures in operating condition.

### **3.2 Period of Concession**

The Concession hereby granted for the Project is for a period of 20 (Twenty) years commencing from the Appointed Day. The Concession Period shall comprise of mobilization & construction period that includes the time for securing all the Applicable Permits.

Provided that in the event of early Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Day and ending with the Termination Date.

### **3.3 Renewal of Concession**

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

### **3.4 Project Site**

As a part of the Concession, for the purpose of implementation of the Project, an extent of Ac. is earmarked in Sy.No.----- of -----Village/Town/ULB, (M), while the ownership and possession of the Site continue to remain with the ULB and concessionaire is only permitted to use the project site for the project purpose.

A separate Lease Agreement is entered by the First Party and the Second Party leasing the land for the project, containing the terms and conditions that are binding on Concessionaire including the use of the land.

### **3.5 Handing over of the Project Site:**

Subject to fulfillment of any other conditions precedent, the ULB shall handover the Project Site immediately on entering into this Agreement and the Lease Agreement as provided therein. The Concessionaire shall use the site for the purpose for which it is handed over and for no other purpose except with the prior written permission of the ULB. The said handing over of the Project Site shall not vest the Concessionaire with any ownership rights or leasehold rights.

### **3.6 Acceptance of Concession**

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform and discharge all of its obligations in accordance with the provisions of the Agreement and the Lease Agreement.

### **3.7 Concessionaire's Rights over the Project Site**

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

- (a) Upon the Project Site being handed over, and subject to the provisions of the Agreement, the Concessionaire has the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigations, development, improvements and constructions in the Project Site as may be necessary or appropriate to carry on the activities of the Project in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and as per Standards of Reasonable and Prudent Concessionaire and good industry practices.
- (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) upon achieving COD of Project Facilities, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- (d) to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project;
- (e) to assign its rights, title or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including its right to receive Tipping Fee (if the same is positive), in favour of Lenders for securing the financial assistance provided or agreed to be

provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the Lenders are made aware of the same by the Concessionaire

(f) Provided that the Concessioneing Authority shall be informed by the Concessionaire as to the creation of any Security Interest in favour of the Lenders within a period of 14 (fourteen) days from the date such Security Interest comes into existence and provide to the Concessioneing Authority within such time, notarized true copies of any and all documents/agreements relating thereto.

(g) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Facilities including the Project Site, save and except as set forth and permitted under the Agreements. Assignment of the Project Site including structures in/on/under of the Site for whatever purpose is prohibited. However, the Concessionaire may assign the revenue generated by it for the purpose of raising loans from the Banks or other such lenders.

(h) The Concessionaire shall not, without the prior written approval of authority, use the Project Site for any other purpose other than for the purpose of the Project, unless prior written approval is obtained from the authority for any other use.

(i) to obtain the utilities required for enabling the construction of the Project Facilities, without any additional cost or charges, other than the applicable charges for the utilities;

(j) to use the unutilized space available at the Project Facilities Site for display of advertisements under Applicable Laws against payment of applicable Taxes such as advertisement tax;

(k) to develop the Project Facilities using such technology that it considers suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, MSW Rules and Good Industry Practices;

(l) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facilities, Good Industry Practices and the requirements of the Project;

### **3.8 Conditions Precedent**

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

#### ***3.8.1 Conditions Precedent for P&D (CP-P&D)***

##### **3.8.1.1 Conditions Precedent for Concessioneing Authority–P&D (CP-P&D Concessioneing Authority)**

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

- a) executed the Project Site Lease Deed and handed over Project Site to the Concessionaire, if any required to be provided by the Concessions Authority in accordance with **Annexure 5-B**;
- b) facilitated the Concessionaire in terms of support and participation by its representative or sending follow-up letters to departments concerned for obtaining of all Applicable Approvals, if requested by the Concessionaire;
- c) approved in consultation with the Concessionaire and/or authority the design and detailed engineering for the Project Facilities in accordance with the provisions of **Annexure 4**, and provided copies thereof to the Concessionaire;
- d) facilitated and ensured the provision of Access Roads to the Processing Facilities Site and Project Site(s) as per Good Industry Practices;
- e) Create a Tipping Fund as per the requirements of **Annexure 6**;
- f) Deposit the money in Tipping Fund as per the requirements of **Annexure 6**;
- g) Appoint a Project Engineer as per the RFP

#### **3.8.1.2 Conditions Precedent for Concessionaire–P&D (CP-P&D Concessionaire)**

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

- a) achieved financial closure i.e. procured and raised all the funds (debt, equity, grant etc.) necessary to finance the Construction Works – P&D as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;
- b) executed the Project Site Lease Deed and taken over of the Processing & Disposal Facilities Site and Project Site(s) from the Concessions Authority in accordance with **Annexure 5B**
- c) got approved from the Concessions Authority the design and detailed engineering for the Project Facilities in accordance with the provisions of **Annexure 4**;
- d) received, at its own cost, water connection, power connection and other service connections to the Project & Processing Facilities Site/ Project Sites;
- e) obtained at its cost the Applicable Approvals set out in **Annexure 3** that are required to commence the Construction Works unconditionally or if subject to conditions then

all such conditions have been satisfied in full and such Applicable Approvals are in full force and effect;

- f) confirmed that all the representations and warranties of the Concessionaire/Selected Bidder set forth in the Proposal of the Selected Bidder and in this Agreement are true and correct.
- g) achieved the Compliance Date-COD-P&D

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

### **3.9 Satisfaction of Conditions Precedent**

- a) Each Party shall make all reasonable endeavors at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent – P&D relating to it within a period of **30 (thirty)** days from the Appointed Date (the “**Compliance Period-P&D**”).
- b) The later of the date within such time when the Concessions Authority or the Concessionaire fulfils its Conditions Precedent (unless the Concessions Authority waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (“**Compliance Date – P&D**” respectively).

### **3.10 Non-Compliance with Conditions Precedent**

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

Concessionaire shall have the option of either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for Concessioneing Authority or (ii) terminate this Agreement, in which event, the Concessioneing Authority shall pay to the Concessionaire, the Development Costs, duly certified by the Project Engineer or Expert of PMIDC. In case of extension of CP-P&D for Concessioneing Authority beyond a period of **30 (thirty) days** from Appointed Date, the Concession Period shall be extended with an equivalent period.

c) In the event this Agreement fails to come into effect on account of the non-fulfillment of the Concessioneing Authority's Conditions Precedent, the Concessioneing Authority shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Concessioneing Authority on the Concessionaire.

d) Instead of terminating this Agreement as provided in this **Clause 3.10 C**, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent

## **Article 4- Project Site(s)**

### **4.1 Access to Project Sites**

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

### **4.2 Use of Processing Facilities Site /Project Sites**

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

#### **4.3 Information about Processing Facilities Site /Project Sites**

The information about the Processing Facilities Site and Project Site(s) set out in **Annexure 5** are provided by the Concessions Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessions Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Processing Facilities Site and Project Sites, which the Concessions Authority may now possess or may hereafter come to possess. Subject to this, Concessions Authority makes no representation and gives no warranty to the Concessionaire in respect of the suitability of the condition, soil and location of the Site for implementation of the Project and shall not be liable in any manner for the correctness or completeness of the information provided by it to the Concessionaire. The Concessionaire shall accept such information at its cost, risk and consequence.

#### **4.4 Concessions Authority and ULBs' Property at Project Site**

The Processing and Disposal Facilities Sites shall be held and handled by the Concessionaire in trust for and on behalf of the Concessions Authority or respective Land ULB, as the case may be, consistent with the Applicable Laws, and in particular,

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



## **Article 5- Project Engineer And/Or Expert**

### **5.1 Project Engineer AND/OR Expert**

The detailed terms and conditions for appointment of Project Engineer/Expert and its rights, responsibilities and scope of works are specified in **Annexure 7**.

## **Article 6 The Concessionaire's Obligations**

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

### **6.1 General Obligations of Concessionaire**

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

#### **a) Development and Implementation of Project**

- (i) investigate, study, design, develop, finance, construct, establish, operate and maintain the Project Facilities, including closure and Post Closure Activities and maintenance, in accordance with the provisions of this Agreement, Scope of Works, the terms of Applicable Approvals, the Applicable Laws and Good Industry Practice;
- (ii) submit Performance Security as per Article 8;
- (iii) submit the business and project development plan along with the detailed design and engineering/report as described in Annexure-1 and 4, obtain approval of Concessioning Authority.
- (iv) shall be allowed to deploy the requisite machinery, manpower, etc after the approval of Plan for P&D from the Concessioning Authority.
- (v) prepare a surface and ground water, leachate and odour control, air emission monitoring programme in accordance with the Applicable Laws including SPCB requirements, MoEF guidelines and MSW Rules and comply with its requirements;
- (vi) achieve agreed milestones within the time periods specified in the Project Implementation Schedule set out in Annexure 8 and achieve COD – P&D within time period stipulated therein;
- (vii) pay “Liquidated Damages” in line with Annexure 9 for delays, if any, in achieving CODs as per Project Implementation Schedule (Annexure 8);
- (viii) operate and maintain the Project Facilities during the Concession Period, including closure and Post Closure Activities and maintenance, at its cost and expense, and in conformity with this Agreement including but not limited to the MSW Rules, Technical Specifications and Good Industry Practice;
- (ix) meet the Performance Parameters as stated in Annexure 10 for Project Facilities
- (x) demand, charge, collect, retain and appropriate the Tipping Fee (in case of Positive Tipping Fee) from the Concessioning Authority or pay the Tipping Fee (in case of

- Negative Tipping Fee) to the Concessioneing Authority at the rates set forth in the successful bid;
- (xi) pay “Penalties” in line with Clause 6.5 in RFP, Annexure 10 of Concession Agreement for not meeting Performance Parameters as per Annexure 10;
  - (xii) provide such facilities as may be required for the Project Engineer at the Processing Facilities Site and Project Sites during his visits;
  - (xiii) arrange and access at its cost and expense all infrastructural facilities like water, electricity and goods, materials, consumables, things and services etc. as necessary for the implementation of the Project and make arrangements for back-up supply of power;
  - (xiv) be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the provisions of this Agreement, including the Technical Specifications and Good Industry Practice;
  - (xv) Shall install a suitable computerized system to capture vehicle no., type of the vehicle, time of entry and weight of MSW carried by it during each entry and exit at the weighbridge.
  - (xvi) Shall install, operate and maintain Weighbridge(s) at its own cost.
  - (xvii) Shall maintain a website that provides detail of the Project in such reasonable detail as would enable awareness about the Project to any person accessing the website. Without prejudice to the generality of the foregoing, the Concessionaire shall provide, on its website, details of the quantity of MSW, liquid, solid and gaseous material discharged from the Project and update the information as to these quantities on a weekly basis;
  - (xviii) shall have minimum 51% (fifty one percent) of its issued and paid up equity capital from Selected Bidder or Lead Member (in case of a consortium being Selected Bidder) during the Construction Period and 15 ( fifteen) years following COD P&D and shall have minimum 26% (twenty six percent) of its issued and paid up equity capital from Selected Bidder or Lead Member (in case of a consortium being Selected Bidder) during the remaining term of the Agreement
  - (xix) shall maintain the Consortium Member(s) (in case of a consortium) respective shareholding commitment , as provided in MOU as a part of its Proposal, during the Construction Period and at least for a period of 2 (two) years following the Commercial Operation Date of Processing and Disposal (COD –P&D)
  - (xx) Shall allow the Concessioneing Authority to install, at the Concessioneing Authority’s cost, any equipment/system/software at the weigh-bridge facility or any other Project Facility, which the Concessioneing Authority may feel necessary for monitoring those operations that affect the Concessioneing Authority’s interest in the Project.

- (xxi) shall ensure that no such technology is used that is banned by Government of India
- (xxii) shall ensure moisture content of MSW shall be suitably addressed and other Performance Parameters are met in all seasons so as to meet the stipulations under SWM Rules 2016.
- (xxiii) In coordination with Concessioneing Authority, the Concessionaire shall develop and conduct the public awareness campaign through appropriate means such as road shows, pamphlets, etc.
- (xxiv) shall adhere to and comply with all the Action Plan and directions for MSW Management in Punjab issued by National Green Tribunal (NGT) and GoI
- (xxv) The Concessionaire shall inform the Authority atleast 6 months prior to the exhaustion of Landfill site

The Concessionaire shall procure & deploy all new vehicles and machinery for the project of good make.

**b) Applicable Permits and Applicable Laws**

- (i) obtain, maintain and periodically renew the requisite authorization under the Applicable Laws and in particular the MSW Rules for establishing, managing and operating and maintaining the Project Facilities, including Post Closure Activities;
- (ii) obtain, maintain and periodically renew at its cost all Applicable Approvals, including environmental clearances, in conformity with the Applicable Laws and be in compliance therewith at all times;
- (iii) comply with the obligations at all times, under any approval or issued from time to time by any Government Authority, including without limitation the GoP, GoI (under the Environment Protection Act, etc), the SPCB and the CPCB, and not undertake any act, deed or thing that violates the terms and conditions of any approval, clearance or no-objection certificate granted by such authority in relation to the Project;
- (iv) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, intellectual property rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (v) be in compliance with the Applicable Laws, including without limitation those relating to municipal solid waste, materials and wastes, safety, health, sanitation, environment and labour, as amended from time to time, and the statutory and regulatory framework relating to the implementation of the Project and the establishment, operation and maintenance, including post closure maintenance of the Project Facilities. Without

limiting the generality of the foregoing, the Concessionaire shall comply with the Environment (Protection) Act, 1986, the MSW Rules, the Water Pollution Act, 1974, the Public Liability Insurance Act, 1991, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Air (Prevention and Control of Pollution) Act, 1981, the Motor Vehicles Act, 1988 and the rules framed there under by GoP or GoI, as the case may be.

**c) Liability**

- (i) be the applicant, the authorized person, the occupier, the transporter (where applicable) and operator of the Project Facilities under and for the purposes of the Applicable Laws, including the MSW Rules. The Concessionaire accepts all liability and shall be liable under the Applicable Laws or otherwise for the implementation, operation and maintenance of the Project Facilities and indemnify and keep indemnified at its cost the Concessioneing Authority and the Government Authorities from and against any liability arising due to its acts or deeds or lack of any of its acts or deeds either by itself or Persons claiming through or under it, for the Project;
- (ii) bear at its cost and consequence, all risks of loss of or damage to life, limb, personal injury, death, physical property and environment, in or around the Project Site(s) or in relation to implementation of project, which arise in connection with or in consequence of the performance of the Construction Works by the Concessionaire or Persons claiming through or under it. Concessionaire shall restore and/or compensate at its cost as the case may be for all such losses or damages;
- (iii) be liable for all cost overruns in the implementation of the Project, save and except as expressly provided herein;
- (iv) be liable for its contracts with its Contractors, personnel, labour or any Third Party. The Concessioneing Authority shall not be liable in any manner in this behalf;
- (v) be solely liable for any cost or price escalation resulting from fluctuation in the prices of goods, materials, consumables, things and services used in the construction and implementation of the Project and not be exempted from its obligation to implement the Project or compensated in any form on account of any such escalation;

**d) Processing Facilities Site /Project Sites**

- (i) not to place or create nor to permit any Contractor or other Person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the

Processing Facilities Site and Project Site(s) and Concessionaire Vehicles, or on any rights of the Concessions Authority therein;

- (ii) ensure that the Processing Facilities Site and Project Sites remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (iii) confine its operations and activities to the Processing Facilities Site and Project Site(s) and to any additional areas arranged by it at its cost and shall not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for a failure to do so;
- (iv) not undertake any act, deed or thing in derogation of or that violates the terms and conditions of the Processing Facilities Site Lease Deed and Project Site Lease Deed(s) between the Concessionaire and/or the Land ULBs.
- (v) remove promptly according to Good Industry Practice from the Processing Facilities Site and Project Site(s) all surplus construction machinery and material, litter, debris, waste water, rubbish and other debris and keep the Processing Facilities Site and Project Site(s) in a neat and clean condition and in conformity with the Applicable Laws and Applicable Approvals;
- (vi) be liable for all hazardous, dangerous and other goods, materials, creatures and substances brought , kept, stored or handled at the site/ Project Facilities.

**e) Shifting of Utilities**

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

**f) Personnel and Labour**

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

**g) Contractors**

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

of performance bonds or bank guarantees by them as security for the performance of their obligations there under;

(iv) Supervise, monitor and control the activities of Contractors under their respective Project Agreements.

**h) Reporting and Access**

(i) provide to the Concessioneing Authority reports on a regular basis in accordance with the provisions of **Annexure 12** hereof and as set forth elsewhere in this Agreement;

(ii) provide all assistance to the Concessioneing Authority and the Project Engineer and access to the Processing Facilities Site, documents, materials and information as may reasonably be required by either of them for the performance of their respective functions, duties and services under this Agreement, the Applicable Laws or otherwise; Provided that any failure on the part of the Concessioneing Authority to inspect any works shall not, in relation to such works, (a) amount to any consent or approval of the Concessioneing Authority or be deemed to be a waiver of any of the rights of the Concessioneing Authority under this Agreement; and (b) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;

(iii) shall also be liable to provide Monthly Weight Sheets (consolidated Daily Weight Sheets) to the Concessioneing Authority at the end of every calendar month.

(iv) at all times, afford access to the Processing Facilities Site or Project Sites to the authorized representatives of the Concessioneing Authority, the DoLG, the SPCB, the CPCB, and officers and representatives of any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions;

(v) allow access to and use of the Processing Facilities Site and Project Site(s)/ Project Facilities for telegraph lines, electric lines, ducting or such other public purposes as any Government Authority may specify.

**i) Safety and Accidents**

(i) give priority to safety in its construction and planning activities in order to protect life, health, property and environment;



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

**j) Taxes**

- (i) pay all charges, Taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, MSW collection and disposal, electric power, gas, telephone and other utilities and consumables used in the implementation of the Project and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility;
- (ii) pay in a timely manner all Taxes, duties, levies, cess and charges including but not limited to income tax, Good and Service Tax, sales tax, value added tax, excise duty, customs duty and octroi that may be levied, claimed or demanded from time to time by any Government Authority, including any increase therein effected from time to time by any Government Authority, in respect of the Project.

**k) Project Agreements**

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

**1) Others**

- (i) maintain insurances throughout the Concession Period in accordance with the provisions hereof;
- (ii) pay liquidated damages to the Concessioneing Authority for occurrences and at rates set forth in **Annexure 9** other than where such occurrences are caused by (a) the occurrence of an event of Force Majeure in accordance with **Article 12** hereof or (b) a fundamental breach of the Agreement by the Concessioneing Authority or any other material act or omission by the Concessioneing Authority in contravention of its obligations under this Agreement;
- (iii) not carry out any business or undertake any project that is in competition, direct or indirect, with the Project/Project Facilities;
- (iv) upon the establishment of on-line waste management/tracking systems at the Project Facilities, the Concessionaire shall have such systems linked to the regional and/or central monitoring systems installed at the Concessioneing Authority, SPCB or other Government Authorities.

**Additional Obligations of the Concessionaire during Construction Period**

The Concessionaire shall prior to commencing the Construction Works

- (i) Submit to the Concessioneing Authority with due regard to the Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities;

- (ii) Have requisite organization and designate and appoint suitable officers/ representatives, as it may deem appropriate to supervise the Project and to deal with the Government Agencies and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (iii) Undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Implementation Schedule and to achieve Construction Completion under and in accordance with this Agreement.
- (iv) The Concessionaire shall make its own arrangements for quarrying, if necessary, and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Approvals;
- (v) The Concessionaire shall promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Concessioneing Authority, the Project Engineer or any Government Authority and ensure completion of construction of the Project in all respects in accordance with the provisions of this Agreement;
- (vi) The Concessionaire shall commence commercial operations of the Processing & Disposal Facilities and entire Project Facilities on achieving COD-P&D;
- (vii) The Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the ULB to determine that Construction Works are being undertaken in accordance with the requirements.

## **6.2 No Breach of Concessionaire's Obligations in Certain Circumstances**

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

- (i) Non Political Event, subject to **Article 12**;
- (ii) Concessioneing Authority's Event of Default;
- (iii) Compliance with the written instructions of / from the Concessioneing Authority or relevant ULBs or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (iv) Closure of the Project Facilities or part thereof with the approval of the Concessioneing Authority;

## Article 7- Concessioning Authority's Obligations

Subject to and in accordance with the provisions of this Agreement, the Concessioning Authority shall have the following obligations:

### 7.1 Obligations

The Concessioning Authority shall:

- a) meet the Conditions Precedent for Concessioning Authority for Concessioning Authority – P&D in timely manner or in extended time as may be agreed between the parties
- b) Execute the Project Site (s) Lease Deed (s);
- c) create “**Post Closure Performance Account**” as per provisions of Article 8.3 and **Annexure 6**;
- d) grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from the Concessioning Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, which are within the administrative control/ powers of the Concessioning Authority, the same shall be provided by the Concessioning Authority within 15 (fifteen) days from receipt of request from the Concessionaire to make available such authorization, provided that the conditions that the applications / details submitted are complete and correct;
- e) without prejudice to the generality of **Clause 7.1** (a) above:
  - i. recommend and forward to the relevant authority/ministry/department, any application of the Concessionaire to obtain any Applicable Approval
  - ii. facilitate the grant of the Applicable Approval with the relevant authority/ministry/department, including entry permits from traffic police, and assist the Concessionaire in getting necessary clearances from the relevant authorities / ministry/departments;
  - iii. ensure that the building plans for the Project Facilities at Processing Facilities Site are duly and expeditiously approved by the concerned authorities under the Act / building by-laws / other relevant by-laws or regulations;
- f) ensure peaceful use of the Processing Facilities Site and Project Site(s) by the Concessionaire under and in accordance with the provisions of this Agreement without

any let or hindrance from any Persons claiming through or under the Concessions Authority;

- g) provide additional land for development of additional Sanitary Landfill Facility as close as possible to the existing Sanitary Landfill Facility, if during the Concession Period, the available Site for Sanitary Landfill Facility falls short of the actual landfill requirements;
- h) Arrange alternative Sanitary Landfill Site within 6 months from the date of intimation by Concessionaire. However the Concessionaire shall inform the Authority atleast 6 months prior to the exhaustion of Landfill site;
- i) Government of Punjab cause appropriate notations and entries to be made in the land records relating to the Site for Sanitary Landfill Facility with the concerned Government Authorities so as to notify any Person dealing with such site or leasing/buying the land and property comprised in such site that the site shall be used for handling and disposal of MSW and that the usage of the site is restricted.

## **Article 8- Securities, Fees, Payments and Revenues**

### **8.1 Performance Guarantee**

a) As per the terms of the RFP, the Concessionaire shall, for ensuring due performance of its obligations and discharges its responsibilities in terms of the Agreement during the Concession Period, the Concessionaire has since submitted Performance Security/Guarantee by means of the Bank Guarantee

No. \_\_\_\_\_ dated. \_\_\_\_\_ for Rs. \_\_\_\_\_ from \_\_\_\_\_ Bank \_\_\_\_\_ Branch valid from \_\_\_\_\_ to \_\_\_\_\_ valid for 20 years plus 90 days thereafter i.e valid from \_\_\_\_\_ to \_\_\_\_\_,

b) The performance Guarantee to be furnished on award of the project shall be 5% of the project cost as estimated and provided by the bidder in its financial proposal submitted as per Format VIII-A.

c) Performance Security, inter-alia, is also intended to ensure that the Concessionaire:

i. will implement the SWM activity on a continual basis. The performance of the project shall be considered against a yardstick in the form of actual quantum of waste handed over at the site for further processing and disposal within the said operations of the developer including Sanitary landfill (SLF). Failure to achieve 75% of annual waste handed over, shall lead to termination of the concession and the Bank Guarantee shall be revoked.

ii. will not dispose of the inerts on any other patch of land other than the location designated for land filling in the SLF

iii. will not accumulate any excavated material and form heaps for the purpose of clearing the land.

iv. Shall not form or accumulate waste unprocessed more than 3 days except under extreme circumstances with the prior approval from authority.

d) If the concessionaire fails to submit the renewed BG as per above within specified time, it will lead to event of default

e) The Performance Security shall be kept valid for entire Concession Period and 90 days after the expiry of the Concession Agreement, by its renewal every year.

f) If the Concession Agreement is terminated due to any reason other than Concessionaire's Default, the Performance Security shall, subject to ULB, GoP's right to receive amounts, if any, due from Concessionaire under the Concession Agreement, be duly discharged and released to the Concessionaire.

g) In the event of the encashment of the Performance Security by ULB pursuant to Encashment Notice issued, the Concessionaire shall within 10 (ten) days of the Encashment Notice, furnish fresh Performance Security to the ULB, failing which the ULB shall be entitled to Terminate the Concession Agreement in accordance with the provisions mentioned herein and in the Concession Agreement.

h) The ULB shall be entitled to encash the Performance Security fully or partially as the case may be after giving notice of 30 (thirty) days if any Event of Default not being remedied by the Concessionaire despite notice from the ULB.

i) Whenever any claim against the Concessionaire for payment of sum of money arises out of or under the Concession Agreement, the ULB shall be entitled to recover such sums or any sum then due or which at any time there may become due from the Concessionaire under the Concession Agreement from Performance Security furnished with the ULB.

j) In case the Performance Security is not sufficient to cover the recoverable amount, the Concessionaire shall pay to the ULB on demand the balance remaining due.

k) Forfeiture of Performance Security in full or in part occurs at the discretion of the ULB.

- i. If the Concessionaire is found guilty of non-performance any of terms and conditions contained in the Concession Agreement in spite of giving notice to do so.
- ii. If the Concessionaire fails to pay the damages, compensation if any, imposed upon him for breach of performance and compliance of standards as specified in the Agreement.
- iii. If the Agreement is terminated on account of default of the Concessionaire.
- iv. If the Concessionaire withdraws/or terminates the Concession Agreement.
- v. If the Concessionaire conceals material facts or inducing undue influence or indulges in corrupt practices by Bidder, modify the RFP Document by the issuance of an Addendum.

## 8.2 Tipping Fee

The Tipping Fee shall be positive or negative depending on the quotation (“**Financial Proposal**”) of the Selected Bidder that shall be placed at **Annexure 6** of this Agreement, on the Appointed Date. To clarify further, the Tipping Fee is termed to be positive when required to be paid by the Concessions Authority/ ULBs and negative when required to be paid by the Concessionaire.

In line with the Financial Proposal and details set out in **Annexure 6**, the Concessionaire shall submit to the Project Engineer/ULB a monthly statement (“**Monthly Fee Statement**”) providing the details, regarding payment to be received from or payment to be made to the Concessions Authority (“**Monthly Payment**”), as the case may be.

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

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

**OR**

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

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

The Tipping Fee escalation shall be as per the Tipping Fee Index **Annexure 13** of Concession Agreement.

### **8.3 Mechanism of payment during the Concession Period**

The Concessioning Authority (in case of Positive Tipping Fee) or the Concessionaire (in case of Negative Tipping Fee) shall make 50% payment within 14 days of submission of Monthly Fee Statement without any verification and rest of the payment will be made after proper verification within next 14 days in accordance with procedure laid out in **Annexure 6**,

- a) Pay to the Concessionaire (in case of Positive Tipping Fee) or the Concessioning Authority (in case of Negative Tipping Fee), an amount equal to 98 % of the total amounts payable as monthly payment – P&D in accordance with **Article 8.3** as stated in such Monthly Fee Statement.
- b) The Concessioning Authority (in case of Positive Tipping Fee) or the Concessionaire in case of Negative Tipping Fee) shall credit the balance amounts, which are equal to 2% of the monthly payment – P&D, in a separate bank account in the name and style of “Post Closure Performance Account” maintained by the Concessioning Authority for meeting the expenses related to Post Closure Activities.

### **8.4 Non Payment by the Concessioning Authority (in case of Positive Tipping Fee) or Concessionaire (in case of Negative Tipping Fee) during Concession Period**

- a) In case the monthly payments as prescribed in the previous clause are due from the Concessioning Authority and the Concessioning Authority does not pay the monthly payments



in stated period of thirty (30) days without giving a written notice of delay, the monthly payments shall be duly released from Tipping Fund within a period of seven (7) days there from, and the Concessioneing Authority shall make good the deficit in Tipping Fund within seven (7) days of release if such payment from Tipping Fund;

b) If Concessioneing Authority does not make good the deficit within seven (7) days of payment from Tipping Fund, the Concessionaire shall make representation to the First Appellate Authority. The First Appellate Authority shall advise the Concessioneing Authority to make good the deficit in Tipping Fund;

c) If Concessioneing Authority does not make good the deficit within thirty (30) days of payment from the Tipping Fund, the Concessionaire shall make representation to the Appellate Authority. The Appellate Authority shall take necessary measures to ensure that the deficit in Tipping Fund is made good.

## **8.5 Mechanism of Payment during Post Closure Period**

a) The Concessionaire shall, at the time of Handing Over of Project Facilities to the Concessioneing Authority, nominate a Person (“**Beneficiary**”) as beneficiary of payments from Post Closure Performance Account pursuant to Termination of the Agreement.

b) For every year during Post Closure Period, the Concessioneing Authority shall pay to the Beneficiary an amount equal to 2% of the initial balance available (inclusive of all taxes and duties, if any applicable) in Post Closure Performance Account as on the date of termination of this Agreement by efflux of Concession Period or otherwise. Such payments shall be made against written demand by the Beneficiary on yearly basis after deduction of applicable taxes and duties. Provided however, no payments from Post Closure Performance Account shall be made to the Selected Bidder / Concessionaire / Beneficiary, if the Agreement is terminated due to Concessionaire’s Default.

c) It may be specifically noted that if any amount in Post Closure Performance Account is utilized to meet any of the obligations pertaining to Post Closure Activities, then such amount shall be first adjusted before allowing yearly payments to the Beneficiary.

d) The remaining value of amount accumulated in Post Closure Performance Account, if any, shall be promptly released by the Concessioneing Authority within 60 (Sixty) days of end of Post Closure Period.

e) All payments, whether by the Concessionaire or by the Concessioneing Authority, shall be made by way of demand draft or cheque payable at par in the ULB of Concessioneing Authority.

## **Article 9- Intellectual Property, Confidentiality and Survival**

### **9.1 Proprietary Material**

a) The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project Facilities/ Project, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire.

b) The Concessionaire, as beneficial owner, hereby grants to the Project and to the Concessioneing Authority a perpetual non-exclusive license to use such Proprietary Material. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the Concessioneing Authority for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.

c) Nothing in this Clause shall be construed to grant the Concessioneing Authority or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

### **9.2 Confidentiality**

a) The Concessioneing Authority shall not at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project Facilities, Project, the Concessionaire and the Concessioneing Authority (including any information concerning the contents of this Agreement) except to its directors, officials, employees, Contractors, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.

- b)** The Concessioneing Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.
- c)** The Concessionaire shall ensure that all its directors, employees, Subcontractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non disclosure agreements reasonably required by the Concessioneing Authority, which have been duly approved by the Concessioneing Authority, with respect to the Project.
- d)** The aforesaid provisions shall not apply to the following information:
  - (i) already in the public domain otherwise than by breach of this Agreement;
  - (ii) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
  - (iii) disclosed due to a court order or under any Act of GoI /GoP

### **9.3 Survival**

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

#### Termination of this Agreement

- a)** shall not relieve the Concessionaire, the ULB of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- b)** 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.

## **Article 10- Amendments and Modifications**

This Agreement and its preamble and Appendices, LOI, LOA, Bid Documents 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 the Parties hereto and evidenced in writing.

Or such address, 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 facsimile, when transmitted properly addressed to such facsimile number and copy sent by mail.

## **Article 11 Insurance**

### **11.1 Insurance Cover**

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

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

### **11.2 Insurance Companies and Costs**

- (a) The Concessionaire shall insure all insurable assets comprised in the Project and/or the Project Facilities.
- (b) The premiums payable on insurance coverage as indicated above, and for Concessionaire Vehicles, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.
- (c) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessions Authority, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

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

### **11.3 Evidence of Insurance Cover**

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

### **11.4 Application of Insurance Proceeds**

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

### **11.5 Validity of the Insurance Cover**

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

## Article 12 Force Majeure

In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event described hereinafter which prevents the Party claiming Force Majeure (the "**Affected Party**") from performing its obligations under this Agreement and which act or event:

- i. Is beyond the reasonable control of and not arising out of the default or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder,
- ii. The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care, and
- iii. Has a Materially Adverse Effect on the Project

### 12.1 Non-Political Force Majeure Events

For the purposes of this Agreement, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external to the site or not designed for in construction works);
- ii) Radioactive contamination or ionising radiation;
- iii) fire (to the extent originating from a source external to the site or not designed for in construction works);
- iv) Strikes or boycotts interrupting supplies and services to the Project (other than those involving the Concessionaire or its Employees/Agents or attributable to any act or omission of any of them) for a period exceeding 15 continuous days in a Financial Year, not being an Indirect Political Event set forth in this Article hereof;
- v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach

thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the MC; or

- vi) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

## **12.2 Indirect Political Force Majeure Event**

For the purposes of this Agreement, Indirect Political Events shall mean one or more of the following acts or events:

- i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, blockade, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism;
- ii) Industry wide or state wide or India wide strikes or industrial action for a period exceeding 60 (sixty) continuous days in a Financial Year; or
- iii) Any public agitation for a period exceeding 60 (sixty) continuous days in a Financial Year.

## **12.3 Political Force Majeure Event**

For the purposes of this Agreement, Political Events shall mean one or more of the following acts or events.

- i) Expropriation or compulsory confiscation, nationalization or requisition of the Project, Project Assets, or rights of the Concessionaire under law.
- ii) The unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid reasons any consent or approval required by the Concessionaire to perform its obligations under the Concession Agreement by the concerned authorities provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to maintenance or renewal of such consent or permits.
- iii) Any change in law except laws relating to taxation.

## **12.4 Effect of Force Majeure**

- a) Before the Appointed Day

Upon occurrence of any Force Majeure Event before Appointed Day, the following shall apply:

- i. There shall be no Termination of the Agreement.
- ii. The Project Completion date shall be extended by the period of which such Force Majeure event shall subsist during construction period subject Article 9.3 above; and



**iii.** The parties shall bear their respective costs and losses, if any, arising out of such Force Majeure Event unless otherwise provided in the Agreement.

**b)** Effect of Force Majeure after the Appointed Day

Upon occurrence of any Force Majeure Event after the Appointed Day, the following shall apply:

- i.** There shall be no Termination of this Agreement
- ii.** The dates set forth for completion of the construction shall be extended by the period for which such Force Majeure shall subsist,

#### **12.5 Allocation of costs during the subsistence of Force Majeure**

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto and the insurance proceeds shall be utilized for the purpose by the parties.

#### **12.6 Termination Notice**

**(a)** If the Force Majeure Event subsists for a period of 120 (One hundred twenty) days or more within a continuous period of 365 (three hundred sixty five) days, either of the affected Parties may in its sole discretion terminate this Agreement by giving 60 (Sixty) days Termination Notice in writing to the other Party without being liable to the other Party in any manner whatsoever provided each such Force Majeure event shall be more than seven (7) continuous days for the purpose counting 120 days

**(b)** If any Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub Article (a), it shall issue Termination Notice setting out;

- i.** in sufficient detail the underlying Force Majeure Event;
- ii.** the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

#### **12.7 Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that the Project Facilities are handed back to ULB by the Concessionaire on the Termination Date free from all encumbrances.

## **12.8 Dispute in existence of Force Majeure Event**

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 as hereinafter specified, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

## **12.9 Duty to Report Force Majeure Event**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- i)** the Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession.
- ii)** Any notice pursuant to this Article 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 12 with evidence in support thereof;
  - (b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession;
  - (c) The measure which the affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (d) Any other information relevant to the Affected Party's Claim.
- iii)** For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required under this Article and such other information as the other party may reasonably request the Affected Party to provide.

## **12.10 Excuse from performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Concession because of 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 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 Concession, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- d) Concessionaire shall not be relieved of any obligations or payments due to ULB that arose or accrued prior to the Force Majeure Event. Also, the Concessionaire shall continue to pay the lease amount even for the period of subsistence of the FM Event, unless and otherwise such payment is either waived or deferred or otherwise by the MC with or without any conditions.

### **12.11 Change in Law**

a) **Change in Law–Effect:** In the event of Change in Law causing Material Adverse Effect on the Project or the rights and obligations of the Concessionaire and consequently leading to Material Breach of any of the provisions of the Agreement by the Concessionaire, then only either at the instance of the ULB or at the instance of the Concessionaire, the Agreement may be terminated subject to the provisions of the Agreement. Therefore change in law under the normal circumstances shall not be a ground for Termination and for whatever reason shall not include any change in the tax laws or such change in law, has solely an economic impact on the Project.

Provided, prior to such request for termination, the parties shall consult each other in good faith for a period of 180 days to mitigate the material adverse impact of the Change in Law. In case during this period, the operation is halted, then the Agreement period shall be extended by such period subject to provisions the Article.

b) In the event the Parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 180-day period, either party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved. However, in case of such termination, the ULB shall not be liable to pay any compensation of whatever nature and extent to the Concessionaire or any such change in law will take care of compensation to the affected parties.

c) On such termination and within 7 (seven) days, the Concessionaire shall hand over the Project Site

## **Article 13 Raising of Loans**

- a) The Concessionaire shall be entitled to raise loans and/or financial facilities from Lenders for the Project implementation and for this purpose the Concessionaire may, if required by such Lenders assign all or any part of its Concession rights with the prior approval of the ULB and for the said purpose mortgage, charge, hypothecate or otherwise encumber all or any of the other assets of the Concessionaire in or pertaining to the said Project, as and when required. ULB shall consent to the assignment or mortgage by the Concessionaire of its License rights, rights and obligations under this Agreement to such of the financial institutions approved or recognized by RBI or other organizations under Indian Law, in connection with the availing of required funds for the construction, operation and maintenance of the Project. While sanctioning the loan or other financial facilities the lender shall ensure itself as an obligation that the loans and financial facilities provided by it are utilized for the purpose of Project and none else.
- b) Loans and mortgages or encumbrances so created by the Concessionaire shall not extend beyond the Concession Period and the liabilities shall be discharged and settled by Concessionaire before expiry or sooner determination of the Termination of the Agreement.
- c) Ownership and Title of the Project Site shall always remain with ULB; and
- d) There shall be no financial assistance for implementation, operation and maintenance of the Project from the ULB.

### **13.1 Substitution of Concessionaire**

- (a) Where the Concessionaire has assigned its Concession rights, and interest in the Project to, and in favour of, the Lenders pursuant to and in accordance with the provisions of this Agreement by way of security in respect of financing by the Lenders under the Financing Documents and pursuant to their rights, the Lenders may be entitled to substitute the Concessionaire by a Selectee in the following events and manner specified.
- (b) Upon occurrence of a financial default, the Lender may issue a notice to the Concessionaire along with particulars thereof, and send a copy to ULB for its information and record. Upon issue of a notice of financial default, the Lenders may, without prejudice to any of their/its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in consultation with ULB subject to the following provisions.
- (c) Upon occurrence of a Concessionaire Event of Default under this Agreement, ULB shall by a notice inform the Lenders of such default.

- i. In the event that the Lender makes a representation to ULB within the period specified in the said intimation stating that it intends to substitute the Concessionaire by a Selectee, the Lender shall be entitled to undertake the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Article. In the event that the Lender fails to make such a representation to ULB within the period specified, ULB shall be entitled to terminate the Agreement in accordance with the provisions of the Agreement.
- ii. To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfill the eligibility criteria that were laid down in the RFP Document for qualifying Bidders during Bidding Process. Provided that the Lenders may represent to ULB that all or any of such criteria may be waived in the interest of the Project, and if ULB determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- iii. The decision of the Lender and ULB in selection of the Selectee shall be final and binding on the Concessionaire. The Concessionaire irrevocably waives any right to challenge the actions of the Lender or MC taken pursuant to this Agreement including the transfer/novation of the Agreement,
- iv. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the Project or its shares. It is hereby acknowledged by the Concessionaire that the rights of the Lenders/Lenders' representative and ULB are irrevocable and shall not be contested in any proceedings before any court and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain ULB or the Lenders/Lenders' representative from effecting or causing the transfer by substitution and endorsement of the Project as requested by Lender. For the avoidance of doubt, the Lenders shall not be entitled to operate and maintain the Project.
- v. In the event that no Selectee acceptable to ULB is selected and/ or recommended by the Lender, ULB may terminate the Agreement in accordance with this Article

## **Article 14 Dispute Resolution**

### **14.1 Amicable Settlement**

a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including validity, interpretation, rights and obligations between the Parties and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably through mutual discussions. If the Dispute is not amicably settled within 45 (forty-five) days of such reference, either Party may refer the dispute to arbitration in accordance with the provisions of this Article.

b) Either Party may require such Dispute to be referred to the ULB Head and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to the First Level Appellate Authority i.e. Chief Executive Officer (CEO) of Punjab Municipal Infrastructure Development Company Limited (PMIDC), Department of Local Government, Punjab. If the Dispute remains unresolved beyond 30 days of its reference to the First Level Appellate Authority, either party may refer it to the Second Level Appellate Authority i.e. the Principal Secretary, Local Government. If the Dispute still remains unresolved after 45 days of such reference, the Dispute shall be referred to arbitration in accordance with the provisions of **Clause 14.2** below.

### **14.2 Arbitration**

i) Any Dispute, which is not resolved amicably as provided above shall be finally decided by reference to arbitration. Such arbitration will be subject to the provisions of the Arbitration and Conciliation Act 1996. The place and seat of such arbitration will be at Chandigarh (Local Government, Government of Punjab) or as may be mutually selected, as the case may be, and the language of arbitration proceedings will be English.

ii) There may be a single arbitrator as mutually selected by the Parties. Otherwise, there shall be three arbitrators of whom each Party shall select one and the third arbitrator shall be selected by both Arbitrators.

iii) The arbitrators shall issue a reasoned award.

**iv)** Concessionaire and ULB undertake to carry out any decision or award of the arbitrators (“Award”) without delay. Awards relating to any Dispute shall be final and binding upon the Parties as from the date they are made.

**v)** The Concessionaire and ULB agree that an Award may be enforced against the other Party, and their respective assets wherever situated subject to the right of the aggrieved parties to secure relief from any higher forum.

**vi)** This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

## **Article 15 Representations and Warranties**

### **15.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to ULB that:

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d) it has the financial standing and capacity to undertake the Project;
- e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h) 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;
- i) 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;
- j) subject to receipt by the Concessionaire from ULB of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and



to the Project Facilities shall pass to and vest in ULB on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire;

- k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to ULB or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the rights to implement the Project.
- m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site and the information provided by the ULB, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:
  - i. the form and nature of the Project Site, including the sub-surface conditions,
  - ii. the hydrological and climatic conditions,
  - iii. the extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
  - iv. the means of access to the Project Site
- n) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that MC shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **15.2 Representations and Warranties**

ULB represents and warrants to the Concessionaire that:

- a) ULB has the full power and authority to grant the Concession or secured relevant authority under the Punjab Municipal Corporations Act;
- b) ULB has taken all the necessary action to authorize the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes ULB's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d) There are no suits or other legal proceedings pending or threatened against ULB in respect of the Project Site.

### **15.3 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 or given such warranty shall promptly notify the other of same.

## Article 16 Miscellaneous

### 16.1 Assignment and charges

- a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except as provided in this Agreement and with prior consent of the ULB.
- b) The Concessionaire shall not create or permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of the ULB, which consent the ULB shall be entitled to decline without assigning any reason whatsoever.

### 16.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. **Unless otherwise provided here in such sum shall until payment thereof, unless specifically provided under the relevant heads, carry interest at prevailing lending base rate for medium term loans of State Bank of India per annum plus 5% from the Due Date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same.** Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

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

### 16.3 Governing Law and Jurisdiction

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

### 16.4 Waiver

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

- i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

- ii. shall not be effective unless it is in writing and executed by a duly authorized representative of such 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 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.

### **16.5 Survival**

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

### **16.6 Amendments**

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

### **16.7 Notices**

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

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

## **16.8 Severability**

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

## **16.9 No Partnership**

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

## **16.10 Language**

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

## **16.11 Exclusion of Implied Warranties etc.**

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

## **16.12 Counterparts**

This Agreement may be executed in three (3) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement and shall be registered if required under the Indian Registration Act at the cost and expense of the Concessionaire

## **16.13 Liability for Review**

Except to the extent expressly provided in this Agreement:

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

#### **16.14 Unforeseen Event**

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

#### **16.15 Liability and Indemnification**

- a) The Concessionaire shall indemnify, defend and hold harmless (the “**Indemnifying Party**”) the Concessioneing Authority (the “**Indemnified Party**”) during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgements, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it of such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ; or (iv) as provided elsewhere herein.
- b) The Concessionaire shall be responsible for executing, performing and completing the Construction Works in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the execution of the Construction Works by the Concessionaire or Persons

claiming through or under it and shall indemnify, keep indemnified and hold harmless the Concessing Authority and its advisors in this behalf.

c) The Concessing Authority/ Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the land comprised in the Site, and/or (ii) breach by ULB of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

d) The Concessing Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project Facilities for any reason whatsoever.

e) The Concessionaire shall keep the Concessing Authority indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the site(s) or in the employment of labour and personnel at the Project Facilities. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.

f) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements.

g) The provisions of this Clause shall survive the expiration or prior termination of this Agreement.

Notwithstanding anything contained in the Agreement:

1) The Concessionaire agrees to indemnify and hold harmless the authority and its officers and employees (each a “DoLG and ULB Indemnified Party”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs and expenses (collectively, “Losses”) to which Indemnified Party/ies may become subject, in so far as such losses directly arise out of, in any way relate to, or result from:

- i. any misstatement or any breach of any representation or warranty made by Concessionaire or
- ii. the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire or
- iii. any claim or proceeding by any third party against ULB arising out of any act, deed or omission by the Concessionaire.

For the avoidance of doubt, indemnification of losses pursuant to this article shall be made in an amount or amounts sufficient to restore the Indemnified Party/ies to the financial position it would have been in had the Losses not occurred. Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

#### **ULB’s Indemnification**

In addition to and not in derogation of any other rights and entitlement of the Concessionaire provided in the Agreement, --

- a) ULB agrees to indemnify and hold harmless the Concessionaire, (Concessionaire’s Indemnified Party) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs and expenses (collectively, “Losses”) to which Concessionaire may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:
  - i) any misstatement or any breach of any representation or warranty made by ULB or
  - ii) any claim or proceeding by any third party against the Concessionaire arising out of any act, deed or omission by the authority.
- b) For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Concessionaire Indemnified Party to the financial position it would have been in had the Losses not occurred.
- c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.



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

**Witnesses for Parties**

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**(1) For and on behalf of the First Party**

1. Signature

Signature:

Name

Name:

Address

Designation:

Mob.No.

Common Seal:

**(2) For and on behalf of the Second Party**

1. Signature

Signature:

Name

Name:

Address

Designation:

Mob.No.

Common Seal:

**(3) For and on behalf of the Third Party**

1. Signature

Signature:

Name

Name:

Address

Designation:

Mob.No.

Common Seal: