

**BEFORE THE HON'BLE NATION GREEN TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**  
**Original Application No. 810 of 2024**

**IN THE MATTER OF:**

Ashish ..... Applicant

Versus

State of Haryana & Ors ..... Respondent (s)

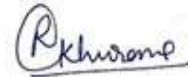
**INDEX**

<b>S. No.</b>	<b>Particulars</b>	<b>Page No.</b>
<b>1.</b>	Report by way of Affidavit of Dr Pankaj IAS, Commissioner , Municipal Corporation, Panipat on Behalf of Respondent No. 4 in compliance of order dated 07.11.2025 and 26.02.2025	<b>1-3</b>
<b>2.</b>	<b>Annexure R/1:</b> Status report of compliance of Rule 15 of the Solid Waste Management rules, 2016	<b>4-8</b>
<b>3.</b>	<b>Annexure R/2:</b> A Copy of the Memo No. 3227 dated 30.01.2026	<b>9-44</b>
<b>4.</b>	<b>Annexure R/3:</b> Concession agreement as referred in status report	<b>45-169</b>

**Date: 27.04.2026**

**Place: New Delhi**

**Filed Through:**



RAHUL KHURANA, ADVOCATE

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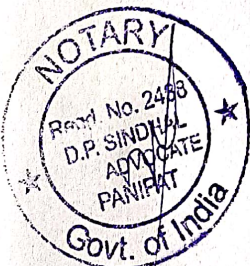
State of Haryana & Ors ..... Respondent (s)

**Report by way of Affidavit of Dr. Pankaj, IAS Commissioner  
Municipal Corporation, Panipat on Behalf of Respondent No.  
4 in compliance of order dated 07.11.2025 and 26.02.2025**

I, Dr. Pankaj, IAS Commissioner Municipal Corporation, Panipat, do hereby solemnly affirm and state as under:

1. That this Hon'ble Tribunal on 07.11.2025 disposed of the aforesaid Original Application directing the answering respondent to file action taken report in tabular format. The relevant portion of the aforesaid order is being reproduced below:

*"39. In view of the above, the present Original Application is disposed of with directions to the Commissioner, MC, Panipat to take requisite remedial measures for due compliance with all aspects covered by Rule 15 (a) to (z) of the Solid Waste Management Rules, 2016 as well as the directions given by this Tribunal O.A. No. 606/2018 titled Compliance of Municipal Solid Waste Management Rules, 2016 and O.A. No. 458/2023 titled Prakash Yadav vs. State of Haryana & Ors., and to file action taken report in tabular format with all requisite details within three months before Ld. Registrar General of this Tribunal who is directed to list the matter before the Bench for further directions in case of non-receipt of the Report and also in case further directions by the Bench*



are considered to be necessary on examination of the Report received from the Commissioner, MC, Panipat as the case may be."

2. That the present reply is being filed in compliance of the aforesaid directions of this Hon'ble Tribunal.
3. That the status report of compliance of Rule 15 of the Solid Waste Management rules, 2016 in tabulated format is annexed herewith as **Annexure R/1**.
4. That compliance of directions passed in Original Application No. 458 of 2023 was sent to the Director General, Urban Local Bodies, Haryana vide Memo No. 3227/CMC dated 30.01.2026. A Copy of the said Memo No. 3227/CMC dated 30.01.2026 along with the annexures mentioned therein is annexed herewith as **Annexure R/2**.
5. That this Hon'ble Tribunal in OA No.606/2018 ,desired certain information 'Urban Local Bodies wise 'information in tabular format. The information pertaining to MC, Panipat is as under:

**Solid Waste Management in the ULB (July. to Dec 2025)**  
**Name of ULB: - Municipal Corporation Panipat**

(1) Name of ULB	(2) Waste Generation (TPD)*	(3) Composition of Waste			(4) Waste collected (TPD)	(5) Waste Transported (TPD)	(6) Final destination of transported waste
		Biodegradable (TPD)	Dry / Recyclable (TPD)	Inert (TPD)			
MC Panipat	310	177	118	15	310	310	JBM Enviro. Waste to Energy Plant Near HVPNL Tajpur Sub Station, Tajpur, Murthal Road, Murthal Village, Sonipat

Waste Processing					
Waste to Energy (Thermal / Methanation route)					
a) Plant capacity	b) Daily inputs of feed	c) Sources of waste	d) Output (Energy)	e) Residue / Rejects management	f) Fly ash and Bottom Ash management
750 TPD 8 MW	310 TPD (Non-Recyclable material RDF)	Mixed Waste and Nonrecyclable waste from Municipal Corporation Panipat.	3.1 MW	Reject disposed (2%) into designated sanitary landfill facility (Waste to Energy Plant, Sonipat)	Utilization of construction material (15%) or low laying area.

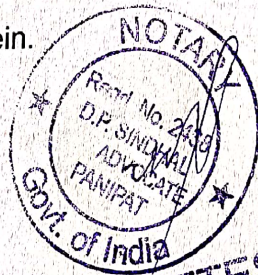
6. That the concession agreement as referred in status report of compliance of Rule 15 of the Solid Waste Management rules, 2016 (Annexure R/1) is annexed as **Annexure R/3**.

In view of the above, it is most respectfully requested that the present compliance report may be taken on record and this Hon'ble Tribunal may be pleased to pass such further orders as it may deem fit.

.....  
Municipal Corporation, Panipat

**Verification:**

It is verified at Panipat on this 27<sup>th</sup> day of April, 2026 that the contents of this report are true and correct to the best of my knowledge and the information is derived from the official records which I believe to be accurate. No material fact has been concealed therein.



.....  
ATTESTED Municipal Corporation, Panipat

Notary, PANIPAT

27 APR 2026

## Action taken report -MC Panipat

## Section-15 (a) to (z) of SWM Rules-2016

## Duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations. - The local authorities and Panchayats shall, -

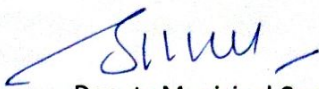
S. No.	Rule	Action Taken
a	Prepare a solid waste management plan as per state policy and strategy on solid waste management within six months from the date of notification of state policy and strategy and submit a copy to respective departments of State Government or Union territory Administration or agency authorized by the State Government or Union territory Administration;	SWM Plan has already been prepared as per Haryana state Govt. Policy.
b	Arrange for door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and other non residential premises. From multi-storage buildings, large commercial complexes, malls, housing complexes, etc., this may be collected from the entry gate or any other designated location;	Concession agreement signed on 25-09-2017 between Director ULB Panchkula & JBM. The MC Panipat is the part of integrated SWM in Sonipat Cluster for Door to Door Collection, transportation, processing & disposal of MSW.
c	Establish a system to recognise organisations of waste pickers or informal waste collectors and promote and establish a system for integration of these authorised waste-pickers and waste collectors to facilitate their participation in solid waste management including door to door collection of waste;	System has been established. As per concession agreement, the waste collection, transportation & processing is being done by JBM including door to door collection of MSW.
d	Facilitate formation of Self Help Groups, provide identity cards and thereafter encourage integration in solid waste management including door to door collection of waste;	As per concession agreement, the JBM is responsible in this regard.
e	Frame bye-laws incorporating the provisions of these rules within one year from the date of notification of these rules and ensure timely implementation;	Bye-laws has already been framed & notified. (Attached)
f	Prescribe from time to time user fee as deemed appropriate and collect the fee from the waste generators on its own or through authorised agency;	Already done and mentioned in bye-laws.
g	Direct waste generators not to litter i.e throw or dispose of any waste such as paper, water bottles, liquor bottles, soft drink canes, tetra packs, fruit peel, wrappers, etc., or burn or burry waste on streets, open public spaces, drains, waste bodies and to segregate the waste at source as prescribed under these rules and hand over the segregated waste to authorised the waste pickers or waste collectors authorised by the local body;	Enforcement for this point being done regularly by the MC Panipat.
h	Setup material recovery facilities or secondary storage facilities with sufficient space for sorting of recyclable materials to enable informal or authorised waste pickers and waste collectors to separate recyclables from the waste and provide easy access to waste pickers and recyclers for collection of segregated recyclable waste such as paper, plastic, metal, glass, textile from the source of generation or from material recovery facilities; Bins for storage of bio-degradable wastes shall be painted green, those for storage of recyclable wastes shall be printed 1 [blue] and those for storage of other wastes shall be printed black;	JBM has done this job as per concession agreement and 1 No. MRF facility has been established.

i	Establish waste deposition centres for domestic hazardous waste and give direction for waste generators to deposit domestic hazardous wastes at this centre for its safe disposal. Such facility shall be established in a city or town in a manner that one centre is set up for the area of twenty square kilometers or part thereof and notify the timings of receiving domestic hazardous waste at such centres;	As per present requirement land has been given to JBM to established waste deposition centre for domestic hazardous waste. As per concession agreement, the JBM is collecting domestic hazardous waste by door to door collection and being disposed off scientifically.
j	Ensure safe storage and transportation of the domestic hazardous waste to the hazardous waste disposal facility or as may be directed by the State Pollution Control Board or the Pollution Control Committee;	JBM has been assigned the job to ensure safe storage and transportation of the domestic hazardous waste to the hazardous waste disposal facility as per concession agreement.
k	direct street sweepers not to burn tree leaves collected from street sweeping and store them separately and handover to the waste collectors or agency authorized by local body;	Enforcement is being done continuously by MC Panipat and fine is imposed on defaulters.
l	Provide training on solid waste management to waste-pickers and waste collectors;	Training on the solid waste management to waste-pickers and waste collectors being done time to time, regularly
m	Collect waste from vegetable, fruit, flower, meat, poultry and fish market on day to day basis and promote setting up of decentralised compost plant or bio-methanation plant at suitable locations in the markets or in the vicinity of markets ensuring hygienic conditions;	Enforcement is being done continuously by MC Panipat and IEC activities are done time to time.
n	Collect separately waste from sweeping of streets, lanes and by-lanes daily, or on alternate days or twice a week depending on the density of population, commercial activity and local situation;	Being done regularly by MC Panipat & through authorized agencies.
o	Set up covered secondary storage facility for temporary storage of street sweepings and silt removed from surface drains in cases where direct collection of such waste into transport vehicles is not convenient. Waste so collected shall be collected and disposed of at regular intervals as decided by the local body;	JBM has set up covered secondary storage facility for temporary storage of street sweepings and silt removed from surface drains in cases where direct collection of such waste into transport vehicles is not convenient. Waste so collected is being disposed off at regular intervals as decided by MC Panipat as per concession agreement.
p	collect horticulture, parks and garden waste separately and process in the parks and gardens, as far as possible;	Being done regularly by MC Panipat & RWAs.
q	transport segregated bio-degradable waste to the processing facilities like compost plant, bio-methanation plant or any such facility. Preference shall be given for on-site processing of such waste;	JBM has been assigned to transport segregated bio-degradable waste to the processing facilities like compost plant, bio-methanation plant or any such facility. Preference being given for on-site processing of such waste, as per concession agreement.
r	transport non-bio-degradable waste to the respective processing facility or material recovery facilities or secondary storage facility;	Transport of non-bio-degradable waste to the respective processing facility or material recovery facilities or secondary storage facility is being done by JBM, as per concession agreement.
s	transport construction and demolition waste as per the provisions of the Construction and Demolition Waste Management Rules, 2016;	Being done regularly by MC Panipat.

t	involve communities in waste management and promotion of home composting, biogas generation, decentralised processing of waste at community level subject to control of odour and maintenance of hygienic conditions around the facility;	Being done regularly by MC Panipat.
u	phase out the use of chemical fertilizer in two years and use compost in all parks, gardens maintained by the local body and wherever possible in other places under its jurisdiction. Incentives may be provided to recycling initiatives by informal waste recycling sector.	Being done regularly by MC Panipat & RWAs.
v	facilitate construction, operation and maintenance of solid waste processing facilities and associated infrastructure on their own or with private sector participation or through any agency for optimum utilisation of various components of solid waste adopting suitable technology including the following technologies and adhering to the guidelines issued by the Ministry of Housing and Urban Affairs from time to time and standards prescribed by the Central Pollution Control Board. Preference shall be given to decentralised processing to minimize transportation cost and environmental impacts such as – a) bio-methanation, microbial composting, vermicomposting, anaerobic digestion or any other appropriate processing for bio-stabilisation of biodegradable wastes; b) waste to energy processes including refused derived fuel for combustible fraction of waste or supply as feedstock to solid waste based power plants or cement kilns;	As per concession agreement. Centralized processing of waste collection is being done at waste to energy plant by JBM.
w	undertake on their own or through any other agency construction, operation and maintenance of sanitary landfill and associated infrastructure as per Schedule 1 for disposal of residual wastes in a manner prescribed under these rules;	Sanitary landfill site constructed by JBM at waste to energy plant at Murthal.
x	make adequate provision of funds for capital investments as well as operation and maintenance of solid waste management services in the annual budget ensuring that funds for discretionary functions of the local body have been allocated only after meeting the requirement of necessary funds for solid waste management and other obligatory functions of the local body as per these rules;	Funds are being provided by the ULB for the same.
y	make an application in Form-I for grant of authorisation for setting up waste processing, treatment or disposal facility, if the volume of waste is exceeding five metric tones per day including sanitary landfills from the State Pollution Control Board or the Pollution Control Committee, as the case may be;	The Panipat is under Sonipat cluster, and waste to energy plant for processing of waste is under CMC Sonipat.
z	submit application for renewal of authorisation at least sixty days before the expiry of the validity of authorisation;	Do
za	prepare and submit annual report in Form IV on or before the 30th April of the succeeding year to the Commissioner or Director, Municipal Administration or designated Officer;	Being done by MC Panipat, time to time.
zb	the annual report shall then be sent to the Secretary-in-Charge of the State Urban Development Department or village panchayat or rural development department and to the respective State Pollution Control Board or Pollution Control Committee by the 31st May of every year;	Being sent by MC Panipat, time to time.
zc	educate workers including contract workers and supervisors for door to door collection of segregated waste and transporting the unmixed waste during primary and secondary transportation to processing or disposal facility;	Being educated regularly by MC Panipat & engaged agencies, time to time.
zd	ensure that the operator of a facility provides personal protection equipment including uniform, fluorescent jacket, hand gloves, raincoats, appropriate foot wear and masks to all workers handling solid waste and the same are used by the workforce;	PPP Being given by MC Panipat & engaged agencies, time to time.

ze	ensure that provisions for setting up of centers for collection, segregation and storage of segregated wastes, are incorporated in building plan while granting approval of building plan of a group housing society or market complex; and	Practices being exercised by MC Panipat.
zf	frame bye-laws and prescribe criteria for levying of spot fine for persons who litters or fails to comply with the provisions of these rules and delegate powers to officers or local bodies to levy spot fines as per the bye laws framed; and	By-laws already framed & enforced by MC Panipat.
zg	create public awareness through information, education and communication campaign and educate the waste generators on the following; namely: - <ul style="list-style-type: none"> <li>(i) not to litter;</li> <li>(ii) minimize generation of waste;</li> <li>(iii) reuse the waste to the extent possible;</li> <li>(iv) practice segregation of waste into bio-degradable, non-biodegradable (recyclable and combustible), sanitary waste and domestic hazardous wastes at source;</li> <li>(v) practice home composting, vermi-composting, bio-gas generation or community level composting;</li> <li>(vi) wrap securely used sanitary waste as and when generated in the pouches provided by the brand owners or a suitable wrapping as prescribed by the local body and place the same in the bin meant for non- biodegradable waste;</li> <li>(vii) storage of segregated waste at source in different bins;</li> <li>(viii) handover segregated waste to waste pickers, waste collectors, recyclers or waste collection agencies; and</li> <li>(ix) pay monthly user fee or charges to waste collectors or local bodies or any other person authorised by the local body for sustainability of solid waste management.</li> </ul>	IEC activities are being done time to time by MC Panipat to educate waste generators for points (i) to (ix)
zh	stop land filling or dumping of mixed waste soon after the timeline as specified in rule 23 for setting up and operationalisation of sanitary landfill is over;	JBM has established the sanitary landfill site, as per concession agreement.
zi	allow only the non-usable, non-recyclable, non-biodegradable, non-combustible and nonreactive inert waste and pre-processing rejects and residues from waste processing facilities to go to sanitary landfill and the sanitary landfill sites shall meet the specifications as given in Schedule-I, however, every effort shall be made to recycle or reuse the rejects to achieve the desired objective of zero waste going to landfill;	The instruction are being followed by JBM while processing & disposal of waste at waste to energy plant.
zj	investigate and analyse all old open dumpsites and existing operational dumpsites for their potential of bio-mining and bio-remediation and wheresoever feasible, take necessary actions to biomine or bio-remediate the sites;	Old dumpsites has been bio-remediated.
zk	in absence of the potential of bio-mining and bio-remediation of dumpsite, it shall be scientifically capped as per landfill capping norms to prevent further damage to the environment.	The old dumpsite has been bio-remediated scientifically.
zl	collect and transport bio-degradable, non-bio-degradable and domestic hazardous waste from households including slums and informal settlements, commercial, institutional and other nonresidential premises, multi-storey buildings, large commercial complexes, malls, housing complexes and the like in compartmentalized and covered vehicle to the respective processing facility.	JBM is responsible to collect and transport bio-degradable, non-bio-degradable and domestic hazardous waste from households including slums and informal settlements, commercial, institutional and other nonresidential premises, multi-storey buildings, large

		commercial complexes, malls, housing complexes and the like in compartmentalized and covered vehicle to the respective processing facility as per concession agreement. The work is going on as per norms.
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Deputy Municipal Commissioner  
Municipal Corporation  
Panipat


**MUNICIPAL CORPORATION PANIPAT**

To

Director General  
Urban Local Bodies, Haryana,  
Panchkula

Memo No. 3227/wc

Dated: 30.01.2026

**Sub :-** **Reminder – Non-compliance with Hon'ble NGT directions regarding imposition of Environmental Compensation for littering/dumping of solid waste at unauthorized locations**

**Ref:-** Your office memo no. SNT/DULB/2026/SBM-416 Dated 22.01.2026  
Your office memo no. SNT/DULB/2025/SBM-328 Dated 29.11.2025  
Your office memo no. SNT/DULB/2025/SBM 309 Dated 31.10.2025  
Hon'ble NGT orders dated 26.07.2024 in OA No. 458/2023

Kindly refer your office letter under reference on the above cited subject. In this connection, the action taken report of MC Panipat is as follow:-

S. No.	Compliance as per SWM Rules-2016	Action Taken Report by MC Panipat
1	Whether a Solid Waste Management Plan has been prepared in accordance with State Policy/Strategy and approved by the competent authority. If yes, please provide the copy	Yes, several action plans have been submitted time to time as required by DULB. The action plans submitted vide letter no.1746/CMC dated 24/03/2025. Copies attached herewith.
2	Whether SWM byelaws incorporating provisions of SWM Rules, 2016 have been framed, notified and implemented. If yes, please provide the copy	Yes, Copy attached herewith
3	Whether provisions for <b>spot fines for littering and non-compliance</b> have been notified and enforcement mechanism put in place. No. of Challans imposed during Jan 2025 to Jan 2026 Total amount recovered from the challans	Yes, Notified copy attached herewith. No. of Challans imposed during Jan 2025 to Jan 2026 (Littering, Burning) = 232 (Total Amount = 3,04,000) Total amount recovered from the challans = INR 2,59,000/-
4	Status of 100% door-to-door collection of segregated waste from: No. of wards covered with 100% door-to door collection of Municipal Solid Waste No. of wards covered with 100% door-to door collection of segregated Municipal Solid Waste.	No. of wards covered with 100% door-to door collection of Municipal Solid Waste =26 Wards No. of wards covered with 100% door-to door collection of segregated Municipal Solid Waste. =10

5	Percentage of establishments practicing source segregation (wet, dry, domestic hazardous, sanitary waste).	Approx 70% establishments practicing source segregation (wet, dry, domestic hazardous, sanitary waste).
6	Whether a formal system for identification and recognition of waste pickers has been established (Yes/No)	Yes, the concessionaire Environment Management for Pvt. Door to Door and Waste Processing i.e JBM All these waste pickers Ltd. Has identified and recognized waste pickers. are registered with Namaste Scheme also.
7	Number of waste pickers / informal waste collectors: Identified Issued ID cards Integrated into SWM activities (Yes/No)-	Identified- 214 registered on Namaste Portal Issued ID cards- 0 Integrated into SWM activities (Yes/No)- Yes
8	Status of formation and engagement of Self-Help Groups (SHGs) in waste collection/processing. (Yes/No) If Yes, provide the list of SHGs	No
9	Whether user charges for solid waste management have been prescribed and notified (Yes/No)-	Yes
10	Availability and operational status of: • Material Recovery Facilities (MRFs) (in nos.) • Secondary storage facilities (in nos.)	1 No. MRF of 5 TPD Capacity at Waste to Energy Plant Tajpur Village Murthal. 1 No. Transfer Station at Barsat Road Panipat
11	Compliance with colour-coded bins (Green/Blue/Black) (Yes/No)-	Yes
12	Establishment of domestic hazardous waste collection centers (1 per 20 sq. km) and notification of timings. (Yes/No)- No. of domestic hazardous waste collection centers:	Domestic Hazardous waste is collected by the Door to Door agency i.e JBM herewith. Management Pvt. Ltd. In separate compartment.
13	Instructions issued to street sweepers regarding non-burning of leaves and separate handling (Yes/No)-	Yes, it is for mentioned in the RFP that was included by MC Panipat while inviting Street Sweeping works. Same has been implemented on the ground.
14	System for separate collection of street sweepings and drain silt. (Yes/No)- If yes give details of agency:	Yes. MC Panipat is divided into 4 Zones - Work of street sweepings and drain silt is done by Zone 1&2 street Sweeping and Drain Silting is done by M/s IND Sanitation Pvt. Ltd. Zone 3&4 street Sweeping and Drain Silting is done by M/s Pooja Consulation Pvt. Ltd..
15	Status of covered secondary storage facilities for street sweepings.	1 No. Transfer Station at Barsat Road Panipat for Street Sweeping garbage.
16	Separate collection and processing of: Market waste (vegetable, fruit, meat, fish, flower markets) Horticulture, park and garden waste (Yes/No)-	Yes.
17	Quantity of non-biodegradable waste sent to: MRFs (in TPD) Waste-to-Energy / RDF / Waste-to-Compost (in TPD)	Approx. 240 TPD sent to MRF and Waste to Energy Plant at Murthal managed and operated by JBM Environment Management Pvt. Ltd.

	Location of sanitary landfill facility	Near Waste to Energy Plant at Murthal managed and operated by JBM Environment Management Pvt. Ltd.
19	Confirmation that only inert and processing rejects are disposed at landfill (Yes/No)	Yes
20	Status of bio-mining / bioremediation of old dumpsites: Quantity processed (in MT) Balance quantity (in MT)	4.09 Lakh MT bio remediated and processed.
21	No. of compartmentalized and covered vehicles used for transportation of segregated waste.	14-Tractor Trolley 72-Tata Ace 65 Rickshaw
22	Total no. of training provided to (Jan 25 to Jan 26): Sanitation workers: Contract workers Supervisors	Sanitation workers: 15 Contract workers: 15 Supervisors: 15
23	Availability and mandatory use of Personal Protective Equipment (PPE) for all sanitation workers (in nos.)	1387 PPE Kits one for each Sanitation worker
24	Total no. of IEC activities conducted (Jan 25 to Jan 26 for: Source Segregation home composting Waste reduction and reuse	Source Segregation 270 home composting 35 Waste reduction and reuse 50
25	Measures taken to promote: Home composting Community-level decentralized processing	35 IEC activities done in last one year for Home Composting. Composting pits are available at community parks for Community-level decentralized processing.
26	Measures taken to ensure zero waste to landfill, including recycling and reuse of rejects.	1. Source Segregation & Public Education 2. Material Recovery Facilities (MRFs) & Advanced Sorting 3. Biological Treatment (For Organic Waste) - Composting 4. Waste-to-Energy (WTE) Plant: The Core Engine for "Zero to Landfill" 5. SLF for Non-Processable and Hazardous Waste
27	Whether provisions for collection, segregation and storage of waste have been incorporated in building plan approvals for: Group housing societies (Yes/No) Market complexes (Yes/No)	Yes
28	Number of domestic hazardous waste collection centers operational. Whether centers are: Established by ULB, or Established through Producers/PROs under EPR. Types of domestic hazardous waste being collected.	Established by ULB through PPP Model Types of domestic hazardous waste being collected - sanitary pads, diapers and condoms Quantity collected (monthly) - 20-22 MT Mode of disposal: Sent to authorized TSDF (Waste to Energy Incinerator)

	<p>Quantity collected (monthly).  Mode of disposal:  Recycled Sent to authorized TSDF  IEC activities undertaken to inform residents about these centers.</p>	<p>IEC activities undertaken to inform residents about these centers - Monthly Scheduled ( minimum 2 activity per month)</p>
29	<p>Measures taken for littering and burning of MSW as per the orders of Hon'ble NGT</p>	<ol style="list-style-type: none"> <li>1. Strengthening Enforcement and Penal Action <ul style="list-style-type: none"> <li>• Intensified Ground Surveillance: Dedicated enforcement squads comprising Sanitary Inspectors and Sanitary Supervisors will be deployed across all wards, with a focus on early mornings and late evenings when incidents of burning are most frequent.</li> <li>• Challaning Regime: Any person or entity found burning waste shall be issued an on-the-spot fine under Section 15 of the Environment (Protection) Act, 1986, and relevant municipal bylaws. The fine structure will be widely publicized to act as a deterrent. This is mentioned that total 23 burning challans are done in the 3 months (Oct. - Dec).</li> <li>• Geo-Tagged Evidence: Field staff will be equipped with mobile devices to capture geo-tagged photographs and videos of violations as evidence for legal proceedings.</li> </ul> </li> <li>2. Intensive Information, Education and Communication (IEC) Campaign <ul style="list-style-type: none"> <li>• Mass Awareness Drives: Ward-level public meetings, nukkad natak (street plays), and school engagement programs are conducted to educate citizens about the health and environmental hazards of open burning.</li> <li>• Digital Outreach: Regular messages will be disseminated via social media platforms, and print media.</li> <li>• Permanent Signage: "No Open Burning" signboards in Hindi and English will be installed at all public places, garbage collection points, and vulnerable open areas.</li> </ul> </li> <li>3. Provision of Alternatives to Vulnerable Groups <ul style="list-style-type: none"> <li>• Distribution of Electric Heaters: Recognizing that night watchmen and security guards often resort to burning waste for warmth during winter, the corporation will distribute electric heaters to registered guards across the city.</li> <li>• Awareness Workshops for Guards: Special training sessions will be organized to sensitize</li> </ul> </li> </ol>

<p>Total no. of environmental compensation levied on the violators (non-BWGs and BWGs)</p> <p>BWG:</p> <p>Non-BWGs</p> <p>Amount Collected: BWG: Non-BWGs</p>	<p>them to the legal and environmental implications of waste burning and the safe use of provided alternatives.</p> <p>4 Improving Waste Collection and Disposal Mechanisms</p> <ul style="list-style-type: none"> <li>• 100% Door to Door Collection: The existing system will be reinforced to ensure no household or commercial waste is left unattended, thereby removing the fuel for open burning.</li> <li>• Regular Cleaning or Transfer Station Community bins will be cleared at increased frequency, especially during festive seasons and high-waste generation periods.</li> </ul> <p>Total no. of environmental compensation levied on the violators (non-BWGs and BWGs) 10</p> <p>BWG: 0</p> <p>Non-BWGs: 10</p> <p>Amount collected BWG Non BWGs: INR 50,000</p>
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### ATR Mandatory detail

Description		Action Taken Report	
<b>a. Enforcement Measures:</b>			
<ul style="list-style-type: none"> <li>• Steps taken for complete prohibition of littering/dumping at unauthorized locations (roadsides, rivers/waterways, wetlands, lakes, nallahs, panchayat/revenue lands, PWD or other government lands).</li> </ul>	Regular inspection is being done by the ward supervisor/ASI/SI/CSI to enforce prohibition of littering/dumping at unauthorized locations		
<b>b. Environmental Compensation Imposed/Realized:</b>			
<ul style="list-style-type: none"> <li>• Number of violations identified/booked.</li> </ul>	<b>Non BWGs</b>	<b>BWGs</b>	
	10(first instances and no subsequent instance found)	0	
<ul style="list-style-type: none"> <li>• Penalty/compensation amount imposed (first and subsequent instances).</li> </ul>	50000/-	0	
<ul style="list-style-type: none"> <li>• Amount recovered.</li> </ul>	50000/-	0	

**c. Designation of Enforcement Officers:**

14013

Name, designation, and contact details of officers authorized enforcement and penalty collection.	Name	Designation	Mob. No.	Area	Over all incharge
	Sh. Vikash	SI	9991184307	Ward no.1-6	Sh. Jitender Narwal, CSI, Mob. 8813801080
	Sh. Rakesh	ASI	9996660320	Ward no.7-12	
	Sh. Gurmeet	ASI	9034420507	Ward no.13-14	
	Sh. Rinku Sharma	SI	9812176991	Ward no.15-20	
	Sh. Pramjeet	ASI	9812173198	Ward no.21-26	

**d. Utilization of Environmental Compensation:**

- Details of utilization/proposed utilization for solid waste management activities.

It is proposed that the environmental compensation should be utilized in the activities for prevention of air pollution.

**e. IEC Measures Undertaken:**

- Hoardings, banners, announcements, social media outreach, electronic/print media and public awareness activities conducted for awareness on the violation and environmental compensation for these violations.

20 Nos. Hoardings erected.  
60 Nos. banners Mounted  
Regular public awareness activities being done in school, college & public places

**f. Supporting Evidence:**

- Photographs, orders, notification copies, and other documentary proofs.

Photographs, orders, notification copies, and other documentary proof, Attached

Commissioner  
Municipal Corporation  
Panipat



To

The Director  
Urban Local Bodies Haryana  
Panchkula

Memo No. - 1746/mc

Dated - 24/03/25

Subject:-

Regarding filling of affidavits in compliance with Writ Petition (Civil) No. 1029/1985- Proceedings Dated 24-02-2024

With reference to the subject sited above and memo no. SNT/DULB/2025/SBM-284 dated 13/03/2025 from DULB from your worthy office. Please find attached herewith the requisite action plan as per point no. 1 and few best practices as per point no. 3 followed by Municipal Corporation Panipat.

It is also to be noted that Municipal Corporation Panipat is committed to the adherence of Solid Waste Management rules 2016 , where reviews of concerned agencies are conducted regularly and strict adherence to the rules are ensured by Municipal Corporation's officials.

Da:- As above

Commissioner  
Municipal Corporation  
Panipat

Endst. No. - 1747/mc

Dated - 24/03/25

A copy of the above is forwarded to the Joint Director DULB, Panchkula.

Commissioner  
Municipal Corporation  
Panipat

## BEFORE THE HON'BLE SUPREME COURT OF INDIA

## Writ Petition (C) 13029 of 1985

IN THE MATTER OF:

M.C. MEHTA

.....Petitioner

Versus

Union of India &amp; Ors

IN RE: MUNICIPAL SOLID WASTE

## AFFIDAVIT

I, Dr.Pankaj Rao, IAS Commissioner Municipal Corporation, Panipat Govt. of Haryana, do hereby solemnly affirm and state as under:

1. That the above-mentioned Writ Petition is pending before Hon'ble Supreme Court of India and is fixed for hearing on 02-04-2025.
2. That this affidavit sets out the compliance status of Municipal Corporation Panipatin the National Capital Region (NCR) of Haryana with the provisions of the Solid Waste Management Rules, 2016 (hereinafter referred to as "the SWM Rules, 2016").
3. That the Municipal Corporation Panipathave undertaken the following measures towards compliance with the SWM Rules, 2016:
  - i. Municipal Corporation Panipat, fall within the NCR region. MC have engaged M/s J.B.M. Environment Management Company for Door-to-Door Collection, Transportation, and Processing of Municipal Solid Waste (MSW) based on Model RFPs circulated by the DULB.

Further, Short Term and Long-Term action plans are given as under:

## A. Profile of ULB

S.no	Particular	Status
1.	Current Population (as per FIDR Portal)	6,11,000
2.	No. of residential/commercial Units (As per NDC Portal)	1,40,453
3.	Per capita waste generation (gm/capita)	Approx. 600gram
4.	Total waste Generation (In TPD)	Approx. 367 TPD
5.	Bye Laws has been notified as per SWM Rules 2016 (Yes/No) If yes, attach the copy, if No, then give the timeline for issuance of notification for Bye laws	Yes, Copy Attached

In Municipal Corporation Panipat sweeping operations are carried out systematically to ensure cleanliness across urban areas. Residential areas are swept once a day, while commercial and public areas undergo sweeping twice a day through both manual and mechanized methods. To enhance efficiency and maintain urban hygiene, 02 No. of road sweeping machines have been deployed by the ULB.

#### **B. Collection & Transportation of Municipal Solid Waste**

<b>Present Status for Collection of MS Waste (%)</b>	<b>Ultimate Target for Collection of MS Waste (%)</b>	<b>GAP (%)</b>	<b>Timeline to achieve the target</b>
65%	100%	35%	31-07-2025

In Municipal Corporation, Panipat, 100% transportation of collected Municipal Solid Waste (MSW) is being carried out efficiently to ensure proper waste management. Waste is collected from residential, commercial, and public areas and transported to designated processing or disposal sites as per SWM Rules 2016.

#### **Action Plan to maintain, further improvement and monitor the collection and transportation of waste:**

<b>S.no</b>	<b>Content</b>	<b>Timeline</b>
1	Presently 100% vehicles are GPS enabled with a pre-decided route plan. These vehicles are being monitored on the centralized SWM monitoring portal.	Already Achieved
2	Total 81 Nos. of vehicles are compartmentalized and equipped to collect segregated waste.	Regular Activity
3.	Regular Monitoring for cleaning of Garbage Vulnerable Points are being monitored by the ULBs as well as on the centralized SWM monitored.	Regular Activity
4.	Total 64 Nos. Rag pickers have been identified and engaged with Door-to-Door collection vehicles/ Secondary points across the State for improving the waste collection and Segregation.	Regular Activity
5.	Total 60 Nos. of SHGs formed in the MC for Solid Waste Management works including Door-to-Door Collection.	
6.	100 % of Properties will be covered with QR Code Scanner/ RFID tags to monitor the primary waste collection as the new	31-12-2025

S.no	Content	Timeline
	Model RFP.	
7.	Regular monitoring is being done by Municipal Corporation Panipat on centralized SWM monitoring portal for Primary collection, secondary collection, GVPs, Waste processing and payments & penalties.	Regular Activity
8.	For Redressal of citizens complaints, Swachhta App, Swachh Haryana App, Sameer App, are already in service and monitored regularly at ULB level.	Regular Activity

### C. Segregation and Processing of MSW as per SWM Rules, 2016

#### i. Segregation:

Present Status of Segregation (%)	Ultimate Target for segregation (%)	GAP (%)	Timeline to achieve the Target
0%	100%	100%	31-12-2025

#### Action Plan and timeline to achieve the targets: -

S.no	Content	Timeline
1	MC has engaged 01 of NGOs for conducting IEC activities regarding Solid Waste Management including source segregation. Regular IEC activities are conducted and monitored by Nodal Officer.	Already engaged and will continue.
2.	08 BWGs have been identified by MC so far, out of which all BWGs have been registered. The BWGs is being penalized for non-compliance of SWM Rules, 2016 as per orders passed by Hon'ble NGT regarding environmental Compensation. In the year 2024-25 total 02 no. of notices have been issued, total Rs 10000 fine imposed and recovered total Rs. zero.	100% BWGs registered
3.	Total no. of 26 Ward committees have been formed by MC to facilitate	Regular Activity

S.no	Content	Timeline
	the segregation and maintain cleanliness across the MC jurisdiction	
4.	In Non-compliance of SWM Rules, 2016 is being penalized regularly. In the year 2024-25 total 35 no. Challans have been issued on the violators out of which total fine of Rs. 17500/- have been recovered.	Regular Activity
5.	PMU is engaged at State level and PIUs are engaged at District level to ensure the implementation of SWM Rules 2016 and to facilitate and support BWGs for their waste management.	Already Achieved
6.	Total no. of 26 IEC campaigns with 1600 nos. of participants have been organised in compliance of SWM Rules 2016	

#### ii. Present status of Waste Processing and Action Plan:

The current combined waste processing capacity in MC is 750 Tons Per Day (TPD), while total waste generation stands at 367 TPD, resulting in a shortfall of 383 TPD. To bridge this gap, future provisions have been planned to enhance waste processing capacity more than half of existing waste generation. Additional, MC is implementing the Standard Model RFP issued by DULB for Collection & Transportation of MSW and Processing of MSW to streamline the MSW works.

Facility	Required Capacity (in TPD)	Present Capacity (in TPD)	GAP	Timeline to achieve the GAP
Total no. of MRF	80	0	80	31-7-2025
Total no. of Compost Plant/Pits	-----	-----	-----	As MC Panipat is the part of WTE plant at Murthal, Sonipat.
<b>Total no. of Park Pits (only for Horticulture Waste)</b>	10	0	10	31-7-2025
<b>Total no. of</b>	----	----	----	As MC Panipat is

Sanitary Landfill Facility (SLF)				the part of WTE plant at Murthal, Sonipat.
----------------------------------	--	--	--	--

#### D. Details of Legacy Waste sites across Haryana

Initially, MChas total 06.00 lacMT of legacy waste, which was laying down by current Door-to Door Collection agency. As of February 2025, 0.MT has been remediated. The remaining legacy waste is expected to be completed by June 30, 2025.

The bioremediation of legacy waste is being carried out in accordance with CPCB guidelines. As per the RFP for the remediation and reclamation of existing legacy waste sites, the concessionaire is responsible for processing the waste and ensuring sustainable disposal of the recovered materials. The inert waste generated from the process will be utilized for filling up the area beneath the base course of Roads and highways, thereby promoting resource recovery and minimizing landfill dependency. Also, soil enrichment material is being used for Barren land and C&D waste is being used for filling the low laying area.

#### E. Status of Construction & Demolition Waste Management

Present Status of Generation of C&D waste (in TPD)	Present Status of Collection & Transportation of C&D waste (in TPD)	Present Status of Processing of C&D waste (in TPD)	GAP	Timeline to achieve the Target
Approx. 03 TPD	Approx. 03 TPD	All collected C&D waste dumped in low lying Area	Nil	-----
Remarks: At present All collected C&D waste dumped in low lying Area				

#### F. Status of Domestic Hazardous & Sanitary Waste

Collection mechanism of DHS Waste	Final Disposal of DHS waste
A separate bin installed on door-to-door collection vehicle to collected Domestic Hazardous & Sanitary waste.	By Incineration

#### G. Give details of best practices followed by the MC in compliance of SWM Rules, 2016.

Municipal Corporation Panipat proposes the following best practices for waste management:

**Effective Waste Segregation:** The municipality will continue its focus on segregation at the source through the use of color-coded bins and will ensure 100% door-to-door collection systems. This will be accompanied by extensive

community outreach and education programs to ensure that residents are aware of and practice proper waste segregation.

Composting and Recycling: We will continue enhancing the composting and recycling programs, setting up community composting units and material recovery facilities. The focus will be on recycling organic waste and diverting recyclables like paper, plastic, and metals from landfills. We are going to established 1 no MRF and 05nos RRR center.

Circular Economy; The municipality will continue its work to promote the circular

economy model, where waste is minimized, and materials are reused and recycled as much as possible, reducing the overall environmental impact. We have already on boarded scrap dealers & kabadiwallas with MC Panipat for ensuring this.

' Citizen Engagement and Education. There will be continuous engagement with

citizens to raise awareness about waste reduction, segregation, and responsible

disposal practices. Awareness drives, educationally programs in schools, and community outreach will continue to be undertaken. We have designated 3 local

residents as Youth Ambassador for local ownership of IEC activities.

That the Municipal Corporation, Karnal undertakes to continue its efforts to achieve 100% compliance with SWM Rules, 2016, and other applicable guidelines, ensuring timely progress reporting and necessary interventions to address any gaps.

That the Status-cum-Action Plan is submitted in compliance of the directions received in this regard.

4. That the Municipal Corporation Panipat undertakes to continue its efforts to achieve 100% compliance with SWM Rules, 2016, and other applicable guidelines, ensuring timely progress reporting and necessary interventions to address any gaps.
5. That the Status-cum-Action Plan is submitted in compliance of the directions received in this regard.

#### VERIFICATION

I, the above-named deponent, do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge and belief. Nothing material has been concealed therein.

Verified at Panipat on this 24<sup>th</sup> day of March, 2025.

**DEPONENT**

  
Dr. Pankaj Rao IAS

Commissioner

Municipal Corporation, Panipat



# MUNICIPAL CORPORATION PANIPAT

14124

Improvement Trust Building, Railway Road, Panipat, Haryana.

Tel. 0180-2645800, Fax. 0180-2645800

Email- [nagarnigampanipat132103@gmail.com](mailto:nagarnigampanipat132103@gmail.com)

From

Commissioner  
Municipal Corporation  
Panipat

To

The Director  
Urban Local Bodies, Haryana  
Panchkula  
Email ID : [dulbhry@hry.nic.in](mailto:dulbhry@hry.nic.in)

Memo no. 2103.....

Dated : 06/09/19.....

**Subject:- Notification of SWM Bye-Laws In all Urban Local Bodies of Haryana.**

Kindly refer to your memo no. Tech./Sect.I/SWM/2019/1364 dated 14-03-2019 vide which the draft of Solid Waste Management Bye Laws prepared by the Urban Local Bodies Department and duly approved by Government of Haryana has been forwarded for implementation. However, under Section 394 of the Haryana Municipal Corporation Act, 1994 this notification is required to be published in the official Gazette of Government of Haryana.

Hence, kindly arrange for its publication in the Gazette of Govt. of Haryana.

  
Commissioner

Municipal Corporation  
Panipat

Endst no. 2104-05.....

Dated : 06/09/19.....

A copy of above is forwarded to the following for information please.

1. Principal Secretary to Govt. of Haryana
2. Deputy Commissioner, Panipat

  
Commissioner

Municipal Corporation  
Panipat

## Approval Note

**Subject:- Notification of SWM Bye-laws in all the urban local bodies of Haryana**


It is submitted that the draft of Solid Waste Management bye-laws prepared by the ULB deptt. duly approved by the Govt. of Haryana for implementation of solid waste management rules, 2016 has been received in this office vide DULB Haryana Panchkula memo No. Tech/ Sect.I/SWM/2019/1364 dated 5/3/2019 (Copy enclosed).

Accordingly, the notification of these bye-laws are to be done for implementation in DULB Panipat. The bye-laws are placed herewith for approval for notification.

  
C.S.I.  
M.C. Panipat

  
S.E.  
M.C. Panipat

*For Perusal of  
w/ C.M.C*

  
J.C.  
M.C. Panipat

  
Commissioner  
M.C. Panipat

**(Solid Waste Management) Draft Bye-laws, 2018****NOTIFICATION**

By using the authority vested through Municipal Corporation, Panipat Haryana Municipal Corporation Act 1994, section 394 in order to organize & regularize Solid Waste Management and Handling Work in the Municipal Corporation, Panipat Urban Local Body, Haryana and in view of the Solid Waste management Rules, 2016 issued in public interest by the Ministry of Environment, Forest and Climate Change, Government of India on 8th April 2016, the Government of Haryana (State) and Municipal Corporation, Panipat hereby forms the following byelaws for Municipal Solid Waste of Urban Local Bodies (Management & Handling), Cleanliness & Sanitation.

**CHAPTER – 1  
GENERAL****1. Short Title and commencement**

- These Bye-laws shall be known as Solid Waste (Management & Handling), Byelaws for the Municipal Corporation, Panipat 2018 and come into operation from the 1<sup>st</sup> September.
- These Bye-laws shall remain in force until amended in accordance with Solid Waste Management Rules, 2016, due notice of such amendment being published in the local newspapers and websites of the Municipal Corporation, Panipat.

**2. Applicability**

These byelaws shall be applicable within the limits of Municipal Corporation, Panipat to every generator of Municipal Solid Waste and to every premise under the ownership or occupation of any person within the limits of the Municipal Corporation, Panipat.

**3. Prohibition of Littering of Municipal Solid Waste**

- No person shall throw or deposit litter in any occupied/unoccupied/open/vacant public or private place except in authorized public or private litter receptacles
- No person shall throw or deposit litter upon any street, road, sidewalk, playground, garden, traffic island or other public/private place from any vehicle either moving or parked.
- No person shall drive or move any truck or other vehicle filled with litter unless such vehicles are so designed to cover the waste so as to prevent any littering from being blown off or deposited upon any road, sidewalks, traffic islands, playground, garden or other public place.
- No person shall cook, bathe, spit, urinate, defecate, feed animals / birds or allow their droppings/poop, wash utensils or any other object or keep any type of storage in any public place except in such public facilities or conveniences specifically provided for any of these purposes.

4. **Definitions :-** (1) In these bye-laws, unless there is anything repugnant on the subject or context-

- (a) "aerobic composting" means a controlled process involving microbial decomposition of organic matter in the presence of oxygen;
- (b) "anaerobic digestion" means a controlled process of digestion involving microbial decomposition of the organic matter in the absence of oxygen;
- (c) "bio-degradable substance" means a substance which can be degraded by micro-organisms into simpler stable compounds;
- (d) "bio-medical waste" means any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto or in the production or testing of biological or in health camps;
- (e) "bio-methanation" means a process, which entails the enzymatic decomposition of organic matter by microbial action to produce methane-rich biogas;
- (f) "bulk garden and horticultural waste" means bulk waste from parks, gardens etc. including grass clippings, weeds, woody 'brown' carbon-rich material such as pruning, branches, twigs, wood chipping, straw, dead leaves, tree trimmings, etc. which cannot be accommodated in the daily collection system for bio-degradable waste;
- (g) "collection" means lifting and removal of solid waste from collection points or any other location;
- (h) "Collection at Source" means the collection of municipal solid waste by the Municipal Corporation directly from the premises of any building or common premises of a group of buildings. This is also referred to as "door to door collection";
- (i) "composting" means a controlled process involving microbial decomposition of organic matter;
- (j) "construction and Demolition waste" means waste from building materials, debris and rubble resulting from construction, remodeling, repair and demolition operations;
- (k) "disposal" means the final and safe disposal of post processed residual solid waste and inert street sweepings and silt from surface drains on land to prevent contamination of ground water, surface water, ambient air and attraction of animals or birds;
- (l) "door to door collection" means collection of solid waste from the door step of households, shops, commercial establishments, offices, institutional or any other non-residential premises and includes collection of such waste from entry gate or a designated location on the ground floor in a housing society, multi storied building or apartments, large residential, commercial or institutional complex or premises;
- (m) "door-to-door collection system or vehicle" means the bell-ringing vehicle (includes a carriage, cart, van, truck, hand-cart, bicycle, cycle-rickshaw, auto-

rickshaw, motor vehicle and every wheeled conveyance which is used or is capable of being used on a street) provided by the Municipal Corporation for point to point collection of Municipal Solid Waste;

- (n) "domestic hazardous waste" means waste contaminated with hazardous chemicals or infectious waste such as discarded paint drums, pesticide cans, CFL bulbs, tube lights, expired medicines, broken mercury thermometers, used batteries, used needles, gauge and syringes, etc. generated at the household level;
- (o) "dry waste" means waste other than bio-degradable waste and inert street sweepings and includes recyclable and non-recyclable waste, combustible waste and sanitary napkin and diapers, etc;
- (p) "dump sites" means a land utilised by Urban Local Body for unscientific disposal of solid waste without following the principles of sanitary land filling;
- (q) "E-waste" means waste electrical and electronic equipment in whole or in part or rejects from their manufacturing, refurbishment and repair process which are intended to be discarded as waste;
- (r) "facility" means any establishment wherein the solid waste management processes namely segregation, recovery, storage, collection, recycling, processing, treatment or safe disposal are carried out;
- (s) "fine" means penalty imposed on waste generator or operator of waste processing and disposal facilities under these bye-laws for non – compliance of the directives contained in these bye-laws;
- (t) "Garbage Vulnerable Points" means Secondary Collection Points
- (u) "handling" includes all activities relating to sorting, segregation, material recovery, collection, secondary storage, shredding, baling, crushing, loading, unloading, compacting, transportation, processing and disposal of solid waste;
- (v) "incineration" means an engineered process involving burning or combustion of solid waste to thermally degrade waste materials at high temperatures;
- (w) "inert waste" means waste which are not bio-degradable, recyclable or combustible and includes non-recyclable fraction of construction and demolition waste, street sweeping or dust and silt removed from the surface drains;
- (x) "institutional generators" includes occupier of the institutional buildings such as building occupied by the Central Government Departments, State Government Departments, public or private sector companies, marriage halls, hospitals, education institutions, hotels and restaurants, etc.;
- (y) "land filling" means disposal of solid waste on land in facility designed with protective measures against pollution of surface water, ground water and air fugitive dust, wind-blown litter, foul smell, fire hazard, bird menace, pests and rodents, greenhouse gas emission, slope instability and erosion;
- (z) "leachate" means the liquid that seeps through solid waste or other medium and has extracts of dissolved or suspended material in it;

- (aa) "litter" means all refuse and include any other waste material which, if thrown or deposited as prohibited under these bye-laws, tends to create nuisance, or a danger to life, environment, public health, safety and welfare;
- (ab) "littering" means putting litter in such a location that it falls, descends, blows, is washed, percolates or otherwise escapes or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or onto any public place; or causing, permitting or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto any public place;
- (ac) "municipal solid waste" includes commercial and residential waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential waste, street sweepings, silt removed or collected from the surface drains, horticulture waste, construction and demolition waste generated in Municipal Corporation area in either solid or semi solid form excluding hazardous industrial waste but including treated bio-medical waste;
- (ad) "non-biodegradable waste" means any waste that cannot be degraded by microorganisms into simpler stable compounds;
- (ae) "operator of a facility" means a person who owns or operates a facility for collection, segregation, storage, transportation, processing and disposal of municipal solid waste and also includes any other agency authorized as such by the Municipal Corporation for management and handling of solid waste in the respective areas;
- (af) "palletization" means a process whereby pellets are prepared which are small cubes or cylindrical pieces made out of solid waste and includes fuel pellets which are also referred as refuse derived fuel;
- (ag) "primary collection" means collecting, lifting and removal of segregated solid waste from source of its generation including households, shops, offices and any other non-residential premises or from any collection points or any other location specified by the Municipal Corporation;
- (ah) "processing" means the process by which waste materials are transformed into new or recycled products;
- (ai) "recycling" means the process of transforming segregated solid waste into raw materials for producing new products which may or may not be like its original products;
- (aj) "redevelopment" means rebuilding of old residential or commercial buildings at the same site, where the existing buildings and other infrastructures have become dilapidated;
- (ak) "Refused derived fuel"(RDF) means fuel derived from combustible waste fraction of solid waste like plastic, wood, pulp or organic waste, other than chlorinated materials, in the form of pellets or fluff produced by drying, shredding, dehydrating and compacting of solid waste ;
- (al) "residual waste" means and includes the waste and rejects from the solid waste processing facilities which are not suitable for recycling or further processing

- (am) "sanitation" means the promotion of hygiene and the prevention of disease and other consequences of ill health related to environmental factors;
- (an) "sanitary waste" means waste comprising of used diapers, sanitary towels or napkins, condoms, incontinence sheets and any other similar waste;
- (ao) "Schedule" means schedule appended to these bye-laws;
- (ap) "secondary collection points" means collection of solid waste deposited at secondary waste storage depots or bins for onward transportation of the waste to the processing or disposal facility;
- (aq) "secondary storage" means the temporary containment of solid waste at a public place in a covered bin or container in a manner so as to prevent littering, vectors, stray animals and odour;
- (ar) "segregation" means sorting and separate storage of various components of solid waste namely biodegradable waste or wet waste, non-biodegradable waste or dry waste including recyclable waste, combustible waste, sanitary waste, non-recyclable inert waste, domestic hazardous waste, e-waste and construction and demolition waste;
- (as) "source" means the premises in which waste is generated;
- (at) "storage" means the temporary containment of municipal solid waste in a manner so as to prevent littering, attraction to vectors, stray animals and excessive foul odour;
- (au) "street" includes any way, road, lane, square, court, alley, gully, passage, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the roadway or footway over any bridge or causeway;
- (av) "stabilization of waste" means the biological decomposition of biodegradable waste to a stable state where it generates no leachate or offensive odours and is fit for application to farm land, soil erosion control and soil remediation;
- (aw) "transportation" means a specially designed transportation system to carry municipal solid waste from one place to another hygienically so as to prevent foul odour, littering, unsightly conditions, accessibility to vectors, etc.;
- (ax) "treatment" means the method, technique or process designed to modify physical, chemical or biological characteristics or composition of any waste so as to reduce its volume and potential to cause harm;
- (ay) "treated bio-medical waste" means the waste generated in hospitals and health care institutions which have been prescribed as treated in accordance with the Bio-Medical Waste Management Rules, 2016;
- (az) "user fee" means a fee imposed through these bye-laws by the Urban Local Body on the waste generator;
- (ba) "ULB" means Urban Local Body which comprises all Municipal Corporations, Municipal Councils and Municipal Committees of Haryana State.
- (bb) "vermi composting" is the process of the conversion of bio-degradable waste into compost using earth worms ;
- (bc) "waste generator" means and includes every person or group of persons or

residential and commercial establishments including Indian Railways, defense cantonments, industries, hospitals, hotels etc. which generate solid waste;

- (bd) "Waste pickers" means a person or groups of persons engaged in collection of reusable and recyclable solid waste from the source of waste generation as well as picking up of waste from the streets, bins, processing and waste disposal facilities for sale to recyclers directly or through intermediaries to earn their livelihood.

- (2) The words and expressions used but not defined herein shall have the same meaning as respectively assigned to them in Solid Waste Management Rules, 2016 or the Construction and Demolition Waste Management Rules, 2016 made by the Government of India, Ministry of Environment, Forest and Climate Change under the provisions of the Environment ( Protection) Act, 1986 (29 of 1986) respectively published in the Gazette of India in Part II-Section 3(ii) vide G.S.R No.1357(E) dated the 8<sup>th</sup> April, 2016 and in Part II-Section 3(ii) vide G.S.R. No. 317(E) dated the 29<sup>th</sup> March, 2016.

#### CHAPTER-II

#### SOURCE SEGREGATION

##### 5. Segregation, Storage, Delivery and Collection of Municipal Solid Waste

- (1) Every generator of Municipal Solid Waste shall segregate the waste at source into the following categories as applicable and shall store separately without mixing it for segregated storage in authorized storage bins, private/public receptacles for handing over or delivering to authorized waste pickers or waste collectors as directed by local authority/body from time to time:
- Bio-degradable (**wet**) waste
  - Specified domestic hazardous waste (as per applicable rules)
  - Fully treated Bio-medical waste (as per applicable rules)
  - Construction and demolition waste (as per applicable rules)
  - Bulk garden and horticulture waste including tree and plant trimmings
  - All other non- biodegradable (**dry**) waste including recyclable and non-recyclable waste. Sanitary waste like napkins, diapers, tampons etc shall be securely wrapped in pouches provided by the manufacturers or brand owners or in suitable wrappers as instructed by the official / authority and shall be stored with the dry waste for handing over.
  - All bulk generators shall manage the waste at their premises as per instructions notified by the ULB from time to time.
- (2) The ULB shall separately notify from time to time the mandatory colour coding and other specifications of receptacles prescribed for storage and delivery of different types of solid waste to enable safe and easy collection without any mixing or spillage of waste, which generators of different types of solid waste shall have to adhere to.

- (3) It shall be the duty of every generator of municipal solid waste, either owner or occupier of every land or building to collect or cause to be collected from their respective land, premises and building, to segregate waste and to store and deliver the same to the municipal worker/vehicle/waste picker / waste collector deployed by Municipal Corporation, Panipat.

#### **6. Storage of Segregated biodegradable or wet waste, at source**

- (1) **Bio-degradable (wet) waste:** Segregated Bio-degradable Municipal Solid Waste if not composted by the generator, shall be stored by them within their premises and its delivery shall be ensured to the municipal worker/vehicle/waste picker / waste collector or to the bio-degradable waste collection vehicle provided for specified commercial generators of bulk bio-degradable waste at such times as may be notified from time to time.
- (2) **Bulk garden and horticultural waste shall be kept un-mixed and composted at source:** The Urban Local Body shall also notify Instructions/ guidelines with regard to pruning of trees and storage and delivery of tree trimmings including segregated garden and horticultural waste by charging suitable fees as notified by it from time to time, for collection and transport to its facility.

#### **7. Storage of Segregated non-biodegradable or dry waste, at source**

- (1) All dry waste including recyclable and non-recyclable waste, combustible waste, sanitary waste, etc. shall be segregated from the wet waste and secured within the site for disposal to a public dry waste bin or handing over to municipal dry waste collection vehicle.
- (2) Sanitary waste like napkins, diapers, tampons etc. shall be securely wrapped in pouches provided by the manufacturers or brand owners or in suitable wrappers as instructed by the official / authority and shall be stored with the dry waste for handing over.
- (3) All recyclable and non-recyclable dry waste shall be stored and delivered by every generator of waste to the dry waste collection vehicle, which shall be provided by ULBs and its Agents at such spots and at such times as may be notified by them from time-to-time for collection of such waste by ULBs.

#### **8. Placement of dustbins at Household/Premises**

- (1) Separate bins shall be kept at household/premise level for dry and wet waste.
- (2) The separate bins shall be kept near the entry gate, in case of individual household or individual shops and at a designated location on the ground floor, in case of housing society, multi-storeyed building or apartments, large residential, commercial, institutional complex or premises.  
Provided that, in case of buildings other than individual households, the designated location shall be easily accessible from the street for collection of waste.

Provided further that, for housing society, multi-storeyed building or apartments, large residential, commercial, institutional complex or premises, the bins shall be installed as per the mandatory colour coding notified by the ULBs for storage and delivery of different types of solid wastes.

(3) The following specified household hazardous wastes shall not be mixed with the dry or wet waste and shall be stored separately.—

- (a) Aerosol cans
- (b) Batteries and button cells
- (c) Bleaches and household kitchen and drain cleaning Agents & its Containers.
- (d) Car batteries, oil filters and car care products and consumables
- (e) Chemicals and solvents and their containers
- (f) Cosmetic items, chemical-based Insecticides and their containers
- (g) Light bulbs, tube-lights and compact fluorescent lamps (CFL)
- (h) Discarded Medicines and its containers,
- (i) Paints, oils, lubricants, glues, thinners, and their containers
- (j) Pesticides and herbicides and their containers
- (k) Photographic audio/video tapes and their containers, chemicals
- (l) Styrofoam and soft foam packaging of furniture, packaging and equipment
- (m) Thermometers and mercury-containing products

(4) The household domestic hazardous wastes shall be handed over to the collection vehicle provided for periodic/weekly collection as notified by ULB or any agency authorized by State Pollution Control Board or to a center designated for collection of such waste for disposal.

### CHAPTER-III

#### PROCESSING AT SOURCE

##### 9. On-site composting of bio-degradable waste

(1) In house composting of waste by the generators of bio-degradable waste shall be promoted to minimize transportation of wet waste. Waste generators may have composting facility on-site or may deliver the same to a collection vehicle for transfer of the waste to ULBs composting centre or its contactor's composting centre.

- (2) The waste generators may adopt any of the techniques available for bio-degradable waste such as composting, vermin-composting, mechanized composting, biogas plant etc as per mentioned in SWM Rules,2016 and may also choose to use other natural methods/resources for bio-degradation of waste by obtaining the required authorizations.
- (3) The Municipal Corporations/Municipal Committees/ Municipal Councils shall disburse information about composting through composting centers and such centers shall be listed on its website

#### CHAPTER IV

#### PRIMARY STORAGE & BIN MANAGEMENT

##### A. Primary storage –From House hold to Municipal Bins

##### 10. Municipal Bins / Community Bins in public places:

- a) Segregated waste shall be delivered by the respective generators to Municipal bins / Community bins provided by ULB or authorized agency. Every community bin shall be separate for bio-degradable (wet waste) and non-bio-degradable waste (dry waste).
- b) All the stakeholders (Individual/ official / RWAs) shall ensure that at no point of time the community bins are overflowing nor exposed to open environment and prevent their scattering by rag pickers, stray animals or birds etc.
- c) A concerned ULBs shall ensure cleaning of such bins daily/ regular intervals and proper monitoring shall be carried out.
- d) Concerned ULBs shall notify charges/ fine against littering of waste on non-designated places.

11. In exceptional cases, until the services of a door-to-door collection system is not in place, waste should be stored at designated points/bins on commercial areas or any other public place for the time being. Community waste storage bins shall be maintained by Municipal Corporation/Municipal Committees/ Municipal Councils, where segregated waste shall be deposited by the generator, and from where Municipal Corporation/Municipal Committee/ Municipal Council's shall collect such waste.

12. Every owner/ occupier of any premises other than designated slaughter houses/poultry and fish markets, who generates poultry, fish and slaughter waste as a result of any commercial activity, shall store the same separately in closed, hygienic condition and deliver it at a specified time to ULB collection vehicle provided for this purpose. Deposit

of such waste in any community bin is prohibited and shall attract fines as indicated in the schedule of Fines.

### **13. Delivery of segregated premises waste from premises**

**(1) It shall be the duty of every generator** of municipal solid waste, either owner or occupier of every land and building to collect or cause to be collected from their respective land, premises and building, to segregate waste and to store and handover the same to the municipal worker/vehicle/waste picker / waste collector deployed by the ULB for the purpose.

**(2)Segregated Bio-degradable Municipal Solid Waste** (as per the illustrative list in Schedule II)if not composted by the generator, shall be stored by them within their premises and its delivery shall be ensured to the municipal worker/vehicle/waste picker / waste collector or to the bio-degradable waste collection vehicle provided for specified commercial generators of bulk bio-degradable waste at such times as may be notified, from time to time.

**(3)Specified household hazardous waste** (as listed in Schedule III) shall be stored and handover by every generator to the collection vehicle, which shall be provided weekly/periodically by ULB/or any other Agency authorized by the Haryana State Pollution Control Board for collection of such waste, or deliver to a center designed for collection of such waste for disposal in a manner that is mandated by the Government of Haryana or Haryana State Pollution Control Board.

**(4)Untreated bio-medical waste**(as listed in Schedule IV) shall be collected & stored in specified type of covered receptacles and delivered by every generator of such waste to the collection vehicle which shall be provided weekly/periodically by ULB or any other Agency authorized by the Haryana State Pollution Control Board, or to a center designated for collection of such waste, for disposal in manner that is mandated by Haryana State Pollution Control Board in accordance with the Bio-Medical Waste (Management &Handling) Rules, 2016.

**(5)Construction and Demolition waste** shall be stored and delivered separately at such spot and at such time as notified by ULB or its agency from time to time for collection of such waste. Small generators (household level) shall be responsible to

segregate the Construction & Demolition waste at source by contacting a local help-line of ULB or the Agency who shall then send a vehicle to pick up such segregated construction & demolition waste on payment of necessary charges by the said generator and transport this waste to a processing center. The details of local Help line of ULB shall be available in the Offices of the ULBs and on their website.

**(6) All other Non-biodegradable ("Dry") waste**, both recyclable and non-recyclable shall be stored and delivered by every generator of waste to the dry waste collection vehicle, which shall be provided by ULB or its Agency at such spots and at such times as may be notified by them from time-to-time for collection of such waste.

**(7) Bulk garden and horticultural waste** shall be kept separated and composted at source. The ULB shall also notify Instructions/ guidelines with regard to pruning of trees and storage and delivery of tree trimmings including segregated garden and horticultural waste by charging suitable fees as notified by it from time to time, for collection and transport to its facility.

**(8) Disposal by burning of any type of solid waste at roadsides**, or at any private or public property is prohibited and penalty will be levied on defaulters.

**B. Municipal Bin Management Plan –Placing of Bins (plans to be prepared by RWA/ Agency hired by ULB)**

The Resident Welfare Association (RWA)/ any agency hired by ULB along with the EE/ AE/Sanitary Inspector and sanitation agency concerned shall prepare the Bin management plan for smooth and better functioning of SWM of the respective area.

**14. Transformation of garbage Vulnerable Points**

(1) The ULB shall identify through ground survey or through online crowd sourcing applications, such Garbage Vulnerable Points which are prone to littering or haphazard disposal of garbage/waste.

(2) The ULB shall prepare such plans or schemes to transform the garbage vulnerable points and such schemes among other things as may be required for efficient management of such Garbage vulnerable Points, may also impose restrictions and penalty or provide incentives for maintaining good practices, conduct community involvement programs, etc.

**CHAPTER-V**  
**TRANSPORTATION**  
**(FROM PRIMARY STORAGE TO SECONDARY STORAGE/PROCESSING)**

**15. Primary collection**

Primary collection refers to the process of collecting waste from households, markets, institutions and other commercial establishments and taking the waste to a storage depot/ transfer station. Primary collection may be accomplished through the use of containerized push carts/tri-cycles, small mechanized vehicles, compactors and/or tipping vehicles.

**Vehicles Specifications:**

- The primary vehicles should be Compartmentalized with provision for collection of dry and wet waste separately also a separate container/bucket shall be provided in the vehicles for collection of domestic hazardous waste separately.
- The vehicles should be covered vehicles to avoiding littering of waste.
- The motorized vehicles should be fitted with GPS facility to track the movement and area covered by such vehicles.
- The Primary Vehicles should have Public Announcement System (PAS) to create awareness regarding handing over source segregated waste to the waste collector.

**16. Secondary Transportation**

Secondary collection includes picking up waste from community bins, waste storage depots or transfer stations and transporting it to waste processing sites or to the final disposal site. Larger capacity vehicles are proposed to transport waste from the secondary or tertiary collection point (depot / transfer station) to the processing/disposal facility. The vehicles shall synchronize well with containers placed at depots / transfer stations to prevent multiple handling of waste. A combination of dumper placers, tractor trolleys and refuse collectors should be used.

**Vehicles Specifications:**

- The vehicles should collect dry and wet waste separately and transport it to designated waste processing and disposal sites.

- The vehicles should be covered vehicles to avoiding littering of waste.
- The vehicles should be fitted with GPS facility to track the movement and frequency of lifting of waste from secondary or tertiary collection point (depot / transfer station) to the processing/disposal facility.

## CHAPTER VI

### ROLE OF STACKHOLDERS

#### **16. Role of Resident Welfare Association, commercial associations and housing societies.—**

(1) All resident welfare and market associations shall, within one month from the date of notification of these byelaws and in partnership with the ULB ensure segregation of waste at source by the generators as prescribed in these byelaws, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorized waste pickers or the authorized recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the Urban Local Body.

(2) All gated communities and institutions with more than 5,000 sq.m area shall, within one month from the date of notification of these byelaws and in partnership with the Urban Local Body, ensure segregation of waste at source by the generators as prescribed in these byelaws, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorized waste pickers or the authorized recyclers. The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the Urban Local Body.

#### **17. Role of Bulk Generators.—**

(1) All hotels and restaurants shall, within one year from the date of notification of these byelaws and in partnership with the ULB ensure segregation of waste at source as prescribed in these byelaws, facilitate collection of segregated waste in separate streams, handover recyclable material to either the authorized waste pickers or the

(2) The bio-degradable waste shall be processed, treated and disposed off through composting or bio-methanation within the premises as far as possible. The residual waste shall be given to the waste collectors or agency as directed by the Urban Local Body.

#### 18. Obligatory duties of the Urban Local Body

- (1) **Infrastructure facilities:** Urban Local Body shall provide adequate infrastructure facilities to assist citizens' compliance with these Bye-laws. In addition to waste collection services, litter bins, dry waste sorting centers, and composting centers shall be set up, wherever possible and essential, in consultation with local citizens.
- (2) **Citizen Resource Base:** The Urban Local Body shall facilitate information about composting as well as recycling of dry waste through composting centres and dry waste sorting centres listing them on its website.
- (3) The ULB shall authorise interested organizations to collect bio-degradable 'puja' articles (flowers, leaves, fruits etc.) at certain designated sites near water-bodies such as beaches, lakes, ponds, etc. in notified receptacles. The collection from such receptacles shall preferably be composted at a suitable location.
- (4) **Point-to-Point waste collection services:** The Urban Local Body shall provide for the collection of the municipal solid waste from specific pick-up points on a public or private road up to which the generator must bring the segregated and stored waste for delivery to municipal worker/vehicle/waste picker / waste collector provided by Urban Local Body according to the route plans at such times and at such spots as notified by the concerned official/authority in advance for specified types of waste for different localities.
- (5) **Collection at source:** Urban Local Body shall provide for the collection of municipal solid waste from premises of a building or group of buildings from waste storage receptacles kept on the premises to which Urban Local Body vehicles / workers shall be provided access at such times as may be notified by the concerned official/authority of ULB.
- (6) **The ULB shall provide suitable community bins** at places specified by the ULB for collection of waste. The waste generators should ensure that segregated waste is being delivered to the designated bins. The authority should ensure that at no point of time shall the bins be overflowing with garbage
- (7) **The daily and weekly time schedule for picking up waste** by the sanitation workers of the ULB should be notified in advance and made available at all the ULB office as well as website
- (8) **The arrangements for the collection of construction and demolition waste, and garden and horticultural waste, by ULB or its licensees shall be made available to the**

public as well as to the bulk generators of waste by the official/authority as the case may be.

- (9) **Action against the Transport contractors and Urban Local Body employees** will be taken by the Urban Local Body in case the contractor or the employee mixes segregated waste or fails to collect waste at the specified time schedule.
- (10) **Urban Local Body shall co-ordinate with other government agencies and authorities**, to ensure compliance of these Bye-laws, within Urban Local Body under the jurisdiction or control of such bodies.
- (11) The Urban Local body shall utilize its own/outsourced/contract sanitation workers and vehicles in carrying out sanitation and solid waste management functions for full or partial daily cleaning work, so that the urban body is able to keep its area neat and clean in public interest.
- (12) **User charges:** The Urban Local Body shall notify user charges from the households / premises for the waste management services rendered to waste generators

#### **19. Responsibility of the Urban Local Body**

- The vehicles used for the transport of solid waste are to be duly closed so that the waste should not be visible to the public and the waste is not scattered elsewhere on the road during transportation.
- The design of the transport vehicles will be such that the waste will not be allowed to touch ground until it reaches its final processing/disposal site, and thus the recurring handling of the waste will not be allowed.

#### **20. Obligatory duties of the Urban Local Body or the waste generators in case of some specific situations**

- Every owner / occupier of any premises other than designated slaughter houses and markets, who generates poultry, fish and slaughter waste as a result of any commercial activity, shall store the same separately in closed, hygienic condition and deliver it at a specified time, on a daily basis to the Urban Local Body collection vehicle provided for this purpose. Deposit of such waste in any community bin is prohibited and shall attract **finest as indicated in the schedule of Fines (Schedule-I)**.
- The official of the Urban Local Body shall be responsible for repair/remodelling of civic facilities in the markets to provide better hygiene and sanitary conditions in the market premises.
- All vendors/hawkers shall keep their biodegradable and other waste unmixed in containers / bins at the site of vending for segregated storage of waste generated by that vending activity. It shall be the responsibility of the generator/ vendor to deliver this waste duly segregated to the Municipal Collection Vehicle of the Urban Local Body or to the nearest designated community bins. Failing which fine shall be **imposed as per the Schedule of Fines (Schedule-I)**.
- It shall be the responsibility of the owner/occupier of premises within house-gullies to ensure that no waste is dumped or thrown in the house-gully, and to segregate and deliver any solid waste to the waste collection vehicle which shall be provided by the

Urban Local Body at such spots and at such times as may be notified by official/authority.

- It shall be the responsibility of the owner of any pet animal to promptly scoop/clean up any poop/litter/faecal matter created by any owned/pet animals on the street or any public place, and take adequate steps for the proper disposal of such waste in their own sewage or other such sanitary system, failing which fines should be imposed by the ULB.
- For Public Gatherings and Events, organised in public places for any reason (including for processions, exhibitions, marriages, circus, fairs, political rallies, commercial, religious, socio-cultural events, protests and demonstrations, etc.) where Police permission of the police or the ULB is required, it shall be the responsibility of the Organiser of the event or gathering to ensure the cleanliness of that area as well as all appurtenant Urban Local Body immediately after the event.
- Every owner or occupant of private property shall maintain authorized refuse receptacles on private premises provided the receptacles are neither visible from public street/roads and sidewalks nor accessible to animals.
- The Government / Semi-government statutory bodies shall be responsible for implementation of these Bye-laws within the public premises owned/occupied by them.

#### **21. Penalties for contravention of the byelaws**

- Whoever contravenes or fails to comply with the provisions of these byelaws shall be liable to punishments as mentioned in the schedule – 1 appended with these byelaws. The defaulter can also be asked to do community service for at least one hour like road sweeping, cleaning graffiti etc. by the concerned person of the ULB.
- In the event of continuation of the breach of the provisions of these Bye-laws, the equal amount of fine for every day of default shall be levied or Rs.100/day, whichever is higher, in addition to original fine.
- Every violation shall be recorded and the corporation shall provide a slip to the violators to deposit the fine within seven days of the violation at an office(s) designated by the ULB for the purpose.
- If a violator, who is the owner or occupier of a premise, fails to deposit the fine within the stipulated timeframe, then the fine plus 12 per cent annual interest rate shall be added to the property tax and recovered.
- If the violation continues, the defaulter can be taken to a civil court as per the Environment Management Act.
- The ward waste management taskforce shall submit a fortnightly report to the city waste management task force about the violation so found and action taken.
- The ULB shall publish a status report on the number of violations and violators, the amount of fines imposed and recovered etc. on its website every month.

#### **22. Recycling of the Municipal Solid Waste**

For the processing of the Solid Waste generated in the ULB, it is the responsibility of the respective ULB to earmark specific land parcels for processing after taking necessary approval from the state Pollution Control Board.

- For the processing of the bio-degradable waste, various techniques can be used such as vermicomposting, composting, mechanized composting, biomethanation etc. Also the

waste can be degraded using the other natural methods/resources by obtaining the required authorisations.

- For the waste material mixed with the recyclable/renewable resources as a mixture, the method of recycling should be used. In some cases the waste resources can be used to generate energy. Such plants with the technology should be authorised by the pollution control board.

#### Schedule – 1 (Schedule of Fines)

Sr. No.	Sub-division / Description of Byelaw	ULB Population $\geq$ 10 Lakh	ULB Population $\geq$ 1 Lakh < 10 Lakh	ULB population < 1 Lakh
<b>Byelaw No. 3: Littering and Creating Nuisance</b>				
1	Littering on roads/streets	Rs. 500	200	100
2	Spitting	Rs. 250	100	50
3	Bathing	Rs. 300	100	50
4	Urinating	Rs. 500	200	100
5	Defecating	Rs. 500	200	100
6	Feeding animals/birds in non-designated Points	Rs. 500	200	100
7	Washing utensils / clothes / any other object at non designated points	Rs. 300	100	50
<b>Byelaw No. 4 : Segregation, storage, delivery and collection violations</b>				
8	For delivering waste non segregated and not stored in separate bins: a) Individual b) Bulk generator	Rs. 200 Rs. 1000	100 500	50 300
9	For not delivering bio-degradable waste in a segregated manner as specified	Rs.300	100	50
10	For not storing & delivering Construction and Demolition waste in	Rs. 2000	1500	500

	segregated manner.			
11	For not delivering "dry" waste in a segregated manner as specified	Rs. 200	100	50
12	For not delivering garden waste and tree trimmings as specified	Rs. 200	100	50
13	For burning waste.	Rs. 500	200	100
<b>Byelaw No.6: Specific Categories / Situations</b>				
14	For not delivering (non-household) fish, poultry and meat waste in a segregated manner, as specified	Rs. 750	300	150
15	For a vendor / hawker without a container / waste basket	Rs. 750	300	150
16	For not keeping a house gully clean	Rs. 500	200	100
17	For littering/defecation by pet / owned animals	Rs. 1000	500	300

#### SCHEDULE - II

Illustrative list of biodegradable and recyclable waste:

Biodegradable Waste: "Biodegradable waste" means "wet" Waste of plant and animal origin.	Recyclable waste "Recyclable waste" means "dry" waste that can be transformed through a process into raw materials for producing new products, which may or may not be similar to the original products.
• Kitchen Waste including: tea leaves, egg shells, fruit and vegetable peels	• Newspapers
• Meat and bones	• Paper, books and magazines
• Garden and leaf litter, including flowers	• Glass
• Soiled paper	• Metal objects and wire
• House dust after cleaning	• Plastic
• Coconut shells	• Cloth Rags
• Ashes	• Leather
	• Rexene
	• Rubber
	• Wood /furniture
	• Packaging

#### Schedule - III

Specified household hazardous waste:

- Aerosol cans
- Batteries and button cells

- Bleaches and household kitchen and drain cleaning Agents & its Containers.
- Car batteries, oil filters and car care products and consumables
- Chemicals and solvents and their containers
- Cosmetic items, chemical-based Insecticides and their containers
- Light bulbs, tube-lights and compact fluorescent lamps (CFL)
- Discarded Medicines and its containers,
- Paints, oils, lubricants, glues, thinners, and their containers
- Pesticides and herbicides and their containers
- Photographic audio/video tapes and their containers, chemicals
- Styrofoam and soft foam packaging of furniture, packaging and equipment
- Thermometers and mercury-containing products

#### Schedule - IV

List of Bio-medical waste: means any waste, which is generated during the diagnosis, treatment or immunization of human beings or animals or in research activities pertaining thereto or in the production or testing of biological.

- Category No 4 Waste sharps: Needles, syringes, scalpels, blades, glass, etc. that may cause puncture and cuts. This includes both used and unused sharps.
- Category No 5 Discarded Medicines and Cytotoxic drugs (waste comprising of outdated, contaminated and discarded medicines)
- Category No 6 Solid Waste:(Items contaminated with blood, and body fluids including cotton, dressings, soiled plaster casts, lines, beddings, other material contaminated with blood)
- Category No. 7 Solid Waste (waste generated from disposable items other than the waste sharps such as tubing's, catheters, intravenous Sets etc.

#### Schedule – V (User Charges)

Monthly user charges for Door to Door Solid Waste Management Collection		
Sr. No.	Property Description	Rs. per Month
<b>RESIDENTIAL</b>		
1.	BPL Houses, Notified Slums, Malin Bastis & EWS flats.	5/-
2	Residential Houses including hostels/PG upto 100 Sq. Mtr. (plot area)	20/-
3	Residential Houses including hostels/PG more than 200 Sq. Mtrs. But upto 400 Sq. Mtr (plot area)	40/-
4	Residential Houses including hostels/PG more than 200 Sq. Mtrs. But upto 400 Sq. Mtr (built up area)	50/-
5	Residential Houses including hostels more than 400 Sq. Mtr. (plot area)	100/-
6	Apartments, Flat having covered area upto 2000 Sq. Ft. except EWS flats	50/- per flat
7	Apartments, flats having covered area more than 2000 Sq. Ft.	100/- per flat
<b>COMMERCIAL</b>		
8	Individual Shops and private offices upto 200 Sq. Feet covered area including service stations, restaurants, dhabas, fishery shops,	25/-

	Shops in grain market and vegetable market etc.	
9	Individual Shops and private offices upto 200 Sq. Feet covered area including service stations, restaurants, dabhas, fishery shops, Shops in grain market and vegetable market etc.	100/-
10	Nursing Homes, Clinic/hospitals/Aushdhalayas without indoor facilities, Hospitals upto 50 beds.	1500/-
11	Hospitals more than 50 beds but upto 100 beds	3000/-
12	Hospitals more than 100 beds	5000/-
13	Shopping Complexes including Malls, Cinemas Halls, notified Slaughter Houses	Rs. 0.50 per Sq. ft of covered area
14	Factories, Mills etc.	Rs. 0.50 per Sq. mtr. of plot area
15	Banks, Auditorium, Guest Houses, Hotels (upto 10 rooms)	500/-
16	Marriage Halls, Banquets Hall, Hotels (above 10 rooms), Commercial Party Lawns	4000/-
17	Clubs with restaurants facilities having membership upto 500 nos.	500/-
18	Clubs with restaurants facilities having membership morethan 500 Nos.	1000/-
19	Petrol Pump and Gas Station	1000/-
<b>INSTITUTIONAL</b>		
20	Central and State Govt. and Public Sector Offices/ Complexes, Welfare Organizations/Societies	150/-
21	All educational institutes of any type having plot area upto 2 acres	500/-
22	All educational institutes of any type having plot area more than 2 acres but upto 5 acres	1000/-
23	All educational institutes of any type having plot area more than 5 acres	2000/-
24	All dharamshalas, religious places, sports club	These are exempted

  
C.S.I.

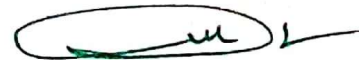
M.C. Panipat

  
S.E.

M.C. Panipat

*for perusal of CME*

J.C.   
M.C. Panipat



Commissioner  
M.C. Panipat

दोबारा बहाल कर दिया।

### अधिसूचना

- 1) आप सभी नागरिकों को स्वच्छ वातावरण उपलब्ध करवाने व पर्यावरण संरक्षण के लिए भारत सरकार व हरियाणा सरकार द्वारा प्रकाशित निम्नलिखित नियम नगर निगम पानीपत द्वारा लागू किए जा चुके हैं। इनकी पालना करना सभी नागरिकों, कार्यालयों व सभी संस्थानों के लिए अनिवार्य है :-
- Solid Waste Management 2016  
Plastic Waste Management Rule 2016  
C&D Waste Management Rule 2016  
Hazardous Waste Management Rule 2016  
E-Waste Management Rule 2016  
Horticulure Waste Management ( MC ACT-1994)
1. नगर निगम पानीपत के अधीन क्षेत्र में घर-घर से कूड़ा उठाने वाले वाहन कूड़ा उठाते हैं। प्रत्येक घर व दुकानदार से अनुरोध है कि अपने घर व दुकान/ संस्थान पर हरे व नीले रंग के कूड़ेदान में ही अलग-अलग गीला व सूखा कूड़ा इकट्ठा करके नगर निगम के वाहन में ही डालें। इसके अतिरिक्त अगर कोई भी नागरिक खुले में कूड़ा डालता हुआ पाया गया तो उसके खिलाफ नियमानुसार कार्यवाही अमल में लाई जाएगी।
  2. नगर निगम पानीपत के क्षेत्र में 50 माइक्रोन से कम प्लास्टिक की थैली व नियम के विरुद्ध बने प्लास्टिक के सामान का प्रयोग/ बिक्री नहीं कर सकता। Plastic Waste Management Rule 2016 की पालना न करने वाले पर उचित जुर्माना व प्रशासनिक कार्यवाही अमल में लाई जायेगी।
  3. नगर निगम पानीपत क्षेत्र में खुले में शौच/ पेशाब करना निषेध है। उल्लंघन करने पर नियमानुसार जुर्माना किया जाएगा।
  4. नगर निगम क्षेत्र में कोई व्यक्ति अपने वाणिज्यिक एवं रिहायशी भवन से निकलने वाले कचरा, मलबा सड़क पर नहीं डाल सकता। यह मलबा उसे अधिकृत व्यक्ति अथवा संस्था के माध्यम से अधिकृत स्थल पर डालना होगा। अमल न करने वाले के विरुद्ध उचित कार्यवाही की जायेगी।
  5. सभी सैप्टिक टैंक साफ करने वाले अपना रजिस्ट्रेशन नगर निगम पानीपत में करवाएं तथा सैप्टिक टैंक खाली करने व उनके निष्पादन का रिकार्ड बनाएं। सैप्टिक टैंक केवल एस.टी. पी. पर ही खाली किये जायें।
  6. सभी होटल, बैंक, हाल, होस्टल, ढाबा अथवा प्रत्येक वह संस्थान जिसके द्वारा 100 कि.ग्रा. प्रतिदिन से अधिक कचरा पैदा किया जाता है वह अपने-अपने स्थलों पर कंपोस्ट प्लांट लगाना सुनिश्चित करें व सभी हस्पताल भी अपने कचरे का नियमानुसार निष्पादन सुनिश्चित करें।
  7. किसी भी स्थान पर कचरा जलाने वाले के खिलाफ नियमानुसार कार्यवाही की जाएगी।
  8. नगर निगम पानीपत के क्षेत्र में कोई भी होटल, सोसायटी एवं औद्योगिक क्षेत्रों में बागवानी से पैदा होने वाले कूड़े का वैज्ञानिक तरीके से निष्पादन करना अनिवार्य है अगर कोई इसका वैज्ञानिक रूप से निष्पादन नहीं करता या जलाता है तो उसके विरुद्ध उचित कार्यवाही अमल में लाई जाएगी।

हस्ता/-

आयुक्त नगर निगम, पानीपत



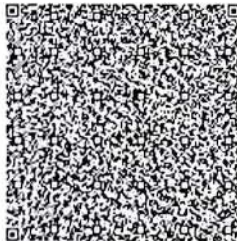
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Description of Document	: Article 5 General Agreement
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
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This Stamp Paper forms the part of Concession Agreement between:

1. The Govt. of Haryana through Director Urban Local Bodies
2. Municipal Corporation, Sonapat
3. Municipal Corporation, Panipat
4. Municipal Committee, Gannaur
5. Municipal Committee, Samalkha
6. JBM Environment Management Pvt. Ltd., New Delhi
7. Neel Metal Products Ltd., New Delhi

  
Director General

Urban Local Bodies  
Haryana, Panichkula



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**CONCESSION AGREEMENT**  
**BETWEEN**

**The Government of State of Haryana,  
represented by the Director,  
Directorate of Urban Local Bodies, Haryana**

**AND**

**Municipal Corporation, Sonapat  
Acting through its authorised Officer on it's behalf**

**AND**

**Municipal Corporation, Panipat  
Acting through its authorised Officer on it's behalf**

**AND**

**Municipal Committee, Gannaur  
Acting through its authorised Officer on it's behalf**

**AND**

**Municipal Committee, Samalkha  
Acting through its authorised Officer on it's behalf**

**AND**

**CONCESSIONAIRE**

**For**

**Development of Integrated Solid Waste Management (Collection, Transportation,  
Processing and Disposal) in Sonapat Cluster**



*[Signature]*  
**Director, General  
Urban Local Bodies  
Haryana, Panchkula**




*[Signature]*  
**New Metal Products Limited  
Gurgaon  
Haryana  
122004**

## Table of Contents

1. DEFINITIONS AND INTERPRETATION	7
2. THE CONCESSION AND CONDITIONS PRECEDENT	20
3. SITE(S)	26
4. INDEPENDENT EXPERT / PROJECT MANAGEMENT UNIT	28
5. THE CONCESSIONAIRE'S OBLIGATIONS	29
6. FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT	35
7. DESIGNATED AND PARTICIPATING ULB'S OBLIGATIONS	37
8. MONITORING AND INSPECTION	39
9. PAYMENTS	42
10. ESCROW ACCOUNT	45
11. FORCE MAJEURE AND CHANGE IN LAW	47
12. EVENTS OF DEFAULT AND TERMINATION	57
13. SUBSTITUTION OF THE CONCESSIONAIRE	62
14. HANDOVER OF PROJECT	63
15. DISPUTE RESOLUTION	66
16. INSURANCE	68
17. INTELLECTUAL PROPERTY AND CONFIDENTIALITY	70
18. REPRESENTATIONS AND WARRANTIES	72
19. MISCELLANEOUS	75
ANNEXURE 1: SCOPE OF SERVICES	81
ANNEXURE 2: Service Level Benchmarks	87
ANNEXURE 3 : FINANCIAL PROPOSAL	91


  
 Director, General  
 Urban Local Bodies  
 Haryana, Panchkula


ANNEXURE 4: OPERATIONAL ACCEPTANCE CERTIFICATE	92
ANNEXURE 5: FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE	93
ANNEXURE 6: SCOPE OF WORK OF PMU	96
ANNEXURE 7: SUBSTITUTION AGREEMENT	98
ANNEXURE 8: ESCROW AGREEMENT	107
ANNEXURE 9: LAND LEASE AGREEMENT	120



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*[Handwritten signature]*  
Director, General  
Urban Local Bodies  
Haryana, Panchkula



**CONCESSION AGREEMENT**

**THIS CONCESSION AGREEMENT** (hereinafter referred to as the "**Agreement**") made this 26<sup>th</sup> day of September 2017 at New Delhi

**BETWEEN**

The Government of Haryana acting through Director/ Chief Engineer of Directorate of Urban Local Bodies, herein referred to as "**Department**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and administrators

**AND**

Municipal Corporation, Sonapat, established under the provisions of the Haryana Municipal Corporation Act 1994, acting through its Commissioner hereinafter referred to as "**Designated ULB**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

**AND**

Municipal Corporation, Panipat, established under the provisions of the Haryana Municipal Corporation Act 1994, acting through its Commissioner hereinafter referred to as "**Participating ULB**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

**AND**

Municipal Committee, Gannaur, established under the provisions of the Haryana Municipal Act 1973, acting through its Secretary hereinafter referred to as "**Participating ULB**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

**AND**

Municipal Committee, Samalkha, established under the provisions of the Haryana Municipal Act 1973, acting through its Secretary Officer hereinafter referred to as "**Participating ULB**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

**AND**

M/s JBM Environment Management Private Limited, a special purpose vehicle incorporated<sup>1</sup> under provisions of the Companies Act, 2013, having its registered office at 601, Hemkunt Chambers, 89, Nehru Place, New Delhi- 110019, acting through its Director hereinafter referred to as "**Concessionaire**" which expression shall unless repugnant to the context include its successors and permitted assigns.

<sup>1</sup> As per the RFP, the Successful Bidder is required to incorporate an SPV which shall undertake the execution of the Project



  
 Director, General  
 Urban Local Bodies  
 Har 3, Panchkula



And

M/s Neel Metal Products Limited (in consortium with M/s Ekolog Limited), a company registered under the Companies Act, 1956/ 2013 having its registered office at 601, Hemkunt Chambers, 89, Nehru Place, New Delhi- 110019, in its capacity as the **Confirming Party** to this Agreement (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through Mr. Vinay Maheshwari, the Authorized Person, authorized vide Board Resolution dated 22<sup>nd</sup> April 2017; ~~or power of attorney dated \_\_\_\_\_.~~

Collectively referred to as "Parties" and individually as "Party"

**WHEREAS**

- A. The Directorate of Urban Local Bodies, Haryana ("**Department**") is engaged in the development of cluster based integrated solid waste management projects in the State of Haryana. The Department is desirous of implementing such cluster based integrated solid waste management project by seeking private sector participation on Public Private Partnership ("**PPP**") mode by inviting Proposals for setting up of an integrated solid waste management facility for Sonapat Cluster;
- B. Sonapat Cluster comprises of Urban Local Bodies in Sonapat, Panipat, Gannaur and Samalkha (collectively referred to as "**Participating ULBs**");
- C. The Participating ULBs have entered into an Inter-ULB Agreement dated 25<sup>th</sup> September, 2017 for management of MSW generated within their municipal areas whereby the Designated ULBs has been empowered to discharge the obligations set out herein on behalf of the Participating ULBs in addition to itself
- D. The Participating ULBs have nominated Municipal Corporation, Sonapat as their lead member (hereinafter referred to as ("**Designated ULB**") and authorized the Designated ULB to discharge obligations set out herein on behalf of the Participating ULBs.
- E. The Designated ULB on behalf of itself and the other Participating ULBs desires to develop integrated solid waste management facility through private participation on Design, Build, Finance, Operate and Transfer (DBFOT) basis for the management of the Project Assets, Facilities and resources required for the integrated management of Municipal Solid Waste ("**MSW**") within the jurisdiction of the Participating ULBs
- E. The Department had invited competitive request for proposals from eligible Bidders for implementing the Project and in response thereto received proposals from Bidders including the selected bidder for implementing the Project.
- F. The Department, after evaluating the aforesaid Proposals, accepted the Proposal submitted by the Selected Bidder/Consortium and issued Letter of Award (LoA) No. **TAXEN-1/DULB/1890 dated 21/4/2017** to it for developing the Project. The LoA has been duly accepted by the Selected Bidder vide its E-mail dated 27.04.2017
- G. The Selected Bidder has since promoted and incorporated the Concessionaire ("**Special Purpose Vehicle**" or "**SPV**") as a limited liability company under the Companies Act, 2013 and has requested the Department and Participating ULBs to accept the Concessionaire as the



entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project.

- H. The Department and Participating ULBs have accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.



*[Handwritten signatures in blue and green ink]*



NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

**ARTICLE I**

**I. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

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

- 1.1.1. **"Abandonment"** means an action on the part of the Concessionaire with the intent to not discharge its balance obligations related to the Project under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the Concession Period, or
  - (ii) cumulative period of more than 45 (forty-five) days during the Concession Period other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Designated ULB or any Participating ULB;
- 1.1.2. **"Access Road"** means the motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
- 1.1.3. **"Acceptance of Concession"** shall have the meaning assigned thereto in **Article 2.1.5**;
- 1.1.4. **"Accounting Year"** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.5. **"Additional Cost"** means the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire is required to incur, post the Appointed Date, on account of Change in Law;
- 1.1.6. **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:
- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
  - (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **"Base Adjusted Equity"**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
  - (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

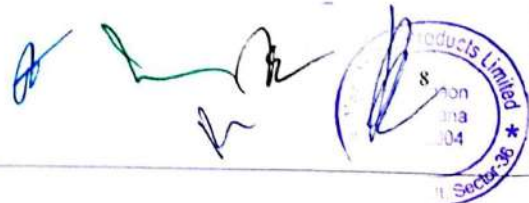


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For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal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

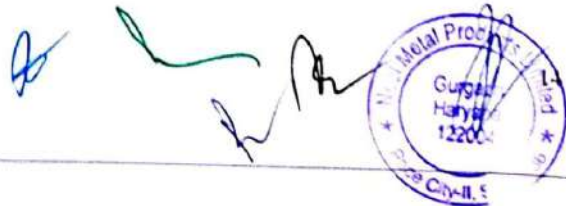
- 1.1.7. **"Affected Party"** means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 11.1**;
- 1.1.8. **"Agreement"** or **"Concession Agreement"** means this agreement executed between the Department, the Concessionaire, the Participating ULBs, and the Selected Bidder (as Confirming Party) including its schedules and Annexures and includes any amendments made thereto in accordance with the provisions hereof;
- 1.1.9. **"Annexures"** means any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.10. **"Applicable Law"** means all laws, acts, ordinances, rules, regulations, notification, policies, circulars and guidelines in force and effect, including inter-alia the Solid Waste Management Rules, 2016, and shall also include judgments, decrees, injunctions, writs or orders of any court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith ;
- 1.1.11. **"Applicable Approvals"** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;
- 1.1.12. **"Appointed Date"** means the date of signing of this Concession Agreement;
- 1.1.13. **"Arbitration Act"** means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.14. **"Associate"** or **"Affiliate"** means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression "significant influence" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- 1.1.15. **"Bio-methanation"** means an anaerobic decomposition process that entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;



- 1.1.67. **“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.68. **“Material Breach”** means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.69. **“Nominated Company”** means the entity that is selected either by the Lenders or by Participating ULB for substituting the Concessionaire, upon occurrence of Concessionaire’s Event of Default or Financial Default, in terms of the provisions of the Agreement and the Substitution Agreement;
- 1.1.70. **“Operational Acceptance Certificate(s)”** shall refer to the Certificate to be issued by the PMU as set out in **Annexure 4**, upon successful commissioning and functioning of the Processing Facility;
- 1.1.71. **“Output Based Incentive” “OBI”** means the amount quoted by bidder as Rs. Per KWh for net exportable power. It will have two component (a) DISCOM component of OBI (DC- OBI) means Tariff as per PPA and duly approved by HERC. (b) ULB component of OBI (UC- OBI) means difference of quoted OBI and tariff to be paid by ULB. DC-OBI would be payable by DISCOM and UC-OBI will be paid by Designated ULB.
- 1.1.72. **“O&M Expenses”** means the incurred in 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 this Agreement for the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the O&M Expenses.
- 1.1.73. **“Organic Waste”** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.74. **“Participating ULBs”** means the undermentioned urban local bodies (ULBs)
- (a) Municipal Corporation Sonapat (“Participating ULB1”)  
 (b) Municipal Corporation Panipat (“Participating ULB2”)  
 (c) Municipal Committee Gannaur (“Participating ULB3”)  
 (d) Municipal Committee Samalkha (“Participating ULB4”)
- 1.1.75. **“P&D”** or **“Processing & Disposal”** refers to Processing & Disposal of MSW collected from Project Area, as is more clearly defined in Annexure 1;
- 1.1.76. **“Performance Security”** means the guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Successful Bidder (or the Concessionaire), in accordance with **Article 5.1** in the format given at **Annexure 5**;
- 1.1.77. **“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity;



- 1.1.78. **"Post Closure Activities"** means the activities to be undertaken by the Parties after closure of SLF;
- 1.1.79. **"Post Closure Period"** means a period of twenty (20) years starting from the date of Closure of the specific cell of the Engineered SLF during which Post Closure Activities are to be undertaken.
- 1.1.80. **"Post-COD Period"** means the period starting on and from the COD and ending on the Transfer Date;
- 1.1.81. **"Power Plant"** means the waste to energy plant having capacity of at least 5 MW to be set up by the Concessionaire as a part of the Processing Facility as per the provisions of this Agreement;
- 1.1.82. **"Power Purchase Agreement" or "PPA"** means the draft of Power Purchase Agreement to be signed between DISCOM & Project developer, the same will be issued after due approval of of HERC for purchase of power generated at the Power Plant by the Discom ;
- 1.1.83. **"Pre-COD Period"** means the period commencing from the Appointed Date and extending upto the COD;
- 1.1.84. **"Preliminary Notice"** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.85. **"Processing Plant/Processing Facility"** means the facility created by the Concessionaire for processing of the MSW, prior to its final disposal at Engineered Sanitary Landfill Site, including inter-alia the Power Plant and treatment of organic fraction by biological processing (composting, bio-methanation);
- 1.1.86. **"Project"** shall mean the collection, transportation, processing and disposal of MSW from Waste Generators in the Project Area and discharging the Scope of Services more specifically set out in Annexure 1;
- 1.1.87. **"Project Agreements"** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project, including without limitation the Land Lease Agreement(s).
- 1.1.88. **"Project Area"** means the area presently under municipal boundaries of the Participating ULBs or any extension thereof during the Term;
- 1.1.89. **"Project Assets"** means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites in the form of lease and/ or license rights (as applicable) , Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, grievance redressal centre, Processing Facility, electrical systems, communication systems, transport vehicles and administrative office; (c) Project Facilities situated on the Sites; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Approvals and authorisations relating to or in respect of the Project;



pollutants slope instability and erosion in accordance with the terms of this Agreement ;

- 1.1.39. **"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company, but does not include any grant from a Government Agency including Designated ULB;
- 1.1.40. **"Event of Default"** shall have the meaning assigned thereto in **Article 12**;
- 1.1.41. **"Event of Default - Concessionaire"** shall have the meaning assigned thereto in **Article 12.2**;
- 1.1.42. **"Event of Default – Designated ULB"** shall have the meaning assigned thereto in **Article 12.3**;
- 1.1.43. **"Escrow Account"** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
- 1.1.44. **"Escrow Bank"** shall have the meaning as set forth in **Annexure 8**;
- 1.1.45. **"Escrow Agreement"** shall have the meaning as set forth in **Article 10.1.2**;
- 1.1.46. **"Escrow Default"** shall have the meaning as set forth in **Article 6.1.1**;
- 1.1.47. **"Estimated Project Cost"** shall be as given in Feasibility Report annexed as Annexure –I with the RFP Document;
- 1.1.48. **"Excluded Waste"** means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste, (iii) Dead Remains and (iv) E-Waste and (v) construction and demolition waste;
- 1.1.49. **"Financing Agreements" or "Financing Documents"** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Total Project Cost;
- 1.1.50. **"Financial Default"** means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of (three) months;
- 1.1.51. **"Financial Proposal"** means the final quotation of the Successful Bidder in response to the RFP document, which has been accepted by the Department and the Participating ULBs, annexed hereto as **Annexure 3**;
- 1.1.52. **"Financial Year"** shall be same as Accounting Year;



- 1.1.53. **"Force Majeure"** or **"Force Majeure Event"** means an act, event, condition or occurrence as specified in **Article 11**;
- 1.1.54. **"GoI"** means the Government of India;
- 1.1.55. **"GoH"** means the Government of Haryana
- 1.1.56. **"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;
- 1.1.57. **"Government Agency"** means GoI, GoH, Participating 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 or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.58. **"Hand Over of Project"** shall have the meaning assigned thereto in **Article 14**;
- 1.1.59. **"Hazardous Waste"** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto;
- 1.1.60. **"HERC"** shall mean the Haryana Electricity Regulatory Commission;
- 1.1.61. **"Independent Expert"** refers to a person/ firm/ entity appointed by the Designated ULB to monitor the activities of the Concessionaire and shall be a member of the PMU.
- 1.1.62. **"Land Lease Agreement(s)"** means the Agreement(s) pursuant to which, the Site(s) shall be leased to the Concessionaire in its capacity as the lessee, for setting up the Project for the Term in the format attached as Annexure 9;
- 1.1.63. **"Lenders"** or **"Senior Lenders"** means any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing the Total Project Cost as evidenced in Financing Documents;
- 1.1.64. **"Letter of Award"** or **"LOA"** means the letter no... **TA/XEN-1/DULB/1890 dated 21/4/2017**, issued by the Department/Designated ULB to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.65. **"MNRE"** means Ministry of New & Renewable Energy, GoI;
- 1.1.66. **"MSW"** or **"Municipal Solid Waste"** means solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the jurisdiction of Participating ULBs, and shall include solid waste, and Organic Waste;



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- 1.1.16. **"C&T"** or **"Collection and Transportation"** refers to primary and secondary collection and transportation of MSW from the Project Area to the Processing Facility/ Sanitary Landfill;
- 1.1.17. **"Construction & Demolition (C&D) Debris"** or **"Debris"** means solid waste resulting from construction, re-modeling, repair, renovation or demolition of Structures or from land clearing activities. **"Structures"** for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. **Debris** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures;
- 1.1.18. **"Change in Law"** shall have the meaning assigned thereto in **Article 11.B.1**;
- 1.1.19. **"Commencement Date"** shall have the meaning as assigned to it in **Article 2.3**
- 1.1.20. **"Compliance Date(s)"** means the later of the date by which the Condition Precedent of the Concessionaire and Participating ULBs under Article 2.2 are achieved or waived;
- 1.1.21. **"Composting"** means a controlled process involving microbial decomposition of organic matter;
- 1.1.22. **"Concession"** shall have the meaning as assigned thereto in **Article 2**;
- 1.1.23. **"Conditions Precedent(s)"** means Conditions Precedent as specified in Article 2.2;
- 1.1.24. **"Compliance Period"** shall have the meaning assigned thereto in Article 2.2.2;
- 1.1.25. **"Commercial Operations Date"** or **"COD"** means the date when the Concessionaire begins commercial operations of the /Power Plant pursuant to issuance of Operational Acceptance Certificate by the Project Management Unit;
- 1.1.26. **"Contractor"** or **"Sub-Contractor"** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project;
- 1.1.27. **"CPCB"** means the Central Pollution Control Board of Government of India
- 1.1.28. **"Dead Remains"** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.29. **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **"principal"**) but



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excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and
- (c) any Subordinated Debt disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity; its shall to the extent not converted until date of termination, be deemed to be Debt Due for the purposes of this Agreement. For the Purposes of this Agreement, the term "Subordinated Debt" shall mean the debt provided by lenders or the Concessionaire's shareholders for meeting the Total project Cost and shall be subordinate to the financial assistance provided by senior lenders.
- 1.1.30. **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements;
- 1.1.31. **"Discom"** means the distribution licensee within the State of Haryana which agrees to procure the power generated at the Power Plant, as per the terms and conditions set out in the PPA;
- 1.1.32. **"Dispute"** shall have the meaning assigned thereto in **Article 15.1(a)** hereof;
- 1.1.33. **"Dispute Resolution Procedure"** means the procedure for resolution of disputes as set forth in Article 15;
- 1.1.34. **"EIA"** means the Environment Impact Assessment for the Project;
- 1.1.35. **"Emergency"** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to any of the Project;
- 1.1.36. **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;
- 1.1.37. **"Engineered Sanitary Landfill Site" or "Sanitary Landfill Site" or "Sanitary Landfill"** means the Sanitary Landfill Site to be developed, constructed and operated by the Concessionaire at the allocated site i.e. Village Murthal in Sonapat in conformance with the terms of this Agreement for disposal of Residual Inert Matter and Rejected Waste;
- 1.1.38. **"Sanitary Landfill Site" or "SLF"** means the site where the Concessionaire conducts a final and safe disposal of Residual Inert Matter, Residual Solid Waste and inert waste, which is 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, green-house gas emissions, persistent organic



- 1.1.90. **"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.91. **Project Monitoring Unit** or **"PMU"** means the unit set up by the Participating ULBs as specified in Article 4.1 to monitor and supervise the activities of the Concessionaire;
- 1.1.92. **"Proprietary Material"** shall be as defined in Article 17.1;
- 1.1.93. **"Refuse Derived Fuel" or "RDF"** means the solid fuel in the form of fluff or pellets/briquettes that is produced by separation and drying of combustible fractions of the MSW;
- 1.1.94. **"Residual Inert Matter"** means the inert matter left for final disposal in Engineered Sanitary Landfill Site after processing of the MSW by one or more of the relevant Project;
- 1.1.95. **"Residual solid waste"** means and includes the waste and rejects from the MSW which are not suitable for recycling or further processing;
- 1.1.96. **"Rupees" or "Rs"** refers to the lawful currency of the Republic of India;
- 1.1.97. **"SBM Guidelines"** means the guidelines issued by the Ministry of Urban Development, Government of India in December 2014 titled "Guidelines for Swachh Bharat Mission"
- 1.1.98. **"SBM Grant"** means the capital grant to be paid in two instalments to the Concessionaire according to the SBM Guidelines for discharging obligations under this Agreement and as more specifically set out in Clause 9.2;
- 1.1.99. **"Secondary Collection Points"** means areas of land allocated by the Participating ULBs in consultation with the Concessionaire to temporarily store the MSW collected by the Concessionaire from Project Area by way of door-to-door waste collection system, street sweeping and drain de-silting from Project Area;
- 1.1.100. **"Share Transfer Agreement"** means the agreement to be entered into between the shareholders of the Concessionaire (in case the Successful Bidder is a consortium) for transfer of equity shareholding of the Concessionaire to the members of the consortium formed by the Successful Bidder;
- 1.1.101. **"Site(s)"** means the piece(s) of land made available to the Concessionaire under Land Lease Agreement(s), for implementing the Project, i.e. land for transfer stations, Processing Facility, Landfill site;
- 1.1.102. **"SPCB"** means State Pollution Control Board particularly Haryana State Pollution Control Board (HSPCB);
- 1.1.103. **"Substitution Agreement"** is an agreement that may be executed between the Concessionaire, Participating ULBs and the Lenders in the form set out in Annexure 7, pursuant to which, in case of Default by the Concessionaire including



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Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement.

- 1.1.104. **"Selected Bidder" or "Successful Bidder"** means the Person selected by the Participating Bidders through a competitive bidding process for implementing the Project;
- 1.1.105. **"Supplementary Fuel"** means any fuel that can be used as a supplement to the MSW to enrich RDF / fuel during commissioning / start of activities. Use of supplementary fuel would be permissible as per MNRE guidelines.
- 1.1.106. **"SWM Rules"** means the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time;
- 1.1.107. **"Tariff"** means the rate of Rs. 7.05 per kWh approved by HERC for purchase of power by the Discom from the Power Plant
- 1.1.108. **"Tax"** means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.109. **"Term"** means the time period of twenty two (22) years commencing from the Appointed Date to the extent extended by any permitted time extensions as expressly provided under the terms of this Agreement;
- 1.1.110. **"Termination"** means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- 1.1.111. **"Termination Date"** means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.112. **"Termination Notice"** means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.113. **"Termination Payments"** means the payments payable pursuant to Article 11.4 and 12.4 of this Agreement;
- 1.1.114. **"Tipping Fee"** shall be fee payable as defined in Article 9.1
- 1.1.115. **"Third Party"** means any Person other than the Parties to this Agreement;
- 1.1.116. **"Total Project Cost"** means the lowest of the following :
- i. The estimated cost of the Project, as specified in the RFP; or
  - ii. Project Cost as set forth in the Financing Documents as executed with Lenders; or
  - iii. Actual capital cost of the Project, upon completion of construction of the Project as certified by the Statutory Auditors.

It shall exclude the SBM Grant amount disbursed to the Concessionaire



- 1.1.117. **"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.118. **"Transfer Station"** means the point(s) where MSW collected by the Concessionaire from the Project Area would be stored to achieve economies of scale before further transportation to the Processing Facility or Engineered Sanitary Landfill Site, as applicable;
- 1.1.119. **"Transaction Advisor"** means the advisor appointed by the Department for advice and assistance for selection of the Concessionaire for discharging obligations under this Agreement;
- 1.1.120. **"Tests"** means the tests to be carried out by the Concessionaire at its cost, in the presence of PMU as may be required for getting Statutory clearances / Approval or asked by PMU in respect of the Processing Facility including Power Plant and SLF to ensure that the same conforms to the requirements as per Good Industry Practice and Applicable Law or Applicable Approvals;
- 1.1.121. **"User Charges"** means the fees chargeable from Waste Generators by the Concessionaire, as notified from time to time by the Participating ULBs under Applicable Law;
- 1.1.122. **"Vacant Possession"** means delivery of possession of the Site(s) free from all Encumbrances to the Concessionaire and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;
- 1.1.123. **"Waste Generators"** means all residential, commercial and industrial establishments generating MSW and located within the Project Area;
- 1.1.124. **"Weighbridge"** means the electronic weighbridge capable of performing the operations to meet the Concessionaire obligations as specified in Article 5.

## 1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- (i) the words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (ii) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (iii) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which



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have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

- (iv) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
  - (v) the words "include" and "including" are to be construed without limitation;
  - (vi) the headings of the Articles in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
  - (vii) the Annexures and Recitals to this Agreement form an integral part of this Agreement and will be in force and effect as though they were expressly set out in the body of the Agreement;
  - (viii) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates;
  - (ix) references to Recitals, Articles, Clauses or Annexures in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses and Annexures of to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Annexure in which such reference appears;
  - (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and
  - (xi) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Designated ULB and/ or the Participating ULBs and/or the PMU shall be provided free of cost and in three copies, and if the Designated ULB and/ or the Participating ULBs and/or the PMU is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### 1.3. Measurements and arithmetic conventions

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



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18

**1.4. Priority of agreements, Articles and annexures**

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein; i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles of this Agreement and the Annexures, the Articles shall prevail;
- (c) Between any two Annexures, the Annexure relevant to the issue shall prevail;
- (d) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the latter shall prevail.



**ARTICLE 2:****2. THE CONCESSION AND CONDITIONS PRECEDENT****2.1. Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Designated ULB on behalf of all Participating ULBs and the Department hereby grant and authorise the Concessionaire to design, setup, finance, operate maintain and transfer (DBFOT) the Project and to exercise and/ or enjoy such rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement ("the Concession").

**2.2. Rights Associated with the Grant of Concession**

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

- (a) to design, engineer, finance, procure, construct, install, commission, operate and maintain the Project either itself or through such Person/Contractor as may be selected by it;
- (b) upon achieving COD of Processing Facilities, forming part of the Project, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- (c) to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project; and

Provided that the Designated ULB 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 Designated ULB within such time, notarized true copies of any and all documents/agreements relating thereto.

Provided further, nothing contained herein shall (i) absolve the Concessionaire from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to the Designated ULB.

- (d) to collect and process entire MSW from the Project Area and dispose-off the Residual Inert Matter and Rejected Waste/ processing rejects in SLF and / air pollution control residue in secured landfill;
- (e) to collect User Charges from Waste Generators, and appropriate/retain and utilize the same at its own discretion;
- (f) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- (g) to share the fiscal incentives and benefits in the ratio of 50:50 accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative except for the sharing of benefits and incentives with respect to the Power Plant which shall be consistent with regulations, directions and orders of HERC;



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- (h) to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;
- (i) to appropriate, possess and control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing on Secondary Collection Points and Sites with reference to MSW management in Project Area;
- (j) to develop the Power Plant using such technology to establish a waste to energy plant having capacity of at least 5 MW, which is suitable and commercially viable in accordance with terms of this Agreement, SWM Rules and Good Industry Practices;
- (k) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facility, Good Industry Practices and the requirements of the Project;

### 2.3. Concession Period

The Concession Period shall be for a period of 22 years from the Appointed Date ("the **Concession Period**") during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for integrated management of Municipal Solid Waste in accordance with the provisions hereof:

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date. For avoidance of doubt, it is hereby clarified that the Concession Period shall also include the time period required by Parties for fulfilment of the Condition Precedent obligations, and in case of any extensions therefor or by other reason as envisaged in terms hereof, Concession Period shall be proportionately extended.

### 2.4. Renewal of Concession

The Participating ULBs shall have the option to agree to renew or extend the Concession after the expiry of the Term on same terms and conditions. Provided that any such extension shall also lead to an extension of Land Lease Agreement(s) for an equal period so as to make the Land Lease Agreement co-terminus with extended Concession Period.

### 2.5. Acceptance of Concession

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

### 2.6. CONDITIONS PRECEDENT

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



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### 2.6.1. Conditions Precedent for Participating ULBs

The obligations of the Concessionaire hereunder are subject to the satisfaction in full of the following Conditions Precedent by the Participating ULBs. The Participating ULBs shall have:

- (a) Finalised and allocated Secondary Collection Points in the Project Area in consultation with the Concessionaire;
- (b) Allocated / demarcated site for dumping of MSW till the time processing and disposal facilities are established as a part of the Project on an 'as is where is basis';
- (c) Appointed Independent Expert and nominated members of PMU as per provisions of this Agreement
- (d) Executed and procured execution of Substitution Agreement;
- (e) Facilitated and ensured that Land Lease Agreement(s) are executed for all Site(s) and vacant and unencumbered possession of all the Site(s) is handed over to the Concessionaire. It is clarified that the respective Participating ULBs shall be responsible for execution of Land Lease Agreements for Site(s) under their jurisdiction
- (f) Facilitated the Concessionaire in terms of support and participation by its representatives or sending follow-up letters to the Departments concerned/ Competent Authority for obtaining of all Applicable Approvals, if requested by the Concessionaire;
- (g) Provided the Concessionaire with authority letter for collection of User Charges effective from such date as indicated in the relevant notification issued in this respect;
- (h) Issuance of the order/ notification for the area falling in their respective jurisdictions, regarding payment of User Charges by the Waste Generators to the Concessionaire at the rates notified by the Participating ULBs;
- (i) Provide Access Roads to the Site(s) as per Good Industry Practices including for the Site(s) for Transfer Stations;
- (j) Shall within 120 (one hundred and twenty) days of Appointed Date, ensure termination of the existing contracts with other contractors for collection and transportation of MSW within their respective jurisdictions as per the operational plan submitted by Concessionaire;
- (k) Execution of Inter-ULB Agreement between the Participating ULBs and;
- (l) Provide the Concessionaire with an inventory of the vehicles and other movable infrastructure deployed in Project Area which shall be purchased by the Concessionaire from the Designated ULB on a price mutually agreed to between the Concessionaire and the Designated ULB with the help of an individual valuer.

### 2.6.2. Conditions Precedent for Concessionaire

The obligations of the Participating ULBs hereunder are subject to the satisfaction in full of the following Conditions Precedent of the Concessionaire. The Concessionaire shall have:

- (a) provided a certified true copy of its constituent documents;
- (b) achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds thereunder;
- (c) finalised and taken over Secondary Collection Points in the Project Area in consultation with the Participating ULBs
- (d) provided the Designated ULB notarised true copies of its board resolution authorising the execution, delivery and performance of this Agreement by the Concessionaire;



- (e) executed and procured execution of Escrow Agreement in terms of Article 10
- (f) executed and procured execution of Substitution Agreement;
- (g) Confirmed that all the representations and warranties of the Concessionaire/Successful Bidder set forth in the Proposal of the Successful Bidder and in this Agreement are true and correct.
- (h) Executed the Land Lease Agreement(s) and taken over vacant and unencumbered possession of all the Site(s) from the Participating ULBs
- (i) Procured at its own cost, water connection, power connection and other service connections to the Site.
- (j) Submission of Operational plan for collection and transportation of MSW.
- (k) Furnished Bank Guarantee for remaining Transaction Advisor Fees to Transaction Advisor, as per format acceptable to Designated ULB.

### 2.6.3. Condition Precedent for Department

Procure execution of PPA between the Concessionaire and DISCOM

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

### 2.6.4. Satisfaction of Conditions Precedent

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 180 (One Hundred & Eighty) days from the Appointed Date (the "Compliance Period") unless specified otherwise.
- (b) The later of the date within such time when the Participating ULBs/Department or the Concessionaire fulfils its Conditions Precedent (unless the Participating ULBs 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" respectively).

### 2.6.5. Non-Compliance with Conditions Precedent

- (a) In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and the Designated ULB/Participating ULB 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 Designated ULB/Participating ULB shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- (b) In the event this Agreement fails to come into effect on account of non-fulfilment of the Concessionaire's Conditions Precedent, the Designated ULB shall be entitled to forfeit and encash the Performance Security.
- (c) In the event the Conditions Precedent for Participating ULBs/Department have not been satisfied within the stipulated time, then the Concessionaire shall have the option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for Participating ULBs/Department or (ii) terminate this



Agreement. In the event of termination, the Participating ULBs shall pay to the Concessionaire, reasonable development costs, as determined through the mechanism enumerated below. In case of extension of time period for fulfilment of Conditions Precedent for Participating ULBs beyond a period of 180 (One Hundred and Eighty) days from the Appointed Date, the Concession Period shall be proportionately extended for the same period. Parties hereby agree that for determination of the said development cost, the Designated ULB may appoint a financial consultant for determining such development cost, whose determination shall be final, conclusive and binding. The Parties shall share the cost of such financial consultant,

- (d) In the event this Agreement fails to come into effect on account of the non-fulfilment of the Participating ULBs'/Department's Conditions Precedent, the Designated ULB shall in addition to payment of development cost in terms of sub-clause (c) above, shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Participating ULBs on the Concessionaire.
- (e) Instead of terminating this Agreement as provided in this Article 2.2, the Parties shall have the option to extend the time for fulfilling the Conditions Precedent by mutual agreement.

## 2.7. Collection and Transportation of MSW by the Concessionaire prior to COD

Notwithstanding the completion of Conditions Precedent, the Concessionaire shall commence its obligation related to collection and transportation of the MSW within the Project Area within 120 (One hundred and twenty) days of the Appointed Date (the "**Commencement Date**"). The Participating ULBs shall grant right of way and right of use to the Concessionaire in respect of the Secondary Collection Points within the aforesaid period. The collected MSW shall be disposed of by the Concessionaire at the designated dump/ Sanitary Landfill site, as per Applicable Law. The Concessionaire shall be paid a fixed Tipping Fee of Rs.1000/- (Rupees One Thousand) per ton of MSW collected, transported to the Processing Facility and disposal at Landfill Site.

Within the aforesaid period of 120 (one hundred and twenty) days, the Concessionaire shall also install an electronic weigh bridge at the Processing Facility/ Landfill site as per the specifications specified in this regard in this Agreement, or get approval from the Designated ULB for using nearest installed weigh bridge to measure the weight of the MSW transported. The weigh bridge installed by Concessionaire or third party during initial phase of operation or in the case of breakdown or maintenance shall be calibrated as per applicable BIS / IS standard. The calibration report will be submitted to Designated ULB/ PMU. The Concessionaire shall also install CCTV cameras above the weighbridge.

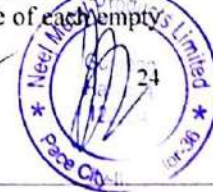
For measurement of MSW, weigh bridge shall be installed at the entrance of the Landfill site/ Processing Facility site in terms of this Agreement. The weigh bridge shall be operated and maintained by the Concessionaire but the same shall be subject to inspection by the authorized representatives of the Designated ULB and PMU;

Tipping Fee payment to the Concessionaire will be made as per the measurement at the processing weighbridge located at the entry of the Processing Facility;

Each consignment to the Landfill site/ Processing Facility site shall be screened and weighed at the weighbridge. Concessionaire shall also keep a record of weight and volume of each empty



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delivery truck, in order to determine the net weight of the consignment. The Designated ULB shall have an option to depute a responsible person from the Designated ULB to monitor the operations of the weighbridge who shall provide details of the same to the PMU and Designated ULB on a weekly basis;

The weighbridges shall be monitored and inspected regularly by PMU and/ or Designated ULB to ensure due calibration and accuracy and any errors shall be rectified immediately.

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## ARTICLE 3

### 3. SITE(S)

#### 3.1. Handover of sites

- (a) Designated ULB shall co-ordinate with the Participating ULBs and ensure that they shall within 30 days from the Appointed Date ("**Commencement Date**"), handover the Sites under their respective jurisdiction for transfer stations, Processing Facility, Landfill Site, to the Concessionaire on as-is-where-is basis, free from Encumbrance, for the purpose of implementing the Project.
- (b) Upon the Sites being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 3, have the right to enter upon, occupy and use the same or to make it as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- (c) Annual advance lease rental of one rupee per square metre per annum to be paid by the Concessionaire to the Participating ULBs for each year of the Concession Period as consideration for the Land Lease Agreement for the Site(s) handed over on leasehold basis to the Concessionaire in its capacity as the lessee for setting up the Processing Facility.
- (d) The term of the such Land Lease Agreements shall be co-terminus with this Concession Agreement and upon expiry of this Agreement due to efflux of time or due to early termination on account of default, the term of the Land Lease Agreement shall also expire simultaneously and the Concessionaire shall hand over possession of the Sites in accordance with the terms of this Agreement and Land Lease Agreements

#### 3.2. Rights, Title and Use of the Sites

- (a) The Concessionaire shall have the right to the use of the Sites in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- (b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project and Project Facilities, including the Sites save and except as set forth and permitted under this Agreement.
- (c) The Concessionaire shall not, without the prior written approval of the Participating ULBs, use the Sites for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (d) The Concessionaire shall allow free access to the Sites to the members of the Project Management Unit, any officer of the Participating ULBs and/ or the Department for inspection of the Sites and the works being undertaken by the Concessionaire.
- (e) The Concessionaire shall allow access to and use of the Sites for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as the Designated ULB may specify.
- (f) Provided, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur / suffer any liability on account thereof.

#### 3.3. Peaceful Possession

The Designated ULB shall ensure that the Participating ULBs provide following warranties:

- (a) The Sites together with the necessary right of way/way-leaves :  
 have been acquired through the due process of law;  
 belong to, or has been leased to the Participating ULBs and is vested in the



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Participating ULBs;

and that the Participating ULBs have full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Sites, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any Persons affected thereby.

- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession of land provided by the Participating ULBs. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Sites or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in charge on the Sites or any part thereof, the Participating ULB shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

### 3.4. Applicable Approvals

The Concessionaire shall obtain and maintain the Applicable Approvals in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Approvals have been issued.



**ARTICLE 4****4. INDEPENDENT EXPERT / PROJECT MANAGEMENT UNIT****4.1. Composition**

The Designated ULB shall appoint the Project Management Unit (PMU) comprising of an Independent Expert, who shall be an officer in the grade of an Executive Engineer or an external expert with at least 15 years of experience in solid waste management with engineering degree/ masters in environment/ civil and one representative each nominated by each the Participating ULBs. Such representative shall be an officer of grade of Executive Officer/ Municipal Engineer or above. The Independent Expert shall head the PMU.

**4.2. Duties and functions**

The PMU shall have the overall responsibility of monitoring and supervision of the Project. The detailed terms and conditions for appointment of Project Management Unit and its rights, responsibilities and scope of services are specified in **Annexure 6**.

**4.3. Remuneration**

The remuneration, cost and expenses of the PMU including inter-alia the Independent Expert shall be borne by the Designated ULB.

**4.4. Replacement**

The Designated ULB may, in its discretion, terminate the appointment of the Independent Expert at any time and appoint another Independent Expert in its place.

The Designated ULBs shall also have the power to replace their nominated members and nominate their replacements by giving 15 (fifteen) days prior notice in writing to the other Parties.

**4.5. Tenure**

The tenure of the PMU shall commence from the date of its constitution during the Compliance Period and extend up to the Transfer Date, unless the Agreement is terminated earlier in terms hereof.



**ARTICLE 5**

**5. THE CONCESSIONAIRE'S OBLIGATIONS**

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

**5.1. Performance Security**

- (a) The Concessionaire shall, for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee from a scheduled bank acceptable to Designated ULB, in favour of "Commissioner Municipal Corporation Sonapat", in the form as set out in Annexure 5, ("**Performance Security**") for a sum equivalent to 10% of the Estimated Project Cost during the entire Concession Period.
- (b) The Performance Security shall be kept valid and in force for the entire duration of the Concession Period, through periodical renewals, at least one month prior to the expiry of the subsisting Performance Security. In the event the Concessionaire fails to provide the renewed/ extended/ enhanced performance security at least 1 (one) month prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Designated ULB shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Concessionaire Event of default in terms hereof.
- (c) In the event, the Concessionaire is in default or breach of the due, faithful and punctual performance of its obligations under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Designated ULB for or against the Concessionaire under this Agreement or against the Designated ULB in respect of this Agreement, the Designated ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of services within the time period specified herein, or in respect of any dues, demands damages or claims against the Concessionaire.
- (d) The decision of the Designated ULB as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Participating ULBs under this Concession Agreement is required to be provided in connection with any demand made by the Participating ULBs to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.
- (e) In the event of encashment of the Performance Security by the Designated ULB, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from Designated ULB provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle the Designated ULB to terminate this Concession Agreement in accordance with the provisions hereof.
- (f) Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Designated ULB's right to receive amounts, if any, due from the Concessionaire



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under this Agreement, be duly discharged and released to the Concessionaire.

### 5.2. Obligation for payment of Transaction Fee

The Concessionaire shall be liable to pay Transaction Fee equivalent to 2% (two percent) ("Fee") of the Estimated Project Cost to the Transaction Advisors as per the following terms:

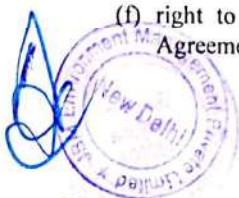
- (i) Within one week (1 week) of issuance of LOA to the Concessionaire: the Concessionaire shall pay 60% of the Fee;
- (ii) Within ten days (10 days) Signing of Concession Agreement by Concessionaire: the Concessionaire shall pay 10% of the Fee
- (iii) Within thirty days (30 days) of commencement of C&T operations by the Concessionaire: the Concessionaire shall pay 15% of the Fee
- (iv) Within thirty days (30 days) of commencement of P&D (COD of Power Plant) by the Concessionaire, the Concessionaire shall pay 15% of the Fee

Towards securing the above payment to the Transaction Advisor, the Concessionaire has furnished a bank guarantee ("Bank Guarantee for Transaction Advisor Fees") for the aggregate amount equivalent to 40% of the outstanding Fee post payment of the 60% Fee in terms of Article 5.2 (i). Upon Concessionaire re-furnishing such Bank Guarantee(s) corresponding to the value of balance TA Fees from time to time, the relevant earlier bank guarantee will be returned. The failure of the Concessionaire not to make payment of any of the aforesaid instalments of the Transaction Advisor shall be treated as Concessionaire Event of default and Participating ULBs shall be entitled to set off such amounts from amounts due to the Concessionaire on account of Tipping Fee or from collections made on account of User Charges.

### 5.3. General Obligations

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in Schedule 1 and under this Agreement and the Selected Bidder's obligations under the LOA;
- (b) obtain all Applicable Approvals as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law (including without limitation all public and labor related laws and health, safety, and sanitation laws, as then in force) governing the operations of Project (including electricity generation) at all times during the Concession Period;
- (d) endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers,
- (e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;



- (g) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the Participating ULBs indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall Designated ULB and/or Participating ULBs be treated as the employers of the Concessionaire, in this regard;
- (h) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (i) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (j) upon receipt of a request thereof, afford access to the Project to the authorised representatives of Designated ULB for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (k) bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;
- (l) ensure that the Project is operational on all calendar days of the year;
- (m) be responsible for the conduct of its staff employed for this Project while on duty;
- (n) shall obtain the approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;
- (o) to operate, maintain, repair and renovate the Project Assets and Project Facilities, in accordance with, *inter alia*, the Applicable Laws, Applicable Approvals and the requirements;
- (p) commence collection and transportation of the MSW within the Project Area within 120 (one hundred and twenty) days of the Appointed Date in terms of Article 2.3;
- (q) procure, acquire and put into place at its own cost and expenses all the Project Assets and Project Facilities required by the Concessionaire to implement the Project during the Pre-COD Period so as to achieve COD within the time stipulated in this Agreement;
- (r) promptly rectify and remedy any defects or deficiencies, if any pointed out by the PMU/Participating ULBs in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the PMU/Participating ULBs;
- (s) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Annexure 2;
- (t) to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- (u) to deal with and resolve any complaints regarding incorrect charging of User Charges and submit compliance thereof to such Participating ULB to whose jurisdiction such complaint pertained to;
- (v) to pay all taxes, duties and outgoings, including utility charges relating to the Project.



- (w) transfer the Project to the Designated ULB/Participating ULB upon expiry or early Termination of this Agreement, in accordance with the provisions hereof.
- (x) provide live GPS feed of movement of transportation vehicles to designated ULB.
- (y) be responsible and indemnify the Participating ULB for any accident due to negligence or otherwise in the performance of the project.
- (z) submit compliance as required to environmental agency and shall provide all information related to project as would be required by Participating ULBs pursuant to any RTI query or any issue raised in State assembly / Parliament.

#### 5.4. No Breach of Obligations

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) Force Majeure Event, subject to Article 11.1;
- (ii) Designated ULB's Event of Default;
- (iii) Compliance with the instructions of the PMU / Designated ULB 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;

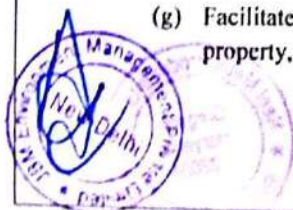
#### 5.5. Penalties & Damages

In case the Concessionaire fails to fulfil the obligations as set under this Agreement, penalties for non-fulfilment/ damages shall be imposed according to provisions of Annexure 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the aggregate Liquidated damages levied in terms hereof on the Concessionaire by Designated ULB exceeds INR 7,00,000/- (INR Seven Lakhs) in any quarter, the same shall be deemed as Concessionaire Event of Default and shall make the Agreement liable for termination.

#### 5.6. Obligations of the Selected Bidder

The Selected Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Concessionaire's activities such that the experience and expertise becomes available to the Concessionaire on an on-going basis:

- (a) Arranging the financing for the Project, including mobilization of debt and Equity;
- (b) facilitate procurement of Applicable Approvals for commencing and implementing the Project;
- (c) facilitate award of Project Agreements in respect of engineering, procurement, construction and operation and maintenance of the Project;
- (d) Ensure timely implementation of the Project in accordance with the provisions of this Agreement, as per the standard specifications, the Applicable Laws, the terms of the Applicable Approvals and Good Industry Practice
- (e) Compliance with and implementation of the environment management plan;
- (f) Compliance with the provisions of this Agreement relating to liability and indemnification; and
- (g) Facilitate implementation of measures for safety, security and protection of the works, property, life and materials at the Project Site and the environment.



### 5.7. Concessionaire's Representative

The Concessionaire shall deploy a representative on its behalf to be designated as the Project Manager who shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in-charge to ensure implementation of the Project in accordance with the provisions hereof. The Project Manager shall closely co-ordinate with the Project Management Unit/ Participating ULBs and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out by the Project Management Unit during routine inspections and project review meetings and submit action take report to the Project Management Unit/ Participating ULBs within a period no later than 7 (seven) days from the date of conveying of such defect/ shortcoming. The Project Manager or its nominee shall make themselves available for meetings as and when called upon by the Project Management Unit/ Participating ULBs.

### 5.8. Sole purpose of the Concessionaire

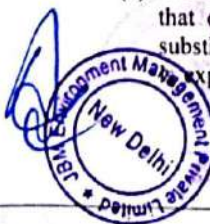
The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of PMU/ Designated ULB, be or become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

### 5.9. Employment of trained personal

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

### 5.10. Obligations relating to Project Agreements

- (a) It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- (b) The Concessionaire shall submit to PMU/ Designated ULB the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and PMU/ Designated ULB shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to PMU/ Designated ULB a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of PMU/ Designated ULB to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by PMU/ Designated ULB. No review and / or observation of PMU / Designated ULB and / or its failure to review and / or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall PMU / Designated ULB be liable for the same in any manner whatsoever.
- (c) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Designated ULB to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination. For the avoidance of doubt, it is expressly agreed that in the event the Designated ULB does not exercise such rights of



substitution within a period not exceeding 30 (thirty) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Designated ULB and the covenant shall expressly provide for such eventuality.

- (d) The Concessionaire expressly agrees to include the covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Designated ULB an acknowledgment and undertaking, in a form acceptable to the Designated ULB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Designated ULB in the event of Termination.

#### 5.11. Equity Lock-in requirements

The Concessionaire acknowledges that:

- 5.11.1. The Selected Bidder shall hold at least 51% shareholding in the paid up equity capital of the Concessionaire until expiry of 3 years from COD and thereafter 26% shareholding in the paid up equity capital during the remaining Concession period.
- 5.11.2. Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the "Lead Member") of such Consortium, shall have an equity share holding of at least 51% (fifty one percent) of the paid up Equity capital of the concessionaire until expiry of 3 years from COD and thereafter 26% shareholding in the paid up equity capital during the remaining concession period.
- 5.11.3. Any violation/ modification in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire's Event of Default.



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**ARTICLE 6****6. FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT****6.1. General Obligations**

- 6.1.1. The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders for the same.
- 6.1.2. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 180 (one hundred and eighty days) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Designated ULB in a sum calculated at the rate of 0.1 (zero point one per cent) of the Performance Security for each day of delay.
- 6.1.3. Damages specified herein shall be payable every week in advance and the period beyond the said 180 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Closure has occurred solely as a result of any default or delay by the Designated ULB or Participating ULB in procuring satisfaction of the Conditions Precedent specified in Article 2.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of penalties.
- 6.1.4. The Concessionaire shall, upon occurrence of Financial Closure, notify the Designated ULB forthwith, and shall have provided to the Designated ULB, at least 2 (two) days prior to Financial closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

**6.2. Termination due to failure to achieve financial closure**

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial closure does not occur, for any reason whatsoever, within the period set forth in Article 6.1.2 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the financial closure, the provisions of this Article 6.2 shall not apply.

**6.3. Substitution Agreement**

- 6.3.1. This Agreement shall not be assigned by the Concessionaire. Provided however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Annexure 7.
- 6.3.2. The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement.



6.3.3. Provided that in the event the Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement, Designated ULB shall proceed to terminate the Agreement.



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**ARTICLE 7****7. DESIGNATED AND PARTICIPATING ULB'S OBLIGATIONS**

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

**7.1. Specific Obligations**

The Designated ULB shall:

- (a) identify and earmark / allocate parcel(s) of land within the Project Area for the purpose of setting up of transfer stations, Processing Facility and Sanitary Landfill for scientific management of MSW. Identify and earmark parcel of land within Project Area for purpose of setting up secondary collection points.
- (b) on its behalf and on behalf of the other Participating ULBs provide the Concessionaire with an Authority Letter to collect notified User Charges. The Designated ULB shall ensure that the other Participating ULB issues similar Authority Letter in favour of the Concessionaire.
- (c) facilitate in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from Designated ULB and/ or the Participating ULB under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- (d) appoint Independent Expert to form part of the PMU who shall monitor, supervise, and review Concessionaire's progress details/ activities. The Concessionaire shall submit monthly reports to Designated ULB and PMU regarding progress of the Project. Designated ULB shall validate the data provided by the Concessionaire in monthly progress reports after seeking comments of the PMU.
- (e) on its behalf and on behalf of the other Participating ULBs, handover to the Concessionaire within 60 (Sixty) days of the date of signing of Concession Agreement, the existing infrastructure of Collection & Transportation (C&T) like dumper bins, vehicles, transfer stations, decentralized waste management units etc. to be deployed in Project Area, on an 'as is where is' basis, if any, at a price determined by the independent valuer appointed by the Designated ULB.
- (f) on its behalf and on behalf of the Participating ULB handover the existing infrastructure of Processing & Disposal assets, deployed and used at Project Site, on as is where is basis to the Concessionaire, within 60 (Sixty) days of the date of signing of Concession Agreement.
- (g) make timely payments as prescribed in Article 9.
- (h) To make available treated wastewater of up to 2 MLD from the Sewage Treatment Plant not beyond 10 kms from the project site.
- (i) shall along with Participating ULB provide land for the parking and workshop to Concessionaire.

**7.2. Department's Obligations**

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



- (a) The Department shall coordinate with the Designated ULB in securing the SBM Grant for the Project.
- (b) The Department shall, where appropriate, coordinate with the Concessionaire in securing Applicable Approvals.
- (c) The Department shall coordinate with the Designated ULB in securing timely payments to the Concessionaire.
- (d) The Department, if required may be called upon to assist in case of dispute resolution according to Article 15.



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**ARTICLE 8****8. MONITORING AND INSPECTION****8.1. During Pre-COD Period****8.1.1. Monthly Progress Reports**

During the Pre-COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the PMU/ Designated ULB, a monthly report bringing out in detail the progress made by the Concessionaire and also organize monthly review meetings with respect to its scope of work, including inter-alia the Processing Facility (including the Power Plant), Project Facilities, the quantity of MSW collected, processed and disposed and any such information as may be considered essential by the PMU.

**8.1.2. Inspection**

During the Pre-COD Period, the PMU/ Designated ULB shall inspect or cause to be inspected the Processing Facility, Project Assets and Project Facilities at least once a month or at such shorter intervals as may be considered essential by the PMU and make report of such inspection (the "Pre-COD Inspection Report") stating in reasonable detail the delay or deficiencies, if any, with particular reference to the scope of the Project, specifications, Good Industry Practices, Applicable Law & Approvals.

It shall send a copy of such a Report to the Concessionaire within 2 (two) days of such inspection/ observation and upon receipt thereof, the Concessionaire shall rectify and remedy the observations, if any, stated in the Inspection Report. Provided however, such inspection or submission of Inspection Report by the PMU shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

**8.1.3. Tests**

For determining that the Processing Facility, Project Assets and Project Facilities conform to the specifications and requirements of this Agreement, the PMU/ Designated ULB shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the PMU/ Designated ULB from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the PMU/ Designated ULB and furnish the results thereof to the PMU/ Designated ULB. For the avoidance of doubt, the costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire.

In the event that results of any tests conducted under this Article 8.1.3 establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the PMU/ Designated ULB in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 8.1.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the PMU/ Designated ULB forthwith.

**8.2. Post COD period****8.2.1. Monthly Status Reports**

During Post COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the PMU/ Designated ULB a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the maintenance



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requirements, the power generated and exported, the quantity of MSW collected, processed & disposed and shall promptly give such other relevant information as may be required by the PMU/ Designated ULB. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

#### 8.2.2. Inspection

The PMU/ Designated ULB shall inspect or cause to be inspected the execution of the Project at least once a month. It shall make a report of such inspection (the "Post COD Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with reference to the maintenance requirements, maintenance manual<sup>2</sup>, performance parameters or requirements as set forth in this Agreement including Schedules/ Annexures, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the PMU/ Designated ULB shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

#### 8.2.3. Remedial measures

The Concessionaire shall repair or rectify the defects or deficiencies, which have impact on the operations/ efficiency of the Project, if any, set forth in the Post COD Inspection Report and furnish a report in respect thereof to the PMU/ Designated ULB within 15 (fifteen) days of receiving the Post COD Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports to the PMU/ Designated ULB of the repair works once every week until such works are completed in conformity with this Agreement.

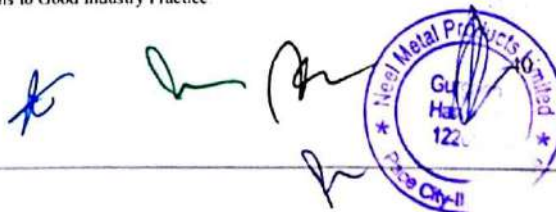
In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the PMU/ Designated ULB shall be entitled to recover Damages from the Concessionaire as per Annexure 2 - Penalties and Damages.

#### 8.2.4. Designated ULB's/ Participating ULBs right to take Remedial measures

8.2.4.1 In the event the Concessionaire does not maintain and/ or repair the Processing Facility/ Project Facilities/ Project Assets or any part thereof in conformity with the maintenance requirements, maintenance manual or performance parameters requirements or requirements as set forth in this Agreement including Schedules/ Annexures, and fails to commence remedial works within 15 (fifteen) days of receipt of Post COD Inspection Report or notice in this behalf from the PMU or the Designated ULB, as the case may be, the Designated ULB shall, without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to 10% (ten percent) of such cost shall be paid by the Concessionaire to the Designated ULB as Damages.

8.2.4.2 The Designated ULB shall have the right, and the Concessionaire hereby expressly grants to the Designated ULB the right, to recover the costs and Damages specified in Article 8.2.4.1 directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in

<sup>2</sup> Maintenance manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice



accordance with the instructions of the Designated ULB under this Article 8.2.4.2. Any demand from Designated ULB stating that a specified amount is payable shall be final, binding and conclusive qua the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and damages.



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**ARTICLE 9****9. PAYMENTS****9.1 Tipping Fee**

9.1.1 Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, Designated ULB agrees and undertake to pay to the Concessionaire (on behalf of all the Participating ULBs) fixed charges of Indian Rupees One Thousand (Rs.1000/-) per ton of MSW collected by way of door to door collection in the Project Area and transported to the Processing / disposal site by the Concessionaire during the Pre-COD period or until period of two years, whichever is earlier, provided that this condition shall not apply in the event delay beyond the period of two years is caused by Participating ULBs Event of Default or Force Majeure.

9.1.2 Post COD Period, the Designated ULB agrees and undertakes to pay to the Concessionaire charges of Indian Rupees Three Hundred Thirty Three (Rs.333/-) per ton of MSW collected by way of door to door collection in the Project Area and transported to the Processing Facility by the Concessionaire. This amount will be escalated at the rate of 4% per annum after one year of achieving COD, for each fiscal year during the Term of this Agreement.

9.1.3 The amount will be paid on the basis of actual transportation of MSW carried out by the Concessionaire and the invoice shall be verified by the PMU/ULB. The Concessionaire shall raise monthly invoice and attach daily weights sheets of the electronic weigh bridge installed at the entrance of the Sanitary Landfill/ Processing Facility site, duly verified and approved by the PMU/ ULB.

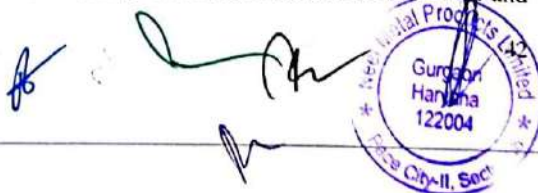
**9.2 SBM Grant**

9.2.1 Designated ULB (on behalf of all the Participating ULBs) shall pay to the Concessionaire cash support for an amount equal to INR Forty Crores (the "SBM Grant") as per SBM Guidelines.

9.2.2 The SBM Grant shall be disbursed to the Concessionaire in two tranches of equal amount. The first tranche of the SBM Grant shall be disbursed to the Concessionaire upon achieving COD of the Waste to Energy Facility and the second tranche within 6 months of the previous tranche. In the event of occurrence of a Concessionaire Event of Default, disbursement of the SBM Grant or any part thereof shall be suspended till such Default has been cured by the Concessionaire. The Designated ULB shall disburse the SBM Grant amount by disbursing and depositing the same in the Escrow Account.

**9.3 Output Based Incentive (OBI) Payments**

9.3.1 "OBI" means the amount quoted by bidder as Rs 10.60 per KWh for net exportable power. It will have two component (a) DISCOM component of OBI (DC- OBI) means Tariff as per PPA and duly approved by HERC. (b) ULB component of OBI (UC- OBI) means difference of quoted OBI and tariff to be paid by ULB. DC-OBI would be payable by DISCOM and UC-OBI will be paid by Designated ULB. The difference between the amount of OBI quoted (in Rs/ kWh) by the Selected Bidder in its financial quote/ Bid, and HERC notified (DC- OBI) tariff (in Rs/ kWh) (hereinafter referred to as the "Tariff"), shall be the (UC- OBI) amount ( hereinafter referred to as the "Differential Amount") that will be payable by the Designated ULB to the Concessionaire only if the OBI financial quote of the Selected Bidder is over and



above the HERC notified Tariff for waste to energy. In the event, the Selected Bidder quotes below the HERC Tariff, Designated ULB shall not be liable make any payments to the Concessionaire.

The foregoing is illustrated by way of an example, as follows:

HERC notified Tariff (in Rs/ kWh)	Financial Quote OBI (in Rs/ kWh)	Amount payable by the Designated ULB (in Rs/ kWh)
7	8	1
7	7	0
7	6	0

9.3.2 Where the OBI financial quote of the Selected Bidder is over and above the HERC notified Tariff for waste to energy, the Designated ULB shall be liable to pay the difference between the HERC notified Tariff (in respect of each kilowatt hour of power exported to DISCOM) and the OBI financial quote of the Selected Bidder. The difference so determined shall be multiplied with the number of units of power exported per month and the sum so arrived at shall be payable by the Designated ULB to the Concessionaire. The Concessionaire shall raise bills/ invoice based on the output produced (net exportable power in Kilowatt hour) as determined in the manner specified above, on a monthly basis.

9.3.3 The Parties hereby agree that the Concessionaire shall in addition to the Tariff (under PPA) and the Differential Amount (payable hereunder), be entitled to a yearly escalation on Differential Amount, as per the mechanism enumerated below:

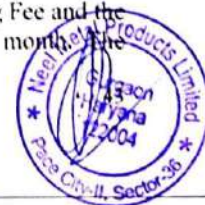
- a) With effect from the second year of Concession, the Concessionaire shall be eligible to receive, an additional amount ("Additional Amount") equivalent to 4% of the previous year's Differential Amount. In second year of Concession, the Additional Amount will be based on first year's Differential Amount and thereafter in each subsequent year (i.e. third and thereafter) of concession, the 4% escalation would be computed on the aggregate amount of Differential Amount and Additional Amount (if any) paid hereunder by Designated ULB in the immediately preceding year. By way of illustration:- Assuming HERC Tariff for 1<sup>st</sup> year of Concession is INR 7, and Selected bidder quotes OBI of INR 10; therefore Differential Amount payable for 1<sup>st</sup> year being INR 3, on which, in 2<sup>nd</sup> concession year escalation of 4% would be applicable. This escalated amount shall be added to Differential Amount payable in second year, and the aggregate amount thus arrived will be used in third year for computation of Additional Amount (i.e. 4% escalation on such aggregate amount).
- b) For avoidance of doubt it is clarified that the amount paid in any year (except the first year) shall be the arithmetic sum of OBI for that year and the Additional Amount (i.e. escalation) calculated for that year over the last year amount; in the manner described above.

#### 9.4 Payment mechanism

9.4.1 The Concessionaire shall raise by 5<sup>th</sup> day of a Month, the bill/ invoice for Tipping Fee and the Differential Amount (payable as per Article 9.3.3 above) for the preceding month.



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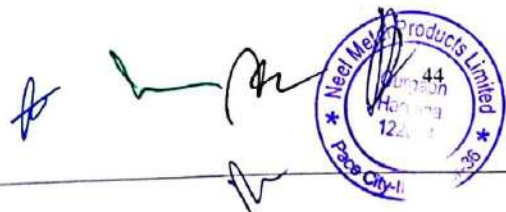


invoice thus raised shall, subject to due performance by Concessionaire and other terms and conditions of this Agreement, be approved by the PMU by 15<sup>th</sup> of the month and submitted to Designated ULB for release of payment.

- 9.4.2 Designated ULB shall pay 90% of the bill amount, to the Concessionaire by the end of the month in which the bill has been raised. The remaining 10% of the bill amount shall be paid by the Designated ULB by the end of the third month, subject to deductions as applicable.
- 9.4.3 Designated ULB shall pay the amount against bills of the Concessionaire through the Escrow Account mechanism by deposit of the relevant amount in the Escrow. Further, subject to due performance of obligations by the Concessionaire, the Designated ULB shall, by way of additional security for payment, deposit and maintain at all times, an amount equivalent to fee for corresponding to next two months payment in the Escrow Account in the manner detailed as follows The Designated ULB shall deposit in, the Reserve Sub -Account of the Escrow Account, at all times during term of this Agreement, an amount equivalent to meet two month's payment of Tipping Fee (as applicable during Pre COD period); and of Tipping Fee (as applicable during Post COD period) and Differential Amount, namely, [OBI (less) HERC Tariff], in the Escrow Account.

By way of illustration, the aforesaid payment mechanism of fee is shown as following:

<b>Month</b>	<b>Activity</b>
T1	Month of processing of waste
5 <sup>th</sup> of T2	Bills raised by the Concessionaire, to be approved by the PMU
15 <sup>th</sup> of T2	Bill approval by the PMU and submission to Designated ULB
End of T2	90% payment by Designated ULB
End of T3	10% payment by Designated ULB



**ARTICLE 10****10. ESCROW ACCOUNT****10.1. Escrow Account**

- 10.1.1 The Concessionaire shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with the terms and conditions of this Agreement and the Escrow Agreement.
- 10.1.2 The nature and scope of the Escrow Account as fully described in the Agreement to be entered into amongst the Concessionaire, the Designated ULB, the Escrow Bank and the Senior Lenders (if any) through the Lenders' Representative, shall be substantially in the form set forth in Annexure-9 (the "Escrow Agreement")

**10.2. Deposits into Escrow Account**

- 10.2.1. The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- all funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;
  - all revenues from or in respect of the Project including tariff received under Power Purchase Agreement, the OBI and Additional Amount received from Designated ULB as per Article 9.3..2, and insurance claims;
  - all payments made by the Designated ULB on account of the SBM Grant and Tipping Fee; and
  - User Charges recovered from Waste Generators
- 10.2.2. Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements. The Designated ULB shall at all times and in any month of the Concession, ensure that in the Reserve Sub- Account ("Reserve Fund") under the Escrow Account, an amount equivalent to immediately next two months fee i.e.[ Tipping Fee as applicable during Pre COD Period, and thereafter ( Differential Amount + (plus) Tipping Fee) as applicable in accordance with terms hereof during post COD period], as is payable to Concessionaire in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and Designated ULB does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow bank to stop any appropriation from Reserve Fund; in case of any delay by Designated ULB in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the Designated ULB shall forthwith top up and maintain the required reserve in the Reserve Fund.

**10.3 Withdrawals during Concession Period**

- 10.3.1. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary



and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) operation and maintenance expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) operation and maintenance expenses and other costs and expenses incurred by the Designated ULB in accordance with the provisions of this Agreement, and certified by the Designated ULB as due and payable to it;
- (e) All payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

10.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Article 10.3.1, except with the prior written approval of the Designated ULB

#### 10.4 Withdrawals upon Termination

10.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due;
- (c) all payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (d) retention and payments relating to the liability for defects and deficiencies;
- (e) operation and maintenance expenses
- (f) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Article (j) of this Article 10.4.1 until a vesting certificate has been issued by the Designated ULB.

10.4.2. The provisions of this Article 10 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 10.4.1 have been discharged.



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**ARTICLE 11****11. FORCE MAJEURE AND CHANGE IN LAW**

The word "Party" and "Parties" in this Article shall refer to either the Concessionaire or the Designated ULB.

**11.1. Force Majeure**

As used in this Agreement, the expression "**Force Majeure**" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 11.2, 11.3 and 11.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

**11.2 Non-Political Event**

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting Project development/implementation for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year not being an Indirect Political Event set forth in Article 11.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Designated ULB;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) *any event or circumstances of a nature analogous to any of the foregoing.*



### 11.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of fee or consideration under Power Purchase Agreement by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Designated ULB to permit the Concessionaire to continue the discharge of its obligations hereunder, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.



#### 11.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 11B and its effect, in financial terms, exceeds the sum specified in Article 11B.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

#### 11.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 11 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

11.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

11.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports



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containing information as required by Article 11.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

#### 11.6 Effect of Force Majeure Event on the Concession

11.6.1 Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the period set forth for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

11.6.2 At any time after the Compliance Date, if any Force Majeure Event occurs:

- (a) *before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or*
- (b) *after COD, whereupon the Concessionaire is unable to collect User Charges under this Agreement despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of said fee on account thereof;.*

#### 11.7 Allocation of costs arising out of Force Majeure

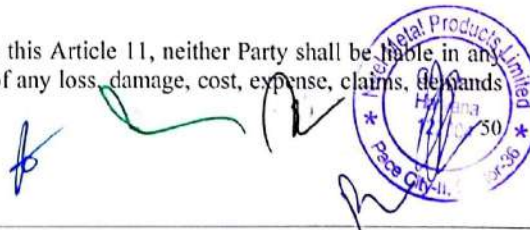
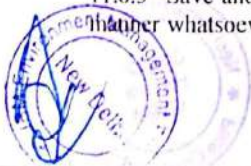
11.6.3 Upon occurrence of any Force Majeure Event prior to the Compliance Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

11.6.4 Upon occurrence of a Force Majeure Event after the Compliance Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Designated ULB to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Designated ULB to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, operation and maintenance expenses, any increase in the cost of discharging obligations hereunder on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Document may be relied upon to the extent that such information is relevant.

11.6.5 Save and except as expressly provided in this Article 11, 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.

#### **11.7 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 11, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### **11.8 Termination Payment for Force Majeure Event**

11.8.1 If Termination is on account of a Non-Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire of an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

11.8.2 If Termination is on account of an Indirect Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire of an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and

11.8.3 If Termination is on account of a Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 12.4(f) as if it were an Designated ULB Default.

#### **11.9 Dispute resolution**

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

#### **11.10 Excuse from performance of obligations**

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same; and



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(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.



\* L R H



## ARTICLE 11A

**11A SUSPENSION OF CONCESSIONAIRE'S RIGHTS****11A.1 Suspension upon Concessionaire Default**

Upon occurrence of an Concessionaire Event of Default, the Designated ULB shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect User Charges including receiving of Payments (under article 9) and/ or SBM Grant, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Designated ULB to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

**11A.2 Designated ULB to act on behalf of Concessionaire**

11A.2.1 During the period of Suspension, the Designated ULB shall, on behalf of the Concessionaire, collect all fee and revenues under and in accordance with this Agreement and deposit the same in the an Escrow Account. The Designated ULB shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations .

11A.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Designated ULB for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Designated ULB for all costs incurred during such period.

**11A.3 Revocation of Suspension**

11A.3.1 In the event that the Designated ULB shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Designated ULB may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

11A.3.2 Upon the Concessionaire having cured the Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Designated ULB shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

**11A.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Major Lenders, shall be entitled to substitute the Concessionaire under and in accordance



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with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, the Designated ULB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 11A.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

**11A.5 Termination**

11A.5.1 At any time during the period of Suspension under this Article 11A, the Concessionaire may by notice require the Designated ULB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 11A.4, the Designated ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 11A.

11A.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 11A.1, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Designated ULB upon occurrence of a Concessionaire Default.



**ARTICLE 11B**

**11. CHANGE IN LAW**

**11B.1 Increase in costs**

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- (i) The enactment of any new Indian law including laws related to environment/emission/ discharge standards;
  - (ii) The repeal, modification or re-enactment of any Applicable Law;
  - (iii) A change in the interpretation or application of any Indian law by a court of record;

Provided that Change in Law shall not include:

- (i) Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
  - (ii) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge (including interalia, bye laws, directions, orders, regulations to be issued under the SWM Rules),
  - (iii) Any change in the rates of the Taxes which have a direct effect on the Project.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden ("Additional Cost"), the aggregate financial effect of which exceeds Rs. One Crore in any Accounting Year, the Concessionaire may so notify the Designated ULB and provide the information's as provided in Article (c) below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising therefrom shall be dealt with as per terms of Article (d) below.
- (c) Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify Designated ULB and the PMU of the following:
- (i) The nature and the impact of Change in Law on the Project;
  - (ii) the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
  - (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost;
  - (iv) The relief sought by the Concessionaire.
- (d) Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the



Concessionaire may by notice require the Designated ULB to pay an amount equivalent to 50% of Additional Cost as determined/certified by PMU based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 11B.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement



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## ARTICLE 12

### 12. EVENTS OF DEFAULT AND TERMINATION

#### 12.1. Events of Default

Event of Default shall mean either Concessionaire Event of Default or Designated ULB Event of Default or both as the context may admit or require.

#### 12.2. Concessionaire Event of Default

In addition to any events specified elsewhere in this Agreement, any of the following events shall constitute an Event of Default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of one or more of the following reasons:

- (i) The Concessionaire has failed to process the MSW at the proposed site for a continuous period of three days or an aggregate period of seven days in any Month; This period shall be exclusive of the maintenance schedule of the Processing Facility
- (ii) The Concessionaire is in Material Breach of any of its obligations under this Agreement in respect of which a specified time period has not been specified in this Agreement and the same has not been remedied for more than 30 (thirty) days;
- (iii) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (iv) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (v) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Designated ULB, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (vi) Abandonment of the Project by the Concessionaire;
- (vii) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (viii) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days.
- (ix) The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement.
- (x) No collection of waste for consecutive 7 days after starting door to door collection in particular area.



### 12.3. Designated ULB Event of Default

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

- (i) Designated ULB has failed to make any payments including payment of SBM Grant and Payments (under article 9) due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;
- (ii) Designated ULB is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- (iii) Designated ULB has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) Designated ULB has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect.
- (v) Any representation made or warranties given by Designated ULB under this Agreement have been found to be false or misleading.

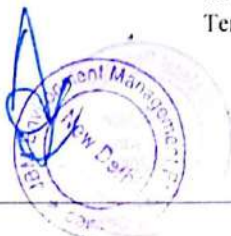
### 12.4. Termination due to Event of Default

#### (a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which Designated ULB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Designated ULB shall, be entitled to terminate this Agreement in the manner as set out under Article 12.4(a)(ii) and Article 12.4(a)(iii).

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 12.2, Designated ULB may terminate this Agreement by issue of Termination Notice in the manner set out under Article 12.4(c) after giving the Concessionaire an opportunity of hearing.

- (ii) If Designated ULB decides to terminate this Agreement pursuant to preceding Article (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to Designated ULB in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, Designated ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and appropriate amount of the Performance Security.



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(iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, Designated ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security.

**(b) Termination for Designated ULB Event of Default**

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Designated ULB Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article (i) it shall in the first instance issue Preliminary Notice to Designated ULB. Within 30 days of receipt of Preliminary Notice, Designated ULB shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "**Designated ULB Proposal to Rectify**"). In case of non - submission of Designated ULB Proposal to rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If Designated ULB Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, Designated ULB shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however Designated ULB fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

**(c) Termination Notice**

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

**(d) Obligation of Parties**

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

- (i) until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;



(ii) the Termination Payment, if any, payable by Designated ULB in accordance with the following sub - article (f) is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and

(iii) the Project is handed back to Designated ULB as instructed by Designated ULB, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to Designated ULB.

**(e) Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same:

Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

**(f) Termination Payment for ULB Event of Default**

Upon Termination of this Agreement on account of Designated ULB Event of Default, the Concessionaire shall be entitled to receive back the Performance Security from the Designated ULB and also receive from the Designated ULB, Termination Payment as specified below:

An amount equal to Debt Due and 150% of the Adjusted Equity;

**(g) Termination Payment for Concessionaire Event of Default**

(i) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire and the Designated ULB shall be entitled to forfeit the Performance Security of the Concessionaire.

(ii) Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the Designated ULB shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as specified below:

An amount equal to 90% of Debt Due less Insurance cover; provided that if any insurance claims forming part of the Insurance cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due

**12.5. Rights of Designated ULBs on Termination**

(a) Upon Termination of this Agreement for any reason whatsoever, Designated ULB shall upon making the Termination Payment, if any, to the Concessionaire, have the power and authority to:

(i) enter upon and take possession and control of the Project Facilities and Project Assets forthwith;



- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facilities and Project Assets;
- (b) Notwithstanding anything contained in this Agreement, Designated ULB shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facilities and Project Assets by the Concessionaire to Designated ULB shall be free from any such obligation/ fee/ penalties/ taxes.
- (c) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Designated ULB with the necessary particulars, and in the event of any delay, the Designated ULB shall pay interest at a rate equal to 3% (three per cent) above the Bank Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the Designated ULB upon actual or constructive transfer of the Project Assets by the Concessionaire to the Designated ULB and/ or Participating ULBs clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.
- (d) The Concessionaire expressly agrees that Termination Payment under this Article 12.5 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- (e) The Designated ULB and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, the Designated ULB shall be entitled to pay the Termination Payment [to the extent required] to the Lenders' Representative for procuring discharge/release of the any charge/Hypothecation created by Concessionaire on the moveable project assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from the Designated ULB, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due as aforesaid, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby irrevocably agree that such payment by Designated ULB shall be full and final settlement of Proportionate claim of Termination Payment to the Concessionaire under this Agreement.

#### 12.6. Accrued Rights of Parties

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



## ARTICLE 13

### 13. SUBSTITUTION OF THE CONCESSIONAIRE

#### 13.1. Substitution by Lenders' Representative

In the event of Concessionaire's default, Designated ULB shall, if there be any Lenders, send copy of the Termination Notice to the Lenders' Representative to inform and grant 15 (Fifteen) days to the Lenders' Representative, for making representation on behalf of the Lenders stating the intention to substitute the Concessionaire. In case Designated ULB receives representation on behalf of the Lenders, within the aforesaid period, Designated ULB shall withhold the termination for period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement, and substitute the Concessionaire with Nominated Company.

#### 13.2. Substitution by Designated ULB

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company or the company nominated by the Lenders' Representative in terms of Article 13.1 is not acceptable to Designated ULB, Designated ULB may either substitute the Concessionaire with Nominated Company, in accordance with the Substitution Agreement, or terminate the Agreement.

#### 13.3. Substitution Process

While carrying out substitution, the Lender's Representative or Designated ULB, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire. Such Nominated Company shall have to agree to bear all the liabilities of the Concessionaire in terms of this Agreement and Financing Agreement.

#### 13.4. Consequences of Substitution

Designated ULB shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, subject to fulfilment of the Concessionaire's entire obligation under this Agreement by such Nominated Company, for the remainder of the term of this Agreement. Such rights shall be granted by Designated ULB through the Novation of the Agreement, if applicable, in favour of the Nominated Company.

Designated ULB shall also execute new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/clearances of Designated ULB received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.



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**ARTICLE 14****14 HANDOVER OF PROJECT****14.1 Ownership during the Term of Agreement**

Without prejudice and subject to the Agreement, the ownership of the Project except Site(s), including all improvements made therein by the Concessionaire, during the term of the Agreement, shall at all times remain with the Concessionaire

**14.2 Condition Survey**

- (a) The Concessionaire agrees that on the service of a Termination Notice or 180 (one hundred and eighty) days prior to the expiry of the Term by efflux of time, it shall conduct or cause to be conducted by the PMU under the supervision of the Designated ULB, a survey ("Condition Survey") and inventory of the Project to ascertain the condition thereof, verify compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project;
- (b) If, as a result of the Condition Survey, the Designated ULB shall observe/notice that the Project or any part thereof is not in the condition required thereof under this Agreement (except normal wear and tear) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in the requisite conditions well before the Termination Date.
- (c) In the event the Concessionaire fails to comply with the provisions of this Agreement, the Designated ULB may itself cause the Condition Survey and inventory of Project to be conducted. The Designated ULB shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project in the requisite condition. In event, the Concessionaire fails to pay the cost incurred, the Designated ULB shall be entitled to recover the amount from its invoices and/ or the Performance Security.

**14.3 Concessionaire's Obligations upon Termination**

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

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



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It is clarified that only the assets of the Concessionaire shall be taken over, free of cost and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the Designated ULB. The Concessionaire's employees shall be the Concessionaire's Successful Bidder's responsibility even after the expiry of the Term.

- (iv) transfer or cause to be transferred assigned to the Designated ULB any Project Agreements which are (A) valid and subsisting, (B) capable of being transferred to the Designated ULB and (C) those the Designated ULB has chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Designated ULB.
  - (v) at its cost, transfer to the Designated ULB all such Applicable Approvals which the Designated ULB may require and which can be legally transferred.
  - (vi) at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Designated ULB. In the event the Concessionaire fails to remove such objects within the stipulated time, the Designated ULB may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- (b) All proceeds of insurance claims shall be deposited in a separate account and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto unless and until all dues of damages payable to the Designated ULB or any Government Authority or in respect of the Project have been cleared and no amounts payable refundable to either of them by the Concessionaire pursuant to this Agreement are outstanding.
  - (c) The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.
  - (d) The Designated ULB shall be entitled to encash any subsisting Performance Security/bank guarantee(s) provided by the Concessionaire or the Selected Bidder, if the Termination is on account of Concessionaire Event of Default –

#### 14.4 Divestment Certificate

- (a) On the Termination Date the PMU shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of this Agreement, as the case may be. In the event the PMU notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.
- (b) Upon Termination (due to Force Majeure Event or Event of Default or expiry of the Term by efflux of time), the divestment by the Concessionaire of all rights, title and interest in the Project and the Project Assets and the Project Facilities shall be deemed to be complete on the Termination Date but no later than 30 (thirty) days thereafter, by when all the requirements of this Agreement shall be fulfilled. The



*[Handwritten signature]*

*[Handwritten signature]*



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Designated ULB shall upon fulfilment of the requirements of this Agreement issue a certificate (the "**Divestment Certificate**"), with a copy thereof endorsed to the other Participating ULBs, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project and the Project Assets and the Project Facilities and the vesting thereof in the Participating ULBs pursuant hereto.



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## ARTICLE 15

### 15 DISPUTE RESOLUTION

#### 15.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the PMU (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **Article (b)** below.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- (c) Either Party may require such Dispute to be referred to the Commissioner, Designated ULB (or the Person holding charge) 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 arbitration in accordance with the provisions of **Article 15.2** below.

#### 15.2 Arbitration

##### (i) Procedure

Subject to the provisions of **Article 15.1**, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by a Sole Arbitrator to be appointed by the Designated ULB. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The expenses of arbitration shall be borne equally by both the Parties.

##### (ii) Place of Arbitration

The place of arbitration shall ordinarily be Panchkula but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

##### (iii) Language

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

##### (iv) Enforcement of Award

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




**15.3 Performance during Dispute**

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



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**ARTICLE 16****16 INSURANCE****16.1 Insurance Cover**

The Concessionaire shall, at its cost and expense, purchase and maintain effective from the Compliance Date and during the Term such insurance policies for such maximum sums as are necessary and customary under Financing Documents and Applicable Laws, and/or in accordance with Good Industry Practice (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 Term, Closure and Post Closure Period;
- (d) Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws;
- (e) Comprehensive Third Party liability insurance including injury or death to Persons who may enter the Site;
- (f) Insurance policies related to any of the Concessionaire's obligations hereunder;
- (g) Any other insurance that may be considered necessary by the Designated ULB/GoH/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).

**16.2 Insurance Companies and Costs**

- (a) The Concessionaire shall insure all insurable Project Assets comprised in the Project and/or the Project.
- (b) 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 Designated ULB, 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.
- (c) The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Designated ULB and/ or Participating ULBs, 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.

**16.3 Evidence of Insurance Cover**

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



#### 16.4 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 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 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.

#### 16.5 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 Term and furnish copies of the same to the Designated ULB. 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 Designated ULB 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 Designated ULB may at its option purchase and maintain such insurance and all sums incurred by the Designated ULB in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Designated ULB by exercising right of set off or otherwise from the Performance Security.



**ARTICLE 17**

**17 INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

**17.1 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/ 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 Designated ULB a perpetual non-exclusive license to use such Proprietary Material in connection with the Project. 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 Designated ULB for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- (c) Nothing in this Article 17.1 shall be construed to grant the Designated ULB or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

**17.2 Confidentiality**

- (a) The Designated ULB 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, Project, the Concessionaire and the Designated ULB (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 Designated ULB 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 Designated ULB, which have been duly approved by the Designated ULB, with respect to the Project.
- (d) The aforesaid provisions shall not apply to the following information:-  
 i. obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or  
 ii. already in the public domain otherwise than by breach of this Agreement;  
 iii. disclosed due to a court order or under any Act of GoI/GoH



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17.3 Survival

The Concessionaire and the Designated ULB accepts and confirms that the provisions of this Article 17 shall survive the expiration or any earlier termination of this Agreement.



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**ARTICLE 18**

**18 REPRESENTATIONS AND WARRANTIES**

**18.1 Representations and Warranties of the Parties**

Each Party represents and warrants to the others that:

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

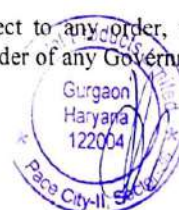
**18.2 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Designated ULB that:

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



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- (e) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (f) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Designated ULB or to any Government Authority in relation to Applicable Approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (g) its shareholding pattern is in compliance with the requirements of this Agreement;
- (h) it has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (i) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (j) all its rights and interests in the Project shall pass to and vest in the Participating ULBs on the Transfer Date free and clear of all liens, claims and Encumbrances.

### 18.3 Representations and Warranties of Designated ULB

The Designated ULB represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of all Participating ULBs.
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.
- (c) it has the financial standing and capacity to perform its obligations under this Agreement.
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e) all information provided by the Designated ULB in the bid documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects.

### 18.4 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.



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**18.5 Disclaimer**

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, the Technical Specifications, all the information and documents provided by the Designated ULB or any Government Authority, the market and demand conditions, information relating to Participating ULBs and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 18.5(a) above and hereby confirms that the Designated ULB, any Government Authority and their consultants and advisors shall not be liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.
- (c) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Designated ULB, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
- (d) The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

**18.6 Obligation to Notify Change**

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



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**ARTICLE 19**

**19 MISCELLANEOUS**

**19.1 Assignment and Charges**

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Designated ULB and the Department.
- (b) Restraint set forth in Articles (a) shall not apply to:
- (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
- (ii) mortgage/ pledge/hypothecation of moveable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) s in favour of the Lenders for the Project.  
 Provided, no charge/mortgage/lien/hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Site, assets and equipment's provided by the Participating ULBs for the Project..  
 Provided further that irrespective of security hereinabove permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to the Participating ULBs, upon expiry or earlier termination of this Agreement, their respective Project Assets free of all encumbrances whatsoever..
- (c) The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Site(s).

**19.2 Interest and Right of Set Off**

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

Provided the stipulation regarding interest for delayed payments contained in this Article 19.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

**19.3 Governing Law and Jurisdiction**

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



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**18.4 Waiver**

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

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

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

**19.5 Survival**

Termination of this Agreement shall not relieve the Concessionaire or the Participating ULBs of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of 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.

**19.6 Amendments**

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

**19.7 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 at their respective addresses as specified below or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

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

To the Concessionaire:  
 Mr. Amit Bajpai  
 JBM Environment Management Private Limited  
 601, Hemkunt Chambers, 89,  
 Nehru Place, New Delhi- 110019



To the Designated ULB

Commissioner  
Municipal Corporation  
Sonapat

To the Department  
Director,  
Directorate of Urban Local Bodies, Haryana

#### 19.8 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.

#### 19.9 No Partnership

Nothing contained in this Agreement shall be construed or interpreted to create an association, joint venture or partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

#### 19.10 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.

#### 19.11 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.

#### 19.12 Counterparts

This Agreement may be executed in six (6) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

#### 19.13 Liability for Review

Except to the extent expressly provided in this Agreement:

- (a) no review, comment, certification, verification or approval by the Designated ULB and/or Participating ULBs or an Independent Expert or any Government Authority or any



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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 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 Approvals; and

- (b) the Designated ULB and/ or Participating ULBs, 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.

#### 19.14 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.

#### 19.15 Liability and Indemnification

- (a) The Concessionaire shall indemnify, defend and hold harmless (the "Indemnifying Party") the Designated ULB and/ or Participating ULBs (the "Indemnified Parties") during the Term 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 or due to such Party's representations and warranties herein; covenants, agreements or obligations contained herein or PPA or the terms and conditions hereof or the PPA; 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 Approvals 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 its obligations hereunder 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 discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the Designated ULB and/ or Participating ULBs and its advisors in this behalf.
- (c) The Designated ULB and/ or Participating ULBs 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 for any reason whatsoever.
- (d) The Concessionaire shall keep the Designated ULB and/ or Participating ULBs indemnified during the Term 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



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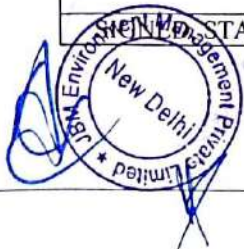


employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.

- (e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.
- (f) The provisions of this Article 19 shall survive the expiration or prior termination of this Agreement.

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

<p>SIGNED, STAMPED AND DELIVERED BY: For <b>DESIGNATED ULB/ MUNICIPAL CORPORATION SONEPAT</b></p> <p>Commissioner of Designated ULB, duly authorized by the _____</p> <p><b>Commissioner Municipal Corporation Sonepat</b> (Signature &amp; Stamp)</p>	<p>SIGNED, SEALED AND DELIVERED BY: For <b>CONCESSIONAIRE</b></p> <p>Director of Concessionaire, duly authorized by the resolution of the Board of Directors passed at its meeting held on 25.09.2017</p> <p> </p> <p>(Signature &amp; Seal)</p>
<p>SIGNED, STAMPED AND DELIVERED BY: For <b>PARTICIPATING ULB/ MUNICIPAL CORPORATION PANIPAT</b></p> <p>Commissioner of Participating ULB, duly authorized by the _____</p> <p><b>Commissioner Municipal Corporation Panipat</b> (Signature &amp; Stamp)</p>	<p>SIGNED, SEALED AND DELIVERED BY: For <b>Selected Bidder</b></p> <p>Authorized Signatory of Selected Bidder, duly authorized by the resolution of the Board of Directors passed at its meeting held on 22.04.2017</p> <p></p> <p>(Signature &amp; Seal)</p>
<p>SIGNED, STAMPED AND DELIVERED BY: For <b>PARTICIPATING ULB/ MUNICIPAL COMMITTEE GANNAUR</b></p> <p>Secretary of Participating ULB, duly authorized by the _____</p> <p><b>Secretary Municipal Committee Ganaur, Sonepat (Hr.)</b> (Signature &amp; Stamp)</p>	<p>SIGNED, STAMPED AND DELIVERED BY:</p>



<p>For PARTICIPATING ULB/ MUNICIPAL COMMITTEE SAMALKHA</p> <p>Secretary Officer of Participating ULB, duly authorized by the _____</p> <p><b>Secretary Municipal Committee, Samalkha</b></p> <p>(Signature &amp; Stamp)</p>	
<p>SIGNED, SEALED AND DELIVERED BY:</p> <p>For DEPARTMENT _____ of Department, duly authorized by the _____</p> <p>(Signature &amp; Seal)</p> <p><b>Director, General Urban Local Bodies Haryana, Panchkula</b></p>	
<p>IN PRESENCE OF</p>	
<p>Sign:</p> <p>Name:</p> <p>Address</p>	<p>Sign:</p> <p>Name:</p> <p>Address</p>
<p>Sign:</p> <p>Name:</p> <p>Address</p>	<p>Sign:</p> <p>Name:</p> <p>Address</p>



## ANNEXURE 1: SCOPE OF SERVICES

### 1. Obligation to set-up Processing Facility

- 1.1. The Concessionaire shall be obligated to set up at its cost and expense, a Processing Facility at the earmarked Site, for processing of MSW prior to its final disposal at Engineered Sanitary Landfill Site, as per the Implementation Schedule submitted by the Concessionaire. The Implementation Schedule shall be submitted in MS Word format.
- 1.2. The Processing Facility also includes the Power Plant having capacity of at least 5 MW. The Concessionaire shall have the Processing Facility fully set up and obtain an Operational Acceptance Certificate from the PMU for the newly installed Facility within a period no later than 24 (twenty four) months from the Appointed Date. The Concessionaire shall also be obligated to promptly rectify and remedy defects or deficiencies that are pointed by the PMU and furnish a report in respect thereof to the PMU.
- 1.3. In the event, the Concessionaire is unable to achieve COD of the Power Plant within the period of 24 (twenty four) months from the Appointed Date, the Concessionaire shall be granted an additional mutually agreed period without levy of any damages. In case of any further delay to achieve COD from the mutually agreed additional period, Liquidated Damages at the rate of 0.1% (zero point one percent) of the Performance Security per day of delay shall be levied by the Designated ULB on the Concessionaire, subject to a maximum of 90 (ninety) days beyond which it shall tantamount to Concessionaire Event of Default. Provided however, if the delay to achieve COD is due to any Force Majeure event or delay on the part of the any Government authority to grant the requisite approvals within time or due to delay on the part of PMU in issuing Operational Acceptance Certificate, no such Liquidated Damages shall be levied.

### 2. Primary collection of waste from the point of generation

- 2.1. The Concessionaire shall undertake daily collection (door to door) of MSW generated within the Project Area commencing from the Commencement Date.
- 2.2. The Concessionaire shall collect MSW at pre-informed timings. The timings are to be planned after consultation with the respective Resident Welfare Associations ("RWAs") of the Participating ULBs.
- 2.3. The Concessionaire shall provide the Participating ULBs with a route plan and timings of visit/ time table as decided between the RWAs and the Concessionaire by 15th April and 15th October, every year, for the duration of Concession Period.
- 2.4. The Concessionaire shall collect notified User Charges from each household on a monthly basis and utilize it for the operations of the Project. A receipt of collected User Charge shall be provided to end user by Concessionaire. Record of the same will be maintained by Concessionaire
- 2.5. The Concessionaire shall arrange for all vehicles, devices, community bins at its own cost to collect all MSW generated in the Project Area.
- 2.6. The MSW shall be collected using containerized motorised vehicles (such as auto tippers) or containerized tricycles, handcarts, community bins or any other device which is suitable for collection of waste without necessitating deposition of waste on the ground and multiple handling of waste
- 2.7. The containers shall be colour coded as per the SWM Rules.
- 2.8. All such vehicles, devices, community bins shall display a logo of the Participating ULB and Swachh Bharat Abhiyan logo of at least 12 inches by 12 inches size (font size of 6-9 inches) size.



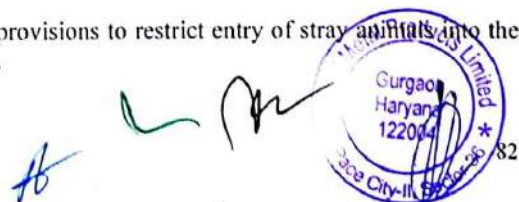
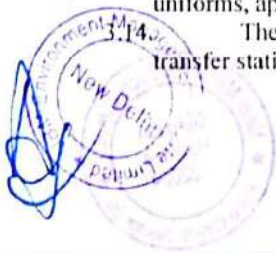
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- 2.9. The Concessionaire shall ensure that the collection bins, vehicles and devices are cleaned on a daily basis using disinfectants.
- 2.10. The Concessionaire must put a system in place which indicates that the bins are picked up on being full to their capacity.
- 2.11. The Participating ULB/ PMU reserves right to conduct random checks

### 3. Secondary Storage of waste

- 3.1. The Concessionaire shall be provided with land(s) for Secondary Collection Points (including land for Transfer Station/Transfer Point) by Participating ULBs free of cost within 30 days of signing of Concession Agreement. The land provided shall only be used for the purposes of the Project.
- 3.2. Dedicated mobile transfer stations/ dumper placers/ container bins of at least 2 cubic meters capacity or any such equipment which is suitable for storage of waste ("Equipment for secondary storage") shall be positioned by the Concessionaire at such Secondary Collection Points to receive MSW from the vehicles and devices engaged in the primary collection of waste.
- 3.3. Equipment for secondary storage shall be designed for at least twice the designed capacity (as per the CPHEEO manual specifications). Waste density to be assumed as 500 kg/ cum. The bins should be designed in line with the transportation system so as to avoid any manual handling of waste.
- 3.4. The Concessionaire shall provide equipment for secondary storage at its own cost.
- 3.5. All equipment for secondary storage shall be covered and colour coded as per SWM Rules. All equipment for secondary storage shall be marked with ULB and Swachh Bharat Abhiyan logo of at least 12 inches by 12 inches (font size of 6-9 inches) size. The Concessionaire shall display any other form of advertisement on the equipment for secondary storage only after prior approval of the Designated ULB. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 3.6. If required, Transfer Station(s) shall be installed in the Project Area.
- 3.7. The land for setup of Transfer Station, upon request of the Concessionaire, shall be provided/ procured by the Designated ULB in accordance with Land Lease Agreement within 30 days of signing of the Concession Agreement.
- 3.8. The Transfer Station shall be refurbished/ constructed by the Concessionaire at its own cost. The Concessionaire shall refurbish/ construct the Transfer Station within a period of six months from the date of handing over the vacant land by the Designated ULB to the Concessionaire.
- 3.9. The Transfer Stations/ Dhalaos shall be designed for all weather operations. The Transfer Station shall be operated under cover, so that dust, litter and noise could be effectively controlled. The Transfer Station shall be cleaned daily and the floors washed.
- 3.10. The walls of the Transfer Station / Dhalaos shall be white-washed every six months for the duration of Concession Period. And all the vehicles/ equipment shall be re-painted every six months.
- 3.11. The Transfer Station shall be equipped with internal roads, ramp and platforms at different levels. These shall be concrete built with a capacity to withstand the load of moving machineries/vehicles.
- 3.12. The Concessionaire shall erect at least one (1) signboard with details (capacity, contact details and warnings) about the transfer station in local language, Hindi and English of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance to in a manner that it is ordinarily visible to any person using such entrance.
- 3.13. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other safety gear.
- 3.14. The Concessionaire shall make provisions to restrict entry of stray animals into the transfer stations, e.g. animal catchers, etc.



- 3.15. The Transfer Station shall display a logo of the Participating ULB and Swachh Bharat Abhiyan of at least 12 inches X 12 inches each (font size of 6-9 inches) size on the outside of all of its walls. Additionally, all the outer walls of the transfer station shall also be painted with this advisory about solid waste management. The Concessionaire shall display any other form of advertisement on the Transfer Stations only after prior approval of the Designated ULB. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 3.16. The Concessionaire shall have right to advertise on Processing Facility, transfer Station, Dhalaos, transportation vehicles and Sanitary landfill. This will be an additional source of revenue for the Concessionaire.

#### 4. Secondary Transportation of Waste to the Processing Facility

- 4.1. The Concessionaire shall transport MSW from Secondary Collection Points to the Processing Facility on a daily basis. In the case of change of site allocated for Processing Facility & SLF occurs after submission of bid and the new allocated site falls with 10 kms of road distance, the Concessionaire shall continue with the transportation of MSW from Secondary Collection Points to the new Processing Facility with no additional cost to ULB's. If the new allocated site will be more than 10 kms far from the previously allocated site, Concessionaire may charge additional amount mutually agreed to both parties in consultation with Independent Expert.
- 4.2. The Concessionaire shall deploy closed vehicles such as tipper trucks, compactors etc. to transport the MSW generated in the Project Area to the Processing Facility at its own cost.
- 4.3. The vehicles deployed shall be roadworthy conforming to approval from the State Transport Authority.
- 4.4. The Concessionaire shall comply with all Applicable Laws, including all rules and regulation prescribed in the regard, from time to time by any other statutory and Competent Authorities concerned, regarding fuel used or pollution control standards or any other norm.
- 4.5. The Concessionaire shall at periodic intervals check their adequateness and their conformity with the manufacturer's specification for their maintenance and replacement.
- 4.6. Designated ULB/ PMU/ Participating ULB after approval of the Competent Authority reserves right to conduct random checks.
- 4.7. The Concessionaire shall provide automatic position identification systems using Global Positioning System (GPS) technology which shall ensure automatic tracking and recording of vehicle identification and movement in all vehicles.
- 4.8. The Concessionaire shall display Designated ULB (and social message given by Designated ULB) and logo of Swachh Bharat Abhiyaan of at least 12 inches X 12 inches size (font size of 6-9 inches) on the transportation vehicles and shall display any other form of advertisement on the transportation vehicles For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 4.9. The drivers appointed/engaged by the Concessionaire shall have a valid driving license as desired for the specific vehicle.
- 4.10. All vehicles shall have High Security Registration Plate and be equipped with electronic toll collection tag.
- 4.11. All penalties, levies and fines levied in relation to the activities/ operations of the Concessionaire under the Project, shall be borne by the Concessionaire only without any liability of the Designated ULB/ Participating ULB/ Department.

#### 5. Processing & Disposal of MSW

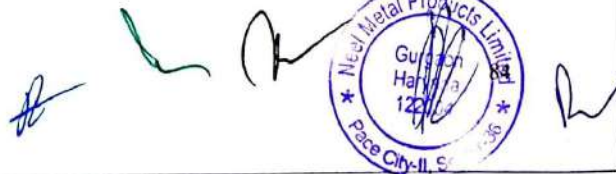
- 5.1. The Concessionaire shall setup Processing Facility & Sanitary Landfill on the designated lands provided by Designated ULB. The land provided shall only be used for the purposes of the Project.



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- 5.2. The Concessionaire shall take all Applicable Approvals in sequence and comply with the provisions therein from time to time.
- 5.3. The Concessionaire shall design, construct, operate and maintain all the Project Assets and Project Facilities including Processing Facility & Sanitary Landfill in compliance with all applicable laws at its own cost
- 5.4. For the Processing Facility, use suitable technology for waste to energy and biological processing (as mentioned in technical proposal) for the in line with the Applicable Laws including but not limited to SWM Rules. The Sanitary Landfill shall be setup in accordance with the requirement of SWM Rules.
- 5.5. For the water requirement of the processing facility, the Concessionaire shall arrange for transportation/ pipeline for treated sewage from the nearest Sewage Treatment Plant (STP) identified and allocated for this purpose, distance of which shall not be more than 10 kms.
- 5.6. The Concessionaire shall export the power generated at the Power Plant in accordance with the terms and conditions of the PPA executed between the Concessionaire and the DISCOM. The Concessionaire shall take all requisite Approvals as may be required for execution of the PPA.
- 5.7. The Concessionaire shall employ suitable technology/ processes to manage the waste piled up at the existing site for reclaiming the land to the extent possible including but not limited to the land required for setting up the processing and disposal plant.
- 5.8. The Concessionaire shall at its cost and expense procure all machinery and equipment for Processing Facility and Sanitary Landfill. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project
- 5.9. The Processing Facility shall achieve COD within a period of 24 (twenty four) months and SLF within a period of 08 (eight) months from the date of signing of this Agreement. The Concessionaire shall submit monthly progress reports during the above period to Designated ULB/ PMU.
- 5.10. The Concessionaire shall operate and maintain the Processing Facility & Sanitary Landfill in accordance with the Applicable Laws
- 5.11. The Concessionaire shall ensure that the inert/processing rejects/ash generated from the Processing Facility should not be in excess of 20% (twenty percent) of input waste quantity. The Concessionaire will all time ensure the daily capping of SLF as per Solid Waste Management Rules, 2016. Concessionaire will also ensure treatment and discharge of Leachate generated from Processing Facility & SLF.
- 5.12. The Concessionaire shall develop a part of sanitary landfill as secured landfill for disposal of fly ash/ air pollution residual.
- 5.13. All penalties, levies due to any non-compliance will be borne by the Concessionaire
- 5.14. The Concessionaire shall receive revenue generated through products produced out of such processing like compost, energy, RDF, biogas, etc. The revenue generated through carbon credits shall be shared in the ratio of 50:50 between the Concessionaire and the Participating ULBs.
- 5.15. The Concessionaire shall maintain daily records of quantum of incoming, processed waste, rejects, products and product quality in the formats approved by PMU. The monthly report shall be submitted by the Concessionaire to the Designated ULB/ PMU. The monthly report may be subject to verification by Designated ULB or PMU.
- 5.16. The Concessionaire shall arrange for all facilities and equipment for weighment - minimum 2 (two) electronic weighbridges with CCTV cameras, platforms etc.
- 5.17. The Concessionaire shall erect at least (1) signboard with details (capacity, contact details and signage) about the Processing Facility and Sanitary Landfill in local language, Hindi and English of a size not less than 2ft. by 4ft. each, adjacent to the main entrance in a manner that is ordinarily visible to any person using such entrance
- 5.18. Concessionaire shall all time comply with the statutory norms of CPCB/ SPCB for pollution control



- 5.19. Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of Air & Water
- 5.20. The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility and Sanitary Landfill.
- 5.21. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE)

## 6. Setup Complaint Redressal Centre

- 6.1. The Concessionaire shall setup at least one (1) Complaint Redressal centre which shall be functional by the Commencement Date such that it allows for (a) easy monitoring of operations of the Project and (b) establishment of standard protocol to address customer complaints.
- 6.2. The Complaint Redressal Centre shall be capable to registering complaints by the way of written communication, telephonically or personal visits by the consumers. The Complaint Redressal Centre shall be supported in English, Hindi and Regional Language.
- 6.3. The Complaint Redressal Centre shall have at least three (3) operational dedicated phone lines for receiving customer calls / complaints.
- 6.4. The telephone numbers of the Complaint Redressal Centre shall be clearly reflected on all secondary storage equipment and transportation vehicles. These numbers shall be mentioned in English, Hindi and Regional Language.
- 6.5. The "Complaint Redressal Centre" shall be kept operational by the Concessionaire from 6 am to 10 pm, seven (7) days a week. All complaints shall be verified and shall be redressed within 24 hours of their receipt.
- 6.6. The aggrieved residents for registering of their complaints may also contact the offices of the Participating ULBs who shall immediately forward such complaints to the Complaint Redressal Centre. Each of the Participating ULBs shall designate one of their officers not below the rank of Junior Engineer as the Nodal Officer to receive such complaints. The Concessionaire shall be bound to take action on the complaint so forwarded on an immediate basis and send status report to such Nodal Officer within 24 hours of having redressed the complaint specifying the action taken. In the event, the Concessionaire fails to take action or send status report within the aforesaid time period, it shall be liable to pay Liquidated Damages mentioned in Penalty clause for each day of delay.

## 7. Organize and manage IEC activities

- 7.1.1. The Concessionaire shall undertake the IEC activities or alternatively may hire agency having proven credentials in IEC activities. The agency hired by the Concessionaire may be NGO, Society or Body Corporate. The Concessionaire shall impart project specific training to the hired agency prior to deployment.
- 7.1.2. IEC activities shall be aimed at creating awareness among the community, and prepare residents for upcoming Project, inform about SWM Rules, source segregation, health and environment impacts, roles of ULB and Concessionaire in the Project, etc. through web site, mass media communication strategies such as newspapers releases, hoardings, glow sign boards, radio, TV, street plays, awareness campaigns at schools etc. At least one (1) advertisement in one (1) newspaper of at least 3 by 3 inches shall be released by the Concessionaire every three months. Concessionaire can also distribute the pamphlets with list do's and don'ts as an awareness media'
- 7.1.3. The Concessionaire shall organise training programs for RWAs to motivate the community towards waste management for ensuring the sustainability of a system at least once in three (3) months for first year of operations and thereafter at the interval of six months for balance concession period



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- 7.1.4. The Concessionaire shall submit an annual program of the IEC activities planned for each year (on a monthly basis) to the ULB/ PMU within the first month of each calendar year clearly notifying the components & expenditure under each head of expense.
- 7.1.5. All staff uniform and vehicles involved in the Project shall have advisory messages about solid waste management.



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## ANNEXURE 2: Service Level Benchmarks

Following are the benchmarks set by MoUD (Handbook on Service Level Benchmarks). The Concessionaire will need to achieve the same in the proposed timeline:

S. No.	Indicator	Unit	Definition	Benchmark Value	Proposed Timeline
1.	Household level coverage of SWM services through door-to-door collection of waste	%	Percentage of households and establishments that are covered by a daily doorstep collection system.	100%	From the date of signing of Concession Agreement:  Phase 1 Phase 2 Phase 3 Timeline 6 months 9 months 12 months Target 50% 75% 100%
2.	Extent of segregation of waste	%	Segregation should at least be at the level of separation of wet and dry waste at the source, that is, at the household or establishment level. It is important that waste segregated at the source is not again mixed, but transported through the entire chain in a segregated manner. It is therefore important that this indicator is based on Measurement of waste arriving in a segregated manner at the treatment/disposal site, rather than being measured at the collection point.	100%	6 months from the date of signing of the Concession Agreement
3.	Collection efficiency	%	The total waste collected by the ULB and authorised service providers versus the total waste generated within the ULB, excluding recycling or processing at the generation point. (Typically, some amount of waste	100%	6 months from the signing of the Concession Agreement



			generated is either recycled or reused by the citizens themselves. This quantity is excluded from the total quantity generated, as reliable estimates will not be available for these.)		
4.	Extent of recovery of waste collected	%	This is an indication of the quantum of waste collected, which is either recycled or processed. This is expressed in terms of percentage of waste collected	80%	From date of commissioning of the Processing Facility:  Phase Timeline Target Phase 6 months 70% 1 Phase 9 months 90% 2 Phase 12 months 100% 3
5.	Extent of scientific disposal of waste at landfill sites	%	The amount of waste that is disposed in landfills that have been designed, built, operated and maintained as per standards laid down by Central government. This extent of compliance should be expressed as a percentage of the total quantum of waste disposed at landfill sites, including open dump sites	100%	Six months from the date of setup of the Sanitary Landfill
6.	Efficiency in redressal of customer complaint	%	The total number of SWM-related complaints redressed within 24 hours of receipt of the complaint, as a percentage of the total number of SWM-related complaints received in the given time period.	80%	From the date of signing of Concession Agreement:  Phase Timeline Target Phase 6 months 75% 1 Phase 9 months 99% 2

**Penalties & Damages**

S. No.	Default	Monitoring Mechanism	Cure Period	Penalty
Primary Collection				
	door to door MSW collection is	user complaint /verification by	No collection of Waste for 2	Rs. Gurgaon 5/Daily Household 122004 * 88



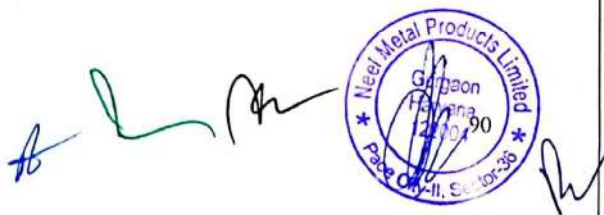
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	not provided to minimum percentage of Waste Generators / Households as per target specified in Services Level Benchmark from the appointed date	PMU	consecutive Days	
			No collection of Waste for 5 consecutive Days	Rs. 10 /Day/ Household
Secondary Storage & transportation				
3	Non-clearance of bins/ dhalao for consecutive 2 days	Spot inspection conducted by Designated ULB/ PMU/ user complaint	One day	Rs. 200 per instance
	Transportation of MSW in non-covered vehicles	Spot inspection conducted by Designated ULB/ PMU/ user complaint	One day	Rs. 250 per instance
5	Non-operation of transfer station for one day	Spot inspection conducted by Designated ULB/ PMU	One day	Rs. 5000 per day
Waste processing				
	Weighbridge is non-operational at transfer Station/ Processing facility/ landfill due to breakdown for a consecutive period of 4 days	Daily check by PMU	From a list of three weighbridges, located near the project / processing site provided by Designated ULB from where the concessionaire can weigh the MSW at its own cost	Rs. 5000 per day after 4 days
6	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	Inspection by PMU/ Designated ULB/ Progress Report	30 days from Scheduled Construction Completion Date	0.1% of the Performance Security per day of delay beyond 30 days
Sanitary Landfill				
9	Inert/ Residual waste greater than 20% sent to landfill	Weighment slips/ Daily reports/ Inspection by PMU	-	for every ton of increase, an amount equivalent to 2.5 times of average monthly per ton OBI payment



				made on Processing & Disposal head over immediately preceding three months. In the event OBI is zero, penalty shall be imposed at the rate of Rs 1000/ton.
Complaint redressal				
10	Improper working of call centre: Down time exceeds 3 hours per day	Inspection by PMU	3 hours	Rs. 2500 per hour after 3 hours
	Improper working of call centre: Down time exceeds 3 hours per day for more than five days in a month	Inspection by PMU	3 hours	Rs. 1,00,000 per month
IEC activities				
11	Non-display of logo of appropriate dimensions	Spot inspection conducted by Designated ULB/PMU		Rs. 200 per instance
12	Non-issue of advertisement	Copy of advertisement to be provided to PMU/		Rs. 1,00,000

Notwithstanding anything to the contrary contained herein, in the event in any quarter the aggregate liquidated damages levied by the Designated ULB on account of non-performance exceeds INR 7,00,000/- (INR seven lakhs), then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination. No collection of waste for 7 consecutive days shall also be construed as Concessionaire Event of Default.



**ANNEXURE 3 : FINANCIAL PROPOSAL**

(as submitted by Selected Bidder)



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**ANNEXURE 4: OPERATIONAL ACCEPTANCE CERTIFICATE**

**Format as decided by PMU**



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**ANNEXURE 5: FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE**  
[ON APPROPRIATE STAMP PAPER]

Bank Guarantee No. [ \_\_\_ ]

**THIS DEED OF GUARANTEE** is executed on this [insert date] day of [insert month and year] at --  
 ----- by [INSERT NAME OF BANK] having its head/registered office at [insert address],  
 (hereinafter referred to as the "**Guarantor**", which expression shall unless repugnant to the subject or  
 context thereof include its successors, assigns and permitted substitutes);

**IN FAVOUR OF:**

----- with its principal office at [insert address],  
 (hereinafter referred to as "**Designated ULB**" or "**Beneficiary**", which expression shall unless  
 repugnant to the context or meaning thereof include its successors and permitted assigns).

**WHEREAS:**

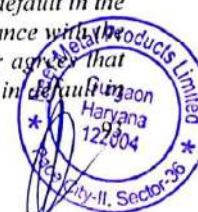
- (A) \_\_\_\_\_ (the "**Concessionaire**"),  
 \_\_\_\_\_ (the "**Department**") and the  
 \_\_\_\_\_ (the "**Designated ULB**") have  
 entered into a Concession Agreement dated ..... (the "**Agreement**") whereby the  
 Designated ULB has agreed to the Concessionaire undertaking the  
 \_\_\_\_\_ (hereinafter the "**Project**"),  
 subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the  
 Designated ULB in a sum of Rs. \*\*\*\*\* cr. (Rupees \*\*\*\*\* crore) (the "**Guarantee Amount**")  
 as security for due and faithful performance of its obligations, under and in accordance with  
 the Agreement, during its term i.e. the Concession Period (as defined in the Agreement).
- (C) We, .....through our Branch at ..... (the "**Bank**") have agreed to  
 furnish this Bank Guarantee by way of Performance Security.

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

- The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the term of the Agreement under and in accordance with the provisions of the Agreement, and agrees and undertakes to pay to the Designated ULB, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Designated ULB shall claim, without the Designated ULB being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
- A letter from the Designated ULB, under the hand of an Officer not below the rank of Chief Executive Officer in the Designated ULB that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Designated ULB shall be the sole judge as to whether the Concessionaire is in default.



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due and faithful performance of its obligations any time during the term of the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Designated ULB and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

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



envelope containing the notice was posted and a certificate signed by an officer of the Designated ULB that the envelope was so posted shall be conclusive.

- 10. This Guarantee shall come into force with immediate effect and shall remain in force and effect during the term of the Agreement or until it is released earlier by the Designated ULB pursuant to the provisions of the Agreement.

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

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

(Signature)  
(Name)  
(Designation)  
(Code Number)  
(Address)  
NOTES:

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



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## ANNEXURE 6: SCOPE OF WORK OF PMU

### 1. Role of the PMU

The PMU is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the PMU is to:

- (a) independently review, monitor and where required by the Agreement, to approve activities associated with the design, construction, operation and maintenance of the Project;
- (b) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, PMU site visits and Tests;
- (c) assist the Parties in arriving at an amicable settlement of disputes, should the need arise; and
- (d) review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

### 2. Structure & Scope of Services

- (a) PMU shall be headed by an Independent Expert having the following qualifications:
  - i. A person having at least 15 years of experience in the Solid Waste management sector from private sector with educational background of Environmental Engineering/ Environmental Sciences/ Public Health/ Civil Engineering
  - ii. An officer of the grade of Executive Engineer from government services
  - iii. Salary / Wages of such Independent Expert will be borne by Designated ULB.
- (b) PMU shall also comprise of nominated members of the Participating ULBs. Such members should be officers of rank of executive officer or above.

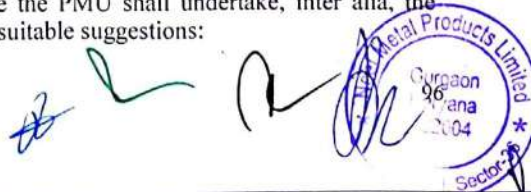
The services to be provided by the PMU are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

#### 2.1 Design and Planning

- (a) Ensure that all activities of the Project fully comply with all Applicable Laws and, in particular, SWM Rules, 2016 governing the requirements of Municipal Solid Waste disposal.
- (b) Review of the Implementation Plan submitted by the Concessionaire :

#### 2.2 Construction Inspection and General Services

- 2.2.1 The PMU would monitor, in accordance with Good Industry Practice, the progress in implementation of the Project. For this purpose the PMU shall undertake, inter alia, the following activities and where appropriate make suitable suggestions:



- (a) Ensure compliance by the Concessionaire with the provisions of this Agreement and applicable laws;
- (b) Act on the Designated ULBs' behalf as the Designated ULBs' representative regarding all contact with the Concessionaire unless expressly indicated otherwise;
- (c) Review of all Tests
- (d) Interpret the requirements of the contract and make decisions regarding performance of the Concessionaire. The PMU shall inform and advise Designated ULB, in a timely manner all matters relating to the execution, progress, and completeness of the Project;
- (e) Reject work which fails to comply with the specifications and requirements of the Agreement. Whenever considered necessary or advisable to ensure correction of defective work, the PMU may require inspection or testing of such work, whether or not such work be then fabricated, installed, or completed;

2.2.2 The PMU shall attend regular meetings (“**Project Review Meetings**” or “**PRMs**”) with the Designated ULB and the Concessionaire, to be held from time to time. The PMU shall take notes at the meetings and provide a copy of the PRM minutes to each person who attended the meeting.

2.2.3 The PMU shall approve Fortnightly Progress Reports and bills and invoices raised by the Concessionaire



## ANNEXURE 7: SUBSTITUTION AGREEMENT

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

### AMONGST

1. \_\_\_\_\_ (hereinafter referred to as the "Designated ULB" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. The Government of Haryana acting through Director/ Chief Engineer of Directorate of Urban Local Bodies, Haryana established under the provisions of \_\_\_\_\_, acting through its \_\_\_\_\_ herein referred to as "Department", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and administrators
3. [\*\*\*\*\*Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at \*\*\*\*, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
4. \*\*\*\*[NAME AND PARTICULARS OF Lenders' Representative] and having its registered office at \*\*\*\*, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

### WHEREAS:

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

NOW IT IS HEREBY AGREED as follows:

### 1 DEFINITIONS AND INTERPRETATION

#### Definitions



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

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

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

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

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

“**Notice of Financial Default**” shall have the meaning assigned thereto in Article 3.2.1; and

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

## 1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Articles are, unless stated otherwise, references to Articles of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning assigned thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## 2 ASSIGNMENT

### 2.1 Assignment of rights and title

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

## 3 SUBSTITUTION OF THE CONCESSIONAIRE

### 3.1 Rights of substitution



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3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Substitute Entity under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Designated ULB and Department hereby agree to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Substitute Entity selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

### 3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Designated ULB for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Designated ULB to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Designated ULB shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Substitute Entity, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Designated ULB may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Designated ULB may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### 3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Designated ULB shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Substitute Entity.

3.3.2 In the event that the Lenders' Representative makes a representation to the Designated ULB within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Substitute Entity, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Designated ULB shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative,



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Representative and the Concessionaire, the Designated ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### 3.4 Procedure for substitution

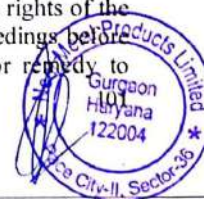
- 3.4.1 The Designated ULB and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Designated ULB under Article 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Substitute Entity upon such Substitute Entity's assumption of the liabilities and obligations of the Concessionaire towards the Designated ULB under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Substitute Entity shall be required to fulfill the eligibility criteria that were laid down by the Designated ULB for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Designated ULB that all or any of such criteria may be waived in the interest of the Project, and if the Designated 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.
- 3.4.3 Upon selection of a Substitute Entity, the Lenders' Representative shall request the Designated ULB to:
- (a) accede to transfer to the Substitute Entity the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Substitute Entity, on the same terms and conditions, for the residual Concession Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Substitute Entity on the same terms as are contained in this Agreement.
- 3.4.4 If the Designated ULB has any objection to the transfer of Concession in favour of the Substitute Entity in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Designated ULB, the Substitute Entity shall be deemed to have been accepted. The Designated ULB thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Substitute Entity; provided that in the event of such objection by the Designated ULB, the Lenders' Representative may propose another Substitute Entity whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Substitute Entity in place of the Concessionaire.

### 3.5 Selection to be binding

The decision of the Lenders' Representative and the Designated ULB in selection of the Substitute Entity shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Designated ULB taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Substitute Entity. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Designated ULB and the Concessionaire shall have no right or remedy to



*[Handwritten signatures in blue and green ink]*



prevent, obstruct or restrain the Designated ULB or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **4 PROJECT AGREEMENTS**

##### **4.1 Substitution of Substitute Entity in Project Agreements**

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

#### **5 TERMINATION OF CONCESSION AGREEMENT**

##### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Designated ULB to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Designated ULB shall undertake Termination under and in accordance with the provisions of Article 12 of the Concession Agreement.

##### **5.2 Termination when no Substitute Entity is selected**

In the event that no Substitute Entity acceptable to the Designated ULB is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Article 3.3.2, the Designated ULB may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

##### **5.3 Realisation of Debt Due**

The Designated ULB and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

#### **6 DURATION OF THE AGREEMENT**

##### **6.1 Duration of the Agreement**

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

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

#### **7 INDEMNITY**



## 7.1 General indemnity

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

## 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 8 DISPUTE RESOLUTION

### 8.1 Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Department, Designated ULB, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Gurgaon and the language of arbitration shall be English.

## 9 MISCELLANEOUS PROVISIONS

### 9.1 Governing law and jurisdiction

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



*[Handwritten signatures in green and black ink]*



## 9.2 Waiver of sovereign immunity

The Designated ULB unconditionally and irrevocably:

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

## 9.3 Priority of agreements

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

## 9.4 Alteration of terms

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

## 9.5 Waiver

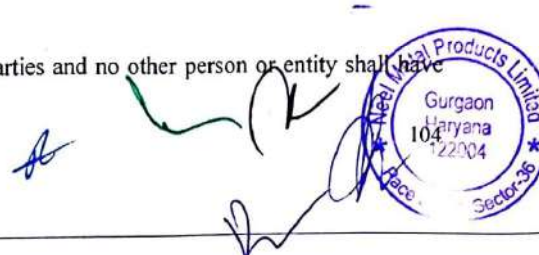
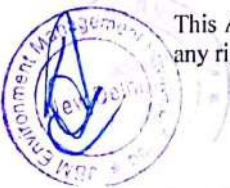
9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

## 9.6 No third party beneficiaries

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



## 9.7 Survival

### 9.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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.

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

## 9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

## 9.9 Successors and assigns

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

## 9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.00 (five) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

## 9.11 Language

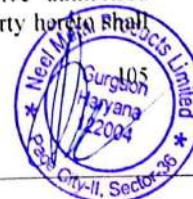
All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

## 9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereby shall



*[Handwritten signatures in blue and green ink]*



be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**9.13 Original Document**

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of  
CONCESSIONAIRE by:

For and on behalf of  
DESIGNATED ULB OF [\*\*\*] by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
SENIOR LENDERS by the Lenders'  
Representative:

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
DEPARTMENT

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

In the presence of:

- 1.
- 2.

Handwritten signature in blue ink and a circular stamp, partially obscured, likely belonging to the CONCESSIONAIRE.

Handwritten signatures in blue and green ink and a circular stamp for 'Nesal Metal Products Limited' with 'Gurgaon Haryana' and '100%' visible, likely belonging to the DESIGNATED ULB OF [\*\*\*].

**ANNEXURE 8: ESCROW AGREEMENT**

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

**AMONGST**

- 1 ..... **LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ..... (insert name and particulars of Lenders' Representative) and having its registered office at ..... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 ..... (insert name and particulars of the Escrow Bank) and having its registered office at ..... (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
5. The Government of Haryana acting through Director/ Chief Engineer of Directorate of Urban Local Bodies, Haryana established under the provisions of \_\_\_\_\_, acting through its \_\_\_\_\_ herein referred to as "**Department**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and administrators; and
6. \_\_\_\_\_ (hereinafter referred to as the "**Designated ULB**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

**WHEREAS:**

- (A) The Department and Designated ULB have entered into a Concession Agreement dated ..... with the Concessionaire (the "**Concession Agreement**") for undertaking the ..... Project on design, build, finance, operate and transfer (the "**DBFOT**") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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



*[Handwritten signatures in blue and green ink]*

*[Handwritten signature in blue ink]*



## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

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

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Department, Designated Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Article 6.1;

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

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

“**Payment Date**” means, in relation to any payment specified in Article 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective sub-accounts of the Escrow Account, into which the monies specified in Article 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

### 1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.



## 2 ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Department, Designated ULB, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Department, Designated ULB, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Department, Designated ULB, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

### 2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders, Designated ULB or the Department with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Department, Designated ULB, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### 2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

### 2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.



*[Handwritten signatures in green and blue ink]*



## 2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Designated ULB, Department, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Designated ULB, Department, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## 2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

## 3 DEPOSITS INTO ESCROW ACCOUNT

### 3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

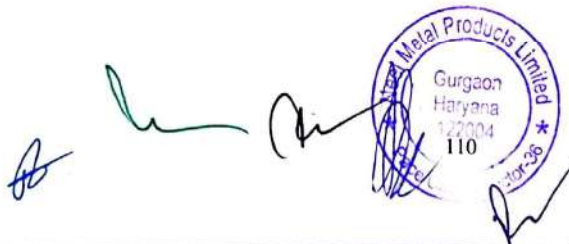
- (a) all monies received in relation to the Project from any source, including the Senior Lenders, and the Designated ULB;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Tipping Fee, fees received by the Concessionaire under Power Purchase Agreement and OBI Differential amount received from the Designated ULB;
- (d) any other revenues from or in respect of the Project,;
- (e) all proceeds received pursuant to any insurance claims; and
- (f) all other monies in accordance with the Concession Agreement.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### 3.2 Deposits by the Designated ULB

The Designated ULB agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) SBM Grant, Payments (under article 9) and other monies disbursed by the Designated ULB to the Concessionaire (c) all fee collected by the Designated ULB in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:



### 3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project;

### 3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## 4 WITHDRAWALS FROM ESCROW ACCOUNT

### 4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Designated ULB in accordance with the provisions of the Concession Agreement, and certified by the Designated ULB as due and payable to it;
- (e) All payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire. (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.



*[Handwritten signatures in blue and green ink]*



#### 4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies;
- (f) O&M Expense;
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Article 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Designated ULB.

#### 4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Articles 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### 4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### 4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Designated ULB may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 11A of the Concession Agreement. Any instructions given by the Designated ULB to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Designated ULB hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.



## 5 OBLIGATIONS OF THE ESCROW BANK

### 5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

### 5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

### 5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

### 5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

### 5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals not ordinarily be granted to the Escrow Bank.



*[Handwritten signature]*



## 6 *ESCROW DEFAULT*

### 6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Designated ULB or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## 7 *TERMINATION OF ESCROW AGREEMENT*

### 7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Designated ULB remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

### 7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Designated ULB, Department and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### 7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders’ Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.



*[Handwritten signature]*

*[Handwritten signature]*



*[Handwritten signature]*

## 8 SUPPLEMENTARY ESCROW AGREEMENT

### 8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Article 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## 9 INDEMNITY

### 9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Department, Designated ULB, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

### 9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be finally decided by reference to arbitration to a Board of Arbitrators



*[Handwritten signatures in blue and green ink]*



comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act.

- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Panchkula, Haryana and the language of arbitration shall be English.

## **II MISCELLANEOUS PROVISIONS**

### **11.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Panchkula shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **11.2 Waiver of sovereign immunity**

The Designated ULB unconditionally and irrevocably:

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

### **11.3 Priority of agreements**

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

### **11.4 Alteration of terms**

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

### **11.5 Waiver**

- 11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:



Handwritten signatures in green and black ink, and a circular stamp of Iron Metal Products Limited, Gurgaon 110, Haryana 122004, with a signature over it.

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

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### 11.6 No third party beneficiaries

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

#### 11.7 Survival

##### 11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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.

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

#### 11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10.1 of this Agreement or otherwise.

#### 11.9 Successors and assigns

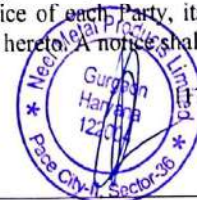
This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

#### 11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall



*[Handwritten signatures in blue and green ink]*



be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**11.11 Language**

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

**11.12 Authorised representatives**

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

**11.13 Original Document**

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

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

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
ESCROW BANK by:  
(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
DESIGNATED ULBby:  
(Signature)  
(Name)  
(Designation)  
(Address)

<sup>f</sup> To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.



(Fax No.)  
(e-mail address)

(Fax No.)  
(e-mail address)

In the presence of:

1.

2.

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
SENIOR LENDERS by the  
Lenders' Representative:

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
SENIOR LENDERS by the  
Lenders' Representative:

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



*[Handwritten signatures in green and blue ink]*



**ANNEXURE 9: LAND LEASE AGREEMENT****Project Site (s) Lease Deed for Transfer Stations, Processing & Disposal**

This LEASE AGREEMENT made on the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and

**BETWEEN**

Municipal Corporation Sonapat, a statutory body constituted under the Haryana Municipal Act \_\_\_\_\_, of year \_\_\_\_\_, and having its office at \_\_\_\_\_, (hereinafter referred to as "**the Lessor**" which expression shall unless repugnant to the context thereof, include its successors & assigns)

**AND**

M/s \_\_\_\_\_, a special purpose vehicle incorporated under the provisions of Companies Act, 2013 or \_\_\_\_\_ Concessionaire, and having its registered office at \_\_\_\_\_ (hereinafter referred to as "**Lessee**" which expression shall unless it be repugnant to the subject or context be deemed to include its successors and permitted assigns).

**WHEREAS**

- A. The Municipal Corporation of Sonapat is desirous of improving its municipal solid waste (MSW) management and disposal capabilities in order to enable the due discharge of its functions under the Solid Waste Management Rules, 2016 and its amendments framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and including any statutory amendments / modifications thereto or re-enactments thereof, for the time being in force from time to time] and for that purpose has proposed to develop an Integrated MSW Management Project for the Sonapat Cluster. To carry out MSW Management activities in the Sonapat Cluster and to develop Transfer Station, Processing and Disposal Facilities as a part of Integrated MSW Management project for the Sonapat Cluster by the Lessee, Municipal Corporation of Sonapat (Concessioneing Authority) has entered into a Concession Agreement dated \_\_\_\_\_, ("**Concessionaire**"), under which it has authorized the Concessionaire to implement the Project.
- B. The Municipal Corporation of Sonapat in order to enable the due implementation of the Project for the Sonapat Cluster and to discharge its obligations under the Concession Agreement signed with the Department and Lessee, is hereby providing the Lessee (the Concessionaire under the Concession Agreement), by way of this Lease Agreement ("**this Agreement**"), the earmarked premises (more particularly delineated in Schedule A hereto and shown in the Site map attached thereto) to setup Transfer Station (Collection & Transportation), Processing and Disposal Facilities for the purposes of implementing the Project for Sonapat Cluster and constructing, operating and maintaining the Project site(s) as a part of Project on the earmarked premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.



**NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:**

1. The Lessor hereby leases the earmarked premises to the Lessee for a period commencing from the date of execution and co-terminus with Concession Period ("Term"). This Agreement is to be read, for any interpretation, together with the provisions of the Concession Agreement.
2. The terms that are used but not defined herein shall have the same meaning as given to them in the Concession Agreement.
3. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the lease payment stipulated in Article 4 below; the Lessor hereby demises to the Lessee, all the land (together with any physical structures existing thereon) which is described, delineated and shown in the **Schedule A** hereto (the "earmarked premises"), to hold the said earmarked premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof. The term of this Agreement shall be co-terminus with the Concession Agreement. The Lessor hereby agrees and authorizes the construction, operation and maintenance of the Project Site(s) on the earmarked premises in accordance with the terms of the Concession Agreement.
4. In consideration of the transfer of the earmarked premises under this Agreement, the Lessor shall, effective from the date of handover of the possession of the earmarked premises to the Lessee, receive a rent of Rupee one per square meter per annum. The rent for the duration of the Concession Period and the first instalment of rent in respect of a period of three (3) years shall be payable at the time of signing of this Agreement by way of a demand draft in favour of " \_\_\_\_\_ " payable at \_\_\_\_\_. Thereafter the rent in respect of each subsequent block of three years shall be payable by the Lessee in advance on the same date after every three years. The Lessor undertakes and assures the Lessee that the lease payment for the earmarked premises shall remain fixed for the entire period that this Agreement remains valid and binding. This Agreement shall be co-terminus with the Concession Agreement.
5. The earmarked premises are being vested with the Lessee, under this Agreement, free from any Encumbrances (other than the existing physical structures thereon which has been inspected by the Lessee and agreed to be taken over in accordance with the terms of This Agreement and the Concession Agreement), whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances upon or under the earmarked premises which materially adversely affect its rights in relation to the earmarked premises /the Project, it shall notify the Lessor, which shall, within thirty (30) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within thirty (30) days from the notice thereof, the Lessee may remove or cause to be removed such encumbrance and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.
6. The earmarked premises are being vested with the Lessee, under this Agreement only for the purposes of the Project, including for the purposes of developing, establishing, designing, constructing, operating, and maintaining the Project site(s), which the Lessor is desirous of being constructed, operated and maintained on the earmarked premises for the purposes of enabling the Project activities in accordance with the Concession Agreement.



*[Handwritten signatures and initials]*



7. The Lessor hereby authorizes the Lessee, to construct, erect, own, operate and maintain any superstructure, facility or any movable or immovable structures constituting the Project site(s) on the earmarked premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the earmarked premises as of the date of this Agreement. The Lessor hereby agrees that the construction, operation and maintenance of the Project site (s) at the earmarked premises and the collection, storage, transportation, processing and disposal of MSW at the earmarked premises is being undertaken pursuant to the Concession Agreement granted by it and for the purposes of enabling the Lessor to discharge its functions of managing, processing and disposing MSW of the entire Sonepat Cluster.
8. The Lessee shall have the right to, after taking prior permission of the Lessor, vest with the Lenders the power to take over the control, possession and all rights and interests in relation to the earmarked premises by appointing a person, the substitute entity, to replace the Lessee and undertake the construction, operation and maintenance of the Processing Facilities, in accordance with the provisions of the Concession Agreement, upon the occurrence of an event of default by the Lessee, as the case may be, under any of the Financing Agreements. The Lessor shall then novate this Agreement in favour of the substitute entity, which shall constitute an agreement between the substitute entity and the Lessor on the terms and conditions of this Agreement as existing at the time of such novation.
9. The Lessee agrees that it is not authorized to create any Encumbrance over the Project site(s) constructed on the earmarked premises.
10. The Lessor hereby covenants and assures the Lessee that:
- (a) all the land comprising the Site is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Project site (s) as a part of the Project;
  - (b) the site is free from any encroachment or encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any authority, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto;
  - (c) Lessor is the owner of the lands constituting the earmarked premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the earmarked premises for the Project;
  - (d) it shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the earmarked premises and all rights in relation thereto, including the creation of security interest in favour of the Lenders in accordance with the provisions of the Concession Agreement;
  - (e) it shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the Project site (s) (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use, by the Lessee of the earmarked premises and the Project Site(s);
  - (f) it shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Agreements;
  - (g) there is no litigation, claim, demand or any proceedings (whether administrative, legal or quasi-judicial) pending before any authority in respect of the earmarked premises or its use for the purposes of managing, collecting, transporting, processing and disposing MSW; and
  - (h) Lessee shall have complete, lawful and uninterrupted, possession, control and use of the earmarked premises



11. The Lessee hereby covenants with the Lessor as follows:
- (a) that it shall implement the SWM Project as a part of MSW management for Sonepat Cluster in accordance with the Concession Agreement;
  - (b) that it shall observe and perform all terms, covenants, conditions and stipulations of this Agreement; and
  - (c) that it shall not mortgage or create any third party rights in the earmarked premises.
12. Lessor has requisite right and authority to lease the Site to Lessee for the Term of this Agreement for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful Vacant Possession, enjoyment/ occupation and use of the earmarked premises throughout the Term, without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person claiming through under or in trust for Lessor or from any third person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Person claiming right, title or interest to or in the earmarked premises or any part thereof or challenging the validity of the usage of the earmarked premises for the Project or challenging the validity of this Agreement, as also against any actions, proceedings, damages, losses and expenses caused to Lessee as a result or in consequence of any such claims or demands as aforesaid.
13. Otherwise as expressly provided in this Agreement no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part by any Party without the written consent of the other Party and in the event of any assignment the assignee shall assume the duties and liabilities of the assignor.
14. Otherwise an expressly provided in this Agreement no mortgage of leasehold interest shall be created of the land/Site(s) under this Agreement in whole or part for obtaining term loan to finance the Project without the written consent of lessor.
15. The Lessor hereby assures and represents to the Lessee that the vesting of the earmarked premises under this Agreement shall be irrevocable for as long as the Concession Agreement remains in force and the Lessor shall not terminate or seek to terminate this Agreement except upon the expiry or early termination of the Concession Agreement. The Parties hereby agree that on the expiry or termination of the Concession Agreement the Concessionaire shall hand back to the Lessor or its nominated agency free of cost, the vacant and peaceful possession of the earmarked premises in accordance with the provisions of the Concession Agreement.
16. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration in accordance with the relevant provision of the Concession Agreement as per provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be Indian law.
17. The Lessor hereby recognizes that this is a commercial act being undertaken by the Lessee and that it hereby unconditionally and irrevocably waives any right of immunity, sovereign or otherwise from legal proceedings that may be initiated to enforce any provisions of this Agreement.

IN WITNESS WHEREOF the Parties have affixed therein and sealed to this Lease Agreement the day



hereinabove written:



SIGN SIGNED, SEALED AND DELIVERED IN THE NAME AND ON BEHALF OF THE LESSOR THROUGH:	
SIGNED, SEALED AND DELIVERED BY LESSEE THROUGH ITS AUTHORISED SIGNATORY IN PRESENCE OF:	



*[Handwritten signature]*



*[Handwritten signature]* 124  
*[Handwritten signature]*