

PROJECT IMPLEMENTATION AGREEMENT

BETWEEN

GOVERNMENT OF STATE OF _____ (the "State Govt.")

AND

[] MUNICIPAL CORPORATION / MUNICIPALITY (the "MC 1")

AND

[] MUNICIPAL CORPORATION / MUNICIPALITY (the "MC 2")

AND

[NAME OF THE COMPANY] (the "Concessionaire")

For

**Design, Financing, Development, Construction, Operation, Maintenance, Management and Transfer of a
Regional Municipal Solid Waste Facility in [], State of [_____]**

THIS AGREEMENT made this__ day of_____ 2010 at []

BETWEEN

The Government of State of _____, the acting through [*****] , (hereinafter referred to as “**State Govt.**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the FIRST PART

And

[] **Municipal Corporation / municipality**, a municipal corporation / municipality established under the [.....], and having its office at _____, acting through [Name of the Commissioner], the Commissioner (hereinafter referred to as “**MC 1**”), which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the SECOND PART

AND

[] **Municipal Corporation / municipality**, a municipal corporation / municipality established under the [.....] and having its office at _____, acting through [Name of the Commissioner] , the Commissioner (hereinafter referred to as “**MC 2**”), which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the THIRD PART

MC 1 and MC 2 are hereinafter referred to as the “Participating ULB” which will have the same meaning given to it as provided in Clause 1.1 of this Agreement.

And

[**name of the SPV incorporated by the Successful Bidder**], a company incorporated under the Companies Act, 1956 and having its registered office [**please insert the address**] (hereinafter referred to as “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its associate/group companies, successors and assigns) of the FOURTH PART

State Govt., the Participating ULBs and the Concessionaire are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS

- A. The Municipal Solid Waste (Management and Handling) Rules, 2000 (the “MSW Rules”) issued by the Ministry of Environment and Forests, Government of India under the Environment (Protection) Act, 1986; impose a duty on each municipality in India to undertake scientific collection, segregation, storage, transportation, processing and disposal of municipal solid waste (the “MSW”) generated within its jurisdiction.
- B. These municipal corporations / municipalities in the State of _____ currently dispose the collected MSW at the designated dumping sites, and consequently there is no scientific treatment and disposal of the MSW generated within their respective jurisdictions. The Government of (the “State Govt.”) recognizes that the existing state of MSW management systems in the State are raising a public health and sanitation issues, which need to be addressed in public interest. State Govt. also recognizes in some cases the issues such as non- availability of land, lack of technical know-how and financial resources further creates bottlenecks in the effective implementation of scientific disposal of MSW.
- C. Therefore, in furtherance of public interest and with the aim of improving standards of public health and sanitation in the State, the State Govt. has now decided to adopt and implement this Agreement to provide a facilitative framework for the development of a regional municipal solid waste management program. Therefore, the municipal corporations in the State may use this regional solid municipal waste management program for the scientific treatment and disposal of the MSW generated within their respective jurisdictions.
- D. A regional municipal solid waste facility ensures that the various municipal corporations / municipalities are able to efficiently use and share the resources such the technology, the facility and the landfill site. Hence this Agreement.
- E. In light of the above, State Govt. has decided to provide a suitable land of approximately [please specify the land area in acres] at [please specify the place in the State of] for the design, finance, construction, development, operation and maintenance (and transfer) of a regional municipal solid waste management facility (including processing and land filling) through the Concessionaire (the “**Project**”).
- G. The Project is being implemented through a special purpose vehicle incorporated by a private developer selected by the State Govt. after a competitive bid process (the “Concessionaire”). A Concession Agreement would be entered between State Govt. and the Concessionaire and shall form an integral part of this Agreement.

- H. It is also envisaged under the aforesaid Project that each of the municipal corporations / municipalities participating in the Project shall also be required to sign and execute an agreement providing for supplying an assured quantity of MSW and make tipping fee payments thereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1.1 Definitions

In this Agreement, unless repugnant to the context or inconsistent therewith, the following words, phrases and expressions shall bear the meaning hereinafter respectively assigned to them:

“Additional Major Works” means the works that may be required to be performed by the Concessionaire under Clause 12.5 of this Agreement;

“Additional Minor Works” means the works that may be required to be performed by the Concessionaire under Clause 12.4 of this Agreement;

“Agreement” means this agreement between State Govt., the Participating ULBs and the Concessionaire, including its schedules and annexures and includes any amendments made hereto in accordance with the provisions hereof.

“Applicable Approvals” means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required by Applicable Laws, to be procured by either State Govt. or by Concessionaire in connection with the implementation of the Project.

“Applicable Laws” means all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which have the force of law, in force and effect, 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 subsistence of this Agreement and applicable to the Project.

“Book Value” shall have the same meaning as provided under Clause 35.4(d) of this Agreement;

“C&D Debris and Silt Waste” means solid waste resulting from construction, remodeling, repair, renovation or demolition of Structures or from land clearing activities or trenching or de-silting 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. C&D debris include, but are not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no

hazardous materials, pipes, steel, aluminum and other non-hazardous metals used in construction of structures.

“Change in Law” shall have the same meaning as provided under Clause 35.6 of this Agreement;

“Concession” means collectively all the rights granted by State Govt. to Concessionaire under this Agreement with respect to developing, implementing, constructing, operating and maintaining the Regional MSW Facility for the management, processing and disposal of the MSW generated from within the MSW Supply Area, subject to all the terms, conditions, covenants and obligations of this Agreement.

“Concession Agreement” means the agreement governing the terms and conditions of the Concession granted to the Concessionaire and is provided as Schedule I to this Agreement.

“Construction Commencement Certificate” is the certificate issued by the Project Engineer under Clause 11.1 of this Agreement;

“Concessionaire Delivery Schedule” means the delivery schedule submitted by the Concessionaire and is attached as Schedule VI B to this Agreement.

“Construction Conditions” means in relation to the Regional MSW Facility, means the minimum conditions that are required in order to ensure that the construction of the Regional MSW Facility is done in accordance with Good Industry Practice, and which are specified in the Standards and Specifications as provided under this Agreement.

“Construction Period” means in relation to the Project a maximum period of [●] months from the Effective Date (this Construction Period includes the Testing Period) within which the Concessionaire shall ensure that the construction of the Regional MSW Facility is completed and the Regional MSW Facilities can be used for the treatment and disposal of the MSW in accordance with the terms and conditions as provided in the Concession Agreement.

“Dead Remains” means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants).

“Development Costs” shall mean the aggregate of the amounts spent by Concessionaire in undertaking activities in relation to the implementation of the Project till the date of commissioning which amounts will include but not be limited to: (a) expenditure incurred by Concessionaire for and in relation to the Project which have been charged/assigned to Concessionaire, (b) expenditure incurred in relation to preparation of all reports, studies and other papers relating to the Project and the Regional MSW Facilities, (b) expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Approvals, (c) fees of all consultants, experts, accountants, lawyers, lenders and other independent persons hired in relation to the Project, (d) costs of maintaining offices of Concessionaire that are attributable to the Project, (e) any payments made to Participating ULBs or on behalf of the Participating

ULBs in relation to the Concession or the Project and (f) costs of any contractors appointed by Concessionaire in relation to the implementation of the Project.

“Encumbrances” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the Site.

“Effective Date” means the date of the obligations of Concessionaire become binding and effective, and all the conditions precedent specified are either satisfied or waived by the Concessionaire.

“Excluded Waste” means waste material of the nature that the Regional MSW Facilities are not designed or authorised to receive, manage, process and dispose which includes (i) chemical waste, (ii) Hazardous Waste, (iii) Industrial Waste and (iv) Untreated bio-medical waste (iv) other waste as specified

“Force Majeure Event” means any event which prevents or delays the performance of the obligations under this Agreement in whole or in part by either Party by reason of public agitation, civil disturbance, riots, war, hostilities, acts of public enemies, civil commotion, sabotage, fire, flood, earthquake, epidemics, explosion, strikes, lock-outs, acts of God, acts on orders of Government/authorities, rules and regulations or delay/abandonment due to order of the Court and/or any other cause beyond the reasonable control of the Party affected.

“Financing Documents” or “Financing Agreements” means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Regional MSW Facility or any part thereof, for securing the debt provided.

“State Govt.” means Government of [.....].

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Concession 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 facilities similar to the Regional MSW Facilities to be constructed, operated and maintained pursuant to the Project.

“Hazardous Waste” shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989.

“Landfill Site” or “Landfill” means the landfill site for disposal of solid waste admeasuring [●] located within the Site, the exact location of which is indicated in the map in Schedule IV.

“Lease Agreement” means the lease agreement provided by State Govt. pursuant to which State Govt. shall lease the Site to the Concessionaire, the draft of which is provided as Schedule VII;

“**Lenders**” mean the Persons that provide the financing for the Projects pursuant to Financing Agreements.

“**MC**” means the Municipal Corporation / municipality of _____. “**Manual of Municipal Solid Waste Management**” means the Manual prepared and published by CPHEEO, Ministry of Urban Development in 2000, which gives elaborate guidelines on planning, implementation and operation and maintenance of MSW facilities with a view to fulfill the requisite obligations of MSW Rules – 2000

“**MC 1**” means the [] Municipal Corporation / municipality.

“**MC 2**” means the [] Municipal Corporation / municipality.

“**MSW**” or “**Municipal Solid Waste**” includes commercial and residential wastes generated in municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes.

“**MSW Supply Agreement**” means the agreement signed between the Participating ULBs and the Concessionaire whereby each Participating ULB agreed to transport MSW from their respective jurisdiction at their own cost, and the Concessionaire agrees to transport the MSW thus provided by the Participating ULBs to the Site for processing and disposal and is attached as Schedule II to this Agreement.

“**MSW Rules**” means The Municipal Solid Wastes (Management and Handling) Rules, 2000 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or reenactments thereof, for the time being in force.

“**Material Adverse Effect**” means a material adverse effect on (a) the ability of either Party to exercise any of the rights to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement; and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“**Milestones**” means the milestones for construction as provided by State Govt. of this Agreement and it shall form a part of the Standards and Specifications that are required to be strictly adhered to by the Concessionaire for the purpose of the implementation of the Project.

“**Minimum MSW Quantity**” means [●] metric tons ([] MT) of MSW per day, (with a permitted variation level of plus minus ten percent), which is the minimum quantity of MSW that each Participating ULB is

required to deliver to the Concessionaire at its respective Transfer Station, in accordance with the MSW Supply Agreement.

“Operating Conditions” means, in relation to a Regional MSW Facility, the minimum conditions that are required in order to ensure the due performance of the Regional MSW Facility.

“Operations Date” means the date notified by Concessionaire as the date on which the Regional MSW Facility is ready to commence commercial operations after successfully completing the Construction Period.

“Operations Period” means [●] years from the Operations Date till the end of the Term or any other such period as extended by State Govt. in accordance with the terms and conditions of this Agreement.

“Organic Waste” means such type of waste that can be degraded by micro-organisms, but shall not include Excluded Wastes.

“Partial Readiness Certificate” means a certificate issued by the Project Engineer under Clause 11.4 (b) of this Agreement;

“Participating ULBs” means the MC 1 and the MC 2 which are party to this Agreement, and include any other urban local body which may at a later date become party to the this Agreement by signing the Participation Deed.

“Participation Deed” means the deed of adherence provided in Schedule [V] of this Agreement which shall be executed by those ULBs, apart from MC 1 ad MC 2, which may be permitted to participate in the Project by the State Govt. in the future.

“Performance Guarantee” means an irrevocable and unconditional bank guarantee by a nationalized/scheduled bank, payable at [●] in the name of [●]; as a security for performance of the obligation of the Concessionaire to implement the Project

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

“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.

“Processing Facilities” means the individual facilities established at the Site as a part of the Project to process the MSW, including Compost, RDF, Waste-to-Energy, integrated facilities...etc *[Note – this shall be modified for each specific Project to install Compost Plant, RDF Plant...etc.]*

“Products” means any product that is produced or obtained after the processing and/or disposal of MSW under this Project including but not limited to the Residual Inert Matter.

“Progress Certificate” means the certificate issued by the Project Engineer under Clause 11.3 (c) this Agreement.

“Project” means the project for enabling the processing of MSW at [●] and for that purpose to design, finance, develop, construct, operate, maintain and manage the Regional MSW Facility under and in accordance with the terms and provisions of this Agreement.

“Project Engineer” shall mean a reputed Person appointed by the PMC for overall supervision and monitoring of compliance by the Concessionaire with its duties, responsibilities, services and activities during the Construction Period and the Operations Period of the Project.

“Project Monitoring Committee” or “PMC” means the committee established by the State Govt. as described in Clause 9.1.

“Site” means the land admeasuring [●] acres located at [●] (more particularly described in Schedule IV hereunder and shown delineated by red color boundary line on the Site plan annexed hereto

“Readiness Certificate” means the certificate issued by the Project Engineer under Clause 11.4(d) of this Agreement;

“Receipt Point” means the place within the Site, specified in writing by the Concessionaire and marked on a layout plan by the Concessionaire on or before the Operations Date, at which the Concessionaire shall bring the MSW received from Transfer Stations / from the respective municipalities as the case may be; and shall construct a Weighbridge for measuring the MSW received in accordance with the terms of this Agreement.

“Regional MSW Facility” means the integrated MSW management, processing and disposal facility including: (i) the Site, (ii) the individual Processing Facilities (Compost, RDF...etc) at the Site, (iii) Receipt Point, (iv) Weighbridge at the Receipt Point, and (v) the Landfill.

“Residual Inert Matter” means the waste matter obtained after processing of the MSW by each of the relevant Regional MSW Facilities.

“Rejected Waste” means such components of a consignment of MSW delivered by the Participating ULBs that are refused to be accepted by Concessionaire, either at the time of delivery or at any time thereafter, upon inspection of the MSW delivered or being delivered, as the case may be, on the ground that they are either: (a) Dead Remains, (b) C&D Debris, (c) are of a composition that would be detrimental to the Operating Conditions or cause damage or adversely impact the efficient operation or maintenance of the Regional MSW Facility, (d) they have excessive moisture, (e) they are not in accordance with the composition of MSW as defined in this Agreement, (f) they are of a quantity that is below the Minimum MSW Quantity, or (g) they are part of a consignment of MSW that is sought to be delivered by a Participating ULB when it has been notified that the Regional MSW Facility is undergoing

repair or maintenance. Rejected Waste may include but are not limited to Excluded Wastes that may form part of a consignment of MSW.

“Solid Waste” means wastes generated from commercial, agricultural, industrial and domestic activities within the jurisdiction of respective Participating ULBs that are in either solid or semi-solid form but shall not include the Excluded Wastes.

“Standards and Specifications” means the standards, specifications, terms and conditions which must be strictly adhered to by the Concessionaire in relation to the implementation of the Project and shall include the following: (i) Construction Conditions; (ii) Operating Conditions; (iii) project plan (if any submitted by the Concessionaire); (iv) Milestones; and (v) any other condition that may be specified by State Govt. necessary for the effective implementation of the Project; and such Standards and Specifications shall be provided in detail in Schedule III of this Agreement.

“Tipping Fee” is the payment made by the Participating ULBs as a consideration to the Concessionaire for the services provided under the Project;

“Technology” means the relevant technology for the disposal of MSW that the Concessionaire may, at its discretion, deem fit to use in the Regional MSW Facilities from time to time.

“Term” shall have the meaning as specified in Clause 2.5 of this Agreement.

“Termination” means the early termination of this Agreement pursuant to Termination Notice given by either Party to the other Party or otherwise in accordance with the provisions of this Agreement but shall not, unless otherwise requires, include expiry of this Agreement due to the expiry of its Term.

“Termination Notice” means the termination notice given pursuant to Clause 30.3 (d).

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Payment” means the payments payable pursuant to Clause 30.3(g).

“Testing Period” means a maximum period of [3] months within which any performance tests, trial runs etc. shall be conducted at the Regional MSW Facilities so as to ensure that the Project is fit and ready to be used for the treatment and disposal of MSW in accordance with the terms and conditions as provided in this Agreement.

“Testing Quantity” means the quantity of MSW supplied to the Concessionaire by the Participating ULBs for the purposes of performing tests and performance trial runs during the Testing Period.

“Transfer Stations” means the place specified in the MSW Supply Agreement by each Participating ULBs at which the respective Participating ULB shall be required to deliver MSW, and from where the Concessionaire is required to collect the MSW and transport it to the Site and it shall include a Weighbridge as provided under Section 15 of this Agreement.

“ULB Delivery Schedule” means the delivery schedule provided by the Participating ULBs and is attached as Schedule VI A to this Agreement;

“Vacant Possession” means delivery to the Concessionaire, of possession of the land constituting the Site free from all Encumbrances and the grant of all easementary rights and all other rights appurtenant thereto.

“Variation” means the additional works that may be required to be carried out by the Concessionaire under Clause 12.1(a) of this Agreement;

“Variation Order” means the order as provided under Clause 12.2 (f) of this Agreement;

“Weighbridge” means the electronic weighbridge installed by the Concessionaire at the (i) Transfer Stations and (ii) Receipt Point at the Site and capable of performing the operations specified in Section 15 of this Agreement.

1.2 Interpretation

- (a) The words, phrases and expressions defined hereinabove in Clause 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 Clause 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;
- (b) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (c) the words “include” and “including” are to be construed without limitation;
- (d) the headings of the Clauses in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- (e) the Schedules and Annexures to this Agreement form an integral part of this Agreement and shall be interpreted accordingly.

2 THE PROJECT STRUCTURE

2.1 Framework of this Agreement

- (i) The Parties hereby agree that this Agreement establishes a binding framework for the implementation of the Project between the Parties for the development and implementation of a regional solid waste management facility.
- (ii) The binding principles to be used for the purposes of the implementation of the Project are:
 - (a) State Govt. shall provide land for the purposes of the implementation of the Project;
 - (b) the Participating ULBs: (i) shall have an independent access to, and (ii) can use the Regional MSW Facility only after signing and executing this Agreement;
 - (c) the Participating ULBs shall also sign and execute a MSW Supply Agreement to ensure that the minimum quantity of MSW required for the effective operation of the Regional MSW Facility is provided to the Concessionaire;
 - (d) the Participating ULBs shall pay a Tipping Fee for use of the Regional MSW Facility;
 - (e) the Concessionaire shall design, develop, construct, operate and manage the Regional MSW Facility in accordance with the Concession Agreement;
 - (f) the Regional MSW Facility, and any part of the Project shall vest unconditionally with State Govt.;
 - (g) the Participating ULBs shall be responsible for the collection and transportation of the MSW generated within their respective jurisdictions;
 - (h) any municipal authority/corporation/ULB other than the Participating ULBs shall sign a Participation Deed before using the Regional MSW Facility or any part of the Project; and
 - (i) the termination of the Project, exit of any Participating ULB, exit of the Concessionaire, and the termination of Concession Agreement, MSW Supply Agreement, Lease Agreement and the Participation Deed shall be subject to overall supervision of State Govt. in accordance with the terms and conditions of this Agreement.

2.2 Regional MSW Facility

- (i) The Project is for the design, finance, construction, development, operation, management and maintenance of a Regional MSW Facility at the Site for the entire Term.
- (ii) Notwithstanding anything contained in this Agreement, no Party shall modify, alter or in any manner change the operation and use of the Regional MSW Facility at any time during the Term.

It is hereby clarified that the Regional MSW Facility shall only be used as a Regional MSW Facility throughout the Term.

2.3 Common Commitment and the Executing Authority

- (i) The executing authority for the development and the implementation of the Project is State Govt..
- (ii) The Participating ULBs are committed to the development of a sustainable regional solid waste management project, and for this purpose: (i) provide all assistance and co-ordination to State Govt. and the Concessionaire; (ii) agree to the supervision of the executing authority for the purposes of the implementation of the Project, and the terms and conditions of this Agreement and any other agreement signed and executed in relation to this Agreement; and (iii) create awareness regarding the regional solid waste management program in the State.

2.4 Site

A. Vesting of the Site

- (i) State Govt. shall lease the Site to the Concessionaire at a nominal lease rental of Re. [1/- per square meter] per annum for the Term, and State Govt. shall execute the Lease Agreement with Concessionaire together with the execution of this Agreement.
- (ii) The lease rental shall remain fixed for the entire Term and shall not be subject to any escalation. The Concessionaire shall have the full right to regulate the entry into, possession and use of the Project Site.
- (iii) State Govt. hereby agrees that the land constituting the Site shall be vested with Concessionaire under the Lease Agreement, only for (a) the purposes of the development of the Regional MSW Facility; (b) enabling the implementation of this Agreement; and (c) treatment and scientific disposal of MSW generated within the jurisdiction of the Participating ULBs on a regional level.
- (iv) State Govt. hereby assures and represents to Concessionaire that the vesting of the Site with Concessionaire shall be irrevocable for the Term and cannot be terminated earlier than the expiry or Termination of this Agreement and shall be co-terminus only with the expiry or Termination of this Agreement.

Provided, *however*, State Govt. shall have title and ownership rights over the Site at all times during the Term.

B. Use of Site

- (i) The Concessionaire shall not use the Site for any purpose other than for the purpose of design, financing, developing, constructing, operating and maintaining the Regional MSW Facilities, and undertaking other activities to implement the Project pursuant to this Agreement.
- (ii) The Site shall only be used for the purposes of development and implementation of a Regional MSW Facility throughout the Term.

2.5 Term

The rights and obligations of the Parties granted under this Agreement shall be valid for the Term and shall upon the expiry of the Term or upon earlier Termination of this Agreement.

State Govt. may agree to renew the terms and conditions of this Agreement, after the expiry of the Term for such other period as it deems fit and on such terms and condition as may be decided at the point of such renewal.

2.6 Grant of the Concession

Subject to and in accordance with the terms and conditions set out in this Agreement and the Concession Agreement, State Govt. irrevocably grants to the Concessionaire, and the Concessionaire hereby accepts, exclusive right and authority, during the Term, to treat and dispose of the MSW supplied by the Participating ULBs and for that purpose to develop, establish, finance, design, construct, operate and maintain the Regional MSW Facility at the Site; and in addition to the other rights granted under this Agreement:

- (a) to design, finance, construct and develop the Regional MSW Facility so that the MSW supplied by the Participating ULBs is treated and disposed at the Regional MSW Facility in accordance with the Standards and Specifications;
- (b) to achieve Financial Closing;
- (c) to ensure that the Regional MSW Facility is ready for operation and use by the Operations Date;
- (d) to construct Transfer Stations at identified points in consultation with State Govt. and the ULBs;
- (e) receive MSW at the Transfer Stations from each Participating ULBs and transport the same to the Site;

(Note: In case of non-availability of site for development of transfer station, the above two points may be changed to reflect the arrangement for delivery of waste to the concessionaire.)

- (f) to assess, inspect and measure the quantity and quality of the MSW supplied by the Participating ULBs at the Receipt Point at the Site;
- (g) to identify the Rejected Waste; and either (i) return such Rejected Waste to the Participating ULBs, or (ii) dispose the Rejected Waste;
- (h) to receive, store, process, treat and dispose the MSW to dispose the Residual Inert Matter in the Landfill Site;
- (i) to sell or otherwise dispose of the Products from the treatment and processing of the MSW; and
- (j) operate and maintain the Regional MSW Facility from the Operations Date in accordance with the Standards and Specifications till the end of the Term;
- (k) to receive all the fiscal incentives and benefits accruing in respect of or on account of the Project;
- (l) exclusively hold, possess, control the Site in accordance with the terms of the Lease Agreement, only for the purposes of the due implementation of this Project; and
- (m) to transfer the Regional MSW Facility to State Govt. at the end of the Term or on Termination, in accordance with the provisions of this Agreement.

2.7 Use of Suitable Technology

- (i) The Concessionaire shall use the technology that has been approved by State Govt. and is a part of the project plan in accordance with Clause 31.C;
- (ii) The Concessionaire shall have the right to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Regional MSW Facility and the requirements of the Project, provided State Govt. and the Participating ULB have been given a notice in relation to such modification in writing 7 (seven) days before the use of such modified technology at the Regional MSW Facility for the purposes of treatment and disposal of the MSW; and prior re-approval from the competent authority has been obtained for the change in technology.

2.8 Sale and Marketing of Products from Processing MSW

State Govt. hereby confirms that the Concessionaire shall be free to sell or otherwise dispose of any Product without any interference or requirement of any additional reporting, clearance or approval in this

regard from State Govt. The Concessionaire shall have the right to sell or otherwise dispose such products, at such price and to such persons and using such marketing and selling arrangements as it may deem appropriate.

2.9 Participation Deed

If any ULB/municipal corporation/municipal authority in the State other than the Participating ULB (the "Additional ULBs") desire to use the Regional MSW Facility and the services provided under the Project; such Additional ULB may be permitted to use the Regional MSW Facility and the services provided as a part of the Project, after signing the Participation Deed as provided in Schedule V of this Agreement.

3 CONDITIONS PRECEDENT

3.1 Conditions Precedent

The terms and conditions of this Agreement are valid and binding from the Effective Date *provided however*, the following condition precedents are satisfied:

A. State Govt. Condition Precedent

The following conditions precedent shall be satisfied by State Govt.:

- (a) shall at its own cost and expense, vest with the Concessionaire the complete and lawful right, title and Vacant Possession of: (a) the Site without any Encumbrances in accordance with the Lease Agreement; and (b) the required right of way to undertake the development of the other Regional MSW Facilities; and
- (b) shall ensure that the Concession Agreement is signed within [months] of signing of this Agreement; and
- (c) shall ensure that the MSW Supply Agreement is signed within [months] of signing of this Agreement;
- (d) shall provide security over grant funds as provided in Clause 19 of this Agreement; and
- (e) shall ensure that all Applicable Approvals required are procured by the Participating ULBs for enabling the commencement and implementation of the Project.

B. Participating ULBs Condition Precedent

The following conditions precedent shall be satisfied by the Participating ULBs

- (a) shall sign the MSW Supply Agreement within [x months] of the signing of this Agreement;
- (b) shall create an escrow account for the payment of the Tipping Fee; and
- (c) shall ensure that all Applicable Approvals required are procured by the Participating ULBs for enabling the commencement and implementation of the Project.

C. Concessionaire's Condition Precedent

The following condition precedent shall be satisfied by the Concessionaire:

- (a) shall submit a project plan within [x days] of signing of this Agreement;
- (b) shall submit a Performance Guarantee to State Govt.;
- (c) shall ensure that all Applicable Approvals required are procured by the Concessionaire for enabling the commencement and implementation of the Project;

3.2 Non-Compliance with Conditions Precedents

It is agreed that, if the above preconditions are not met within a maximum period of 90 (ninety) days from the Effective Date:

- (i) in relation to the condition precedent to be fulfilled by State Govt., the Concessionaire shall not be liable for the delay in implementation of the Project, and the consequent delay in achievement of the Operations Date,
- (ii) in relation to the condition precedent to be fulfilled by the Participating ULB, and there is a consequent delay in the achievement of the Operations Date then the Participating ULB shall pay in the escrow account an amount equivalent to the Tipping Fee payable for each day of such delay; and
- (iii) in relation to the condition precedent to be fulfilled by the Concessionaire then State Govt. shall have the option of either: (a) extending the time period for satisfaction of the conditions precedent by the Concessionaire by another [●] months or (b) terminating this Agreement. In the event that State Govt. in its sole discretion decides to extend the time period for satisfaction of the condition precedent, the Concessionaire shall have no right for the payment of Tipping Fee for the days for which the extension has been granted.

Provided, *however*, in the event that the Concessionaire is unable to fulfill the condition precedents within the extended time period, State Govt. may invoke the Performance Guarantee and Terminate the Agreement.

- (iv) the Parties may waive the penalties imposed under Clause 3.2(ii) & (iii) above and extend the period of compliance for fulfillment of the condition precedent by mutual consent.
- (v) In the event there is failure or delay in fulfillment of the conditions precedents due to the occurrence of Force Majeure Event, State Govt. shall return the Performance Security without invocation, set off, and any deductions.

4. FINANCIAL CLOSING

- 4.1 The Concessionaire shall ensure that its obligations in relation to obtaining required finances (whether in form of debt and equity) for the purposes of implementation of the Project is fulfilled within a maximum period of three (3) months of signing and execution of this Agreement (the “**Financial Closing**”).
- 4.2 In the event that the Financial Closing is not achieved within the stipulated time period State Govt. may either: (i) Terminate this Agreement; or (ii) extend the time period to achieve the Financial Closing for a period as it deems fit.

Provided, *however*, the Term shall not be extended proportionately due to the delay on part of the Concessionaire in achievement of the Financial Closing.

- 4.3 State Govt. confirms that it would cooperate with the Concessionaire in enabling the Financial Closing of the Project including entering into any substitution agreement that may be required by the Lenders, *provided however*, the title to the Site and/ or the Regional MSW Facilities shall always remain vested with State Govt..

5. OBLIGATIONS OF THE PARTICIPATING ULBs BEFORE THE OPERATIONS DATE

- 5.1 The Participating ULBs shall treat and dispose the MSW generated in their respective jurisdictions in a manner as they deem fit before the Operations Date of the Regional MSW Facility.

It is hereby clarified that the Concessionaire shall not be responsible in any manner for the treatment and disposal of the MSW generated within the jurisdiction of the Participating ULBs before the Operations Date.

- 5.2 The Participating ULBs shall supply Testing Quantity of MSW before the Operations Date for (i) conducting tests and (ii) performance trials at the Regional MSW Facility.

6. COLLECTION AND TRANSPORTATION OF MSW

A. Collection and Transportation of MSW to the Transfer Stations

- 6.1 The Participating ULBs shall be responsible for undertaking collection (including segregation if any done at present) of MSW generated within their respective jurisdiction in a manner as per the mutual agreement between the two parties.

Provided, *however*, a Participating ULB shall be under no obligation to segregate waste (other than if and as agreed to between the parties) and shall collect the MSW generated within their jurisdiction in a manner as per the mutual agreement between the two parties.

- 6.2 The Participating ULBs shall transport at their cost and expense the MSW generated within their jurisdiction to the identified Transfer Stations.

(Note: In case of non-availability of site for development of transfer station, the above point may be changed to reflect the arrangement for delivery of waste to the concessionaire.)

Provided, *however*, the Participating ULBs shall ensure the Minimum MSW Quantity is supplied on each day of the Term at the respective Transfer Stations in accordance with the ULB Delivery Schedule as provided in Schedule [] of this Agreement. The ULB Delivery Schedule shall be read as an integral part of the MSW Supply Agreement and this Agreement. A copy of the approved Concessionaire Delivery Schedule shall be notified to the Project Monitoring Committee by the Concessionaire within [x days] of the grant of approval, by the ULBs.

- 6.3 No modification or change can be made by the ULB to the ULB Delivery Schedule without a prior written notice to the Concessionaire [x days] before such change or modification is proposed to be implemented in relation to the ULB Delivery Schedule.

- 6.4 It is understood that the Participating ULBs may engage suitable contractors for discharging their obligations hereunder in regard to collection, transport and delivery of MSW generated within their jurisdiction to the Transfer Stations. The Participating ULBs shall, however, ensure that all the terms, conditions and obligations in regard thereto are duly carried out and fulfilled by such third parties, including those having existing collection and transport contracts with the Participating ULBs, if necessary by suitably amending the existing contracts/arrangements. Notwithstanding the engagement of such third parties, the Participating ULBs shall continue to be primarily responsible to the Concessionaire for the due performance and discharge of all such terms, conditions and obligations and

shall keep the Concessionaire fully indemnified against any delay or defaults on the part of such third party as also against all damages, losses, costs and expenses caused to the Concessionaire as a result of such delay or defaults.

B. Collection and Transportation of MSW to the Regional MSW Facility

6.5 The Concessionaire shall be solely and exclusively responsible for the transportation of the MSW supplied by the Participating ULBs from the Transfer Stations to the Receipt Point at the Site or any other part of the Regional MSW Facility as designated from time to time based on the actual operation of the Regional MSW Facility and/or the requirement of the Project.

6.6 The Concessionaire shall submit a Concessionaire Delivery Schedule for approval to the Participating ULB in accordance with the MSW Supply Agreement within [x months] of Construction Date.

6.7 The Participating ULBs shall modify if required the submitted Concessionaire Delivery Schedule and provide an approved Concessionaire Delivery Schedule within [x days] of submission of such schedule. Once the Concessionaire Delivery Schedule is approved it shall be treated as an integral part of the MSW Supply Agreement and this Agreement. A copy of the approved Concessionaire Delivery Schedule shall be notified to the Project Monitoring Committee by the Concessionaire within [x days] of the grant of such approval.

6.8 No modification or change can be made by the Concessionaire to the Concessionaire Delivery Schedule without a prior written approval of the Participating ULBs.

6.9 It is understood that the Concessionaire may engage suitable contractors for discharging it's obligations hereunder in regard to transport of MSW .from the Transfer Station to the Site The Concessionaire shall, however, ensure that all the terms, conditions and obligations in regard thereto are duly carried out and fulfilled by such third parties.

Notwithstanding the engagement of such third parties, the Concessionaire shall continue to be primarily responsible for the due performance and discharge of all such terms, conditions and obligations and shall keep the Participating ULBs fully indemnified against any delay or defaults on the part of such third party as also against all damages, losses, costs and expenses caused to the Participating ULBs as a result of such delay or defaults.

7. EXCLUDED WASTE

7.1 Each Participating ULB shall ensure that the MSW transported and supplied to the Concessionaire at the identified Transfer Stations does not have Excluded Waste beyond 10% (ten percent) of the total quantity of MSW supplied per day.

- 7.2 In the event that the Excluded Waste exceeds 10% (ten percent) of the total quantity of MSW supplied per day, the Concessionaire may choose to (i) make a written complaint to the concerned Project Monitoring Committee in accordance with Section 9 of this Agreement; (ii) dispose of the Excluded Waste in accordance with the Applicable Law at an additional cost of [rs] per MT of the Excluded Waste, recoverable from the concerned ULB.

Any payment made to the Concessionaire for the disposal of Excluded Waste shall be in addition to the Tipping Fee and any other amount that may be payable under this Agreement.

8. EXPANSION OF THE PROJECT

8.1 Number of Participating ULBs

- (i) Provided that the capacity of the facility permits, it is desirable that municipal corporations/authorities/ULBs other than the Participating ULBs in the State participate in the development and implementation of the regional municipal solid waste management project being initiated in the State.

8.2 Revamping of the Existing Collection System

It is desirable that the Participating ULBs formulate adequate plans to revamp their collection systems (guidance may be provided by the State Govt.) in the course of the next [ten] years so as to ensure:

- (a) a more uniform, streamlined and a scientific collection mechanism is followed;
- (b) that segregation of waste is done at the source and the various forms of solid waste generated are segregated and stored in separate and distinct containers.

- 8.3 It is specifically understood that the provisions of Clause 8.2 and 8.3 do not in any manner dilute or affect the rights and obligations of the Parties in relation to the implementation of this Agreement and the Project.

9. APPOINTMENT OF PROJECT MONITORING COMMITTEE

- 9.1 The State Govt. shall appoint a Project Monitoring Committee (the "PMC") within a period of six (6) months from the Effective Date.

- 9.2 The Project Monitoring Committee shall consist of a maximum of [•] members to be appointed as follows:

- (i) three representatives selected by State Govt.;

- (ii) one representative of each of the Participating ULBs; and
- (iii) one representative selected by the Concessionaire.

9.2 The State Govt. and the Participating ULBs shall make best efforts to ensure that the representatives selected by them to the PMC are duly qualified having experience in the field of waste disposal management, and operation and maintenance of integrated waste disposal plants.

9.3 Subject to the provisions of sub-clause 9.4 herein below, the Person constituting the Project Monitoring Committee shall hold office for a term of [five (5)] years.

9.4 Any person appointed to the Project Monitoring Committee shall cease to continue as such and be disqualified from being appointed or reappointed in the future as the Project Monitoring Committee if:

- i) he is found to be of unsound mind;
- ii) he is an un-discharged insolvent or has applied to be adjudicated as an insolvent and his application is pending; or
- iii) he has been convicted by a Court for any offence that may involve moral turpitude.

9.5 The costs and expenses in relation to the functioning of the Project Monitoring Committee shall be borne by the State Govt. and Participating ULBs in equal proportions.

9.6 Function of the Project Monitoring Committee

- a) The function of the Project Monitoring Committee shall be only to resolve disputes that may arise on technical matters in relation to any decision or findings of the Project Engineer.
- b) Within seven (7) days of receipt of the above documents, the other Parties shall submit: (i) a description of the dispute; (ii) a statement of that party's position; and (iii) copies of relevant documentary evidence in support of such position.
- c) The Project Monitoring Committee may call for such further documentary evidence and/or interview such persons as they deem necessary in order to reach their decision.
- d) In the event the question(s) are not settled through such mutual consultation and negotiations within a period of five (5) days as evidenced by signing of a written settlement on the question(s) raised, the Project Monitoring Committee shall proceed to reach a decision on the question(s) so referred and shall give a reasoned decision based on the reasons submitted by the Parties and the decision in question of an auditor or the Engineer, as the case may be.

- e) The Project Monitoring Committee shall give a reasoned decision within a period of thirty (30) days from the date of receipt of the written documents under section 9.6 (c) hereinabove. In the event that the Project Monitoring Committee fails to deliver a decision within the stipulated time period the Parties may avail the rights and remedies available under this Agreement to resolve such dispute.
- f) The decisions of the Project Monitoring Committee shall be subject to Section 34 in relation to the dispute resolution.

10. Project Engineer

- (a) The PMC shall within [●] months after being constituted, appoint a suitable Person as the Project Engineer for overall supervision and monitoring of compliance by the Concessionaire with its duties, responsibilities, services and activities during the Construction Period, and Operations Period as set forth in of this Agreement. The Project Engineer shall also be responsible for maintaining proper coordination and exchange of information between the PMC and the Concessionaire.
- (b) The PMC shall be fully entitled to remove and replace the Project Engineer, if so deemed expedient by the PMC.
- (c) The costs and expenses in relation to the functioning of the Project Engineer shall be borne by the Participating ULBs and the Concessionaire in equal proportions.
- (d) The responsibilities of the Project Engineer shall include:
 - i. review of design, engineering, construction and development of the Regional MSW Facility;
 - ii. review of the operations and maintenance of the Regional MSW Facility;
 - iii. submission of monthly reports and such other responsibilities as indicated in this Agreement;
 - iv. providing certificates to the Concessionaire in relation to the construction, operations and management of the Regional MSW Facility after relevant verifications and inspections have been made in accordance with this Agreement; and
 - v. ensure that any performance tests and/or trial runs during the Testing Period are conducted under its supervision.
- (e) The Project Engineer shall not be involved in the day to day implementation of the Project, the construction and/or operations and maintenance of the Regional MSW Facilities.

- (f) With respect to the design, construction, testing and commissioning of the Regional Facilities, the Project Engineer shall issue and sign the Progress Certificate and Final Completion Certificate.
- (g) The Project Engineer shall monitor the (i) construction and (ii) operations and maintenance of the Regional MSW Facility to ensure that it is carried out in conformity with the Standards and Specifications as provided under this Agreement.
- (h) The Project Engineer shall conduct ad-hoc and regular checks and inspections of the Site during the (i) construction and (ii) operations and maintenance of the Regional MSW Facility and ensure that the Standards and Specifications are maintained and adhered to by the Concessionaire.
- (i) In the event that there are any defects or deviations in the design, construction, testing and commissioning of the Regional MSW Facility from the Standards and Specifications, the Project Engineer shall issue written instructions to the Concessionaire in respect of such defects.
- (j) The Concessionaire shall cure the defects and make good any deviation in accordance with the Standards and Specifications and instructions issued by the Project Engineer within [x] days from the issue of such instructions as provided.
- (k) In the event that there is any dispute in relation to the instructions issued by the Project Engineer, the Concessionaire may approach the Project Monitoring Committee.
- (l) A special purpose escrow account shall be established in which an amount equal to the total fee of the Project Engineer for [one] financial quarter shall always be maintained and the Project Engineer's fee shall be paid out of this account. Each Participating ULB and the Concessionaire shall equally share the costs of the Project Engineer and shall deposit their individual contributions towards the payment of the Project Engineer's fee into the escrow account at the end of each month.

11. CONSTRUCTION OF THE REGIONAL MSW FACILITY

11.1 Commencement of Construction

- (i) The Concessionaire shall carry out or cause to be carried out the construction work on the Site from from the date of issuance of the Construction Commencement Certificate by State Govt. in accordance with the Standards and Specifications. The Term of the Agreement shall be calculated from the date of the issuance of the Construction Commencement Certificate.

11.2 Scope of Construction Work

The Concessionaire shall construct the Regional MSW Facility in accordance with the Standards and Specifications as provided under this Agreement and the Project Plan which is approved by State Govt. which shall include:

- (i) Construction of the Regional MSW Facility, including Compost / RDF / Waste to Energy Plant and scientific landfill;
- (ii) Construction of transfer Station at the various specified points for each Participating ULB;
- (iii) Installation of a weighing/metering device such as the Weighbridge at the Transfer Station and the Receipt Point at the Site; and
- (iv) any other allied work (including civil works) that may be necessary in relation to the implementation of the Project.

11.3 Progress Report during the Construction Period

- (a) During the Construction Period, the Concessionaire shall, on or before the 15th day of every calendar month, prepare and submit to the Project Engineer a monthly progress report, for the previous month, in a form as provided by State Govt.. Such report shall describe (i) the progress of the design, construction and development of the Regional MSW Facility; (ii) the status of the construction as per the Milestones; and (iii) projected Operations Date as per the status of construction achieved till date of the progress report. The Concessionaire shall also submit to the Project Engineer the relevant designs and drawings and other technical information as may be reasonably necessary to carry out a technical appraisal of the Project.
- (b) During the Construction Period, the Project Engineer shall, at all reasonable times and upon reasonable notice, have access to the Regional MSW Facility for the purpose of inspecting the progress of work during the Construction Period.
- (c) Based on the review of the progress report submitted by the Concessionaire, the Project Engineer shall issue a Progress Certificate

11.4 Testing Period

- (a) When the construction of the Regional MSW Facility, has been substantially completed (including the construction of the Plant has been fully completed) the Concessionaire shall so notify the Project Engineer in writing. Thereafter, the Project Engineer shall, within (7) seven days of the receipt of such notice, cause the Regional MSW Facility to be inspected.

- (b) Once the Project Engineer has inspected the Regional MSW Facility, the Project Engineer shall issue a Partial Readiness Certificate and the Testing Period of the Regional MSW Facility shall commence from the date of issuance of Partial Readiness Certificate.
- (c) During the Testing Period, which is a period of maximum of three (3) months, the Project Engineer shall inspect Regional MSW Facility in presence of the representatives of the Concessionaire so as to ascertain any material defects, imperfections, shortcomings or such other faults. During this Testing Period, the Project Engineer may also and supervise any trial runs and/or performance tests under his supervision.
- (d) The Project Engineer on being satisfied that (i) all the works stipulated in sub-clause 11.2 (c) above have been completed; (ii) there are no defects which need remedied; and (iii) the Regional MSW Facility can be used and operated for the treatment and disposal of MSW, the Project Engineer shall issue a Readiness Certificate.
- (e) If any latent defect or other defect not in the nature of a defect specified in subsection (c) above appears in the Project during the Term, the Concessionaire shall undertake to make any repairs or take any remedial measures that are reasonably required to remedy any such defect. Such repairs or remedial measures shall be taken up as part of the Operations and Maintenance of the Project under this Agreement.
- (f) For the purposes of conducting trial runs and performance tests as provided under Clause 11.4, the Participating ULBs at its own cost and expense shall provide a Testing MSW Quantity to the Concessionaire after the Concessionaire submits a written request to the Project Engineer in relation to such Testing Quantity.

11.5 Completion Assurance

The Concessionaire hereby undertakes to cause the completion of the construction and commissioning of the Regional MSW Project within the Construction Period in accordance with the terms hereof; provided that the Concessionaire shall not be in breach of this Section 11 if any non-fulfillment or delay in fulfillment of its obligations herein are caused by:

- (i) an occurrence of an event of Force Majeure;
- (ii) the State Govt.'s Event of Default; or
- (iii) a Participating ULBs Event of Default.

12. Variation

12.1 Definition of Variation

- (a) State Govt. may require the provision of additional works and services which are not included in the scope of the Project or the reduction in the works and services from the scope of Project as contemplated by this Agreement (the "Variation"). Any such Variation shall be made in accordance with the provisions of this Section 12 and the resultant costs shall be expended by the Concessionaire and reimbursed to it by State Govt.
- (b) If the Concessionaire or a Participating ULB determines at any time that a Variation is necessary for providing improved MSW treatment and disposal services or to enhance the economic efficiency of the Project or for such other reason related to the performance of services or the Project, it shall by notice in writing require State Govt. to consider such Variation. State Govt. shall, within fifteen (15) days of receipt of such notice, either accept such Variation with modifications, if any, and issue a Variation Notice in accordance with Clause 12. 2(a) or inform the Concessionaire in writing of its reasons for not accepting such Variation. State Govt. may elect to consult at any time prior to making its decision hereunder with the Concessionaire to discuss any such Change in Scope proposal.
- (c) If State Govt. determines at any time that a Variation is necessary for providing improved MSW treatment and disposal services or to enhance the economic efficiency of the Project or for such other reason related to the performance of services or the Project, it shall by notice in writing notify the Concessionaire of such Variation and instruct the Concessionaire to provide a report on the impact of such Variation on the estimated project cost and Concessionaire Fee, covering all the aspects specified in Clause 12.2 below as required for issuance of a Variation Notice. The Concessionaire shall, within fifteen (15) days of receipt of such notice, submit a written report on the impact of the specified Variations together with proposed terms and conditions in light of the requested Variation. State Govt. shall, within fifteen (15) days of receipt of the report from the Concessionaire either accept such Variation with modifications, if any, and issue a Variation Notice in accordance with Clause 12.2(a) or inform the Concessionaire in writing of its reasons for not accepting such Variation. State Govt. may elect to consult with the Concessionaire at any time prior to making its decision hereunder to discuss any such Change in Scope proposal.
- (c) Notwithstanding the foregoing, should the Concessionaire or State Govt. propose any change in the design that does not adversely affect the implementation of this Agreement substantially, such change shall be deemed not to be a Variation of the Works and such change shall be undertaken in accordance with Clause 12.2.

12.2 Procedure for Variation

- (a) If State Govt. requires a Variation in accordance with Sub-Clause 12.1(a) or State Govt. agrees to the Concessionaire's proposed Variation in accordance with Sub- Clause 12.1(b), State Govt. shall issue a notice specifying in reasonable detail the works and services contemplated by such Variation (the 'Variation Notice').
- (b) Upon receipt of a Change in Scope Notice, the Concessionaire shall, with due diligence, provide to State Govt. such information as is necessary, together with preliminary documentation in support of:
- (i) the impact, if any, which the Variation is likely to have on the completion of the Project Milestones if the proposed works or services are required to be carried out during the Construction Period;
 - (ii) the cost to the Concessionaire of complying with such Variation Notice (including, without limitation, material and labour cost information furnished in accordance with the then current schedule of rates applicable to the works assigned by State Govt. to its contractors, including the premium on such rates); and
 - (iii) the options suggested for implementing the proposed Variation and the effect, if any, each such option would have on the costs and time for the implementation thereof, including a detailed breakdown by work classifications.
- (c) In the event that the Variation has been initiated by State Govt., the costs of providing the information and documentation referred to in Sub-Clause 12.2(b), shall be reimbursed to the Concessionaire by State Govt. to the extent such costs are certified to be reasonable by the Project Engineer .
- (d) Upon receipt of the information and documentation in the event that State Govt. decides to proceed with the Change in Scope, it shall convey to the Concessionaire:
- (i) its preferred option as referred to in Sub-Clause 12.2(b)(iii); and
 - (ii) in the case of Additional Major Works, its proposed method of compensation for consideration by the Concessionaire.

- (e) The Parties shall, with assistance of the Project Engineer, agree on the terms for additional compensation for completing the Variation in accordance with the principle set out in Clause 12.3 - Compensation for Variation.
- (f) Upon reaching an agreement on the terms of additional compensation for completing the Variation, State Govt. shall issue an order (the "Variation Order"), requiring the Concessionaire to undertake the Variation. In the event that the Parties are unable to agree as to the additional compensation payable, the Parties may proceed in accordance with Sub-Clause 12.2(g) below.
- (g) A Variation Order shall be effective and binding upon mutual agreement between the Parties. Notwithstanding a dispute regarding cost and time for implementation of such Variation Order, the Parties may agree that the Concessionaire is to proceed with the performance of such Variation Order. Pending resolution of any dispute, State Govt. shall pay to the Concessionaire upon completion of work pursuant to such Variation Order, an amount equal to the costs that are certified by the Project Engineer to be reasonable plus one-half the difference between the amount certified by the Project Engineer and the amount claimed by the Concessionaire with final adjustments to be made in accordance with the resolution of the dispute under the dispute resolution procedure set out in Section 34.
- (h) The provisions of this Agreement, insofar as they relate to the construction of the Works, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Section 12.

12.3 Compensation for Variation

The compensation that the Concessionaire is entitled to receive for undertaking a Variation shall be determined with the object of ensuring that such Variation shall not negatively affect the Project IRR that the Concessionaire would otherwise have received but for such Variation.

12.4 Compensation for Additional Minor Works

For Variation where the additional costs are five percent (5%) or less of the project cost ('Additional Minor Works'), the Concessionaire shall, after completion of the Additional Minor Works, present to State Govt. a statement that the Additional Minor Works have been completed along with such documentation as is reasonably sufficient for State Govt. to determine the accuracy thereof. Within 30 (thirty) days of receipt of such statement, State Govt. shall disburse to the Concessionaire such amounts of compensation for the Variation as agreed in accordance with this Section 12.

12.5 Compensation for Additional Major Works

- (a) For Variation where the additional costs are greater than five percent (5%) of the project cost ('Additional Major Works'), the manner in which State Govt. shall compensate the Concessionaire shall be agreed between the Parties. Such manner of compensation may include but not be limited to:
- (i) direct payment or payments by State Govt. to the Concessionaire;
 - (ii) change in Tipping Fee;
 - (iii) increase in the Concession Period to the extent permitted by Applicable Law; or
 - (iv) a combination of (i), (ii) and/or (iii).
- (b) State Govt. shall ensure that the Concessionaire is compensated for such Additional Major Works and that such compensation shall be adequate to comply with the principle of compensation as described in this Section 12 hereinabove.
- (c) The Concessionaire shall, after completion of the Additional Major Works, present to State Govt. a statement that the works have been completed along with such documentation as is reasonably sufficient for State Govt. to determine the accuracy thereof.

13. OPERATIONS AND MAINTENANCE OF THE REGIONAL MSW FACILITY

13.1 Scope of Operations and Maintenance

- (i) The Concessionaire shall ensure that (a) Transfer Stations and (b) the Regional MSW Facility (including the Plant, Landfill Site, Weighbridge and any work related to the implementation of the Agreement) is in continuous use and operations from the Operations Date till the end of the Term in accordance with the Standards and Specifications as provided in this Agreement.
- (ii) The Concessionaire shall ensure that the following activities are conducted within the scope of operations and maintenance of the Regional MSW Facility at all times during the Term:
- (a) the Regional MSW (including the Weighbridge, Processing Facilities and the Landfill) is in continuous use and operations;
 - (b) the Transfer Stations (including the Weighbridge) is in continuous use and operations;

- (b) the treatment of the MSW is undertaken by the Concessionaire at the Regional MSW Facility, in accordance with the provisions of Applicable Laws and this Agreement;
- (c) there are regular inspections and maintenance checks conducted in relation to the Regional MSW Facility;
- (d) there are periodical reports submitted to the Project Engineer in relation to the operations and maintenance of the Regional MSW Facilities;
- (e) there is an annual report submitted to State Govt. by the Project Engineer in relation to the operations and maintenance of the Regional MSW Facilities ;
- (f) there are accurate and updated records maintained in relation to the Products of the Regional MSW Facility;
- (g) all applicable approvals and insurance covers are maintained and renewed as required; and
- (h) any other activity that may be specified by State Govt. in relation to the implementation of the Project.

13.2 Delay in Occurrence of Operations Date

- (i) In the event that there is delay in the occurrence of the Operations Date due to (i) any act or omission on the part of State Govt.; (ii) any act or omission on the part of the Participating ULBs and (iii) Force Majeure Event, the Concessionaire shall have the right to extend the Operations Date by the same number of days by which the delay was caused.
- (ii) In the event that there is a delay in the occurrence of the Operations Date due to any act or omission on the part of the Concessionaire, State Govt. may (i) Terminate this Agreement; or (ii) extend the Operations Date for a period as it deems fit.

13.3 Obligation to Receive, Treat and Dispose all MSW supplied by the Participating ULB

- (a) The Concessionaire is under an obligation to receive, treat and dispose all MSW supplied by the Participating ULBs to the Concessionaire.

- (b) Each Participating ULB is under an obligation to provide [x] ton per day of MSW as the Minimum MSW Quantity to the Concessionaire subject to the terms and conditions of this Agreement.

14. OBLIGATION TO PROVIDE MINIMUM MSW QUANTITY

Each Participating ULBs shall sign a MSW Supply Agreement with the Concessionaire whereby each Participating ULB has undertaken to deliver the Minimum MSW Quantity for ensuring the due implementation of the Project.

Pursuant to the MW Supply Agreement, each Participating ULB has undertaken that it shall deliver, on every day after the Operations Date, MSW equivalent to at least the Minimum MSW Quantity at their respective Transfer Stations, in accordance with the Delivery Schedule, and in the event it is not able to deliver the average (estimated over 30 days) Minimum MSW Quantity for a period of two (2) consecutive months, it shall pay the Concessionaire for each day of such failure after the two (2) month period, as a pre-agreed reasonable compensation, an amount ("Daily MSW Deficiency Amount") that is determined as follows:

$$A = D(\text{MSW}) \times T$$

Where, **A** = Daily MW Deficiency Amount; and

D(MSW) = The difference between MW Quantity and the actual MSW quantity delivered on that day;

T = Tipping Fee per ton

Provided however, that non-delivery of MW on a day or quantity of Rejected Waste during rainy season on account of high moisture content, shall not be considered as a failure on part of Participating ULBs to deliver Minimum MW Quantity for the purposes of this Section 14.

15. WEIGHBRIDGE AND METERING

- (i) The Concessionaire shall install a weighbridge at (i) the Transfer Station Site for the purpose of determining the volume of MSW supplied by each Participating Municipality; and (ii) the Receipt Point for the purpose of determining the total volume of the MSW supplied to the Concessionaire and if this is below the threshold limit of the Minimum MSW Quantity.

Provided, *however*, the quantity of Rejected Waste shall not be included in the determination of the Minimum MSW Quantity to be supplied by the Participating ULB as provided in this Agreement and the MSW Supply Agreement.

- (ii) The Project Engineer shall undertake regular inspections of the metering devices to ensure the accuracy and calibration of such measurement devices/weighbridge installed by the Concessionaire.
- (iii) The Concessionaire shall maintain: (a) a separate record in relation to the volume of MSW supplied by each Participating Municipality at the Transfer Station Site; and (b) a separate record in relation to the total volume of MSW supplied to the Concessionaire at the Receipt Point at the Regional MSW Facility.
- (iv) The Concessionaire shall maintain and provide the Participating ULB with accurate data in relation to the MSW supplied each day.
- (iv) State Govt. may, at its discretion, appoint a representative to be present at the time of weighing and meter reading at the Transfer Station Site and/or the Receipt Point.
- (v) In the event the MSW contains [%] of Rejected Waste and the Concessionaire processes such MSW including the Rejected Waste at the Regional MSW Facility, the Concessionaire shall be paid an amount of [rs] per ton of the Rejected Waste in addition to the payment of the Tipping Fee payable for the acceptable MSW (excluding the Rejected Waste supplied).

Provided, however, the volume of Rejected Waste shall not be included in the determination of the total volume of MSW supplied by the Participating ULB.

- (vi) In the event the MSW contains [%] of Rejected Waste the Concessionaire shall have the option to reject the entire consignment of the MSW supplied by the Participating Municipality.

16. LANDFILL SITE

- (a) The Concessionaire agrees that it shall dispose the Residual Inert Matter and the Rejected Waste at the Landfill Site.
- (b) The Concessionaire shall be responsible for the due operation and maintenance of the Landfill Site and for ensuring its availability and suitability for accepting the Residual Inert Matter and Rejected Waste. The Concessionaire shall cause the Landfill Site to be operated and maintained at its own cost and expense (including payment of all levies, charges and taxes whatever) and as per the requirements and conditions as prescribed under Applicable Law.
- (c) The Concessionaire shall bear the cost of transportation and off-loading of the Residual Inert Matter (but not of the Rejected Waste) from the Site to the agreed point at the Landfill Site, provided however, that the transportation and offloading by the Concessionaire of the Rejected Waste shall be at the cost and expense of the Participating ULBs.

- (d) The Concessionaire shall ensure that the Landfill Site is utilized in such a manner that it is capable of being used for the Term of this Agreement. In the event that the Landfill Site is closed for reasons attributable to operation of law and/or act of the state agencies/State Govt./Participating ULB then it shall be the obligation of State Govt. to provide an alternative site at a mutually agreeable location free of cost to the Concessionaire. If State Govt. fails to provide the said alternative Landfill Site, the Participating ULBs shall pay to the Concessionaire all transport and handling costs incurred by the Concessionaire in carrying and disposing the Residual Inert Matter and the Rejected Waste.
- (e) The Concessionaire shall be responsible for the operational and post- closure care of the Landfill Site, including laying down a final cover on the Landfill Site in accordance with the MSW Rules.
- (f) After the expiry of the Term of this Agreement, the Concessionaire shall hand over Vacant Possession of the Landfill Site to the State Govt. in good operable condition.
- (g) State Govt. hereby agrees that the Processing Facilities, and all other parts of the Regional MSW Facility, are undertaking the management, processing and disposal of MSW and are being specifically authorized to be constructed, developed, operated and maintained by State Govt. for the purposes of enabling it to handle and process the MSW generated within jurisdiction of the Participating ULBs. State Govt. acknowledges that the availability of the Landfill Site for the purposes of disposal of Rejected Waste and Residual Inert Matter are critical for the continued operations of the Regional MSW facility in a viable manner. State Govt. hereby agrees to indemnify and hold the Concessionaire harmless against any claims, liability, costs, expenses, damages and losses that the Concessionaire may incur as a result of: (i) non-availability of the Landfill Site for the disposal of Rejected Wastes and Residual Inert Matter or (ii) any claim, litigation, action instituted by any third party in relation to the Landfill Site.

17. PRODUCTS FROM THE TREATMENT AND DISPOSAL OF MSW

- 17.1 The Concessionaire has complete rights and title over the Products that may be produced from the treatment and disposal of the MSW at the Regional MSW Facility during the Term.
- 17.2 The Concessionaire shall use or dispose the Products in accordance with Applicable Laws and shall have the right to market and sell the Products generated in relation to the implementation of the Project.

18. TIPPING FEE

18.1 Tipping Fee payable by the Participating ULBs

- (a) 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, each Participating ULB agrees and undertakes to pay to Concessionaire, the Tipping Fee payable at per ton of MSW supplied by each Participating ULB which shall be calculated in accordance with the provisions of the Schedule VIII.

Provided, *however*, the Tipping Fee shall be payable to the Concessionaire only on the commencement of the Operations Date.

The total Tipping Fee to be paid by each participating ULB may be decided based on the amount of waste supplied, and the transportation distance of the waste from the Transfer Station. (It may be the decision of the ULBs whether to agree to an average and uniform Tipping Fee)

- (b) The Concessionaire shall, on the 5th day of every calendar month or in case the 5th day of a month is a holiday then on the following working day of such month, submit to each Participating ULB a statement ("Tipping Fee Statement") providing the following details:
- (i) Total quantity of MSW supplied by that particular Participating ULB in the previous month; and
 - (ii) Amount of Tipping Fee payable by that particular Participating ULB for the previous month.

18.2 Mechanism of Payment

- (a) Each Participating ULB shall, within [ninety (90)] days from the date of receipt of its Tipping Fee Statement:
- (i) Pay to the Concessionaire, an amount equal to 90% of the total amounts payable to Concessionaire as stated in such Tipping Fee Statement,
 - (ii) Pay into a special escrow account designated as "Performance Account", an amount equal to 10% of the total amounts payable to Concessionaire as stated in such Tipping Fee Statement.

Provided, *however*, the Concessionaire shall be eligible to receive at the end of each year, during the Operations Period, an amount equivalent to two-thirds of the amounts accrued in each Performance Account during that year, subject to the Concessionaire furnishing a bank guarantee of equivalent value in favour of each Participating ULB.

Provided further that the bank guarantees shall be kept valid and co-terminus and shall be released with the Performance Account payments by each Participating ULBs due as stated in Clause 18.2 (b) herein below.

- (b) The amounts in each Performance Account would be payable to the Concessionaire upon the expiry of the Term of this Agreement through cheques on each Performance Account duly signed by the concerned Participating ULB and the Concessionaire.
- (c) Any delay in making any payment in accordance with the Tipping Fee Statement shall, without prejudice to any other consequences under this Agreement, entail payment of interest by the concerned Participating ULB on the amount in default at prevailing medium term prime lending rate of State Bank of India calculated for the duration of delay.
- (d) All payments to the Concessionaire shall be made by way of crossed cheque or wire transfer.

19. CONSEQUENCES OF PAYMENT DEFAULT

- (a) If a Participating ULB fails to pay the Tipping Fee payable in accordance with Clause 18, in part or full to the Concessionaire, the State Govt. undertakes to deduct the amount owed to the Concessionaire from the [grant funds/ funds designated for distribution pursuant to octroi compensation/funds designated for distribution pursuant to the state financial commission] earmarked for that particular Participating ULB and pay such amount directly to the Concessionaire within thirty (30) days of default by a Participating ULB.
- (b) Upon occurrence of payment default the Concessionaire shall establish a special designated account into which State Govt. shall deposit three months equivalent of Tipping Fee payment of the defaulting Participating ULBs. State Govt. shall have the right to recover the amount from the defaulting Participating ULB by any measure it may deem fit, including but not limited to levy of betterment charges or other levies under relevant law through any agency of State Govt. to fund the relevant payments.
- (c) In the event of a payment default for a duration of [] consecutive months, the relevant Participating ULB will not be entitled to the services of the Project and the Concessionaire may at its discretion suspend the acceptance of the MSW from the defaulting Participating ULB till such time as the relevant payment default is cured [Note – *please note additional security may be necessary depending on the Project.*]

20. ADDITIONAL OBLIGATIONS OF THE CONCESSIONAIRE

In addition to and without prejudice to the other obligations of Concessionaire specified in other provisions of this Agreement, Concessionaire shall also discharge the following additional obligations:

20.1 Performance Guarantee

The Concessionaire shall submit an irrevocable and unconditional bank guarantee of Rs. [] as a Performance Guarantee from the date of execution of the Agreement till the end of the Term (including any extensions granted).

20.2 Concessionaire's Undertakings

- (a) the Regional MSW Facility shall be designed, constructed and developed in accordance with the Standards and Specifications as provided in this Agreement;
- (b) the Financial Closing shall be achieved within the time stipulated under this Agreement;
- (c) the construction of the Regional MSW Facility shall be completed within the stipulated Construction Period;
- (d) the Regional MSW Facility shall be tested and evaluated during the Testing Period so as to ensure that the Regional MSW Facility is in proper condition to be used and operated for the purposes of the implementation of the Project;
- (e) the Regional MSW Facility shall be used, operated and maintained such that it shall always ensure it has the due authorization and proper legal right to the use suitable technology used for the operation of the Regional MSW Facility; and
- (f) that the Regional MSW Facility shall be operated and maintained in accordance with this Agreement and that the Regional MSW Facility shall, upon completion and commissioning, have the capacity of processing the MSW supplied by the Participating ULBs.

20.3 Adequate Organization

Concessionaire shall, through the Term have requisite organization and designate and appoint suitable manpower and officers/ representatives as it may deem appropriate for implementing the Project properly and for carrying out the purposes of this Agreement in accordance with the terms hereof.

20.4 Marketing/Sale/Disposal of Products

Concessionaire shall collect the Products from the Site and sell the Products in accordance with the terms and conditions of this Agreement and Applicable Laws.

All charges for handling, transportation, marketing and sale of the Products, shall be borne by Concessionaire.

20.5 Applicable Approvals

Concessionaire shall, apply and procure all Applicable Approvals in respect of the construction, commissioning and operation of the Regional MSW Facility *provided however*, any Applicable Approvals that is to be provided by the State Govt. shall be granted by State Govt. upon the application for the same being made in accordance with applicable law by Concessionaire *provided further that* in the event State Govt. and the Participating ULBs fails to perform its obligation of providing the support to Concessionaire for obtaining the Applicable Approvals, then the failure to obtain the relevant Applicable Approvals by Concessionaire shall not be an Concessionaire's Event of Default under this Agreement.

20.6 Compliance with Applicable Laws and Environment Laws

Concessionaire shall construct, operate and maintain the Regional MSW Facility in accordance with Applicable Laws, including but not limited to all the applicable laws relating to protection and safeguard of the environment and the laws for preventing and monitoring pollution of environment, and obtain and maintain the Applicable Approvals required for the same.

20.7 No Breach of Obligations in Certain Circumstances

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 obligations under this Agreement is affected by or on account of any of the following:

- (i) Force Majeure Event, subject to the provision of Section 35
- (ii) State Govt.'s Event of Default;
- (iii) Participating ULBs Event of Default; or
- (iv) closure of the Regional MSW Facility or part thereof as permitted under this Agreement or otherwise with the approval of the State Govt..

21.8 Suspension/Temporary Shutdown or Closure of the Regional MSW Facility

- (a) Force Majeure Event

- (i) The Concessionaire may be allowed to suspend, temporarily shut down or close the Regional MSW Facility only in case of occurrence of a Force Majeure Event.
- (ii) State Govt. shall be under an obligation to provide an alternative landfill site to the Concessionaire for the disposal of the MSW during the tenure of the Force Majeure Event.
- (iii) It is hereby clarified that the Concessionaire shall not be responsible for any additional liability for the temporary shutdown/closure due to the occurrence of the Force Majeure Event.
- (b) Reasons other than Force Majeure Event
 - (i) In the event that there is any reason other than the occurrence of the Force Majeure Event directly attributable to the Concessionaire due to which the Concessionaire closes/temporarily shuts down the Regional MSW Facility, the Concessionaire shall:
 - (x) determine an alternative landfill site; and
 - (y) dispose the MSW generated at the alternative landfill site.
 - (ii) The Concessionaire shall submit a report to State Govt. within [2] days of such temporary shutdown/closure in respect of (x) reasons for the temporary shutdown/closure; (y) the estimated time period for temporary shutdown/closure; (z) the methods proposed to be used by the Concessionaire to resume the operation and maintenance of the Regional MSW Facility.
 - (iii) In the event that the Regional MSW Facility is not fully operational within [x days] from the date of the temporary shutdown or closure of the Regional MSW Facility, State Govt. may Terminate the Agreement.
 - (iii) All the costs and expenses in relation sub-clause 21.8(b) shall be borne solely and exclusively by the Concessionaire.
- (c) Repair and Maintenance
 - (i) In the event that there is some repair or maintenance work that needs to be carried out, the Concessionaire shall ensure that the treatment and disposal of the MSW at the Regional MSW Facility is not affected in a substantial manner.

20.9 Lock-in Obligations

- (i) The Concessionaire shall at all times during the Construction Period hold and maintain the same shareholding pattern as was present at the time of the execution of this Agreement.
- (ii) Any change in the shareholding pattern (of members other than the Lead Member) may be permitted only after completion of 3 (three) years from the occurrence of the Operations Date subject to a written approval from State Govt. [x] months prior to the change in the shareholding is proposed to take place.

Provided, *however*, the Lead Member shall not be permitted to change/dilute its shareholding of 51% at any stage during the Term.

22. ADDITIONAL OBLIGATIONS OF State Govt.

Without prejudice and in addition to the other obligations of State Govt. specified in this Agreement, State Govt. shall have the following additional obligations to enable the due implementation of the Project by Concessionaire:

22.1 Applicable Approvals

- (a) State Govt. shall, at the request of Concessionaire, facilitate Concessionaire in procuring the necessary Applicable Approvals and facilitate the co-ordination with various state and other concerned authorities and agencies and all other assistance and facilities.
- (b) Without prejudice to the generality of Clause 22.1(a) above, State Govt. shall:
 - (i) recommend and forward to the relevant authority/ministry/department, any application of Concessionaire to obtain any Applicable Approval; and
 - (ii) co-ordinate the grant of the Applicable Approval with the relevant authority/ministry/department and assist Concessionaire in getting necessary clearances from the relevant authorities / ministry/departments.

22.2 Benefits to Project to Accrue Directly to Concessionaire

State Govt. hereby agrees that if there is any financial or tax benefits or otherwise in respect or on account of the Project (including but not limited to viability gap funding, grants, tax benefits, etc.), they shall accrue directly and exclusively to Concessionaire alone and not to State Govt. and State Govt. hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of Concessionaire. The responsibility for arrangement of revenues from carbon credits lies with the concessionaire. However, the revenue sharing among the state gov. participating ULBs and the concessionaire will be in the ratio of [%], [%] and [%] respectively.

All expenses, monitoring and verification related to project registration with the UNFCCC will be the sole responsibility of the concessionaire.

22.3 Payment in case of default by Participating ULBs

In the event that any Participating ULB fails to make payments to the Concessionaire in accordance with the terms of this Agreement, the State Govt. shall deduct such amount from the grants earmarked for that particular Participating ULB and pay the same to the Concessionaire as specified in Clause 19 of this Agreement.

22.4 State Govt. Assistance in Enabling Financing

State Govt. hereby undertakes that it shall enter into such agreements as may be reasonably required by the Lenders in order to enable the financing of the Project. State Govt. acknowledges, subject to Clause 32, that under the Financing Documents the Lenders may, in certain events, take over the Regional MSW Facility for management or for sale or provide for transfer of the Regional MSW to another Person. State Govt. agrees, for the purposes of the Financing Documents, to intimate to the Lenders by such notice as required under the Financing Documents:

- (a) of the happening or likely happening of an Event of Default on the part of State Govt., Participating ULBs or the Concessionaire ;
- (b) of the Termination of this Agreement by State Govt., Participating ULBs or the Concessionaire;
- (c) of the occurrence, continuance and cessation of any Force Majeure clause; and
- (d) of any other breach or default on the part of Concessionaire under this Agreement.

Provided, *however*, any charge or security created over the Site shall be subject to the terms and conditions of the Lease Agreement.

23. **ADDITIONAL OBLIGATIONS OF THE PARTICIPATING ULBs**

Without prejudice and in addition to the other obligations of State Govt. specified in this Agreement, the Participating ULBs shall have the following additional obligations to enable the due implementation of the Project by Concessionaire:

23.1 Minimum MSW Quantity

The Participating ULB shall ensure that the Minimum MSW Quantity is supplied to the Concessionaire at all times during the Term and shall execute a MSW Supply Agreement.

23.3 Applicable Approvals

- (a) The Participating ULBs shall, at the request of Concessionaire facilitate Concessionaire in procuring of the necessary Applicable Approvals and facilitate the co-ordination with various state and other concerned authorities and agencies; and all other assistance and facilities.
- (b) to obtain the utilities such as electricity and water required for enabling the construction of the Regional MSW Facility;
- (c) Without prejudice to the generality of Clause 23.3(a) above, the Participating ULBs shall:
 - (i) recommend and forward to the relevant authority/ministry/department, any application of Concessionaire to obtain any Applicable Approval; and
 - (ii) co-ordinate the grant of the Applicable Approval with the relevant authority/ministry/department and assist Concessionaire in getting necessary clearances from the relevant authorities / ministry/departments.

23.4 Benefits to Project to Accrue Directly to Concessionaire

The Participating ULB hereby agrees that if there is any financial or tax benefits or otherwise in respect or on account of the Project (including but not limited to viability gap funding, grants, tax benefits, etc.), they shall accrue directly and exclusively to Concessionaire alone and not to the Participating ULBs and the Participating ULBs hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of Concessionaire. The Participating ULBs agrees to facilitate the grant or receipt of all such benefits by Concessionaire and for the purpose to give all needed recommendations, no-objections, authorizations etc. With regard to carbon credits, these shall be shared between the ULBs and Concessionaire as per agreed terms and conditions (as specified in clause 22.2 above)

24. MONITORING AND RECORDS

- 24.1 State Govt. may, from time to time, monitor and review the construction and operation and maintenance of the Regional MSW Facility including the disposal of Residual Inert Matter and the Rejected Waste at

any given point during the Term. This includes but is not limited to accessing the Regional MSW Facility during working hours, when a request for inspection or a visit by State Govt. or its authorized representative has been made.

- 24.2 State Govt. shall have the right to send its duly authorized representatives to visit the Site, during normal working hours after providing at least one hour notice, *provided however*, the representatives of State Govt. shall not interfere with or prevent Concessionaire officials from discharging their functions and further the State Govt. representatives shall not cause the suspension of the operations of the Regional MSW Facility and will abide by the safety and other regulations (including but not limited to regulations limiting movement of personnel) put in place by Concessionaire at the Site.

25. RECORDS

25.1 Maintenance of Records

- (a) In addition to obligations provided in the Concession Agreement, the Concessionaire shall maintain a record for the entire Term of the Agreement of the following : (i) status or progress report of the construction of the Regional MSW Facility (ii) status or progress report of the operation and maintenance of the Regional MSW Facility (iii) report certifying that the quantity and the quality of the MSW supplied by each Participating ULB (iv) methods of disposal used for (ai) MSW; (aii) Rejected Waste; (aiii) Excluded Waste and (aiv) Residual Inert Matter; and (av) nature and scope of any ancillary activities being carried out in accordance with the terms and conditions of this Agreement.

The aforesaid record and duplicate copies of cash receipts shall be safely and properly preserved and made available to State Govt. for verification whenever called for.

No information, in whole or in part, recorded under this Agreement shall be destroyed by the Concessionaire.

Provided however, that the above is not an exclusive listing of information; and any information or data required by State Govt. from time to time shall be provided by the Concessionaire.

- (b) Maintain a periodical reporting system to provide access and retrieval of Regional MSW Facility operating data including all such information which is necessary to verify costs and expenses incurred and otherwise to confirm that the Concessionaire is in compliance with its obligations under the terms and conditions of this Agreement.
- (c) Provide reports on accidents in respect of the Regional MSW Facilities, if any;

- (d) Provide a copy to State Govt. of its annual audited accounts, audited profit and loss account, balance sheet details of the stocks and assets held and cash flow statement, for the Concessionaire in the implementation of the Project as at the end of and for that accounting period, together with copies of all related director's and auditor's reports within one hundred and eighty (180) days of the end of the relevant financial year.

Each set of accounts delivered hereunder shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in India and consistently applied and in accordance with all Applicable Laws and, together with those notes and subject to any qualifications contained in any relevant auditor's report, shall give a true and fair view of the state of affairs and profits or loss for the period covered by such accounts.

- (e) Report to State Govt. regarding any litigation or material claims, disputes or actions, threatened or filed, concerning the Regional MSW Facility or the obligations to be performed by the Concessionaire under this Agreement;
- (f) Report to State Govt. any refusal or threatened refusal to grant, renew or extend or any action pending or threatened that might affect the granting, renewal or extension of any Applicable Approval;
- (g) Report to State Govt. any material information concerning new or significant aspects of the design, construction, financing, development, operations, maintenance and management of the Regional MSW Facilities; any material complaint about the Regional MSW Facility from any person; or any other information received by the Concessionaire which is material to the construction, operation, and maintenance of the Regional MSW Facilities.
- (h) The Concessionaire shall provide an annual report on all aspects mentioned in this clause to State Govt. at the end of the month of May every year.
- (i) All records required to be maintained in accordance with this clause shall be held for period of five (5) years from the date of creation of the relevant records or until twenty four months (24) after the expiry or earlier termination of the Agreement, whichever is the later. However, the period is extendable so as to meet the Comptroller and Auditor General of (CAG)'s requirement.
- (j) All Regional MSW Facility books and records shall be the property of the State Govt. and shall not be removed from the Regional MSW Facility (except as necessary because of an emergency) without the prior written consent of State Govt.. The Concessionaire shall be deemed to have a limited license to use the data base so created for the limited and specific purpose of implementation of this Project, which license shall terminate and cease to be effective on the termination of this Agreement.

- (k) State Govt. may from time to time specify any changes to be made to the format of any report or information required there under.
- (l) Notwithstanding the reporting requirements of this Clause, the Concessionaire shall provide an accurate, complete and up-to-date record, report or document in relation to any aspect of modernisation, expansion, operation, maintenance and management of the Regional MSW Facility to State Govt. as and when a request is made as soon as reasonably practicable and in any event within any time limit prescribed by State Govt. for the production of such record, report or other document.
- (m) If under any Applicable Law or a clearance or approval it is required to produce any report or any other document, the Concessionaire shall prepare such report diligently as possible thereafter. Wherever practicable, such reports shall be submitted to State Govt. for review thirty (30) days before the same is to be provided to the relevant authority. The Concessionaire shall take into account any comments or revisions proposed by State Govt. thereon.

25.2 Information Warranty

The Concessionaire hereby warrants to the State Govt. and the Participating ULBs that:

- (i) each set of audited accounts provided/to be provided by the Concessionaire under this Agreement are and will be a true and fair state of the financial affairs and condition of the Concessionaire as for the period for which such accounts relate; and
- (ii) all other information provided to State Govt. under this Agreement is true, accurate and complete in all material respects.

26. **POWER OF THE GOVERNMENT OF _____ STATE**

Notwithstanding anything contained in this Agreement, the State Govt. shall have the power to:

- (i) takeover any assets or the management of the Regional MSW Facility in part or in whole in the event: (a) any terms of this Agreement are breached by the Concessionaire without any prior notice; (b) if in its opinion the progress and status of the implementation of the Project is not satisfactory or is not in accordance with the terms and conditions of this Agreement without any prior notice;
- (ii) inspect the Regional MSW Facilities, its construction and operation and maintenance and monitor the implementation of the Project at any time during the Term; and

- (iii) conduct an audit through the Comptroller and Auditor General of India at any time during the Term, and for the purpose of such audit have complete access to the books and accounts of the Concessionaire.

27. COVENANT OF NON-INTERFERENCE

27.1 Non- Interference by State Govt.

- (a) State Govt. covenants with Concessionaire that State Govt. or any of its officers, employees or workmen shall not, at any time, during the Term of this Agreement interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.
- (b) State Govt. shall have no right, title or interest to the technology that would be used by Concessionaire in the development, operation and maintenance of the Regional MSW Facility. State Govt. agrees that any suitable technology that may be employed by Concessionaire in the development, operation and maintenance of the Regional MSW Facilities would be proprietary technology obtained under specific license and State Govt. hereby undertakes that it shall not violate or cause a breach of the license arrangements of Concessionaire for such technology.
- (c) However, the technologies adopted by the Concessionaire have to be accepted and approved by the State Govt. / ULB before being adopted in processing of the MSW.

27.2 Non- Interference by the Participating ULBs

- (a) The participating ULBs covenants with Concessionaire that the ULBs or any of their officers, employees or workmen shall not, at any time, during the Term of this Agreement interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.
- (b) The participating ULBs shall have no right, title or interest to the technology that would be used by Concessionaire in the development, operation and maintenance of the Regional MSW Facility. ULBs agree that any technology that may be employed by Concessionaire in the development, operation and maintenance of the Regional MSW Facilities would be proprietary technology obtained under specific license and the ULBs hereby undertake that they shall not violate or cause a breach of the license arrangements of Concessionaire for such technology.

28. INSURANCE

28.1 Concessionaire's Obligation

Concessionaire shall at its cost and expense, obtain and maintain, during the Term, all such insurances (in addition to those mandated by Applicable Laws or required by the Lenders) as may be required by the Lenders.

Provided, *however*, the insurance cover should include all insurances in relation to the design, finance, construction, operation, maintenance and management of the Project.

28.2 Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or re-instatement of the Regional MSW Facility or any part thereof which may have been damaged or destroyed. Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project.

The Concessionaire shall ensure that all applicable insurances as provided in Clause 28.1 of this Agreement are maintained on a continuous basis and such insurance policies are renewed from time to time throughout the Term.

28.3 No Breach of Insurance Obligation

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

29. EXIT BY PARTICIPATING ULB

29.1 The Parties hereby agree that a Participating ULB cannot terminate its participation in the Project except in accordance with the provisions of this Section 29.

- 29.2 In the event a Participating ULB seeks to exit the Project and it shall submit a written request to that effect to State Govt. clearly stating that: (a) the reasons for seeking an exit from the Project; (b) the alternate arrangement established by it to scientifically dispose the MSW generated within its jurisdiction ("Alternate Arrangement"); and (c) the cost benefit to ULB in ceasing its participation in the Project and the implementation of the Alternate Arrangement.
- 29.3 The State Govt. will require the Project Engineer to analyze the Alternate Arrangement in order to ensure it will enable the Participating ULB to dispose the MSW generated within its jurisdiction in a scientific manner in compliance with the Applicable Laws and to verify the cost benefit of the Alternate Arrangement to the Participating ULB. The State Govt. will also require the Concessionaire to submit a report an impact on the exit of the Participating ULB from the Project.
- 29.4 State Govt. will grant approval for the exit of the Participating ULB only if:-
- (a) the Alternate Arrangement is viable and will enable Participating ULB to dispose MSW in accordance with the Applicable Laws;
 - (b) the Alternate Arrangement is more cost effective for the Participating ULB; and
 - (c) the continued viability of the Project is not adversely affected.

30. EVENTS OF DEFAULT AND TERMINATION

30.1 Events of Default

Events of Default shall mean either (i) Concessionaire's Event of Default; (ii) The Participating ULB/ULBs Event of Default or (iii) State Govt.'s Event of Default or all as the context may admit or require.

(a) Concessionaire's Event of Default

Any of the following events shall constitute an Event of Default by Concessionaire ("**Concessionaire Event of Default**") when not caused by a State Govt.'s Event of Default; The Participating ULB/ULBs Event of Default or a Force Majeure Event

- (i) Concessionaire has failed to fulfill its condition precedent as provided in clause 3 of this Agreement;
- (ii) Concessionaire fails to construct the Regional MSW Facility within the Construction Period or such extended period as permitted by State Govt.;

- (iii) Concessionaire does not follow the Standards and Specifications as provided in this Agreement;
- (iii) Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than sixty (60) days:
- (iv) A resolution for voluntary winding up has been passed by the shareholders of Concessionaire; or
- (v) Any petition for winding up of Concessionaire has been admitted and liquidator or provisional liquidator has been appointed; or Concessionaire has been ordered to be wound up by Court of competent jurisdiction; except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of Concessionaire under this Agreement.

(b) State Govt.'s Event of Default

Any of the following events shall constitute an event of default by State Govt. ("State Govt.'s Event of Default") when not caused by a Concessionaire's Event of Default; The Participating ULB/ULBs Event of Default; or a Force Majeure Event

- (i) State Govt. has failed to fulfill any condition precedent as provided in clause 3 of this Agreement;
- (ii) State Govt. is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within (sixty) 60 days of receipt of notice thereof issued by the Concessionaire; or
- (iii) State Govt. has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement:

(c) Participating ULBs Event of Default

Any of the following events shall constitute an event of default by the Participating ULBs ("The Participating ULB/ULBs Event of Default ") when not caused by a Concessionaire's Event of Default; State Govt. Event of Default; or a Force Majeure Event

- (iv) The Participating ULB/ULBs has failed to fulfill any condition precedent as provided in clause 3 of this Agreement;
- (v) The Participating ULB/ULBs is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within (sixty) 60 days of receipt of notice thereof issued by the Concessionaire; or
- (vi) The Participating ULB/ULBs has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement:

30.2 The Parties hereby agree that only State Govt. shall have the right to terminate the Agreement for and on behalf of the Participating ULBs. In the event that a Participating ULB decides to terminate the Agreement, it shall submit a written request to State Govt. and also send a copy of such written request to other Participating ULBs and the Concessionaire.

30.3 Termination due to Event of Default

(a) Termination for Concessionaire's Event of Default

- (i) Without prejudice to any other right or remedy which State Govt. may have in respect thereof under this Agreement and subject to the existing rights of the Lenders upon the occurrence of a Concessionaire's Event of Default, State Govt. shall be entitled to Terminate this Agreement in the manner as set out under Clause 30.3(a)(ii) and Clause 30.3(a)(iii),
- (ii) If State Govt. decides to terminate this Agreement pursuant to preceding sub-clause (i), it shall in the first instance issue Preliminary Notice to Concessionaire. Within [thirty (30)] days of receipt of the Preliminary Notice, Concessionaire shall submit to State Govt. in sufficient detail, the manner in which it proposes to cure the underlying Event of Default ("**Concessionaire's Proposal to Rectify**"). In case of non-submission of Concessionaire's Proposal of Rectify within the said period of 30 days. State Govt. shall be entitled to terminate this Agreement by issuing Termination Notice, if subsisting.
- (iii) If the Concessionaire Proposal to Rectify is submitted within the period stipulate therefore, Concessionaire shall have further period of 30 days to remedy / cure the underlying Event of Default. If, however Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed State Govt. shall be entitled to terminate this Agreement by issue of Termination Notice, if subsisting.

(b) Termination for State Govt.'s Event of Default

- (i) Without prejudice to any other right or remedy which Concessionaire may have in respect thereof under this Agreement and subject to the rights of the Lenders, upon the occurrence of State Govt.'s Event of Default, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If Concessionaire decides to terminate this Agreement pursuant to preceding sub-clause (i) it shall in the first instance issue Preliminary Notice to State Govt.. Within thirty (30) days of receipt of Preliminary Notice. State Govt. shall forward to Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**State Govt. Proposal to Rectify**"). In case of non submission of State Govt. Proposal to Rectify within the period stipulated thereof, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If State Govt. Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, State Govt. shall have further period of [thirty (30)] days to remedy / cure the underlying Event of Default within such further period allowed. In the event that the Event of Default is not cured within the stipulated time period the Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.

(c) Termination for the Participating ULB/ULBs Event of Default

- (i) Without prejudice to any other right or remedy which Concessionaire may have in respect thereof under this Agreement and subject to the rights of the Lenders, upon the occurrence of the Participating ULB/ULBs Event of Default, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If Concessionaire decides to terminate this Agreement pursuant to preceding sub-clause (i) it shall in the first instance issue Preliminary Notice to the Participating ULB/ULBs and a copy of such Preliminary Notice shall be sent to State Govt. Within [thirty (30)] days of receipt of Preliminary Notice, the Participating ULB/ULBs shall forward to Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**Participating ULB/ULBs Proposal to Rectify**"). A copy of this Proposal to Rectify shall be sent to State Govt.

In case of non submission of the Participating ULB/ULBs Proposal to Rectify within the period stipulated thereof, State Govt. on a written request by the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- (i) If Participating ULB/ULBs Proposal to Rectify is forwarded to the Concessionaire and State Govt. within the period stipulated thereof, State Govt. shall have further period of [thirty (30)] days to remedy / cure the underlying Event of Default within such further period allowed. In the event that the Event of Default is not cured within the stipulated time period the State Govt. shall be entitled to terminate the Agreement on a written request by the Concessionaire, this Agreement by issuing Termination Notice.

(d) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Sub-Clause (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.

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

(e) Obligation of Parties

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

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Regional MSW Facilities.
- (ii) the Termination Payment, if any, payable by State Govt. or the Participating ULBs in accordance with the following sub-clause (f) is paid to Concessionaire on the Termination Date and

(iii) the Regional MSW Facility are handed back to State Govt. by the Concessionaire on the Termination Date free from any Encumbrances along with any payment that may be due by Concessionaire to State Govt..

(f) 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.

(g) Termination Payments

A Non –fulfillment of the Condition Precedent

In the event that the condition precedent as specified under Clause 3 are not fulfilled, the Agreement shall stand terminated and State Govt. shall return the Performance Security after deducting the necessary charges and deductions. The Concessionaire shall transfer and hand-back the Vacant Possession of the Site to State Govt..

B. After the fulfillment of the Condition Precedent

(i) Upon Termination of this Agreement on account of State Govt. Event of Default or the Participating ULB/ULBs Event of Default, the Concessionaire shall be entitled to the following termination payments: (a) if the termination occurs after the fulfillment of the Condition Precedent and prior to the Operations Date, then State Govt. and/the Participating ULBs shall pay Concessionaire a termination payment equivalent to the aggregate Development Costs incurred by Concessionaire and (b) if the termination occurs after Operations Date, then State Govt. shall pay Concessionaire termination payment equal to 150% of the Book Value of the fixed assets as on Termination Date, as determined by the statutory auditor of Concessionaire.

- (ii) Upon Termination of this Agreement on account of Concessionaire Event of Default, State Govt. or the Participating ULBs shall not be liable to pay any termination payment to Concessionaire, but shall be liable to discharge or take over the debt due to the Lenders under the Financing Agreements and Concessionaire shall be obligated to transfer the Regional MSW Facility together with the Encumbrances created in favour of the Lenders under the Financing Agreements.

30.4 Rights of State Govt. on Termination

Subject to the provisions of Section 30 upon Termination of this Agreement and after Concessionaire has received all the payments due from State Govt. under this Agreement, State Govt. shall have the power and authority to:

- (i) enter upon and take possession and control of the Site and the Regional MSW Facilities; and
- (ii) prohibit Concessionaire and any person claiming through or under Concessionaire from entering upon / dealing with the Regional MSW Facilities:

30.5 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it 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.

31. LIABILITY AND INDEMNITY

31.1 General Indemnity

- a. The Concessionaire shall indemnify, defend and hold the State Govt. and the Participating ULBs harmless against any and all proceedings, actions and, third party claims for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, operation and maintenance of the Regional MSW Facility or arising out of a breach by Concessionaire of any of its

obligations under this Agreement (except to the extent that any such claim has arisen due to the State Govt. or the Participating ULB/ULBs Event of Default).

- b. State Govt. shall , indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of: (i) defect in title and/or the rights of the State Govt. in the land comprised in the Site adversely affecting the performance of the Concessionaire's obligations under this Agreement and/or (ii) arising out of acts done in discharge of their lawful functions by State Govt., its Officers, servants, agents, subsidiaries and Contractors ("the State Govt. Indemnified Persons") including the State Govt. Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, contractors, servants or agents including due to Concessionaire Event of Default.
 - c. The Participating ULBs shall indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of acts done in discharge of their lawful functions by the Participating ULBs, its Officers, servants, agents, subsidiaries and Contractors ("the Participating ULBs Indemnified Persons") including the Participating ULB/ULBs Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, Contractors, servants or agents including due to Concessionaire Event of Default.
- 31.2 The Concessionaire shall discharge any liability, fully indemnify, save harmless, defend the State Govt. and the Participating ULBs including its officers, servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- 31.3 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or

delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

32. STEP IN RIGHTS

32.1 Lender's Step- In Rights

The Parties agree that, notwithstanding anything to the contrary hereinabove contained, before State Govt. can terminate this Concessionaire Agreement for a Concessionaire Event of Default or the Participating ULB/ULBs Event of Default, it shall provide a copy of the Preliminary Notice to the Lenders of Concessionaire and the Lenders shall have the right to appoint a substitute entity to take over the Regional MSW Facility and the implementation of the Project under this Agreement *provided however*, that the Lenders shall exercise this right within a period of [thirty (30)] days from the receipt of Preliminary Notice. In the event the Lenders do not appoint a substitute entity, within the time specified in this Clause 32.1, and State Govt. does not want to take over the Regional MSW Facility, then the Lenders shall ensure that, then they enforce and satisfy their security charges and other Encumbrances (including but not limited to by auctioning the secured assets of the Regional MSW Facility Plant) that they may hand - over and provide the Vacant Possession of the Site to the State Govt. in accordance with Clause 33 below. State Govt. shall, in the event such a substitute entity is notified by the Lenders, not terminate this Agreement and will transfer this Agreement to such substitute entity and the substitute entity shall thereafter implement the Project *provided however*, the Lenders shall have no obligation to appoint a substitute entity and shall not in any manner be liable or responsible for the Concessionaire Event of Default.

32.2 Termination Subject to Step In Rights

State Govt. hereby agrees that its right to terminate this Agreement and obtain possession of the Regional MSW Facility shall always be subject to the rights of the Lenders and any Encumbrances created in favor of the Lenders under the Financing Documents.

33. TRANSFER AND HANDBACK OF REGIONAL MSW FACILITIES

33.1 Upon the completion and expiry of the Term of this Agreement or early Termination of this Agreement, Concessionaire shall, after receiving all payments due from State Govt. or the Participating ULBs under this Agreement, transfer and handover to State Govt. the Regional MSW Facility, and the Site, in a good operable condition and any other term and condition as may be stipulated after the joint inspection conducted under Clause 33.2 between the Parties Concessionaire will execute all such documents and

writings as required in that behalf, *provided however*, in the event of early termination, the transfer of the Regional MSW Facility shall occur together with any Encumbrances created in favour of the Lenders under the relevant Financing Documents.

- 33.2 State Govt. shall at least six (6) months before the expected expiry or Termination of the Agreement conduct a joint inspection with the Concessionaire of the Site and the Regional MSW Facility so as to ensure that the Regional MSW Facility are handed over in good operable conditions on the expiry or Termination of the Agreement, as the case may be. Within forty five (45) days of such joint inspection State Govt. shall furnish a list of repairs/works to be done of any part in accordance with the specifications and standards as provided in this Agreement. The Concessionaire shall ensure that such repairs/works are carried out within a maximum period of three months and ensure that the Regional MSW Facility continue to meet the requirement as stipulated by State Govt. and are handed over free from any Encumbrance as stipulated in sub-clause 33.1 above.
- 33.3 State Govt. may, on taking over the Regional MSW Facility, enter into suitable agreements with the owners of the technology being used in the Regional MSW Facility for directly obtaining any necessary license and right on non-exclusive and non-transferable basis, to continue to use the relevant technology only for the purposes of operation and maintenance of the Regional MSW Facility.
- 33.4 The Concessionaire shall also transfer and enable transfer of insurance policies applicable and subsisting to State Govt. at the time of hand back of the Regional MSW Facility to State Govt..

34. ARBITRATION

In the event of any dispute arising between the Parties in relation to or under this Agreement, the same shall be settled by arbitration conducted by an arbitral tribunal consisting of three arbitrators, one to be appointed by each party and the third arbitrator being appointed by the two arbitrators so appointed. The decision of the arbitration tribunal shall be final and binding. The venue for the arbitration shall be [a place in the state]. The arbitration will be governed by the provisions of the Arbitration and Conciliation Act, 1996. The costs of the arbitration tribunal shall be equally borne by both the parties. Each Party shall bear its own cost of the arbitration provided however, the parties can claim costs as part of the relief sought from the arbitration tribunal.

35. FORCE MAJEURE AND CHANGE IN LAW

35.1 Force Majeure Event

Any event lying beyond the reasonable control of a Party and not brought about at the instance of the Party claiming to be affected by such event (“**Affected Party**”) which the Affected Party could not prevent or overcome despite having exercised due care and diligence and which results in a Material Adverse Effect shall constitute a Force Majeure Event. Such events provided they fulfill the requirements stated in the preceding sentence, shall include, but not be limited to the following:

- (a) earthquake, flood, inundation and landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire caused by reasons not attributable to the Affected Party or any of the employees, contractors or agents appointed by the Affected Party;
- (d) acts of terrorism;
- (e) strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Affected Party;
- (f) early termination of this Agreement for reasons of national emergency or national security;
- (g) war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions.

35.2 Notice of Force Majeure Event

- (a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
 - (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated duration of the Force Majeure Event;
 - (iii) the nature of and the extent to which, performance or any of its obligations under this Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performances of such of its obligations affected thereby; and

- (v) any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding sub-clause (a), the Parties meet, hold discussions in good faith and where necessary conduct physical inspection / survey of the Regional MSW Facility in order to:
 - (i) assess the impact of the underlying Force Majeure Event;
 - (ii) determine the likely duration of Force Majeure Period; and
 - (iii) formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party reports concerning the matters set out in the preceding sub-clause (b) as also any information, details or document, which the other Party may reasonably require.

35.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 35.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or likely to be caused to the Regional MSW Facility as a result of the Force Majeure Event and to restore the Regional MSW Facilities, in accordance with the Good Industry Practice and its obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer and Project Monitoring Committee written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issuance of such notice being no excuse for any delay for resuming such performance;

- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with the Agreement;
- (f) any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event or in accordance with Good Industry Practice.

35.4 Termination due to Force Majeure Event

(a) Termination

If a Force Majeure Event continues or is in the reasonable judgment of the Parties likely to continue beyond a period of one hundred and twenty (120) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of one hundred and twenty (120) days, be entitled to terminate this Agreement.

(b) Termination Notice

If either Party being entitled to do so decides to terminate this Agreement pursuant to the preceding sub-clause 35.4(a), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than sixty (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.

(c) 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) the Termination Payment, if any, payable by State Govt. in accordance with the following Clause (d) is paid to Concessionaire on the Termination Date; and
- (ii) the Regional MSW Facility are handed over to State Govt. by Concessionaire on the Termination Date free from all Encumbrances in accordance with the provisions of this Agreement.

(d) Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, State Govt. shall pay to the Concessionaire Termination Payment equal to 100% of the book value of the capital investments (net of depreciation computed on straight line basis as per the rates specified in Companies Act, 1956 ("**Book Value**")) as on the date of Termination Notice, made by Concessionaire towards the Regional MSW Facility and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose (and in the event State Govt. and the Concessionaire fail to agree on the identity of firm within a period of 20 days from the date of the decision to terminate this Agreement, the Book Value shall be determined by the statutory auditors of the Concessionaire) *provided however*, the amounts that can be claimed by Concessionaire under the insurance policies that it has maintained in relation to the Project, with respect to the damage or loss caused by the relevant Force Majeure event shall be taken into account for this purpose and the total amount payable by State Govt. under this sub-clause (d) shall be reduced by such amount as can be claimed under the applicable insurance policies.

35.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Section 35, neither Party hereto 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.

35.6 Change in Law

(a) Change in Law shall mean the occurrence or coming into force of any of the following, after the date of execution of this Agreement:

- (i) The enactment of any new Indian law;
- (ii) The repeal, modification or re-enactment of any existing Indian law;
- (iii) A change in the interpretation or application of any Indian law by a court of record;
- (iv) Any order, decision or direction of a court of record.

Provided that Change in Law shall not include:

- (1) Coming into effect, after the Effective Date, of any provision or statute which is already in place as of the date of execution of this Agreement;
- (2) 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 Effective Date which is a matter of public knowledge;

- (3) Any change in the rates of the taxes.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, Concessionaire is obliged to incur additional costs, and State Govt. shall either : (i) subsequently reimburse to the Concessionaire 100 % of such additional costs, in accordance with this Clause 35.6 or (ii) agree to amend this Agreement as per the proposals of Concessionaire in order to make the continued implementation of the Project viable, *provided* such additional cost is not less than Rupees [twenty five (Rs 25,00,000/-)].
- (c) Upon occurrence of a Change in Law, Concessionaire shall notify State Govt. of the following:
- (i) The nature and the impact of Change in Law on the Project;
 - (ii) In sufficient detail, the estimate of the additional cost likely to be incurred by Concessionaire on account of Change in Law; and
 - (iii) The measures, which Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the additional cost.
- (d) Upon receipt of the notice of Change in Law issued by Concessionaire pursuant to preceding sub-clause, the State Govt. and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by a duly qualified independent person who is acceptable to both State Govt. and the Concessionaire, of the quantum of the Additional Cost to be borne and paid by the State Govt..

36. JURISDICTION

The Parties agree that depending on the monetary value of the dispute either the courts in [....] or the High Court of shall have jurisdiction to try all disputes and matters arising out of an under this Agreement, after reference to arbitration.

37. REPRESENTATION AND WARRNTIES

37.1 Representation and Warranties of State Govt.

State Govt. hereby represents, assures, confirms and undertakes to Concessionaire and the Participating ULBs as follows:

- (a) That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- (b) That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorise the execution, delivery and performance of this Agreement
- (c) Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it
- (d) All approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for the due execution of this Agreement have been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian Law;

37.2 Representations and Warranties of the Participating ULBs

The Participating ULBs hereby represent, assure, confirm and undertakes to Concessionaire and State Govt. as follows:

- (a) That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- (b) That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorise the execution, delivery and performance of this Agreement
- (c) Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it; and
- (d) All approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for the due execution of this Agreement have been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian Law;

37.3 Representation and Warranties of Concessionaire

Concessionaire hereby represents, assures, confirms and undertakes to State Govt. and the Participating ULB as follows:

- (a) That it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- (b) That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals (corporate, statutory or otherwise) to authorise the execution, delivery and performance of this Agreement
- (c) Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it
- (d) this Agreement will be valid, legal and binding against it under the Indian Law.

38. MISCELLANEOUS

38.1 No Waiver of Rights and Claims

Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favour of any party under the terms of this Agreement shown or made by such a party in whose favour such rights or claims might have vested by virtue of this Agreement shall neither constitute nor be construed to be a waiver of such rights or claims accruing in respect of such a party.

38.2 Schedules and Annexures

All schedules and annexure and other explanatory details attached to this Agreement shall be deemed to be a part of this Agreement.

38.3. Supersession of Earlier Agreements

This Agreement represents the entire Agreement between State Govt. and the Participating ULBs and the Concessionaire and all agreements, correspondence, notes or any other document submitted or understandings made or reached by and between the parties inter se in respect of the subject matter of these presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this Agreement.

38.4 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of Term, breach of any term of this Agreement and termination of this Agreement, shall be in

writing and shall be given by hand delivery/ recognized international courier, mail, telex or facsimile and delivered or transmitted to the parties at their respective addresses set forth below:

If to State Govt.:

If to [the Participating ULB - _____]:

If to [the Participating ULB – _____]:

If to Concessionaire:

All notices under this Agreement shall be in English.

38.5 Legal Charges

The prescribed legal charges for execution of this Agreement shall be borne by Concessionaire.

38.6 Counterparts

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

38.7 Assignment

No assignment of this Agreement or any rights or duties hereunder, in whole or in part by any Party is permitted at any point of time during the Term.

Provided, *however*, the Concessionaire may sub-contract whole or part of the design, construction and operation and maintenance of the Project.

Provided, *further*, under no circumstances shall the Concessionaire shall be absolved of its rights, duties, obligations under the terms and conditions of this Agreement and the Concessionaire shall be solely and exclusively responsible for the implementation of the Project.

38.8 No Partnership

Nothing herein contained shall be construed to constitute a partnership between State Govt., the Participating ULBs, and Concessionaire, or to constitute either party as the agent of the other and neither party shall hold itself out as such.

38.9 Severability

If any provision of this Agreement shall be declared illegal, void or unenforceable, the same shall not affect the other provisions herein which shall be considered severable from such provision and shall remain in full force and effect.

38.10. Commercial Agreement

State Govt. hereby recognizes that this is a commercial act being undertaken by State Govt. and that it hereby unconditionally and irrevocably: (i) waives any right of immunity, sovereign or otherwise and (ii) agrees that should any proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement no immunity, sovereign or otherwise, from such proceedings, execution, attachment or other legal process shall be claimed by or in behalf of itself or with respect to any of its assets.

IN WITNESS WHEREOF the parties hereto have placed their respective hands and seals hereto on the day and year first herein above mentioned.

SIGNED, SEALED AND DELIVERED BY:

FOR Government of

(Authorized Representative for and on behalf of Government of)

Duly authorized by the []

Vide resolution no.....dated.....

(Signature)

IN PRESENCE OF

SIGNED, SEALED AND DELIVERED BY:

FOR [] Municipal Corporation / municipality - MC 1

(Authorized Representative for and on behalf of [] Municipal Corporation / municipality)

(Signature)

NAME:

ADDRESS:

SIGNED, SEALED AND DELIVERED BY:

FOR [] Municipal Corporation / municipality - MC 2

(Authorized Representative for and on behalf of [] Municipal Corporation / municipality)

(Signature)

NAME:

ADDRESS:

SIGNED, SEALED AND DELIVERED BY

FOR _____[CONCESSIONAIRE]

(Director)

(Duly authorized by the resolution of the Board of Directors passed at its meeting held on _____)

(Signature)

IN PRESENCE OF

NAME:

ADDRESS:

List of Schedules

Schedule I – Concession Agreement

Schedule II - MSW Supply Agreement

Schedule III – Standards and Specifications

Schedule IV – Map

Schedule V – Participation Deed

Schedule VI

VI A – ULB Delivery Schedule

VI B – Concessionaire Delivery Schedule

Schedule VII – Lease Agreement

Schedule VIII – Tipping Fee payable

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