

**BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 172/2021

IN THE MATTER OF:

Poonam Yadav

.....Applicant

Versus

M/s Ecogreen Energy Private Limited & Ors

.....Respondent(s)

**Response of Mr. Sanjeev Kaushal, IAS, Chief Secretary to
Government Haryana in compliance of the order of this
Tribunal dated 19 July 2021.**

RESPECTFULLY SHOWETH:-

1. That this Tribunal while hearing the aforementioned O.A. on 19 July 2021 directed as under:-

"....In view of above, to ascertain the factual status, we constitute a three-member Committee comprising CPCB, Haryana State PCB and the District Magistrate, Gurgaon. The Committee may visit the site, interact with the stakeholders and take assistance from any other individual/institution and give its report within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF with a copy to the Chief

Secretary, Haryana. The report may inter alia include causes of fire, reasons for unauthorized persons working in the landfill premises, progress on remediation of site and setting up of waste processing plant in furtherance of order of this Tribunal dated 7.4.2021 in OA 514/2018, steps taken by the MCG to prevent sliding of garbage mound due to fire and during monsoon and status of compliance of Rules on relevant aspects. The report may also mention status of legacy waste dump site in terms of order dated 17.7.2019 in OA 519/2019...

"...The Chief Secretary, Haryana may give response within one month thereafter about remedial action taken to comply with the law and steps taken against erring officers for failure for long time to remedy the situation resulting into such ugly situation. The monitoring mechanism in place to ensure that such failures do not happen may also be mentioned. The report may be furnished by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF..."

Hence, the present response is being filed.

2. That, based on the aforesaid orders, a Joint Committee of CPCB, HSPCB and District Magistrate, Gurugram was constituted to submit a report to indicate the causes of fire, reasons of unauthorized persons working in landfill premises, progress on remediation of site and setting up of Waste

Processing Plant in furtherance of order of this Tribunal dated 07 April, 2021 in OA 514/2018, steps taken by the MCG to prevent sliding of garbage mound due to fire and during monsoon and status of compliance of Rules on relevant aspects.

3. That, the report of the Joint Committee was received and a review meeting was convened at the level of the Chief Secretary, Government of Haryana, on 06 May, 2022 with the Commissioners of Municipal Corporations Gurugram and Faridabad, Additional Chief Secretary to Government Haryana, Environment, Forest & Climate Change Department, Director, Urban Local Bodies, officers of Haryana State Pollution Control Board and Deputy Commissioner, Gurugram.
4. That the report of the Joint Committee was discussed in detail and it was observed that the report was sketchy. Since lower level employees were deployed/associated, it did not serve the purpose for which the Committee was constituted by this Tribunal. Besides, the report was incomplete as it did not contain specific actionable points and did not bring out the defaults properly to enable decision making for drawing an action plan for mitigation of the situation. Further, it was also observed that the officers who participated in the proceedings of the Joint Committee were of considerably junior level. It was, therefore, decided that the Committee be reconstituted. Accordingly, vide orders of the

Government dated 25 May 2022, a new Committee with the Deputy Commissioner of Gurugram as Chairman, Senior Environmental Engineer from State Pollution Control Board and a Senior Officer of Central Pollution Control Board as Members, was constituted to conduct field inspections and submit their recommendations. An interim report was also filed before this Tribunal on 12 May 2022 by the undersigned, accordingly.

5. That, the new Committee inspected the site and submitted its report on 03 August 2022 to the undersigned which is attached herewith for reference at **Annexure-R-1**. The Committee has observed following important points and response thereto by the concerned department is as under:-

(i) **Observations**

Aerobic decomposition of waste by bacterial activity raise the temperature up to 75°C resulting in generation of hot spot and the generated methane gas during decomposition comes in contact of high temperature and results in fire. The fire at the Bandhwari land fill site occurred due to the formation of these hot spots.

Response

The Municipal Corporation, Gurugram (MCG) has since informed that Portable Methane Detectors and Non-contact

Infrared Thermometers have been provided in September 2021 to the staff deputed at the site in order to take early measures to prevent the outbreak of fire. No fire incident has occurred since 15 July 2021.

(ii) **Observation**

For proper management of such fires at Bhandwari, treated leachate is used to spray on the waste when rise in temperature is observed at the bio-remediation site and daily bio-culture spray for decomposition and management of fire is being done on the waste. 8 fire extinguishers and 3 dedicated fire tenders along with mist sprayer to control the dust and rise in temperature are provided at the landfill site.

Response

Instructions have been issued by the Director, Urban Local Bodies to all the Municipalities vide letter dated 13 September 2022 (**Annexure-R-2**) to adopt similar guidelines/ action plan for all the land fill sites in the State of Haryana. Since 15 July 2021, bio culture is being sprayed for decomposition and management of fire.

(iii) **Observations**

Urban Local Bodies Department (ULBD) and Municipal

Corporation of Gurugram (MCG) have been directed to prepare detailed on-site emergency plan to cover potential risks/emergencies due to such unexpected fires.

Response

The instructions have been issued by Director Urban Local Bodies to all Municipalities to adopt Emergency Plan vide DULB memo no. Tech./NGT/DULB/2022/5329 dated 13 September 2022 (R-2) and MCG has assured to implement the same within Six Months.

(iv) Observations

The total legacy waste bio-remediated by MCG till July, 2022 is 19.43 lakh MT and bio-mined is 10 Lakh MT whereas as per the action plan submitted before this Tribunal, all the 33 lakh MT legacy waste should have been treated by this time i.e. 31 July 2022. MCG couldn't achieve the timelines of revised action plan submitted on 05 April 2021.

Response

The MCG has now reported that as on date 23 lakh MT of legacy waste is lying at site and during the time period of the disposal of legacy waste, an additional estimated waste of 7 Lakh MT is also expected to be received at site. Thus, the total waste to be disposed is likely to be 30 Lakh MT. The Municipal

Corporation, Gurugram has submitted revised timelines for the disposal of waste as under:-

Sr. No.	Period	Target of legacy waste processing in quarter (in Lakh MT)	Cumulative targets (in Lakh MT)
1	Upto December, 2022	7.2	7.2
2	Jan, 2023 to March, 2023	6.8	14
3	April, 2023 to June, 2023	8.0	22
4	July, 2023 to September, 2023	2.4	24.4
5	October, 2023 to December, 2023	5.6	30

(v) **Observations**

In compliance of the orders of this Tribunal dated 17 July 2019 in OA No. 519/2019 titled as Centre for Wildlife and Environment Litigation Vs Union of India & Ors., MCG has been directed by the Joint Committee to forfeit the ESCROW amount and to submit the details of the same to Haryana State Pollution Control Board (HSPCB), so that it could be operated by the Chief Secretary, Haryana.

Response

Keeping in view the directions of this Tribunal issued vide order dated 10 July 2019 in O.A. No. 514 of 2018 titled as Vivek Kamboj and Ors. Vs. Union of India and Ors., an amount of Rs. 20 cr. has been transferred to the Haryana State Pollution Control Board vide RTGS dated 23 January 2020. The said amount shall be utilised exclusively for the environmental restoration of the Bhandwari site.

(vi) **Observations**

Based upon the persistent violations and regular failure of samples and in compliance of this Tribunal's orders dated 28 February 2020 and 14 December 2020 in OA No. 606/2018, HSPCB has imposed an environmental compensation of Rs. 2,10,00,000/- (@ Rs. 10 lacs per month on MCG for non-compliances made at the landfill site for the months from April, 2020 to Dec, 2021. A Show Cause Notice for imposing environmental compensation of Rs. 70,00,000/- has also been served to the MCG for the non-compliances made at the landfill site for the months from Jan, 2022 to July, 2022.

Response

The MCG has deposited Rs. 2.8 crore of EC with the Haryana State Pollution Control Board and shall be utilised for environmental restoration of Bhandwari site.

(vii) **Observations**

For the treatment of leachate generated from the solid waste, 3 treatment units have been established, out of which one Disc-Tube Reverse Osmosis (DTRO) of 200 KLD capacity was operating satisfactorily and another DTRO of 200 KLD capacity is under maintenance. The Committee observed that the biological

leachate treatment plant was not functional and was lying abandoned. The Committee observed that the treatment capacity of the leachate treatment units is required to be enhanced considering the peak flow as well during monsoon.

Response

The MCG has now reported that both the DTROs of combined capacity 400 KLD are presently functioning properly and sufficient for the daily generation of leachate of approximately 350 KLD. The 3rd leachate facility is not required presently and will be considered during the expansion of the plant.

(viii) **Observations**

Flow of leachate from the landfill site into the adjoining village roads including forest land patch was observed during the visit of the Committee and the sliding of legacy waste outside premises due to fresh addition of waste, into the adjoining forest area was also observed during the visit, besides the spillage of leachate within the premises poses a serious challenge during rainy seasons.

Response

The MCG has assured that all the leachate shall be handled

adequately and spillage is unlikely to happen.

(ix) **Observations**

As far as other gaps identified in the execution and operation of Bandhwari landfill site are concerned, it was observed that non-segregation of waste by the waste generators and the daily generated Municipal Solid Waste (MSW) is being dumped without any processing at Bandhwari site unscientifically. A huge quantity of waste (30.50 lakhs MT) is already dumped in 18 acres of the landfill site, resulting in 42 meter height of dump site. The fresh waste of Gurugram and Faridabad Districts (around 2,100 MT per day) is dumped on this 42 meter heap of waste, resulting in generation of huge amount of leachate. Due to the space constraint, the waste sliding occurs frequently on site, and as per the technical feasibility report of integrated solid waste management, 40 acres of land is required for the treatment of 1100 MT per day of solid waste. Thus, approximately 80 acres of land is required for execution and operation of integrated solid waste management at Bhandwari site.

Response

Approximately 40 acre additional land is required for management of fresh waste of Gurugram and Faridabad and landfill site. MCG and MCF tried to procure additional land in

Farrukhnagar, Basai, Village Karoli, Village Pall-Faridabad and Village Gotra Mohhabatabad-Faridabad but could not finalize the same due to public agitation, litigations and other reasons.

Recently, MCG has obtained a piece of land measuring 05 acre in revenue estate of village Basai, Gurugram and the same has been handed over to concessionaire on 16 September 2022.

In addition, MCG has requested to GMDA on 30 August 2022 to provide land about 6-7 acre at Sector-65 Gurugram for erection of Biogas plant to process the fresh waste, from the land earmarked for electric sub-station. MCG has also written a letter to GMDA on 30 August 2022 to make a request to the Government for procurement of additional land of 20 acre in the vicinity of Bandhwari for fresh waste processing.

Thus, the efforts are being made for procurement of additional land for processing of the fresh waste.

(x) **Observations**

The additional Refuse Derived Fuel (RDF) generated during the treatment of legacy waste was being collected in an open area within the premises of the site. The estimated quantity of the RDF generated till date is 3.75 lakh MT and MCG has entered into an agreement with M/s The People's Association for the treatment of legacy waste which also includes disposal of the RDF. The total

quantity of RDF disposal till date is 3.35 Lakh MT. The remaining quantity of 0.40 lakh MT is still lying at site, occupying an area of around 1.5 acre, reducing the available space further. The disposal of the RDF is reported to be severely constrained because of the non-availability of disposal facility in the vicinity and there is no Waste to Energy (WTE) Plant in the immediate vicinity that can consume the RDF generated in this facility. WTE plants in Delhi and Haryana have excess RDF from their own MSW treatment sites and the cement industries, which can use RDF as alternative fuel, are at a distance of over 400 kms.

Response

The Director, Urban Local Bodies has informed that work of processing of 02 lac MT legacy waste has been allotted to an agency namely M/s People Association Total Health for Youth Applause (PATHYA) after inviting the tender. This work has been enhanced for treatment of legacy waste from 02 Lac MT to 04 Lac MT. This agency has processed 3.30 lac MT of legacy waste so far.

Further, Principal Secretary, Urban Local Bodies Department has been directed to hold a meeting at higher level to find effective ways for disposal of RDF till the commencement of WTE plant at Bhandwari.

(xi) **Observations**

MCG has been granted Environmental Clearance (EC) vide letter No. F.No.10-74/2016-IA.III dated 01 November 2019 for setting up a 15 MW Waste to Energy Plant (WEP). The space required for setting up this plant is 10 acres and is expected to be completed in 24 months, thereafter, the issue of disposal of RDF will also be resolved.

Response

Upon the receipt of the above details in the report, the following directions are also being issued:-

- (i) Principal Secretary, Urban Local Bodies Department shall ensure implementation of the action plan for control of fire incidents in all the landfill sites meticulously and avoid recurrence of such incidents strictly as per the instructions issued by the Government, based on CPCB directions in this regard.
- (ii) Principal Secretary, Urban Local Bodies Department and MCG shall adhere to the timelines for treatment of legacy waste till the Waste to Energy (WTE) plant becomes operational and as per the plan submitted to the Government.

- (iii) Principal Secretary, Urban Local Bodies Department is in the process of issuing of Show Cause Notice to the erring officers for the failure over such a long period, resulting in such situation and has been directed to submit the action taken report within 2 months.
- (iv) HSPCB, in coordination with the Urban Local Bodies Department and the Deputy Commissioner Gurugram shall monitor the progress of the action plan and submit a quarterly report to the Chief Secretary.
6. That, in view of the above mentioned facts, the response /comments of the State may kindly be taken on record in compliance of the directions passed by this Tribunal on 19 July 2021.

Place: Chandigarh
Dated: 22 September, 2022


(Sanjeev Kaushal)
Chief Secretary to Govt. Haryana

From

Deputy Commissioner,
Gurugram.

To

Chief Secretary to Govt. of Haryana,
Chandigarh.

No. 4201 /MB dated 03/08/2022

Subject: OA No. 172/2021 titled as Poonam Yadav V/s M/s Ecogreen Energy Pvt.
Ltd. & Ors.

On the subject cited above.

In compliance of order dated 25.05.2022 of Additional Chief Secretary to
Government of Haryana in OA No. 172/2021, a revised joint committee report is attached
herewith for your kind information & further necessary action please.

Encl:- As above.


Deputy Commissioner,
Gurugram

Date: 03-08-2022

Revised Joint Committee Report in the Matter of Poonam Yadav Vs M/s Ecogreen Energy Pvt. Ltd. &Ors.(OA No. 172/2021) in compliance of order dated 25.05.2022 of Additional Chief Secretary to Government, Haryana.

1.0 Background

Hon'ble NGT vide its Order dated July 19, 2021 in the matter of Poonam Yadav Vs M/s Ecogreen Energy Pvt. Ltd. &Ors. (OA No. 172/2021), Hon'ble NGT issued the following Directions:

Para 5 “----we constitute a three-member Committee comprising CPCB, Haryana State PCB and the District Magistrate, Gurgaon. The Committee may visit the site, interact with the stakeholders and take assistance from any other individual/institution and give its report within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF with a copy to the Chief Secretary, Haryana. Their report may inter alia include causes of fire, reasons for unauthorized persons working in the landfill premises, progress on remediation of site and setting up of waste processing plant in furtherance of order of this Tribunal dated 7.4.2021 in OA 514/2018, steps taken by the MCG to prevent sliding of garbage mound due to fire and during monsoon and status of compliance of Rules on relevant aspects. The report may also mention status of legacy waste dump site in terms of order dated 17.7.2019 in OA 519/2019.”

2.0 Action Taken Report

In compliance of Para 5 of aforesaid Hon'ble NGT's Order, a Joint committee comprising of nominees of CPCB, HSPCB & District Magistrate submitted report in Hon'ble NGT on dated 25.03.2022 which is attached as **Annexure-A**. Whereas, while reviewing the then joint committee report Chief Secretary, Govt. of Haryana in the review meeting held on 06.05.2022 observed slow progress of the targeted action and unrealistic timelines proposed by Municipal Corporation, Gurugram and therefore expressed the need for reconstitution of the committee with Senior Officers from the Department/agencies/ concerned in order to ensure a complete and comprehensive report on the matter, as desired by Hon'ble NGT. In compliance of the observations of Worthy Chief Secretary, Government of Haryana, the joint committee was reconstituted as below:-

Sr. No.	Name & Designation of Member	Member
1	Sh. Nishant Kumar Yadav, IAS, Deputy Commissioner	Chairman
2.	Sh. Ritesh Prasad Gurung, Scientist D	Member, CPCB
3.	Sh. Satinder Pal, Senior Environmental Engineer	Member, HSPCB

Details of Action taken by the Committee in compliance of Order dated 19.07.2021 are enumerated in this section:

The Joint Committee had visited the municipal solid waste landfill at Bandhwari on August 2, 2022, and samples of treated and untreated leachate were collected from inlet & outlet of Disk Tube Reverse Osmosis (DTRO) Plant and from leachate flowing outside premises of site. Sampling was done during the visit. The analysis report of HSPCB Laboratory is awaited.

3.0 Progress made as per action plan submitted by the NGT in the matter of OA No. 514/2018 titled as Vivek Kamboj &Anr. Versus Union of India &Ors.

The total legacy waste bio-remediated by MCG till July, 2022 is only 19.43 lakh MT and bio-mined is only 10 Lakh MT whereas as per the action plan submitted in Hon'ble NGT, all the 33 lakh MT legacy waste should have been treated by this time i.e. 31.07.2022. MCG couldn't achieve the timelines of revised action plan submitted on 05.04.2021.

The revised timeline submitted by Municipal Corporation, Gurugram (MCG) during site inspection is attached as **Annexure-B**. In compliance of order dated 17.07.2019 in the matter of OA No. 519/2019 titled as Centre for Wildlife and Environment Litigation Versus Union of India & Ors., MCG has been directed by the Joint Committee to forfeit the ESCROW amount and also submit the details of the same to HSPCB, so that it could be operated by the Chief Secretary, Haryana.

In compliance of order dated 05.03.2019 in OA No. 514/2018, a Joint committee of CPCB, IIT Delhi and CSIR-NEERI submitted a report on damage due to Pollution from Bandhwari MSW landfill site. As per the study estimate, the total damage of about 148.46 crores was estimated due to externalities from Bandhwari dump site. Consequent upon persistent violations and regular failure of samples and in compliance of order dated 28.02.2020 & 14.12.2020 in OA No. 606/2018, HSPCB has imposed Environmental Compensation of Rs. 2,10,00,000/- (Two Crore & ten lacs) i.e. 10 lacs per month on Municipal Corporation, Gurugram for the non compliances made at the landfill site for the months from April, 2020 to Dec, 2021. A Show Cause Notice for imposing Environmental Compensation of Rs. 70,00,000/- (Seventy lacs only) has been served to the Municipal Corporation, Gurugram for the non compliances made at the landfill site for the months from Jan, 2022 to July, 2022. HSPCB has sought names of Commissioners and other officers/persons of Municipal Corporation, Gurugram/agencies, alongwith their working tenure and their present correspondence address, who are responsible for operation of Municipal Solid Waste Management Facility at Village Bandhwari, Gurugram from 2010 to till date for filling complaint under Water Act, 1974, Air Act, 1981 & EP Act, 1986 for violation of relevant Acts and Solid Waste Management Rules, 2016.

3.1 Violations found during site inspection of Bandhwari landfill site:

During site inspection, main violation observed are listed below:-

1. Guidelines for disposal of legacy waste issued on Feb, 2019 by CPCB is not being adhered completely
2. For the treatment of leachate generated from the solid waste three treatments units were found established. Out of which One DTRO of 200 KLD capacity was operating satisfactory and another DTRO of 200 KLD capacity was under maintenance. Biological Leachate treatment plant is not functional and lying abandoned. Treatment capacity of the leachate treatment units considering the peak flow as well during monsoon is required to be enhanced.
3. It was observed that leachate generation is approx. 350 KLD except rainy season. There are 7 nos. of leachate pond at Bandhwari Landfill site which have storage capacity of 36000 KL and some portion is still available for leachate storage.
4. Flowing of leachate from the landfill site on the adjoining village road including forest land patch was observed during the visit by way of breaking boundary wall which

becomes more frequent during rainy seasons.

5. Spillage of leachate within the premises is also a serious challenge during rainy seasons.

3.2 Non compliance observed regarding Fire control measures:

CPCB has issued directions under section 5 of Environment (Protection) Act, 1986 for implementation of the Solid waste Management, 2016-regarding fire incidents at MSW Dumpsites vide letter No. CP-99/143/2021-UPC-II-HO-CPCB-HO dated 26.05.2022 to the Chairman of all SPCBs/ PCCs. MCG has not submitted any on site emergency plan to cover potential risk/emergencies due to fire to the Joint Committee. Methane gas detectors have not been installed at the site. However, 8 fire extinguisher and 3 dedicated fire tenders alongwith mist sprayer to control the dust & rise in temperature are provided at the landfill site.

3.3 Gaps identified in the execution and operation of Bandhwari landfill site:

1. The major gap identified regarding non compliance of solid waste management rules is non segregation of waste by the Waste generators. MCG has submitted that the source segregation of the solid waste in Gurugram and Faridabad is about 10-12%. The daily generated MSW is being dumped without any processing at Bandhwari Landfill site resulting into increase in quantity of dumped waste unscientifically.
2. **Space constraint:** A huge quantity of waste i.e. 30.50 lakhs MT (23 Lakh MT legacy waste, 7.50 Lakh previous year waste) is already dumped in 18 acres of the landfill site, resulting in 42 meter height of dump site. The fresh waste of Gurugram and Faridabad District which is around 2,100 MT per day is again dumped on this 42 meter heap of waste, resulting in generation of huge amount of leachate. Due to the space constraint the waste sliding occurs frequently on site. The sliding of waste is also a threat to the dumpers which dump the waste at that height. As per the technical feasibility report of integrated Solid Waste Management, Haryana, Faridabad cluster, February, 2016, 40 acres of land is required for the treatment of 1100 MT Per day of Solid waste, which implies that approximately 80 acres of land is required for execution & operation of integrated Solid Waste Management site of

Gurugram & Faridabad District. The technical feasibility report is attached as **Annexure-C**.

Disposal of Generated RDF

The Refuse Derived Fuel (RDF) generated during the treatment of the legacy waste was seen being collected in an open area within the premises of the site. The estimated quantity of the RDF generated till date is 3.75 lakh MT. The MCG has entered into an agreement with M/s The People's Association for the treatment of legacy waste which also includes disposal of the RDF. The total quantity of RDF disposal till date is 3.35 Lakh MT. The remaining quantity of 0.40 lakh MT is still lying at site. This remaining quantity is occupying an area of approx. 1.5 Acres, which further reduces the space availability at the site. The disposal of the RDF has been severely constrained because of the non-availability of disposal facility in the vicinity. There is no Waste to Energy (WTE) Plants in the immediate vicinity that can consume the RDF generated in this facility. WTE plants in Delhi and Haryana have excess RDF from their own MSW treatment sites and the cement industries, which can use RDF as alternative fuel, are at a distance of over 400 kms.

Establishment of Waste to Energy Plant

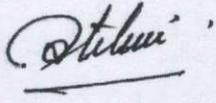
The MCG has been granted Environmental Clearance vide letter No. F.No.10-74/2016-IA.III dated 01.11.2019 for setting up a 15 MW Waste to Energy Plant. The space required for setting up this plant is 10 Acres. The setting up of the WTE plant is expected to take about 24 months. This will resolve the issue of disposal of RDFs as well.

4.0 Recommendations:

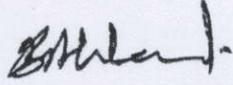
Possible means of management of legacy waste, fire control measures and leachate:

- Guidelines of CPCB for disposal of legacy Waste Feb, 2019 and Solid Waste Management Rules, 2016 may be adhered strictly by Municipal Corporations.

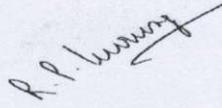
- Municipal Corporation may take additional land to cope up with prevailing situation.



Satinder Pal, SEE
HSPCB



Balraj Ahlawat, SEE
HSPCB



Ritesh Prasad Gurung, Scientist D
CPCB



Nishant Kumar Yadav, IAS
Deputy Commissioner

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
O.A. No. 172 of 2021**

In the matter of:

Poonam Yadav

Applicant

Vs.

M/s Ecogreen Energy Pvt. Ltd.

Respondents

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2.	Annexure I: A copy of the concession agreement between Municipal Corporation Gurugram and M/s Ecogreen Energy Pvt. Ltd.	
3.	Annexure II: A copy of temperature profile log book maintained by Municipal Corporation Gurugram.	
4.	Annexure II(A): A copy of relevant photographs of fire tender deployed 24x7 on the site.	
5.	Annexure III: A copy of the gate pass issued for entry of any visitor into the site.	
6.	Annexure IV: A copy of photographs of trommels installed on the site.	
7.	Annexure V: A copy of photographs showing windrows used for bio-remediation.	
8.	Annexure VI: A copy of flow sheet showing Bioremediation and Bio-mining.	
9.	Annexure VII: A copy of month wise Bio-mining details at Bandhwari landfill site as provided by Municipal Corporation Gurugram.	
10.	Annexure VII (A): A copy of Bio-mining log book being maintained by Municipal Corporation Gurugram.	

11.	Annexure VIII: A copy of relevant documents of the RDF transportation to these plants, work order issued and agreement with cement plants for disposal of RDF.	
12.	Annexure IX: A copy of Work Order issued to M/s Samunder Singh and M/s Tanwar Enterprises for disposal of Compost & Inerts.	
13.	Annexure X: A copy of action plan provided by Municipal Corporation Gurugram for processing waste at Bandhwari landfill site.	
14.	Annexure XI: A copy of Analysis Report of Leachate sample by HSPCB Laboratory.	
15.	Annexure XII: A copy of schedule for the commissioning of the Waste to Energy Plant as submitted by Municipal Corporation Gurugram.	
16.	Annexure XIII: A copy of Consent to Establish granted for common treatment and disposal facilities.	
17.	Annexure XIV: A copy of Minutes of Meeting dated 07.12.2020 held under the chairmanship of Hon'ble Chief Minister.	
18.	Annexure XV: A copy of the work order dated 10.09.2021 issued by Municipal Corporation Gurugram to the M/s The Peoples Association.	
19.	Annexure XVI: A copy of photograph showing remediation work done at site to prevent sliding.	



(Divya Sinha)

Scientist-E

Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
Delhi-110032

Dated: 25.03.2022

Place: Delhi



Date: 25-03-2022

Joint Committee Report in the Matter of Poonam Yadav Vs M/s Ecogreen Energy Pvt. Ltd. & Ors. (OA No. 172/2021)

1.0 Background

Vide its Order dated July 19, 2021 in the matter of Poonam Yadav Vs M/s. Ecogreen Energy Pvt. Ltd. & Ors. (OA No. 172/2021), Hon'ble NGT issued the following Directions:

Para 5 “---we constitute a three-member Committee comprising CPCB, Haryana State PCB and the District Magistrate, Gurgaon. The Committee may visit the site, interact with the stakeholders and take assistance from any other individual/institution and give its report within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF with a copy to the Chief Secretary, Haryana. Their report may inter alia include causes of fire, reasons for unauthorized persons working in the landfill premises, progress on remediation of site and setting up of waste processing plant in furtherance of order of this Tribunal dated 7.4.2021 in OA 514/2018, steps taken by the MCG to prevent sliding of garbage mound due to fire and during monsoon and status of compliance of Rules on relevant aspects. The report may also mention status of legacy waste dump site in terms of order dated 17.7.2019 in OA 519/2019.”

2.0 Action Taken Report

In compliance of Para 5 of aforesaid Hon'ble NGT's Order, Joint committee comprising of following members has been constituted:

Sr. No.	Name & Designation of Officer	Nominee
1	Dr. Chandra Kant Dixit, Sc 'C'	CPCB
2.	Ms. Akansha Tanwar, AEE, HSPCB, Gurugram Region (North)	HSPCB, Gurugram Region (North)
3.	Sh. Darpan Kamboj, Tehsildar, Gurugram	District Magistrate, Gurugram

Details of Action taken by the Committee in compliance of Order dated 19.7.21 are enumerated in this section:

The Committee visited Bandhwari Landfill site on 18.10.2021 to verify facts and also interacted with the stakeholders including the applicant, Municipal Corporation of Gurgaon (MCG), M/s Ecogreen Energy Private Limited.

The applicant Smt. Poonam Yadav was contacted telephonically to know her concerns regarding the landfill site and she submitted that the major concern was the fire on 11.07.2021 at landfill site and non-compliance of Solid Waste Management Rules, 2016 at the Bandhwari landfill site.

Municipal Corporation, Gurugram (MCG) and Municipal Corporation Faridabad have concessionaire agreement for Development of Integrated Solid Waste Management (collection, transportation, processing and disposal) in Faridabad-Gurugram Cluster. The Concession Agreement was signed on 14.08.2017 for a period of twenty two years i.e. up to 2039. As per the Clause 5.8 of the Agreement, scope of work to be carried out by M/s Ecogreen Energy Pvt. Ltd includes setting up of waste processing facility (waste to energy plant & biological processing), sanitary landfill as well as manage the legacy waste at the site. The waste processing & disposal facility is to be set up on the land reclaimed from remediation of legacy waste. Copy of the concessionaire agreement between MCG & M/s Ecogreen Energy Pvt. Ltd is enclosed as **Annexure I (134 pages)**.

3.0 Findings/Observations of Constituted Committee:-

3.1 Fire incidents at Landfill site:

MCG was contacted to find out the details of major fire incident which took place on July 11, 2021. Details of fire incidents, causes of fire as well as the remedial measures in place to check the fire incidents are given below:

- (i) **Details of fire incidents:** MCG has informed that the fire incident on July 11, 2021 was the only fire incident happened at the sanitary landfill site till date. The location of fire was bioremediation site and its duration was from 11.07.2021 evening to 12.07.2021 night (24 hours). The fire was controlled in the night of 12.07.2021. The location at which the fire took place falls under the jurisdiction of MCG and maintained by M/s Ecogreen Energy Pvt. Ltd.

(ii) **Impact of fire incident on Air Quality**

There are 4 Continuous Ambient Air Quality Stations (CAAQMS) at Gurugram.

- NISE Gwal Pahari (Approx distance from Bandhwari Landfill Site is 2 Km)
- Teri Gram (Approx distance from Bandhwari Landfill Site is 2 Km)
- Sector-51 (Approx distance from Bandhwari Landfill Site is 12 Km)

- Vikas Sadan (Approx distance from Bandhwari Landfill Site is 18 Km)

The Air Quality Index (AQI) data and the prominent pollutant for the month of July 2021 at above 4 CAAQMS was examined to evaluate impact of the fire incident on the Air quality. AQI for the four stations of Gurugram for the month of July 2021 is given in the table below:

Date	NISE Gwal Pahari (2 km)	Teri Gram(2 km)	Sector-51 (12 km)	Vikas Sadan(18 km)
1-Jul-21	149 PM ₁₀	201 PM _{2.5}	162 PM ₁₀	107 PM _{2.5}
2-Jul-21	139 PM ₁₀	101 PM ₁₀	148 PM ₁₀	*
3-Jul-21	90 PM ₁₀	115 PM ₁₀	111 PM ₁₀	76 PM _{2.5}
4-Jul-21	93 PM ₁₀	81 PM ₁₀	111 PM ₁₀	79 PM _{2.5}
5-Jul-21	120 PM ₁₀	105 PM ₁₀	103 PM ₁₀	83 PM _{2.5}
6-Jul-21	107 PM ₁₀	129 PM ₁₀	139 PM ₁₀	76 PM _{2.5}
7-Jul-21	119 PM ₁₀	153 PM ₁₀	118 PM _{2.5}	*
8-Jul-21	121 PM ₁₀	142 PM ₁₀	125 PM ₁₀	*
9-Jul-21	67 PM ₁₀	82 PM ₁₀	123 PM ₁₀	89 PM _{2.5}
10-Jul-21	*	91 PM _{2.5}	128 PM ₁₀	69 PM _{2.5}
11-Jul-21	64 PM _{2.5}	76 PM _{2.5}	138 PM ₁₀	60 Ozone
12-Jul-21	59 PM _{2.5}	82 PM ₁₀	140 PM ₁₀	66 PM _{2.5}
13-Jul-21	48 PM ₁₀	62 PM _{2.5}	75 PM ₁₀	68 PM _{2.5}
14-Jul-21	*	82 PM _{2.5}	87 PM _{2.5}	54 PM _{2.5}
15-Jul-21	52 Ozone	53 PM _{2.5}	99 PM _{2.5}	67 PM _{2.5}
16-Jul-21	51 PM ₁₀	57 PM ₁₀	107 PM _{2.5}	69 PM _{2.5}
17-Jul-21	*	71 PM _{2.5}	160 PM _{2.5}	89 PM _{2.5}
18-Jul-21	40 PM _{2.5}	74 PM ₁₀	100 PM _{2.5}	72 PM _{2.5}
19-Jul-21	*	49 PM ₁₀	62 PM _{2.5}	61 Ozone
20-Jul-21	*	50 PM ₁₀	*	60 Ozone
21-Jul-21	*	61 PM ₁₀	69 PM ₁₀	60 Ozone
22-Jul-21	*	70 PM _{2.5}	82 PM ₁₀	81 CO
23-Jul-21	*	53 PM ₁₀	88 PM _{2.5}	64 PM _{2.5}
24-Jul-21	61 PM ₁₀	81 PM ₁₀	170 PM _{2.5}	87 PM _{2.5}

Date	NISE Gwal Pahari (2 km)	Teri Gram(2 km)	Sector-51 (12 km)	Vikas Sadan(18 km)
25-Jul-21	*	89 PM _{2.5}	170 PM _{2.5}	86 PM _{2.5}
26-Jul-21	*	69 PM ₁₀	100 PM _{2.5}	66 PM _{2.5}
27-Jul-21	72 PM ₁₀	128 PM ₁₀	*	131 PM _{2.5}
28-Jul-21	*	70 PM ₁₀	68 PM _{2.5}	68 PM _{2.5}
29-Jul-21	*	67 PM ₁₀	71 PM ₁₀	39 PM _{2.5}
30-Jul-21	*	57 PM ₁₀	83 PM _{2.5}	59 PM _{2.5}
31-Jul-21	*	41 PM ₁₀	76 PM ₁₀	52 PM _{2.5}
Good	2	3		1
Satisfactory	9	20	13	25
Moderate	6	7	16	2
Poor	-	1	-	-
Very poor	-	-	-	-
Severe	-	-	-	-

(* Data not available)

No significant variation was observed in the AQI at the stations located closer to the dumpsite (2 km distance) than those located further away (16-18 km) during the period fire incident has been reported at the site

- (iii) **Cause of fire at landfill site:** As informed by MCG, the fire took place at the bio-remediation site. Aerobic decomposition of waste by bacterial activity raise the temperature up to 75 °C resulting in generation of “hot spot”. The generated methane gas during decomposition comes into contact of high temperature and results the fire. The fire at the Bandhwari land fill site occurred due to the formation of these “Hot Spots”.
- (iv) **Remedial measures:** The Committee observed during the visit that the temperature is being monitored regularly at windrows with the help of dial thermometer. The copy of temperature profile log book being maintained by MCG is enclosed as **Annexure II**. As per the copy of the logbook the temperature was in the range of 35 °C to 59°C. Treated leachate is used to spray on the waste when rise in temperature is observed at the bioremediation site. Daily Bio-culture spray for decomposition and management of fire is being done on waste. One fire tender is available 24 X 7 and deployed on the site. (Relevant photographs are enclosed as **Annexure IIa**). It was also informed by MCG that the training has been provided to employees at site for using fire equipment.

3.2. Reasons for unauthorized persons working in the landfill premises:

At Bandhwari site, there are three gates (gate no. 01, 02 & 03). It was informed by MCG that all three gates have guards 24X7 and the entry of the unauthorized person is not allowed and only authorized persons work at the site.

It was also informed that visitors have to take permission from the plant in-charge and proper gate pass is issued to any visitor (**Annexure III**). During the visit, guards were present at the gate and committee did not observe any unauthorized entry during its visit. During the visit The Committee observed that gate pass issuing system was functional.

3.3 Progress on remediation of legacy waste dumpsite

3.3.1 Treatment of legacy waste

- 17 trommels of capacity 300 TPD each having screen size of 4 mm, 16 mm and 35 mm have been installed (**Annexure IV**).
- Approx 33,00,000 MT of legacy waste is dumped at the site as informed by MCG. CPCB had earlier inspected this dumpsite in January 2021 in O.A No. 514/ 2018 and at that time also total dumped waste was reported as 33,00,000 MT indicating very little variation in the total quantity of waste dumped at the site. This is primarily due to the reason that fresh waste @ 2000 TPD is continued to be dumped at site. MCG informed that at present the processing capacity of legacy waste is 5100 TPD. It was also informed by MCG that processing of additional 10000 TPD shall start by end of Oct-21, so total processing will be approx 15000 TPD. It was informed by MCG that presently in January 2022 the same has been complied by MCG and total processing is 15,000 TPD.
- Approx 2000 TPD (Gurugram 1100 TPD & Faridabad 900 TPD) of fresh waste is continued to be dumped at the legacy waste dumpsite. Hence, net 3100 TPD of waste is currently being remediated at the site. It was informed that MCG and MCF have identified separate lands for processing of daily fresh waste, but due to large scale public agitation, they are not able to divert the fresh waste to the identified sites.
- The present height of the dumpsite is 38 m, as informed by MCG. As per report filed by CPCB in O.A 514/2018 in January 2021, the height of point of dumpsite was 40 m, indicating that there has been a very marginal decrease in height of the dumpsite during the intervening period.
- Waste is first excavated and bio remediated via windrows, turning of windrows

and spray of bio-culture for 25-30 days (**Annexure V**). Waste is then turned periodically and temperature is noted. When temperature comes down to 35 °C, waste is brought to trommels for segregation.

- Trommels are segregating waste into RDF, Inert and compost. Compost is sent for use in parks and RDF to Waste to Energy Plant at Sonipat and Cement plants at Mangrol and Nimach. Inert are used for filling low lying areas. Biomining Process Flow sheet is enclosed as **Annexure VI**.

The present (January 2022) details as informed by MCG about Biomining of legacy waste (total waste Bio remediated, total waste available for biomining & total quantity of screened fractions formed & disposed) are given in table below:

Total Waste Bio Remediation (MT)	Total Waste Available for bio mining, after 35-40% decomposition against total Bio-remediation (MT)	Total Bio Mined waste (MT)	Total RDF (MT)		Total Compost (MT)		Total Inert (MT)	
			Obtained	Disposed	Obtained	Disposed	Obtained	Disposed
1402592	1023893	551947	220082	76226	111430	107455	215358	210995

- There is difference in the waste available for Bio-Mining and total bio mined material. It was informed by MCG that this material was not bio-mined due to rain. There is also difference between the quantity of RDF obtained and the quantity disposed off. As informed, due to rain the moisture content of the RDF had increased and on the request of the cement plants and the Waste to Energy Plant the transportation of the RDF was put on hold. The transportation of the same shall commence as the material dry. Month wise Biomining Details at Bandhwari landfill site as provided by MCG is enclosed as **Annexure VII**. Copy of Biomining log book being maintained by MCG is enclosed as **Annexure VIIa**. It is observed that only 42 % of legacy waste dumped at the site has been remediated so far In addition, fresh waste approx 2000 TPD is continued to be received at the site hence there is no appreciable reduction in the total quantity of waste stored at the dumpsite. Further it is also observed that MCG has failed to adhere to the action plan submitted in Hon'ble NGT in the matter of Vivek Kamboj Vs. Union of India wherein it was submitted by Commissioner, MCG that by November, 2020, 20 working trommels would be installed at site and 27,00,000 tonne of waste would be bio-remediated. ULB, Haryana should fix responsibility of the erring officers of MCG.

- **Utilization of Screened fractions (Compost, Segregated Combustible Fractions (SCF) and Inert)**

Total quantity of segregated material utilized is 394676 MT which is 72 % of the total screened fraction produced indicating that approx one-third of the screened fraction produced has not been utilized so far. Details of utilization of screened fraction as informed by MCG is given below:

- **Compost/Good Earth Soil:**

Out of 111430 MT segregated good earth soil, 107455 MT has been utilized in green belts and parks of the Municipal Corporation Gurugram (MCG), Municipal Corporation Faridabad (MCF), Gurugram Metropolitan Development Authority (GMDA) & Faridabad Metropolitan Development Authority (FMDA).

- **SCF (Segregated Combustible Fractions)/RDF**

Out of total 220082 MT segregated SCF, 76226 MT has been utilized by Cement Plants i.e. J.K. Cement Mangrol, Ultra Tech Cement Nimach and Waste to Energy plant at Murthal, Sonipat. The relevant documents (Vehicles, net weight details verified by MCG, Delivery Challan and Weight at *Dharmkanta*) of the RDF transportation to these plants, work order issued and agreement with cement plants for disposal of RDF is enclosed as **Annexure VIII**.

- **Inerts**

Out of 215358 MT segregated inerts, 210995 MT inerts used for filling of the low lying areas and preparation of the Ramps at site. Work Order issued to M/s Samunder Singh and M/s Tanwar Enterprises for disposal of Compost & Inerts enclosed as **Annexure IX**.

3.3.2 Action Plan for treatment of legacy waste

The action plan to treat the legacy waste as provided by MCG is attached as **Annexure X**. As per the Action Plan -

- (a) The total quantity of legacy waste to be remediated is 3310000 MT.
- (b) The treatment of legacy waste shall be completed by July 2022 as per the quantity TPD mentioned in the action plan.

It is observed that the action plan does not clearly indicate plan for treatment of fresh waste and the plan for utilization of screened fractions.

3.3.3 Leachate Treatment

One Leachate treatment plant of 150 KLD and 2 Disc Tube Reverse Osmosis System (DTRO) of 200 KLD each have been installed, so the total treatment capacity of leachate is 550 KLD. One DTRO was operational during the visit.

The sample of untreated and treated leachate was collected from the inlet and outlet of that plant and analyzed at HSPCB Laboratory. The analysis report of HSPCB Laboratory is enclosed as **Annexure XI**. All the parameters were found within the limit for treated leachate as specified in Schedule II of SWM Rules 2016 except total dissolved solids which was 3150 mg/L against the prescribed limit of 2100 mg/L.

3.4. Progress on setting up of Waste to Energy plant

MCG submitted that Waste to Energy shall be commissioned by October 2023. It will be an integrated waste management plant. The schedule for the commissioning of the plant in said time is enclosed as **Annexure XII**. Consent to Establish Common treatment and disposal facilities has been obtained (**Annexure XIII**) and 06 acre land out of total 10 Acre required land for Waste to Energy Plant has been reclaimed. During the visit it was informed by MCG that the complete land of 10 acres will be reclaimed by 30th Nov 2021 and same will be handed over to concessionaire to commission the Waste to Energy Plant. As per updated information received from MCG, total 10 acres of land has been cleared by shifting the waste from area identified for Waste to Energy plant at landfill site and handed over to concessionaire on 07.12.2021.

A meeting, chaired by Hon'ble CM of Haryana was held with the stakeholders on 7.12.2020. In the meeting, Municipal Corporation, Gurugram was directed to Bio-remediate the legacy waste in Bhandwari at the risk and cost of the Ecogreen. (Minutes of the meeting are enclosed as **Annexure XIV**). Thereafter, for reclamation of land identified for waste to energy plant, after tendering, work order dated 10.09.2021 for treating the legacy waste of total quantity of approx 200000 MT waste has been awarded by MCG to M/s The Peoples Association for Total Help and Youth Applause (PATHEYA), enclosed as **Annexure XV**. The committee observed the progress of reclamation as slow and MCG informed that due to the frequent rains the progress is slow. MCG also informed that the M/s The Peoples Association is bound to complete the work within given time line. For any delay there is a provision of Penalties/Liquidity damages, in the agreement, "In case of delay in completion of the contract, liquidated damages @ (0.5%) half percent of the contract value per week of delay subject to a

maximum of ten percent of the contract value should be levied on the contractor. The penalty damages mentioned in the Work Contract shall be levied on the contractor in addition to these penalties". It was informed by MCG that PATHEYA has cleared 10 acres land by shifting the waste from the area identified for the Waste to Energy plant. The bio-mining of 85000 MT of legacy waste has been completed till January 2022 and the processing of remaining 115000 MT waste is under progress.

3.5. Sliding of garbage out side from the SLF

As informed by MCG the western side of the site is vulnerable to sliding during monsoon due to increase in the moisture content of garbage. To prevent the same the remediation work is being done in that area by making steps instead of steep side slopes (photograph is annexed as **Annexure XVI**). It was informed that the remediation of this area will be completed within the 03 months. It will prevent the sliding of garbage. No sliding has been reported during the last one year.

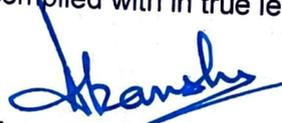
4.0 Recommendation:

The Municipal Corporation, Gurugram and M/s Ecogreen Energy Pvt. Ltd. may be directed to implement the following for the effective implementation of the Solid Waste Management, Rules 2016:

- To make availability of Methane Gas Detectors at site so that area with high methane concentration can be identified and accordingly preventive actions can be taken.
- To restrict smoking in all areas of the sanitary landfill.
- Waste that is unloaded in the filling area should be examined visually for potential fire sources (glowing ash or glowing burning remains).
- If fire sources are located, these have to be neutralized with cover material immediately.
- Restriction of entry of unauthorized person should be ensured strictly.
- The difference between the quantity of waste available for Biomining and quantity of waste biominced should be reduced by speeding up the Biomining work.
- The RDF stored should be disposed off at the earliest.
- The commissioning of the Waste to Energy plant should be ensured as planned.
- Action plan shall clearly indicate plan for treatment of fresh waste as well as for disposal of screened fractions.
- MC, Gurugram and M/s Ecogreen Energy Pvt. Ltd. will ensure that the processing of legacy waste at Bandhwari landfill site be done as per the timeline given in the Action Plan.

The Report is submitted for kind consideration of this Hon'ble Tribunal. The direction passed by this Hon'ble Tribunal shall be complied with in true letter and spirit.


Chandra Kant Dixit
Sc 'C', CPCB


Akansha Tanwar, AEE
HSPCB, Gurugram (N)


Darpan Kamboj,
Tehsildar, Gurgaon

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Name: Ecogreen Energy gurgaon Faridabad pvt ltd

H.No/Floor : Na

Sector/Ward : Na

Landmark : Na

City/Village : Gurugram

District : Gurugram

State : Haryana

Phone : 0



Purpose : GENERAL to be submitted at Other

CONCESSION AGREEMENT

BETWEEN

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

AND

Municipal Corporation, Gurugram
Acting through its Commissioner

AND

Municipal Corporation, Faridabad
Acting through its Commissioner

AND

Ecogreen Energy Gurgaon Faridabad Private Limited ("Concessionaire")

AND

Ecogreen Energy Private Limited ("Selected Bidder")

For

Development of Integrated Solid Waste Management (collection, transportation, processing and disposal) in Faridabad-Gurugram Cluster

14/8/17
14/8/17
14/8/17

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter referred to as the “**Agreement**”) made this 14th day of August 2017 at Gurugram

BETWEEN

The Governor of Haryana acting through **Director, 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, Gurugram 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, Faridabad 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

M/s Ecogreen Energy Gurgaon Faridabad Private Limited, a special purpose vehicle incorporated under provisions of the Companies Act, 2013, having its registered office at **160, Tatvam Villas, Sector-48, Sohna Road, Gurugram**, acting through its **Director, Mr. Ankit Aggarwal** hereinafter referred to as “**Concessionaire**” which expression shall unless repugnant to the context include its successors and permitted assigns.

AND

M/s Ecogreen Energy Private Limited, a registered under the Companies Act, 1956/ 2013 having its registered office at **219, IInd Floor, Vipul Trade Centre Sohna Road Sector-48 Gurugram**, 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 its **Director, Mr. Rakesh Kumar Aggarwal**.

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 Faridabad-Gurugram Cluster;
- B. Faridabad-Gurugram Cluster comprises of Urban Local Bodies in Faridabad and Gurugram, (collectively referred to as "**Participating ULBs**");
- C. The Participating ULB has entered into an Inter-ULB Agreement dated 30.06.2017 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 ULB in addition to itself.
- D. The Participating ULB has nominated Municipal Corporation, Gurugram 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 ULB.
- E. Designated ULB on behalf of Participating ULB desires to develop integrated solid waste management facility through private participation on Design, Build, Finance, Operate and Transfer (DBFOT) basis and management of all Project Assets and Facilities and resources required for integrated management of Municipal Solid Waste ("**MSW**") covering the following activities :
- (i) Door to door collection of MSW in segregated manner from waste Generators in Project Area; however bins for primary collection at household level will not be provided by the Designated ULB or the Concessionaire
 - (ii) Provide suitable type and number of containers/bins at Collection Points identified from time to time by Designated and Participating ULB as the case may be for storage of segregated MSW;
 - (iii) Transportation of MSW from secondary collection points to the Processing Facility;
 - (iv) Fitting of all the MSW transportation vehicles with tracking device (GPS) to monitor their route and provide a feed to Designated ULB
 - (v) Design and setup of Processing Facility and Sanitary Landfill of the capacity to treat the entire MSW generation of the cluster; The Processing Facility shall include a waste to energy plant having capacity of at least 10 MW and treatment of organic fraction by biological processing (composting, bio-methanation);
 - (vi) Procurement of all the Project Assets at its cost, as may be essential to implement the Project;
 - (vii) Operation and maintenance of all the Project Assets including the Processing Facility and Sanitary Landfill;
 - (viii) Transportation of inert/Residual waste from Processing Facility to the Sanitary Landfill;

- (viii) Transportation of inert/Residual waste from Processing Facility to the Sanitary Landfill;
- (ix) Setting up and managing Complaint Redressal Centre to monitor Project activities and to address user complaints with a provision to have a call centre with monitoring mechanism;
- (x) Carrying out Information, Education and Communication (IEC) activities to sensitize users about MSW management;
- (xi) Collection of User Charges as per the notification of Participating ULBs under the provision of SWM Rules 2016.
- (xii) Transportation of street sweeping waste from the designated points established by Participating ULBs in Consultation with Concessionaire.

The obligation of the Concessionaire to undertake the above and related activities shall be together referred to as the “**Project**”

- 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 and issued Letter of Award (LoA) No. **TA/XEN-1/DULB/1889 dated 21/4/2017** to it for developing the Project. The LoA has been duly accepted by the Selected Bidder by its acknowledgement dated 21/4/2017.
- 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 Designated ULB to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for implementing the Project.
- H. By its acknowledgement dated 21/4/2017, the Concessionaire has also joined in the said request of the Selected Bidder to the Department and Designated ULB to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- I. The Department and Designated ULB has 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.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. **“Abandonment”** means the total cessation of activity in the Project by the Concessionaire and of its obligations under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the 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;
- 1.1.2. **“Access Road”** means the motorable approach road for access to the Site(s) from public road;
- 1.1.3. **“Acceptance of Concession”** shall have the meaning assigned thereto in **Clause 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 would be required to incur as a result of Change in Law;
- 1.1.6. **“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:
- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
 - (b) from COD 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;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

- 1.1.7. **“Affected Party”** means the Party claiming to be affected by a Force Majeure Event in accordance with **Clause 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, and notification in force and effect, including Solid Waste Management Rules, 2016, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the period of subsistence of this Agreement and applicable to the Project;
- 1.1.11. **“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 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. **“Associates”** means any company (ies) which is (are) controlled by the company concerned. For the purpose of this definition, the term “control shall have the meaning as contained in the applicable law, which shall include but not be limited to the power to direct the management or policies of such entity, directly or indirectly, through the ownership of shares or other securities, by contract or otherwise, provided that the direct or indirect ownership of fifty one per cent (51%) or more of its voting share capital is deemed to constitute control of such entity, and “controlling” and “controlled” shall be construed accordingly, ;
- 1.1.15. **“Bio-methanation”** means an anaerobic decomposition process that entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;
- 1.1.16. **“C&T” or “Collection and Transportation”** refers to primary and secondary collection and transportation of MSW from the Project Areato the Processing Facility/ Sanitary Landfill;
- 1.1.17. **“Construction & Demolition (C&D) Debris” or “Debris”** means solid waste resulting from construction, re-modelling, 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 **Clause 11.B;**
- 1.1.19. **“Cluster”** shall have the meaning as assigned to it in **Annexure 1**
- 1.1.20. **“Commencement Date”** shall have the meaning as assigned to it in **Clause 2.3**
- 1.1.21. **“Compliance Date(s)”** means the latter of the date by which the Condition Precedent of the Concessionaire or Participating ULBs under Clause 2.2 are achieved or waived;
- 1.1.22. **“Composting”** means a controlled process involving microbial decomposition of organic matter;
- 1.1.23. **“Concession”** shall have the meaning as assigned thereto in Article 2;
- 1.1.24. **“Conditions Precedent(s)”** means Conditions Precedent as specified in Clause 2.2;

- 1.1.25. **“Compliance Period”** shall have the meaning assigned thereto in Clause 2.2.2;
- 1.1.26. **“Commercial Operations Date” or “COD”** means the date when the Concessionaire begins commercial operations of the Processing Facility pursuant to issuance of Operational Acceptance Certificate by the Project Management Unit;
- 1.1.27. **“Contractor” or “Sub-Contractor”** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Project;
- 1.1.28. **“CPCB”** means the Central Pollution Control Board of Government of India
- 1.1.29. **“Daily Weight Sheet”** shall have the meaning assigned thereto in **Annexure 3**;
- 1.1.30. **“Dead Remains”** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.31. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;
 - (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default.
 - (c) the subordinated debt disbursed by lenders for financing the Total Project Cost may also be considered as part of Debt Due. However, any part of Debt Due [including Subordinated Debt] which converts into Equity shall not be deemed as forming part of Debt Due.
- 1.1.32. **“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;
- 1.1.33. **“Dispute”** shall have the meaning assigned thereto in Clause 15.1(a) hereof;

- 1.1.34. **“Dispute Resolution Procedure”** means the procedure for resolution of disputes as set forth in Article 15;
- 1.1.35. **“EIA”** means the Environment Impact Assessment for the Project;
- 1.1.36. **“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;
- 1.1.37. **“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;
- 1.1.38. **“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. Bandhwari in Gurugram in conformance with the MSW Rules or any revision thereof, for disposal of Residual Inert Matter and Rejected Waste;
- 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 or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, but does not include any grant from a Government Agency;
- 1.1.40. **“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 **Clause 12.2**;
- 1.1.42. **“Event of Default – Designated ULB”** shall have the meaning assigned thereto in **Clause 12.3**;
- 1.1.43. **“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a Bank in which all fee payable to the Concessionaire shall be credited, in accordance with the provisions of this Agreement.
- 1.1.44. **“Estimated Project Cost”** shall be as given in Feasibility Report annexed as Annexure –I with the RFP Document;
- 1.1.45. **“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 and (iii) Dead Remains (iv)E waste (v) construction and demolition waste;
- 1.1.46. **“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 rele-

vant 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;

- 1.1.47. **“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 3 (three) months;
- 1.1.48. **“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 2**;
- 1.1.49. **“Financial Year”** shall be same as Accounting Year;
- 1.1.50. **“Force Majeure”** or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in **Article 11**;
- 1.1.51. **“GoI”** means the Government of India;
- 1.1.52. **“GoH”** means the Government of Haryana
- 1.1.53. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the Project Facilities to be constructed, operated and maintained pursuant to the Project;
- 1.1.54. **“Government Agency”** means GoI, GoH, DULB, Participating ULBs or any governmental department 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;
- 1.1.55. **“Grant”** means one time capital grant as Viability Gap Funding (VGF) to be provided by the Designated ULB according to the guidelines of Swachh Bharat Mission for setting up collection, transportation, treatment and disposal of MSW for the designated capacity which shall be INR 75 crores as per the guidelines of Swachh Bharat Mission
- 1.1.56. **“Hand Over of Project”** shall have the meaning assigned thereto in **Article 14**;
- 1.1.57. **“Hazardous Waste”** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto;
- 1.1.58. **“Integrated MSW Management System”** or **“Project”** refers to the project for collection, transportation, processing and disposal of MSW for the Faridabad-Gurugram Cluster and for that purpose to design, develop, finance, construct, operate and maintain the Project, as defined in Recital D;

- 1.1.59. **“Independent Expert”** refers to a person appointed by the Designated ULB to monitor the activities of the Concessionaire and shall be a member of the PMU.
- 1.1.60. **“Landfilling”** means the disposal of the Residual Inert Matter and Rejected Wastes at the Engineered Sanitary Landfill Site in accordance with the terms of this Agreement including MSW Rules;
- 1.1.61. **“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, format of which is attached as annexure 11;
- 1.1.62. **“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 any part of the Project as evidenced in Financing Documents;
- 1.1.63. **“MNRE”** means Ministry of New & Renewable Energy, GoI;
- 1.1.64. **“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, but shall not include the Excluded Wastes;
- 1.1.65. **“MSW 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;
- 1.1.66. **“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);
- 1.1.67. **“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;
- 1.1.68. **“Nominated Company”** means the entity that is selected either by the Lenders or by Designated 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;
- 1.1.69. **“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;

- 1.1.70. **"Output Based Incentive" or "OBI"** shall have the meaning assigned to it in Clause 9.3.
- 1.1.71. **"Organic Waste"** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.72. **"Participating ULBs"** means the ULBs as listed in **Annexure 1** of this Agreement
- 1.1.73. **"P&D" or "Processing & Disposal"** refers to Processing & Disposal of MSW collected from Project Area, as is more clearly defined in Scope of Works;
- 1.1.74. **"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 **Clause 5.1** in the format given at **Annexure 5**;
- 1.1.75. **"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;
- 1.1.76. **"Post Closure Activities"** means the activities to be undertaken by the Parties after closure of Sanitary Landfill Site (SLF);
- 1.1.77. **"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.
- 1.1.78. **"Post-COD Period"** means the period starting on and from the COD and ending on the Transfer Date;
- 1.1.79. **"Power Plant"** means the waste to energy plant having capacity of at least 10 MW to be set up by the Concessionaire as a part of the Processing Facility, in line with the policy of MNRE, GoI, Solid Waste Management Rules, 2016 and NGT guidelines as applicable from time to time and as per the provisions of this Agreement;
- 1.1.80. **"Power Purchase Agreement" or "PPA"** means the draft of Power Purchase Agreement as attached in **Annexure 6**;
- 1.1.81. **"Pre-COD Period"** means the period commencing from the Appointed Date and extending upto the COD;
- 1.1.82. **"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;
- 1.1.83. **"Processing Plant/Processing Facility"** means the infrastructure to be created for processing of MSW prior to its final disposal at Engineered Sanitary

Landfill Site, and also includes a waste to energy plant having capacity of at least 10 MW and treatment of organic fraction by biological processing (composting, bio-methanation);

- 1.1.84. **“Project”** shall have the meaning as assigned to it under Recital D above;
- 1.1.85. **“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).
- 1.1.86. **“Project Area”** means the area presently under municipal boundaries of the Participating ULBs or any extension thereof during the Term;
- 1.1.87. **“Project Assets”** means all physical and other assets relating to and forming part of the Sites including (a) rights over the Sites in the form of lease and/ or license (as applicable) or right of usage 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;
- 1.1.88. **“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 & operated and all other project related physical assets;
- 1.1.89. **“Project Monitoring Unit” or “PMU”** means the unit set up by the Participating ULBs comprising of the members as specified in Clause 4.1 to monitor and supervise the activities of the Concessionaire;
- 1.1.90. **“Proprietary Material”** shall be as defined in Article 17.1;
- 1.1.91. **“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;
- 1.1.92. **“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;
- 1.1.93. **“Rupees or Rs”** refers to the lawful currency of the Republic of India;
- 1.1.94. **“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;

- 1.1.95. **“Share Transfer Agreement”** means the agreement to be entered into between the Successful Bidder and the existing shareholders of the Concessionaire for transfer of equity shareholding of the Concessionaire to the Successful Bidder;
- 1.1.96. **“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;
- 1.1.97. **“SPCB”** means State Pollution Control Board particularly Haryana State Pollution Control Board (HSPCB);
- 1.1.98. **“Substitution Agreement”** is an agreement that may be executed between the Concessionaire, Designated ULB and the Lenders, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire’s roles and responsibilities under this Agreement. Draft of Substitution Agreement has been given in **Annexure 8**, however, the actual agreement may vary depending on Lender’s requirements;
- 1.1.99. **“Selected Bidder” or “Successful Bidder”** means a Person selected through a competitive bidding process for implementing the Project through the Concessionaire;
- 1.1.100. **“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.
- 1.1.101. **“Tax”** means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.102. **“Term”** means the time period of twenty two (22) years commencing from the Appointed Date and shall also include such additional time period/s as may be granted by the Designated ULB under this Agreement;
- 1.1.103. **“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;
- 1.1.104. **“Termination Date”** means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.105. **“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;
- 1.1.106. **“Termination Payments”** means the payments payable pursuant to Articles 11.4 and 12.4 of this Agreement;

- 1.1.107. **“Tipping fee”** shall be as fee payable defined in Article 9.1
- 1.1.108. **“Third Party”** means any Person other than the Parties to this Agreement;
- 1.1.109. **“Total Project Cost”** means the lowest of the following :
- (i) The estimated project cost as specified in the RFP; or
 - (ii) Project Cost as set forth in the Financing Documents; or
 - (iii) Actual capital cost of the Project upon completion of construction of the Project as certified by the Statutory Auditors.
- 1.1.110. **“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;
- 1.1.111. **“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;
- 1.1.112. **“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;
- 1.1.113. **“User Charges”** means the fees chargeable from Waste Generators in line with the policy on Door-to-Door collection of MSW, duly notified by the Participating ULBs, and appended as **Annexure 9**, for providing door-to-door MSW collection service to such Waste Generators;
- 1.1.114. **“Vacant Possession”** means delivery to the Concessionaire of possession of the Site(s) free from all Encumbrances and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;
- 1.1.115. **“Waste Generators”** all residential, commercial and industrial establishments generating MSW and located within Project Area;
- 1.1.116. **“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 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.

1.4. Priority of agreements, clauses 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 thereof 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 Clause 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. The Concession

2.1.1. Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, Participating ULBs and the Department hereby grant and authorise the Concessionaire to design, setup, finance, operate maintain and transfer (DBFOT) of an Integrated Solid Waste Management Project including management of all the Project Assets and the Project Facilities and resources required for integrated management of Municipal Solid Waste and to exercise and/ or enjoy such rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement ("the Concession").

2.1.2. Rights Associated with the Grant of Concession

Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall entitle the Concessionaire, , 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, 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 in sub-clause (d) of this Article 2.1.2 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;
- (h) to obtain the utilities required for enabling the construction of the Project, without any additional cost or charges, other than the applicable charges for the utilities;
- (i) 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;
- (j) 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;
- (k) to develop the Project using such technology to establish a waste to energy plant having capacity of at least 10 MW and treatment of organic fraction by biological processing (composting, bio-methanation); such technology may be suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, MSW Rules and Good Industry Practices;
- (l) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facility, Good Industry Practices and the requirements of the Project except in respect of the building by laws;

2.1.3. Concession Period

The Concession hereby granted is for the period of Twenty Two (22) years starting from the Appointed Date and ending on the Transfer Date ("**the Concession Period**"). During the Concession Period, 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.

2.1.4. Renewal of Concession

The Designated ULB may agree to renew or extend the Concession after the expiry of the initial Term, for another mutually agreed period on existing terms and conditions. Such period of contract can be decided mutually, provided that the Concessionaire

shall have not committed any Event of Default in the last 5 years of Concession Period. Any such extension of contract period shall also lead to an extension of Land Lease Agreement(s) for an equal period. In case the parties are not able to mutually agree on common period for which the Concession needs to be extended, at least six months prior to the end of Term of the Concession, then the Concession shall not be extended further.

2.1.5. Acceptance of Concession

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

2.2. CONDITIONS PRECEDENT

2.2.1 Conditions Precedent

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

2.2.1.1 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 site for dumping of MSW till the time processing and disposal facilities are established as a part of the Project;
- (c) 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
- (d) 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;
- (e) Provided the Concessionaire with authority letter for collection of User Charges effective from such date as indicated in the operational plan submitted by Concessionaire;
- (f) Issued 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;

- (g) Provide Access Roads to the Site(s) including for the Site(s) for Transfer Stations;
- (h) 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 and Executed inter-ULB agreement

2.2.1.2 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 there under;
- (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

2.2.1.3. Condition Precedent for Department

Procure execution of PPA between 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.

2.2.2 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 latter of the date within such time when the Participating ULBs/ Department or ,the Concessionaire fulfils its Conditions Precedent (unless the Designated ULB on behalf of the Participating ULBs waives the same for the Concessionaire) shall be the date from which the relevant and respective obliga-

tions of the Parties hereunder shall commence (“**Compliance Date** – respectively).

2.2.3 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 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 event of termination, the Participating ULBs /Designated ULB shall pay to the Concessionaire, the development costs, as mutually agreed. For the estimation of the development cost, it is hereby accepted by both the parties that the Designated ULB shall propose three names of Reputed Valuers, out of which Concessionaire can object to one and the Designated ULB shall appoint any one Valuer out of remaining two for determining such development cost. In case of extension of CPs for Participating ULBs beyond a period of 180 (One Hundred and Eighty) days from the Appointed Date, the Term of the Agreement shall be extended for the same period.
- (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 may by mutual agreement extend the time for fulfilling the Conditions Precedent
- (f) Further, in the event of delay on part of Participating ULBs / Department in fulfilling its Condition Precedent and parties mutually agree to extend time for such fulfilment, then the Concession Period will also be extended proportionately.

2.3. 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 off 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 the Concessionaire or being used of a 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 weigh bridge.

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 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.

ARTICLE 3

3. SITE(S)**3.1. Handover of sites**

- (a) Designated ULB shall, within 30 days from the Appointed Date ("**Commencement Date**"), handover the Sites 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. Provided however, respective Participating ULBs shall be responsible for providing such Site(s) under their jurisdiction
- (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. In respect of Land Lease Agreements executed with the Participating ULBs for setting transfer stations in the Project Area falling within the jurisdiction of the respective Participating ULBs, the afore-stated lease rental shall be paid by the Concessionaire directly to such Participating ULBs.
- (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 Designated ULB, 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.

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 hereby warrants that:

- (a) The Sites together with the necessary right of way/way-leaves belongs to, or has been leased to the Designated ULB/ Participating ULBs and is vested in the Designated ULB/ Participating ULBs. Further, the Designated ULB/ Participating ULBs has full power to hold, lease, dispose of and deal with the same consistent with the provisions of this Agreement. For the avoidance of doubt, 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 Designated ULB/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 PMU shall comprise of an Independent Expert to be appointed by the Designated ULB² who shall be the 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 engineering and one representative each to be nominated by 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 works are specified in **Annexure 7**

4.3. Remuneration

The remuneration, cost and expenses of 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, but only after appointment of another Independent Expert in its place.

The Participating ULBs may replace their nominated representatives/ 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 upto the Transfer Date, unless the Agreement is terminated earlier in terms hereof.

²Designated ULB shall ensure that a copy of this Agreement is annexed to the appointment letter of the Independent Expert highlighting all the rights and obligations of the Independent Expert to be performed in terms hereof. The appointment letter signed and returned by the Independent Expert shall acknowledge acceptance of its rights and obligations set out in this Agreement.

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 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 nationalised or scheduled bank acceptable to Designated ULB, in favour of "Commissioner Municipal Corporation Gurugram", in the form as set out in Annexure 5, ("Performance Security") for a sum equivalent to 10% of the Estimated Project Cost during entire Concession Period.
- (b) The Performance Security Bank Guarantee 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 Bank Guarantee. 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 bank guarantee, 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 Bank Guarantee. 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 of the Concessionaire being 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 Contract 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 works/ 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 Designated ULB under this Concession Agreement is required to be provided in connection with any demand made by the Designated ULB 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 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 of 2% (two percent) of the Estimated Project Cost to the Transaction Advisors of the Department i.e. M/s Ernst & Young LLP, as per the following terms:

- (i) Within one week (1 week) of issuance of Letter of Intent to the Concessionaire by the Designated ULB: 60%
- (ii) Within ten days (10 days) Signing of Concession Agreement by Concessionaire and the Designated ULB: 10%
- (iii) Within thirty days (30 days) of commencement of C&T operations by the Concessionaire: 15%
- (iv) Within thirty days (30 days) of commencement of P&D by the Concessionaire: 15%

Failure of the Concessionaire not to make payment of any of the aforesaid instalments of the Transaction Advisor, shall be consider as Concessionaire Event of default.

5.3. General Obligations

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations 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 solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies Designated ULB against any claims, damages, expenses or losses in this regard and that in no case and for no purpose shall Designated ULB be treated as employer 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 other requirements as per Good Industry Practices;
- (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 Clause 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 Bench-

marks, set forth in Annexure 1;

- (t) to carry out all necessary test(s) and get the approvals as per the land of law and in conformity with Good Industry Practice 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 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. Obligation to set-up of Processing Facility including Power Plant

The Concessionaire shall be obligated to set up at its cost and expense, a Processing Facility at the earmarked Site as detailed in Annexure 1, 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. The Processing Facility also includes setting up a waste to power plant having capacity of at least 10 MW which shall be exported to the DISCOM with whom the PPA is signed. The Concessionaire shall have the Processing Facility fully set up and obtained 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 any defects or deficiencies that are pointed by the Participating ULBs / PMU and furnish a report in respect thereof to the PMU.

In the event, the Concessionaire is unable to achieve COD within the said time period, the Concessionaire shall be granted an additional mutually agreed extended period without levy of any damages. In case of any further delay to achieve COD from the mutually agreed additional extended 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. Provided however, if the delay to achieve COD is due to any Force Majeure event or delay on the part of 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.

5.5. Primary collection of waste from the point of generation

- (a) The Concessionaire shall undertake daily collection (door to door) of MSW generated within the Project Area commencing from the Commencement Date.

- (b) 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. 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 entire duration of the Concession Period.
- (c) 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 the Concessionaire. Record of the same will be maintained by the Concessionaire
- (d) The Concessionaire shall arrange for all vehicles fitted with GPS devices, community bins at its own cost to collect all MSW generated in the Project Area.
- (e) 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. Further, the Concessionaire shall ensure that :
- (i) all the containers shall be colour coded as per the MSW Rules.
 - (ii) 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.
- (f) The Concessionaire shall ensure that the collection bins, vehicles and devices are cleaned on a daily basis using disinfectants.
- (g) The Concessionaire must put a system in place which indicates that the bins are picked up on being full to their capacity.
- (h) The Participating ULBs/ PMU reserves right to conduct random checks

5.6. Secondary Storage of waste

- (a) Participating ULBs shall make available adequate stretch of land(s) for the sole purpose of setting up of Secondary Collection Points free of cost within 30 days of signing of the Concession Agreement. Provided however, during the course of the Concession Period, if due to any exigency as informed by any of the Participating ULBs in writing to the Concessionaire which require change in location or shifting of the Secondary Collection Points (whether constructed or not), the Concessionaire shall comply with such change orders at its own cost.
- (b) 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.
- (i) 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.

- (ii) The Concessionaire shall provide equipment for secondary storage at its own cost.
 - (iii) All equipment for secondary storage shall be covered and colour coded as per MSW 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 as per applicable law/ rules/ bylaws governing advertisement. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- (c) If required, Transfer Station(s) shall be installed in the Project Area.
- (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) The walls of the Transfer Station / Dhalaos shall be white-washed every six months during the entire duration of the Concession Period and all the vehicles/ equipment shall be re-painted every six months.
 - (v) 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.
 - (vi) 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.
 - (vii) The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other safety gear.
 - (viii) The Concessionaire shall make provisions to restrict entry of stray animals into the transfer stations, e.g. animal catchers, etc.
 - (ix) 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 ap-

proval of the Designated ULB. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.

- (x) The Concessionaire shall have right to advertise on Processing Facility, transfer Station, Dhalaos, transportation vehicles and Sanitary landfill in accordance with applicable law/ rules/ bylaws governing advertisement. This will be an additional source of revenue for the Concessionaire.

5.7. Secondary Transportation of Waste to the Processing Facility

- (a) 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 by both parties in consultation with Independent Expert/ Participating ULBs.
- (b) 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.
- (i) The vehicles deployed shall be roadworthy conforming to approval from the transport regulator.
- (ii) 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.
- (iii) The Concessionaire shall at periodic intervals check their adequateness and their conformity with the manufacturer's specification for their maintenance and replacement.
- (iv) Designated ULB/ PMU/ Participating ULB reserves right to conduct random checks.
- (v) 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.
- (vi) 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.
- (vii) The drivers appointed/engaged by the Concessionaire shall have a valid driving license as desired for the specific vehicle.
- (viii) All vehicles shall have High Security Registration Plate and be equipped with electronic toll collection tag.
- (ix) 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.

- (x) Concessionaire shall provide live GPS feed to Participating ULBs at all time

5.8. Processing & Disposal of MSW

- (a) 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.
- (b) The Concessionaire shall take all Applicable Approvals in sequence and comply with the provisions therein from time to time.
- (c) 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
- (d) For the Processing Facility, use combustion 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 MSW Rules and other directions having the force of law. The Sanitary Landfill shall be setup in accordance with the requirement of MSW Rules.
- (e) 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.
- (f) 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.
- (g) 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.
- (h) The Concessionaire shall achieve COD within a period of 24 (twenty four) months and construct 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.
- (i) The Concessionaire shall operate and maintain the Processing Facility & Sanitary Landfill in accordance with the Applicable Laws
- (j) 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.
- (k) The Concessionaire shall develop a part of sanitary landfill as secured landfill for disposal of fly ash/ air pollution residual.

- (l) All penalties, levies due to any non-compliance of any law or directions having force of law will be borne by the Concessionaire
- (m) 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.
- (n) The Concessionaire shall maintain daily records of quantum of incoming, processed waste, rejects, products and product quality in the formats approved by PMU/ Designated ULB. 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.
- (o) The Concessionaire shall arrange for all facilities and equipment for weighment - minimum 2 (two) electronic weighbridges with CCTV cameras, platforms etc.
- (p) 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
- (q) Concessionaire shall all time comply with the statutory norms of CPCB/ SPCB for pollution control
- (r) Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of Air & Water
- (s) The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility and Sanitary Landfill.
- (t) The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE)
- (u) The Concessionaire shall arrange transportation of treated waste water to fulfil the requirement of processing water from the point of supply provided by designated ULB up to processing facility

5.9. Setup Complaint Redressal Centre

- (a) 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.
- (b) The Complaint Redressal Centre shall be capable of registering complaints by the way of written communication, telephonically or personal visits by the complainant. The Complaint Redressal Centre shall be supported in English, Hindi and Regional Language.
- (c) The Complaint Redressal Centre shall have at least three (3) operational dedicated phone lines for receiving customer calls / complaints.

- (d) 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.
- (e) 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.
- (f) 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.

5.10. Organize and manage IEC activities

- (a) 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.
- (b) IEC activities shall be aimed at creating awareness among the community, and prepare residents for upcoming Project, inform about MSW 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, 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'
- (c) 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
- (d) 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.
- (e) All staff uniform and vehicles involved in the Project shall have advisory messages about solid waste management.

5.11. 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.

5.12. 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 1.

5.13. 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.

5.14. 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.

5.15. Sole purpose of the Concessionaire

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

5.16. 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.

5.17. 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/ Participating ULBs 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, pro-

cure 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.

5.18. Equity Lock-in requirements

The Selected Bidder and the Concessionaire acknowledges that:

- 5.18.1. 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 hold at least 26% shareholding in the paid up equity capital during the remaining concession period.
- 5.18.2. **[Intentionally left blank]**
- 5.18.3. Any violation/ modification in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire's Event of Default.

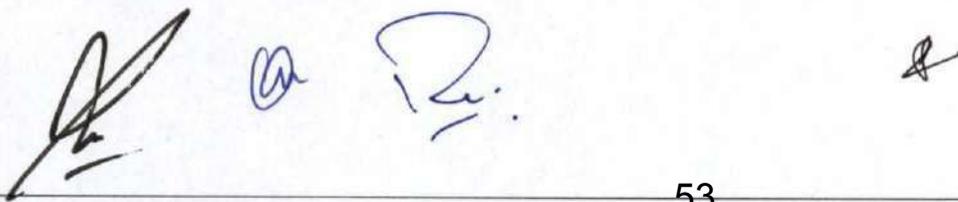


ARTICLE 6**6. FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT****6.1. General Obligations**

- 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 ULBs in procuring satisfaction of the Conditions Precedent specified in Clause 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 Clause 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 Clause 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 8.

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.

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 terminate the Agreement.



ARTICLE 7**7. DESIGNATED 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 on its behalf. 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 Participating ULB handover to the Concessionaire within 60 (Sixty) days of the date of signing of Concession Agreement., the existing infrastructure of Collection & Transportation assets like dumper bins, vehicles, transfer stations, decentralized waste management units etc., deployed in Project Area, on a price to be determined by a Valuer appointed as per mechanism set out below:

For avoidance of doubt it is clarified that the value of the aforesaid C&T assets shall be determined by the Valuer who shall be selected by the process, wherein the Designated ULB shall propose three names of Reputed Valuer, out of which Concessionaire can object to one and the Designated ULB shall appoint any one Valuer out of remaining two for determining such development cost.
- (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 upto 4 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.
- (j) appointed Independent Expert and nominated members of PMU as per provisions of this Agreement. It is hereby clarified that until Participating ULBs appoint PMU, Designated ULB, shall act as approving authority.

7.2 Department'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:

- (a) The Department shall coordinate with the Designated ULB in securing VGF/ Capital 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.



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 of the work and also organise monthly review meetings on the Processing Facility including the Power Plant & other 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 Clause 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 Clause 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 requirements, the power generated & 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 manual³, 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 of 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 at the rate of 0.1 % of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the PMU/ Designated ULB.

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

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

³Maintenance 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.

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.

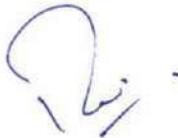


ARTICLE 9**9. PAYMENTS****9.1 Tipping Fee**

- 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 fixed charges of Indian Rupees One Thousand (Rs.1000/-) per ton of waste 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 period of two years whichever is earlier, provided that this condition shall not apply in the event delay beyond a period of two years is attributable on account of 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 waste collected by way of door to door collection in the Project Area and transported to the processing / disposal site by the Concessionaire. This amount will be escalated at the rate of 4% per annum after one year of operation for each fiscal year.
- 9.1.3 The amount will be paid on the basis of actual transportation carried out by the Concessionaire and the invoice shall be verified by the PMU. 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.

9.2 Grant

- 9.2.1 Designated ULB shall pay to the Concessionaire cash support by way of an outright payment for an amount equal to INR Seventy Five Crores (the "Grant") as per SBM guidelines.
- 9.2.2 The Grant shall be disbursed to the Concessionaire in two tranches of equal amount. The first tranche of the 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 Grant or any part thereof shall be suspended till such Default has been cured by the Concessionaire.

9.3 Output Based Incentive (OBI)

- 9.3.1 The difference between the amount of OBI quoted (in Rs/ kWh) by the Selected Bidder in its financial quote/ Bid and HERC notified tariff (in Rs/ kWh) ("Tariff"), shall be the amount ("Differential Amount") that will be payable by the Designated ULB to the Concessionaire only if the 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.

It may be illustrated as follows:

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

- 9.3.2 Where the 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 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 and the Differential Amount, be entitled to a yearly escalation, 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 OBI for immediately previous year. The 4% escalation would be computed on the aggregate amount (i.e. amount arrived by summation of OBI paid by Designated ULB in each relevant year and Additional Amount paid in the immediate preceding year). By way of illustration:- Assuming HERC Tariff for 1st year of Concession is INR 7, and Selected bidder quotes OBI of INR 10; therefore Differential Amount for 1st year being INR 3, on which, with effect from 2nd concession year escalation of 4% would be applicable. This escalated amount shall be added to Differential Amount of second year, and the aggregate amount thus arrived will be used in third year for calculating 4% escalation thereon.

- 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 Addi-

tional 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 bill/ invoice for both Tipping Fee and difference of OBI quoted and HERC notified tariff for the preceding month by 5th of the next month. The same shall be approved by the PMU by 15th of the next 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 succeeding 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 bills of the Concessionaire through the Escrow Account mechanism. The Designated ULB shall deposit, at all times, an amount equivalent to two months of payment of both Tipping Fee (as applicable during Pre COD period) and Tipping Fee (as applicable during Post COD period) and difference of OBI quoted and HERC notified tariff in the Escrow Account.

It may be explained as following:

Month	Activity
T1	Month of processing of waste
5 th of T2	Bills raised by the Concessionaire, approved by the PMU
15 th 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-10 (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:

- a) all funds constituting equity and the debt disbursed by Senior Lenders in terms of the Financing Agreements;
- b) 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 and insurance claims;
- c) all payments made by the Designated ULB on account of the SBM Grant and Tipping Fee; and
- d) User Charges recovered from Waste Generators

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.

10.2.2 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 (OBI + Tipping Fee) as applicable during Post COD Period] as would be 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 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 Agreements;
- (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 Clause 10.3.1 above.

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.



ARTICLE 11**11. FORCE MAJEURE**

The word "Party" and "Parties" in this Clause shall refer to either the Concessionaire or the Designated ULB. **11.1.** 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 Clauses 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 Clause 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 Authority;
- (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:

- (g) 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;
- (h) 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;
- (i) 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;
- (j) any civil commotion, boycott or widespread political agitation which prevents collection of Tipping Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (k) failure of the Designated ULB to permit the Concessionaire to continue the construction works, 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;
- (l) 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;
- (m) any Indirect Political Event that causes a Non-Political Event; or
- (n) 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 Clause 11B;
- (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 Con-

cessionaire'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 containing information as required by Clause 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 Tipping Fee 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

11.7.1 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.

11.7.2 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 (limited to Tipping Fee during Pre COD), any increase in the cost of construction works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of tipping 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.

11.7.3 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.

11.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 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 time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

11.9 Termination Payment for Force Majeure Event

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

11.9.2 If Termination is on account of an Indirect Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in 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

11.9.3 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 Clause 12.4(f) as if it were a Designated ULB Default.

11.10 Dispute resolution

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

11.11 Excuse from performance of obligations

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

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

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

ARTICLE 11A

11A. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

11A.1 Suspension upon Concessionaire Default

Upon occurrence of an Event of Default - Concessionaire, 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 Fee including receiving of Tipping Fee and/ or 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 remedying.
- 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 Concessionaire shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties

expressly agree that the 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 – Concessionaire 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 Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance 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 Clause 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 Clause 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 Clause 11A.4, the Designated ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 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 Clause 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**11B. CHANGE IN LAW****11B.1 Increase in costs**

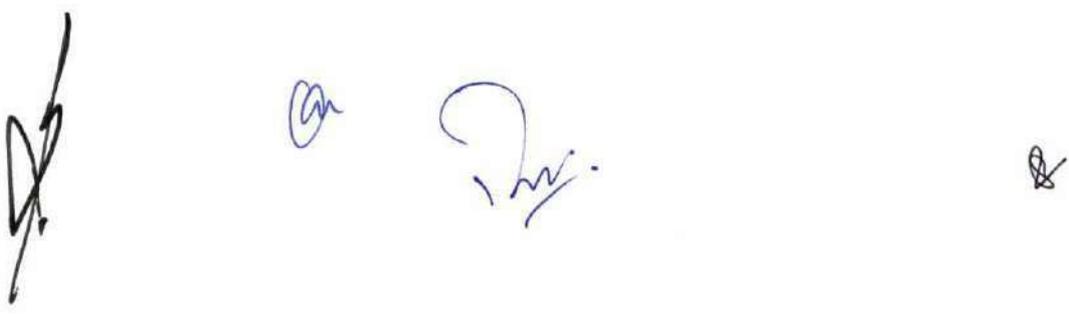
- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- (i) The enactment of any new Indian law including laws related to environment/emission/ discharge standards;
 - (ii) The repeal, modification or re-enactment of any Applicable Law;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

The image shows four handwritten signatures. On the left is a large, bold signature in black ink. To its right are three smaller signatures: one in blue ink, one in black ink, and one in blue ink. The signatures are scattered across the page, likely representing the parties mentioned in the text above.

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 Municipal Solid Waste 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, the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (vi) The Concessionaire has abandoned the Project;
- (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.

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 Grant and Tipping Fee 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 (within its jurisdiction and such delay and withholding is not attributable to Concessionaire or Force Majeure) 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 Clause 12.4(a)(ii) and Clause 12.4(a)(iii) herein below .

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

- (ii) If Designated ULB decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Conces-

sionaire. 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.

- (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 clause (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 is final, 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:

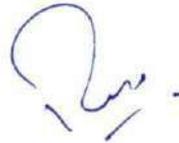
An amount equal to 90% of Debt Due less Insurance cover; provided that if any insurance claims forming part of the Insurance cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due

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 Clause 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.

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 Lender's Representative in terms of Article 13.1 is not acceptable to Designated ULB, Designated ULB may either substitute the Concessionaire with Nominated Company, identified by Designated ULB 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.

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.

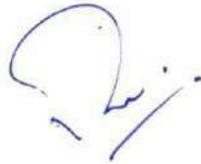
It is clarified that only the assets of the Concessionaire shall be taken over and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the Designated ULB. The Concessionaire's employees shall be the 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 Designated ULB shall upon fulfilment of the requirements of this Agreement issue a certificate (the "**Divestment Certificate**"), with a copy thereof endorsed to the Designated ULB, the Confirming Party and 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 Designated ULB pursuant hereto.



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 **clause (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 with the mutual consent of the Parties. 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 Gurugram but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(iii) Language

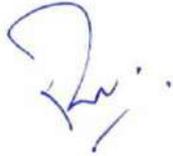
The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using Hindi/other than English as language shall supply 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.



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) 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

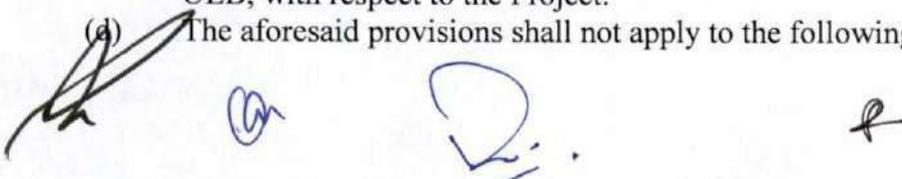
17 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

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 Project and to the Designated ULB a perpetual non-exclusive license to use such Proprietary Material. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the 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

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.



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



MOST URGENT
TIME BOUND

To,

1. All the Commissioners of Municipal Corporations in the State of Haryana.
2. All the District Municipal Commissioners in the State of Haryana.
3. All the Executive Officers/Secretaries of all the Municipal Councils/Committees in the State of Haryana.

Memo No: Tech/NGT/DULB/2022/ 5329

Dated: 13.09.2022

Subject: Directions under Section 5 of Environment (Protection) Act, 1986 for implementation of the Solid Waste Management Rules, 2016-regarding Fire Incidents at MSW Dumpsites.

In On the subject cited above.

2. Please find enclosed herewith the copy of directions received from Chairman, CPCB vide letter No. CP-99/143/2021-UPC-II-GO-CPCB-HO dated 26.05.2022 regarding implementation of the Solid Waste Management Rules, 2016-regarding Fire Incidents at MSW Dumpsites for information and further necessary action.
3. I have been directed by the competent authority to request you to make strict compliance of the directions and submit the action taken report to this office within 15 days positively.

Kindly treat this matter as the MOST URGENT and time bound.

DA: As Above.


Executive Engineer,
For Director, Urban Local Bodies,
Haryana, Panchkula.

CC:-

1. PS to W/PSULB for kind information of W/PSULB, Haryana.
2. PA to W/DULB for kind information of W/DULB, Haryana.
3. PA to W/CE for kind information of W/CE (HQ).



CP-99/143/2021-UPC-II-HO-CPCB-HO

May 26, 2022

To,

The Chairman
All SPCBs/ PCCs

Sub: Directions under Section 5 of Environment (Protection) Act, 1986 for implementation of the Solid Waste Management Rules, 2016-regarding Fire Incidents at MSW Dumpsites.

WHEREAS, the Ministry of Environment, Forest & Climate Change has notified Solid Waste Management Rules on April 08, 2016 which inter-alia state procedures for Solid Waste Management;

WHEREAS, in accordance with Rule 11(d) of the Rules, it is the duty of the State/UT Urban Development Department to ensure implementation of provisions of these Rules by all local authorities;

WHEREAS, in accordance with Rule 15(a) of the Solid Waste Management (SWM) Rules, 2016, the local authorities and Panchayats should prepare a solid waste management plan as per state policy and strategy on solid waste management within six months from the date of notification;

WHEREAS, in accordance with provision of Rule 15(zd) of the SWM Rules, 2016, the local authorities and Panchayats shall 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;

WHEREAS, in accordance with provision of Rule 16 (1a) of SWM Rules, 2016, the State Pollution Control Board or Pollution Control Committee shall enforce these rules in their State through local bodies and review implementation of these rules at least twice a year in close coordination with concerned Directorate of Municipal Administration or Secretary-in-charge of State Urban Development Department;

WHEREAS, MSW is being disposed of unscientifically in most cases which is one of the major causes for public nuisance due to frequent fire incidents, foul odour, generation of leachate and other adverse environmental impacts;

WHEREAS, waste disposed at dumpsites is prone to catching fire in view of inadequate waste management practices adopted at these sites;

WHEREAS, several fire incidents have been reported recently at Ghazipur & Bhalsawa dumpsites in Delhi, Manesar in Haryana and Ludhiana in Punjab;

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WHEREAS, fire incidents at dumpsites may lead to severe adverse impact on environment and related health hazards. People living in and around the dumpsites are likely to be affected due to the frequent outbreaks of fire

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WHEREAS, Hon'ble NGT in OA No. 286 of 2022, in reference to News item published in The Indian Express dated 20th April, 2022, titled "7 Charred to death in fire near Ludhiana dumpsite" issued the following Directions:

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"CPCB to collect information about garbage dumpsites from all States/ UTs in respect of at least Metro cities and issue statutory directions / guidelines for preventing such fires and handling them effectively if they take place, specifying serious consequences of delay in dealing with the issue, in violation of binding rules."

WHEREAS, as per the information provided by SPCBs/PCCs there are 3,184 dumpsites in the country, of which XXX are located in your State/UT;

WHEREAS, CPCB had issued Directions dated October 20, 2018 regarding fire at Bhalsawa site to North Delhi Municipal Corporation in which specific measures to be taken for prevention of fire at the dumpsites had been identified which amongst others included using Construction & Demolition waste material to immediately check fire, stopping dumping of fresh waste, installation of CCTV cameras, setting up of decentralized facilities for biodegradable waste;

WHEREAS, as per Guidelines for Disposal of Legacy Waste (Old Municipal Solid Waste) issued by CPCB, it is important to carry out comprehensive risk assessment and develop onsite emergency plan which should be kept handy prior to commencement of dumpsite bio-remediation & bio-mining;

WHEREAS, CPCB had issued following Directions dated January 27, 2021 to SPCBs/PCCs regarding biomining of legacy waste

- i. SPCBs/PCCs to provide complete list of legacy waste dumpsite in their States /UTs as per format enclosed
- ii. SPCBs/PCCs to ensure that necessary action for biomining and bio-remediation of these dumpsites is done by the concerned Local authorities in compliance with provisions of SWM Rules 2016
- iii. SPCBs/PCCs shall ensure that concerned Local authorities engaged in the biomining process of legacy waste follow procedures as per CPCB Guidelines for disposal of legacy waste with specific compliance to the following points:
 - a. Analysis of various screened fractions i.e. RDF, fine earth / bio earth etc. prior to its disposal / utilization
 - b. Preparation of action plan for utilization / disposal of screened fractions
 - c. Adequate provisions for leachate treatment
 - d. Maintenance of records / documents for disposal / utilization of the RDFs or fine earth and other material

- iv. SPCBS shall ensure that the local bodies prepare time targeted Action Plan for biomining / bio-remediation of these dumpsites in compliance with points listed above. The timeline as specified in SWM Rules and Hon'ble NGT Directions on the matter are to be adhered to for remediation of these sites
- v. SPCBs/PCCs to ensure that no fresh waste is disposed at these dumpsites and local authorities make proper arrangement for management of fresh solid waste
- vi. SPCBs/PCSS to ensure that at least one legacy waste dumpsite is remediated in their jurisdiction which can be considered as model for compliance for other legacy waste dumpsites in Non-Attainment Cities

WHEREAS Hon'ble NGT in its Order dated April 22, 2022 in O.A No. 288/ 2022 regarding News item published in the Times of India dated April 22, titled "Delhi: Another long-drawn effort to douse fire at Ghazipur landfill" has stated that dumpsite may be considered as isolated and vulnerable site which require On-site and Off-site Fire and other disaster management plans; **AND**

WHEREAS, CPCB made the following observations based on inspected various dumpsites, where bioremediation of legacy waste is being carried out:

- i. Fresh solid waste continued to be dumped at these dumpsites.
- ii. Fire incidents have been reported at locations where fresh waste is being dumped
- iii. Inaccessible slopes of garbage were observed
- iv. No standard operating plan in place for prevention and management of dumpsite fires
- v. Cause of fire incident reported is excess release of Methane (CH₄) gas due to anaerobic decomposition of the bio-degradable organic waste, high temperature and dry atmospheric conditions.
- vi. Partial fencing with barbed wire provided at the boundary observed.
- vii. Police patrolling the site not observed.
- viii. No fire tender observed at site.
- ix. Anti-Smog Gun have been installed which were not found in use; **AND**

NOW THEREFORE, in view of above and in exercise of powers vested under section 5 of Environment (protection) Act, 1986 to the Chairman, Central Pollution Control Board (CPCB) the following directions are issued for compliance;

- i. Provide updated information w.r.t Directions dated 27.1.21 regarding biomining issued to SPCBs/PCCs. It is to be ensured that updated information w.r.t at least all Metro cities is provided in accordance with NGT Directions
- ii. Direct State UDDs to conduct comprehensive risk assessment studies and accordingly prepare detailed On-site Emergency Plan for each dumpsite located in their jurisdiction addressing the following issues:
 - a. The onsite emergency plan to cover potential risks / emergencies due to fire, obnoxious / flammable emissions, odour, vector borne diseases,

- rodents, bird nuisance, seasonal affects i.e. summer / winter / monsoon (rainy season) and all other potential risks at the dumpsites.
- b. The onsite emergency plans to address the worst possible case scenarios preferably using appropriate risk assessment softwares covering any or all of the potential emergency issues / scenarios cited above.
 - c. The on-site emergency management plan to cover likely affected geographical area including population, flora & fauna in and around the dumpsites
 - d. The on-site emergency plan to contain detailed remedial measures both hardware and software based for mitigating various emergency situations, which should finally be available with respective control rooms and on-site emergency notice boards.
- iii. To direct District Collector or District Emergency Authority designated by the State Government for integrating such (dumpsites) On-site Emergency Plans with the existing Off-site District Disaster Management Plans in their respective Districts, prepared by the Local Authorities in compliance with Rule 14 of The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989
 - iv. The State / UT Authorities to prepare the on-site & off-site (or update off-site) emergency management plans preferably through an expert agency on the subject.
 - v. The following interim measures to be implemented on priority till the time On-site/Off-site Emergency Plans are prepared and implemented.
 - a. **Disposal of Waste:** Fresh waste not to be disposed at the dumpsite where bio-remediation is being undertaken. Organic waste from slaughter house, fish market etc., industrial waste not to be disposed at the dumpsite. It is to be further ensured that industrial waste / E-waste / lithium battery is not dumped at the site. Waste that is being unloaded at the site should be examined visually for potential fire sources fire sources when located, should be neutralized with cover material immediately. Emergency tipping area to be provided to set aside from the immediate working area where incoming loads of material known to be on fire or suspected of being so can be deposited, inspected and dealt with. Adequate compacting of waste to be done to minimize formation of air or methane pockets which can lead to subsurface fire at site
 - b. **Monitoring at dumpsites:** Methane Gas Detectors (on downwind side) to be installed at site so that area with high methane concentration can be identified and preventive actions be undertaken. Further temperature at windrows to be monitored with non-contact infrared thermometer (as used for monitoring human body temperature under COVID circumstances) and records be maintained for any major deviations. The temperature is to be in the range of 35°C to 59°C. Treated leachate / water to be sprayed on the waste when rise in temperature is observed

at the bioremediation site. Suitable mechanism to be in place. Installation of CCTV cameras at the site and provision of fencing & frequent patrolling to be done for checking unauthorized entry at dumpsite

- c. **Arrangements for Fire Extinguishing:** Arrangements for adequate storage of sand / chemical fire extinguishing medias such as foam or powder at site to be made to douse fire in case a fire incident is reported. Usage of water for dousing fire to be avoided. Isolation and allowing rapid natural burnout or smothering with soil to be done for dousing dumpsite fires. Dedicated fire tenders (preferably chemical extinguishing media) and adequate fire safety measures are to be deputed, specifically during summer season when dumpsites fire is more likely to take place. All mobile equipment or vehicles should be fitted with fire extinguisher and spark arrester
- d. **Health & Safety of Workers:** Fire protection measures and safety equipment to be provided to all workers at the site and checked before entry to the dumpsite. Workers to be trained for detection of fire and necessary action to be taken in case of fire. Periodic training of workers be conducted in Safe handling of Waste, PPE's, Health & Safety issues etc
- e. **Mock Drills & safety audits:** Periodic mock drills to be conducted to prevent fire accidents at dumpsites. Quarterly, Fire Safety and Hazardous Emissions Audits to be conducted.

SPCBs/PCCs are hereby directed to submit action taken report within 15 days for Action Point listed at (v) above. Action taken report for Points (i-iv) to be provided within thirty days of receipt of these Directions


(Naresh Pal Gangwar)
Chairman

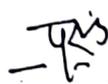
Copy to:

1. **Additional Secretary (CP Division)**
Ministry of Environment, Forests & Climate
Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi - 110003

: for information please

2. **DH-IT Division, CPCB**

: for uploading on website please


(Prashant Gargava)
Member Secretary

o/c