

Draft Concession Agreement
for
Setting Up ~~Solid Waste~~Municipal
Solid Waste (SWMSW) to Energy
Processing Facility in Municipal
Corporation, Gorakhpur Uttar
Pradesh

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PART I - PRELIMINARY

CONCESSION AGREEMENT

THIS AGREEMENT is made on this [XXX] day of [XXX], Two Thousand and Sixteen (Effective Date) at Lucknow.

BETWEEN

Gorakhpur Municipal Corporation, a Municipal Corporation constituted under the _____ Act _____, having its principal office at _____ (hereinafter referred to as “**ULB**” which expression shall unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) of First Part;

AND

Construction and Design Services, a unit of Uttar Pradesh Jal Nigam, a Government of UP Enterprise, having its main office at T.C. – 38 – V., Vibhuti Khand, Gomti Nagar, Lucknow – 226010 (hereinafter referred to as “**C&DS, UPJN**” or “**Construction Supervisor**” which expression shall unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) of Second Part;

AND

_____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at _____ (hereinafter referred to as “**the Concessionaire**” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and substitutes) of Third Part.

WHEREAS,

- (a) By Seventy Fourth Amendment to the Constitution of India (with effect from 1st June 1993), Part IXA was inserted which inter-alia introduced the concept of local self-governance by urban local bodies (“**ULBs**” or “**Municipalities**”). Article 243W divested powers and responsibilities on the municipalities for performance of functions and implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule of the Constitution of India. Public health, sanitation conservancy and ~~solid waste~~Municipal Solid Waste management have been provided as few of the activities in Twelfth Schedule which are required to be undertaken by Municipalities.
- (b) The Ministry of Environment, Forests and Climate Change (MoEFCC) under the aegis of Government of India (GoI), has formulated the ~~Solid Waste~~Municipal Solid Waste Management (SWM) Rules 2016 (“**SWM Rules**”), which shall apply to every urban local body, outgrowths in urban agglomerations, census towns as declared by the Registrar General and Census Commissioner of India, notified areas, notified industrial townships, areas under the control of Indian Railways, airports, airbases, Ports and harbours, defence establishments, special economic zones, State and Central government organisations, places of pilgrims, religious and historical importance as may be notified by respective State government from time to time and to every domestic, institutional, commercial and any other non-residential ~~solid waste~~Municipal

Solid Waste generator situated in the areas except industrial waste, hazardous waste, hazardous chemicals, bio medical wastes, e-waste, lead acid batteries and radio-active waste, that are covered under separate rules framed under the Environment (Protection) Act, 1986. Accordingly, the ULBs are required to perform their obligatory duties within the provision of their respective Acts and also to provide SWM Services in accordance with SWM Rules and also to protect the environment and public health of their citizens and public in general.

- (c) ULB is the urban local body for the city of Gorakhpur, in the state of Uttar Pradesh, and is responsible for providing municipal and civic services, which include the collection, segregation, transportation, processing and disposal of ~~Solid Waste~~Municipal Solid Waste generated within the city, for the benefit of the public residing within its jurisdiction.
- (d) In order to have an efficient ~~Solid Waste~~Municipal Solid Waste Management in Gorakhpur ULB area, ULB / GoUP has designated C&DS, UPJN to select and appoint a Concessionaire by way of carrying out the entire bidding process at the RFP Stage, to develop the Project (as defined hereinafter) for enabling construction of a Waste (~~SW~~MSW) to Energy Processing Facility, and perform, execute and implement the Project under and in accordance with the terms and provisions of this Agreement
- (e) The State Government also recognizes that the existing state of SWM systems in the State is raising public health and sanitation issues, which need to be addressed in public interest. State Government 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 SW;
- (f) Therefore, in furtherance of public interest and with the aim of improving standards of public health and sanitation in the state of Uttar Pradesh, the State Government has now decided to authorize and support this Agreement for development of the Project;
- (g) The objective of the Project is to develop and implement a viable & environmentally sustainable SWM system for Gorakhpur ULB area. The Project would include processing and disposal of the ~~SW~~MSW through Waste to Energy Processing Facility on DBFOT basis via a Public Private Partnership (PPP) model.
- (h) In furtherance of its objective of improving the SWM services in the city of Gorakhpur, C&DS, UPJN on behalf of the ULB / GoUP invited tenders for private sector participation on design, build, finance, operate, maintain and transfer basis in accordance with the competitive bidding guidelines for setting up the Project Facilities;
- (i) C&DS, UPJN had prescribed the technical and commercial terms and conditions (the “Request for Proposals” or “RFP”, which term shall include written clarifications issued to the Bidders and written addendum to the Request for Proposal), and invited bids for the ULB from the bidders including the Selected Bidder, consisting of either sole bidder or consortium of [] and [] (collectively the “Consortium”) with [] as the Lead Member of the Consortium, for implementing the Project

- (j) Pursuant to the said bidding process, Selected Bidder has been selected by the C&DS, UPJN, for processing of ~~SW-MSW~~ and sale of electricity / any other by-product generated/ processed from processing of the SW.
- (k) After evaluation of the bids received, C&DS, UPJN in consultation with the ULB had accepted the bid of the Selected Bidder and issued its Letter of Award No. [____] dated [____] (hereinafter called the “LOA”) to the Selected Bidder requiring, interalia, the execution of this Concession Agreement, subject to the terms and conditions contained therein;
- (l) The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013 (a special purpose vehicle), and has requested the C&DS, UPJN / ULB to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project;
- (m) By its letter dated [____], the Concessionaire has also joined in the said request of the Selected Bidder to the C&DS, UPJN / ULB to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder only for the purposes hereof;
- (n) The Concessionaire, as one of the conditions to the execution of the Concession Agreement, has submitted a bank guarantee to C&DS, UPJN dated _____ ref No _____ of an amount of Rs. 1,50,00,000/- (Rs. One Crore Fifty Lacs Only) issued by _____ Bank towards the Construction Performance Security and C&DS, UPJN acknowledges the acceptance of the same.
- (o) ULB has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly along with C&DS, UPJN agreed to enter into this Concession Agreement with the Concessionaire for the execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- (p) The Parties hereto are required to enter into this Concession Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound, being these presents to record the terms, conditions and covenants of the Concession.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

1.1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder; and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules:

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

	<p>substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 25 year Concession Period shall be $100/300 = 0.333$ rounded off to two decimal points i.e. 0.33.</p> <p>(d) For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made</p>
Affected Party	shall have the meaning set forth in Clause 25.1.
Agreement or Concession Agreement	means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement signed within 30 days of the Letter of Award
Applicable Laws	means all laws, brought into force and effect by GOI or the GoUP including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement
Applicable Permits	means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement
Appointed Date	means the date on which Financial Close is achieved. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be
Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended and shall include modifications to or any re-enactment thereof, as may come in force from time to time
Associate or Affiliate	means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly

	or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise)
Assured Quantity	Shall have the meaning set forth in Clause 6.1.2 (b)
Bank	“Bank” means a Nationalised Bank incorporated in India and having a branch in the city of Lucknow, Uttar Pradesh, but does not include a bank in which any Senior Lender has an interest;
Bank Rate	means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect
Bid	means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof
Bid Security	means the security provided by the Concessionaire to the C&DS, UPJN along with the Bid in a sum of Rs.50,00,000/- (Rupees Fifty Lacs Only), in accordance with the Request for Proposal, and which is to remain in force until substituted by the Construction Performance Security
Bio-medical Waste	shall have the meaning as defined under the Bio-Medical Waste Management Rules, 2016 and as amended from time to time
CDM	means Clean Development Mechanism
CERs	means Certified Emission Reduction
Change in Law	means the occurrence of any of the following after the date of Bid: <ul style="list-style-type: none"> (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the date of Bid; (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid
Change in Ownership	means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium members, together with their Associates, in the total Equity to decline below 100%

	(one hundred percent) thereof during Construction Period and five years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire though selected bidder during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be,) in the proportion of the equity holding of any Consortium member to the total Equity, if it occurs prior to completion of a period of five years after COD, shall constitute Change in Ownership;
COD or Commercial Operation Date	shall have the meaning set forth in Clause 15.1
Completion Certificate	shall have the meaning set forth in Clause 14.2
Completion Date	means the completion date to be notified by the Construction Supervisor, on which the Completion Certificate or the Provisional Certificate, as the case may be, is deemed to have been given to the Concessionaire.
Composting	a controlled process involving microbial decomposition of organic matter
Concession	shall have the meaning set forth in Clause 3.1.1
Concession Period	means the period commencing from Financial Close date and ending on the Transfer Date.
Concessionaire	shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals
Concessionaire Event of Default	shall have the meaning set forth in Clause 29.1.2
Conditions Precedent	shall have the meaning set forth in Clause 4.1
Construction & Demolition / C & D Waste	means the waste comprising of building materials, debris and rubble resulting from construction, re-modeling, repair and demolition of any civil structure, as defined under the Construction and Demolition Waste Management Rules, 2016 (C & D Rules);
Construction Inspection Report	shall have the meaning set forth in Clause 13.2.1
Construction Period	shall mean the period beginning from the Appointed Date and ending on the COD
Construction Plan	as defined in Clause 9.3 of Schedule 9
Construction Requirements	Means collectively construction requirements for the Waste to Energy Processing Facility and Scientific Landfill in line with minimum specifications given in Schedule 9.

Construction Works	means all works and things required to be constructed by the Concessionaire as part of the Project Facilities in accordance with this Agreement
Construction Supervisor	means C&DS, UPJN appointed in accordance with Article 21 for supervising and monitoring compliance by the Concessionaire with the Construction Requirements relating to the Project Facilities as per the scope of work determined by the ULB/GoUP
Contractor	means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire
Contracted Capacity/ Quoted Capacity	shall mean [<i>insert capacity here</i>] MW contracted with UPPCL for supply by Concessionaire from Waste to Energy Processing Facility to UPPCL at the Interconnection Point from the Project.
Cost to ULB	shall have the meaning set forth in Clause 18.2.1
CRE Regulations	means the UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 as amended from time to time
Cure Period	<p>shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:</p> <p>(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;</p> <p>(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and</p> <p>(c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the ULB/Independent Engineer/Construction Supervisor hereunder, the applicable Cure Period shall be extended by the period taken by the ULB/Independent Engineer/Construction Supervisor to accord their approval</p>
Daily Reports	shall constitute the reports to be submitted daily as defined in the Schedule 15
Damages	shall have the meaning set forth in Clause 1.2.1 (w)
DBFOT	Design, Build, Finance, Operate and Transfer

Debt Due	<p>means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>(a) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;</p> <p>(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to ULB Event of Default; and</p> <p>(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;</p> <p>Provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken</p>
Debt Service	means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements
Developer/ Developer WtE	shall mean the Concessionaire
Dispute	shall have the meaning set forth in Clause 35.1
Dispute Resolution Procedure	means the procedure for resolution of Disputes set forth in Article 35.35
Divestment Requirements	means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 30.1
Document or Documentation	means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form
Drawings	means all of the drawings, calculations and documents pertaining to the Project

Encumbrances	means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities
EPC Contract	means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement
EPC Contractor	means the person with whom the Concessionaire will enter into an EPC Contract
Equity	means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component
Event of Default	shall have the meaning ascribed thereto in Clause 29.1.
Excluded Waste	means waste material of the nature that the Project Facilities are not designed or authorized to receive, manage, process and dispose which includes Hazardous Waste, Bio-medical Waste
Existing Assets	shall mean the movable and immovable assets installed and / or put to use at the Project Site and handed over by the C&DS, UPJN / ULB to the Concessionaire on the Appointed Date which have been set out in Schedule 1, exclusively for the purpose of implementing the Project;
Financial Close	means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements
Financial Default	shall have the meaning set forth in Schedule 1818
Financial Model	means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein
Financial Package	means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes

	Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any
Financing Agreements	means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2.
Force Majeure or Force Majeure Event	shall have the meaning ascribed to it in Clause 26.1
GoI or Government	means the Government of India
GoUP	means the Government of Uttar Pradesh
Good Industry Practice	means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner
Government Agency	Gol, GoUP, the ULB, C&DS,UPJN or any governmental department, commission, board, body, bureau, agency, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over Concessionaire, the Site/Project Facilities or any portion thereof, for the performance of all or any of the services or obligations of Concessionaire under or pursuant to this Agreement.
Government Instrumentality	means any department, division or sub-division of the Government or the GoUP and includes any commission, board, ULB, C&DS, UPJN, agency or statutory body including Panchayat under the control of the Government or GoUP, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement
Hand Over of Project Facilities	shall have the meaning ascribed thereto in Article 22.22
Hazardous Waste	shall have the meaning as defined under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

Immovable Project Assets	shall mean building structure, civil works, including foundations, roads and pavements, drainage works, internal wiring and sanitary fixtures etc. at Project Site;
Indemnified Party	means the Party entitled to the benefit of an indemnity pursuant to Article 34 34
Indemnifying Party	means the Party obligated to indemnify the other Party pursuant to Article 34 34
Independent Engineer	shall have the meaning ascribed thereto in Article 21 21
Indirect Political Event	shall have the meaning set forth in Clause 26.3
Insurance Cover	means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 24 24, and includes all insurances required to be taken out by the Concessionaire but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event
Intellectual Property	As defined in Patent Act, 1970
Landfilling	the disposal of the Residual Inert Matter and process remnants at the Scientific Landfill designed with protective measures, against pollution of ground water, surface water, and air fugitive dust, windblown litter, bad odour, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion, in accordance with the terms of this Agreement.
Landfill Waste	means the Residual Inert Matter and process remnants landfilled to Scientific Landfill facility as duly certified by the Independent Engineer in accordance with the O&M Requirements.
Landfilling Weighbridge	Weighbridges installed at the entrance of the Scientific Landfill facility.
Lenders	means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold <i>pari passu</i> charge on the assets, rights, title and interests of the Concessionaire
Lenders' Representative	means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes

Material Adverse Effect	means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party
Material Breach	a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure
Minimum Assured Quantity	80% of the Assured Quantity of SW-MSW to be delivered at the Project Site by the ULB for that operational financial year
Monitoring Agency	Any agency authorized by the ULB to monitor progress or adherence to construction or Operations & Maintenance requirements. This includes the Construction Supervisor or Independent Engineer.
Monthly Reports	shall constitute the reports to be submitted monthly as defined in the Schedule <u>15.1.2</u> 15.1.2
Movable Project Assets	means the following physical and other assets at Project Site: <ul style="list-style-type: none"> (a) tangible assets such as equipments, including generation plant, electrical systems, utilities, information technology system and furniture and fixtures relating to the Project, including refurbishments, additions, alterations or improvements etc., but excluding internal wirings, sanitary fixtures etc. embedded in walls or buildings.; (b) project equipments situated on the Project Site; (c) all rights of the Concessionaire under the Project Agreements; (d) financial assets, such as receivables, security deposits etc.; (e) insurance proceeds; and Applicable Permits and authorizations relating to or in respect of the Project;
Nominated Company	means a company selected by the Lenders' Representative and proposed to the ULB for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement
Non-Political Event	shall have the meaning set forth in Clause 26.2
O&M	means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance and provision of services and Facilities in accordance with the provisions of this Agreement, set forth in Clause 12.3

O&M Contract	means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations
O&M Contractor	means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire
O&M Expenses	means expenses incurred by or on behalf of the Concessionaire or by the ULB, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement
O&M Inspection Report	shall have the meaning set forth in Clause 20.2.1
O&M Plan	shall mean the plan referred to in Schedule 10
O&M Requirements	the requirements as to operation and maintenance of the Project Facilities set forth in the Schedule 10
Obligated Quantity	125% of the Assured Quantity of SW-MSW to be delivered at the Project Site by the ULB in the first Financial Year
Operation & Maintenance Manual or O&M Manual	shall have the meaning ascribed to it in Clause 16.2
Operation and Maintenance Period	means the period commencing from COD and ending on the Transfer Date
Organic Waste	means such type of Waste that can be degraded by microorganisms
Panel of Chartered Accountants	shall have the meaning set forth in Clause 25.2.1
Parties	means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually
Performance Security	shall have the meaning set forth in Clause 9
Performance Standards	Standards of operations as defined in the Schedule 12 , Clause 12.1
Plant	the apparatus and machinery for carrying on the activities required for the Project, fixed or movable, but excluding consumables and premises

Political Event	shall have the meaning set forth in Clause 26.4
Post Closure Activities	the activities to be undertaken by Concessionaire after closure of Scientific Landfill in accordance with the Standards and Specifications.
Post Concession Period	means the 15 year time period commencing from the expiry of the Concession Period; for taking up the Post Closure Activities.
Power Purchase Agreement (PPA)	shall mean the binding agreement entered between the Concessionaire and the UPPCL for sale of power for the Contracted Capacity
Preliminary Notice	the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default
Processing	processing of SW-MSW by which it is transformed into new or recycled products by using processes such as incineration, biomethanation, RDF pelletisation, composting, or any other Proposed Technology in accordance with the standards set forth in the SWM Rules 2016 and Applicable Law
Processing Input Weighbridge	Weighbridge installed at the entrance of the Waste to Energy Processing Facility
Processing Output Weighbridge	Weighbridge installed at the exit of the Waste to Energy Processing Facility
Project	the project for enabling construction of Waste to Energy Processing Facility, processing and disposal of SW-MSW in the Scientific Landfill and for that purpose to design, develop, finance, construct, operate and maintain the Plant, under and in accordance with the terms and provisions of this Agreement.
Project Agreements	means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement.
Project Assets	means all physical and other assets relating to and forming part of the Project Site including: <ul style="list-style-type: none"> (a) rights over the Project Site in the form of license, Right of Way or otherwise; (b) Immovable Project Assets; (c) Movable Project Assets; (d) Existing Assets.

Project Completion Schedule	means the progressive Project Milestones set forth in Schedule 5 for completion of the Project on or before the Scheduled Completion Date
Project Facilities/Facilities	means all the amenities and facilities, (a) the Site (b) Waste to Energy Processing Facility, (c) Scientific Landfill and (d) Transmission Infrastructure
Project Milestones	means the project milestones set forth in Schedule 5
Proposed Technology	shall have the meaning set forth in Clause 2.2.1
Provisional Certificate	shall have the meaning set forth in Clause 14.3 14.3.1
Punch List	shall have the meaning ascribed to it in Clause 14.3.1
Quoted Differential Tariff	means the Quoted Percentage of differential tariff over and above UPERC tariff (i.e. total tariff including Fixed charges and Variable charges) to be receivable / payable by ULB over and above the tariff as determined by UPERC under CRE Regulations or tariff determined, if any specifically for this Project.
RBI	means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, and its successors
RDF	the solid fuel in the form of fluff or pellets/ briquettes that is produced by drying and separation of combustible fractions from the SW-MSW meeting the requirements of the boiler to generate electricity through the turbine that will be part of the Waste to Energy Processing Facility.
Re., Rs., or Rupees or Indian Rupees or INR	means the lawful currency of the Republic of India
Readiness Certificate	the certificate issued by the ULB or the Construction Supervisor certifying, inter-alia, that Concessionaire has constructed all the Project Facilities and the Concessionaire has obtained all approvals necessary to receive the SW-MSW supplied by the ULB.
Reference Exchange Rate	means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda
Request for Proposal or RFP	Request for Proposal document issued by the C&DS, UPJN for this Project
Residual Inert Matter	the waste matter obtained after processing of the SW-MSW by the Waste to Energy Processing Facility

Revenue Share to ULB	shall have the meaning set forth in Clause 18.2.1
Safety Requirements	shall have the meaning set forth in Clause 19.1.1
Scheduled COD	As defined in Schedule 5
Scientific Landfill	prepared for Landfilling of the Residual Inert Matter from the Facilities in accordance with the Specification and Standards contained in the SWM Rules 2016 and Applicable Law
Scientific Landfilling	landfilling of Residual Inert Matter and process remnants in accordance with the Specification and Standards contained in the SWM Rules, 2016 and any amendments/ revision thereto till date.
Selected Bidder	means the sole bidder/consortium of maximum of three members who has been issued the Letter of Award.
Scope of the Project	shall have the meaning set forth in Clause 2.1.1
Scheduled Completion Date	shall mean that date mentioned for completion of Construction Work in schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule 5;
Site or Project Site	As detailed in the Schedule 1
<u>MSW or Solid Waste</u> <u>Municipal Solid Waste</u>	means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in rule 2 of the SWM Rules;
SWM Rules	the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986).
SPCB/UPPCB	State Pollution Control Board: specifically, Uttar Pradesh Pollution Control Board.
Specifications and Standards	means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by the ULB and / or C&DS, UPJN
State	means the State of Uttar Pradesh and “GoUP” means the government of Uttar Pradesh
Statutory Auditors	means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of

	the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 25.2.1
Subordinated Debt	<p>means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:</p> <p>(a) the principal amount of debt provided by Lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and</p> <p>(b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;</p> <p>Provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the Lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken</p>
Substitution Agreement	shall have the meaning set forth in Clause 32.3
Suspension	shall have the meaning set forth in Clause 28.1
SWM	Solid Waste <u>Municipal Solid Waste</u> Management
Taxes	means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income
Termination	means the expiry or termination of this Agreement and the Concession hereunder, as the case may be
Termination Date	the date specified in the Termination Notice as the date on which Termination occurs / comes into effect

Termination Notice	means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement
Termination Payment	means the amount payable by the ULB to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 120 (one hundred and twenty) days from COD, the Concessionaire shall notify to the ULB, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the ULB, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost
Tests	means the tests set forth in Schedule 7 to determine the completion of the Project in accordance with the provisions of this Agreement
TPD	tonnes per day
Total Project Cost	means the actual capital cost of the Project upon completion of the Project
Transfer Date	means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice
Transmission Infrastructure	means transmission infrastructure developed for transmission of power from the Waste to Energy Processing Facility till the point of interconnection of power as mutually decided between the Concessionaire and UPPCL, at the total cost and expenditure of the Concessionaire
ULB	Gorakhpur Municipal Corporation who has consented to participate in the Project and agreed to deliver SW-MSW to the Concessionaire and has signed Concession Agreement with the Concessionaire.
ULB Event of Default	shall have the meaning set forth in Clause 29.1.3 29.1.3
ULB Indemnified Persons	shall have the meaning set forth in Clause 34.1.1
ULB Representative	means such person or persons as may be authorised in writing by the ULB to act on its behalf under this Agreement and shall include any person or persons having ULB to exercise any rights

	or perform and fulfil any obligations of the ULB under this Agreement
UPERC	means Uttar Pradesh Electricity Regulatory Commission
UPPCL	means Uttar Pradesh Power Corporation Limited, its successor or any other distribution licensee substituting it, which has entered into a PPA with the Concessionaire.
Vacant Possession	delivery to Concessionaire of the Site free from all Encumbrances and the grant of all easement rights and all other rights appurtenant thereto subject to and in accordance with this Agreement.
Vesting Certificate	shall have the meaning set forth in Clause 30.4
Waste generators	means and includes every person or group of persons, every residential premises and non-residential establishments including Indian Railways, defense establishments, which generate solid waste <u>municipal solid waste</u> as defined in SWM Rules, 2016 and any amendments/ revision thereto till date.
Waste to Energy Processing Facility	the facilities established for Processing of SW-MSW and a power generation plant that will generate electricity by processing SW-MSW into energy in accordance with this Agreement.
Waste Reports	shall have the meaning ascribed in the Schedule 1515 .

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- (g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Uttar Pradesh are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (q) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation,

winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

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

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

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

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

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

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

PART II - THE CONCESSION

2. SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) ~~SW-MSW~~ processing facility;
- (b) Waste to Energy Processing Facility including segregation of ~~SW-MSW~~ for the Obligated Quantity of ~~SW-MSW~~ during the Concession Period; however the Concessionaire may also have provision for adding extra capacity to the Waste to Energy Processing Facility using the same or any other commercially proven technology to accommodate the growth in ~~SW-MSW~~ potential in the coming years;
- (c) Scientific Landfill and disposal of the process remnants and Residual Inert Matters from Waste to Energy Processing Facility including the Post Closure Period;
- (d) Transmission Infrastructure;
- (e) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

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

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

2.2 Processing Technology

2.2.1 The ULB desires that its ~~SW-MSW~~ management system be an efficient and effective system, which would scientifically collect, transport, segregate, process and dispose of ~~MSW~~, have maximum recycling and recovery, and create public awareness. Without prejudice to the generality of the foregoing, Concessionaire shall develop the Project Facilities using technology or technologies that it had proposed in its Bid to the RFP, adhering to SWM Rules, 2016 and any amendments/ revision thereto till date and in accordance with terms of this Agreement and Applicable Law (the “**Proposed Technology**”) which ensures:

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

- (c) a suitable technology is used for Processing of combustible content of the MSW;
- (d) a suitable technology is used for recovering and processing recyclable content of the MSW;
- (e) not more than 15% of the SW-MSW received at the Waste to Energy Processing Facility is disposed off in the Scientific Landfill.

3. GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the ULB hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of 25 (twenty five) years commencing from COD, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

3.1.2 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (b) design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such person as may be selected by it;
- (c) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (d) upon commissioning of the Project Facilities, to manage, operate and maintain the same either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;
- (e) transfer the Project Facilities to the ULB at the end of the Concession Period or on Termination, in accordance with the provisions of this Agreement;
- (f) borrow or raise money or funding required for the due implementation of the Project and charge or create lien or encumbrance on the whole or part of Movable Project Assets of the Project Facilities except the Site and Landfill Site;
- (g) process ~~SW~~MSW at the Plant, produce energy from Waste to Energy Processing Facility and dispose the process remnants and inert waste as per provisions of this Agreement, SWM Rules 2016 and Applicable Law;
- (h) in accordance with the Applicable Law, store, use appropriate, market and sell or dispose all the components/ products of the ~~SW~~MSW, including but not limited to electricity, methane, RDF, compost and to further retain and appropriate any revenues generated from the sale of such products/ end-products;
- (i) obtain the utilities required for enabling the construction of the Project Facilities;

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

3.2 **Exclusivity of the Concession**

- 3.2.1 Without prejudice to the rights of the ULB under this Agreement to take appropriate steps, the Concessionaire shall be the sole and exclusive person entitled to undertake the Project at the Project Site and ULB agrees that no agreement or arrangement permitting the activities as per the Scope of Work for the Project covered under this Agreement by any other party shall be entered into by the ULB during the Concession Period. However, in case of any increase in the ~~SW-MSW~~ being received beyond 130% of the Obligated Quantity of ~~SW-MSW~~, the ULB shall be entitled to set up a similar facility by inviting bids from other operators subject to providing first right of refusal (FROF) to the Concessionaire to set up such additional facility. The Concessionaire, if agrees to exercise the FROF, shall accept the same in writing within 15 days of offering of such right by the ULB, failing which the ULB shall be entitled to select the developer for such additional ~~SW-MSW~~ by following a process as may be deemed appropriate by it, without facing any objection and/or hindrance from the Concessionaire. If the Concessionaire conveys its acceptance and agrees to set up similar facility pursuant to exercising FROF, the same shall be set up in accordance with the procedure as laid down herein or any additional terms and conditions as may be laid down by ULB at that point of time. However, in case of such additional facility being set up, the ULB shall still be bound to fulfill its obligations first towards the Waste to Energy Processing Facility as defined herein, before sending the ~~SW-MSW~~ to any new facility.

4. CONDITIONS PRECEDENTS

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, ~~2323~~, ~~2626~~, ~~3535~~ and ~~3838~~, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.3 and 4.4 (the “**Conditions Precedent**”).

4.2 Conditions Precedent for ULB

4.2.1 The Conditions Precedent required to be satisfied by the ULB shall be deemed to have been fulfilled when ULB shall have, within a period of [15] [(fifteen)] days from the date of fulfilment of Conditions Precedent by the Concessionaire as stipulated in Clause 4.3 below, to the satisfaction of the Construction Supervisor including approval of Development Plan and Drawings by the Construction Supervisor as stipulated in Clause 4.4 or any extended time mutually agreed with the Concessionaire, handed over vacant and peaceful possession of the Project Site and Existing Assets to the Concessionaire for the development of the Project as per the Clause 6.1.2.(e);

4.2.2 The Conditions Precedent required to be satisfied by the ULB shall be deemed to have been fulfilled on the earlier of (i) on expiry of seven business days from the date when the ULB has offered to hand over the Project Site and Existing Assets to the Concessionaire; (ii) when the Concessionaire has taken over the possession of the Project Site and Existing Assets from the ULB.

4.3 Conditions Precedent for Concessionaire

4.3.1 The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have within a period of [120] [(one hundred twenty)] days from the date of execution of this Agreement, to the satisfaction of the Construction Supervisor and ULB:

- (a) obtained consent to establish the Project Facilities from the Uttar Pradesh Pollution Control Board as per applicable rules and regulations including SWM Rules 2016;
- (b) procured all the Applicable Permits specified in Schedule 2 unconditionally and if subject to conditions, all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (c) executed the Financing Agreements and delivered to the Construction Supervisor 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (d) delivered to the Construction Supervisor 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the

Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;

- (e) delivered to the Construction Supervisor a confirmation from the Selected Bidder / each of the Consortium member if the Selected Bidder is a Consortium, in original, of the correctness of their Representations and Warranties set forth in Clause 7.1.1 (m), Clause 7.1.1 (n) and Clause 7.1.1 (o);
- (f) delivered to the Construction Supervisor the Operations Plan as per Schedule ~~1144~~;
- (g) delivered to the Construction Supervisor a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (h) delivered to the Construction Supervisor at least 5 (five) copies of its Development Plan including the Drawings for the Project. The Concessionaire shall at its cost, prepare the Development Plan in conformity with the Scope of Work. The Development Plan shall inter-alia provide:
 - (i) Plan for development, operation, maintenance and management of the Project.
 - (ii) Detailed break-up of Project Cost in accordance with Good Engineering Practices basing them primarily on UPPWD Rates, CPWD Rates, fully justified market rates and supported with Quotations).
 - (iii) Details of ~~SW-MSW~~ processing and landfilling technology proposed to be adopted by the Concessionaire for the Project
 - (iv) Details of equipment to be procured, erected and installed at the Project Facilities
 - (v) PERT / Gantt chart for development of the Project
- (i) delivered to the Construction Supervisor, the following confirmations, in original, from the Selected Bidder/ members of Consortium:
 - (i) it / its members shall at all times comply with the provisions of Clause 5.11.2 in respect of their shareholding in the Concessionaire;
 - (ii) it / its members has / have the financial standing and resources to fund / raise finances for undertaking and implementing the Project in accordance with this Agreement;

- (iii) the Selected Bidder / each of its member is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the ULB and C&DS, UPJN to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (j) Executed a valid and legally enforceable power purchase agreement (PPA) with UPPCL for the sale of power as generated from the Waste to Energy Processing Facility.

Provided that upon request in writing by the Concessionaire, the Construction Supervisor in consultation with the ULB may, in its discretion, waive any of the Conditions Precedent set forth in this Clause ~~4.34.3~~. For the avoidance of doubt, the Construction Supervisor and/or the ULB may, in their sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.4 **Approval of Development Plan and Drawings**

- 4.4.1 The Concessionaire shall within 60 (sixty) days from the date of this Agreement, submit to the Construction Supervisor and ULB for their review and approval, a plan (“Development Plan”) and Drawings in conformity with the Scope of Work, Construction Requirements and O&M Requirements as per Schedule 6 hereto.
- 4.4.2 Within 30 (thirty) days of receipt of the Development Plan and Drawings, the Construction Supervisor shall review the same taking into account, inter-alia, comments of the ULB, if any, thereon, and convey its comments/ observations to the Concessionaire on the Development Plan and Drawings, including the need, if any, to modify the same. If the comments/ observations of the Construction Supervisor / ULB require the Development Plan and / or Drawings to be modified, the Concessionaire shall promptly and without any undue delay revise and resubmit the Development Plan and/or Drawings or satisfy the Construction Supervisor with regards to its compliance. The Construction Supervisor shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Development Plan and / or revised Drawings, which shall be taken into account by the Concessionaire while finalizing the Development Plan and Drawings
- 4.4.3 If, within the period stipulated in the preceding Clause 4.4.2, the Construction Supervisor does not respond to the Development Plan / Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Development Plan and /or Drawings submitted by it to the Construction Supervisor, and intimate the same to ULB and Construction Supervisor. The same should also be highlighted in the periodic reporting by the Concessionaire.
- 4.4.4 The Concessionaire shall not change the Development Plan and Drawings reviewed and approved by the Construction Supervisor under this Agreement, without submitting such revised Development Plan and Drawings for the review of the Construction Supervisor.
- 4.4.5 The Concessionaire shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification

or in resubmitting the Development Plan unless otherwise agreed by the Construction Supervisor and ULB.

- 4.4.6 Notwithstanding the review by the Construction Supervisor and / or ULB, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Development Plan and / or Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement. Approval of the Development Plan by the Construction Supervisor and / or ULB shall not entitle the Concessionaire to raise any claim for any additional payment from Construction Supervisor and / or ULB.
- 4.4.7 The Concessionaire shall in no way represent to any Person that, as a result of any review by the Construction Supervisor and / or ULB, the ULB and the Construction Supervisor have accepted responsibility for the technical or soundness of any work relating to the Project Facilities or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project Facilities or any part thereof.
- 4.4.8 The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from Construction Supervisor / ULB.
- 4.4.9 The Concessionaire shall also in consultation with the Construction Supervisor finalize an implementation schedule for the Construction Works.
- 4.4.10 Within 90 (ninety) days of issue of Readiness Certificate, the Concessionaire shall furnish to the Construction Supervisor and the ULB three set of "as built" Drawings, 2 (two) hard copies and 1(one) soft copy, reflecting the Construction Works which have been completed as on COD, in a manner as set out in Construction Requirements. The Concessionaire shall also submit an as built survey illustrating the layout of the Project Facilities and setback lines, if any, of the building and structures forming part of Project Facilities

4.5 **Damages for delay by the Concessionaire**

- 4.5.1 In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause ~~4.34.3~~ within a period specified in respect thereof, and (ii) the delay has not occurred as a result of material breach of this Agreement by the Construction Supervisor and / or the ULB, or due to Force Majeure, the ULB shall encash the Construction Performance Security at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security.

4.6 **Damages for delay by the ULB**

- 4.6.1 In the event that (i) the ULB does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause ~~4.2.14.2.1~~ within the period specified in respect thereof,

and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the ULB shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Construction Performance Security.

4.6.2 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Clause 4.2 to 4.3, this Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited and in addition the Concessionaire shall be liable to pay damages as provided in Clause 4.6.1, however the Construction Supervisor shall be obliged to return the Performance Security upon receiving the said damages. If such termination is on account of failure of the Construction Supervisor and / or ULB, the Construction Supervisor shall be obliged to return the Bid Security/ Performance Security. It is clarified that except for the payment as stipulated in the foregoing Clause 4.6.1 and forfeiture in this Clause, none of the Party hereto shall have any claims against the other for costs, damages, compensation or otherwise. (For the avoidance of doubt it is expressly agreed that if the Bid Security has been substituted by Performance Security, the Construction Supervisor shall be entitled to encash therefrom an amount equal to Bid Security).

4.7 **Other Aspects**

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

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

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure, finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall be responsible to operate the Project Facilities such that it can process the Obligated Quantity of ~~SW-MSW~~ throughout the Concession Period.
- 5.1.3 The Concessionaire shall be responsible to accept Obligated Quantity of ~~SW-MSW~~ from ULB delivered every day at its Project Site.
- 5.1.4 The Concessionaire shall be responsible for generation of power from the Waste to Energy Processing Facility and sell the power to UPPCL as per the terms and conditions of the PPA.
- 5.1.5 The Concessionaire shall be responsible for design, engineering, procurement, construction, operation and maintenance of the infrastructure facilities such as water supply, power supply and approach road outside the boundaries of the Project Facilities and shall bear all costs and expenses of the same.
- 5.1.6 The Concessionaire shall be responsible for development and operation of Scientific Landfill and disposal of the process remnants and Residual Inert Matters from the Facilities at its own cost
- 5.1.7 The Concessionaire shall comply with all the Applicable Laws and procure all the Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.8 Subject to the provisions of Clauses 5.1.1 and Clause 5.1.7, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.9 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining all Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;

- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the ULB in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (h) transfer the Project to the ULB upon Termination of this Agreement, in accordance with the provisions thereof.

5.1.10 If the Project is entitled for any capital grant from any of the authorities, the Concessionaire shall solely be responsible to get the same. ULB shall only facilitate the procuring of such grant but does not guarantee the entitlement or receipt of the same to the Concessionaire.

5.2 **Obligations relating to Project Agreements**

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the ULB if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the ULB, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the ULB. For the avoidance of doubt, the ULB acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

5.2.3 The Concessionaire shall ensure that each of the Project Agreements contains provisions that entitle the ULB to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the ULB does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the ULB and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements

and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the ULB an acknowledgment and undertaking, in a form acceptable to the ULB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the ULB in the event of Termination or Suspension.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-license, assign or in any manner create any Encumbrance on Project Site, Existing Assets and Immovable Project Assets.

5.3 Environmental Compliance

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

5.4 Land Use

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

5.5 Processing of ~~SW~~ MSW

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

5.6 Post Closure Activities

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

5.7 Measurement of ~~SW~~ MSW

5.7.1 For measurement of ~~SW~~ MSW, Weighbridges will need to be constructed at the entry and the exit of the Waste to Energy Processing Facility (the “**Processing Input Weighbridge**” and the “**Processing Output Weighbridge**” respectively) and at the entrance of the Landfilling facility (the “**Landfilling Weighbridge**”) by the Concessionaire as per the Schedule 15.

5.7.2 The Concessionaire shall prepare Waste Reports as defined in Schedule ~~15~~ 15 which shall be final and binding on the Parties.

5.7.3 Each consignment to Project Site shall be screened and weighed at the Weighbridge. Concessionaire shall also keep a record of weight and volume of each empty delivery truck, in order to determine the net weight of the consignment.

5.7.4 The ULB as and when required shall depute a responsible person from the ULB (the “**ULB Representative**”) to monitor the operations of the Weighbridges.

5.7.5 The Weighbridges shall be monitored and inspected regularly to ensure due calibration and accuracy and any errors shall be rectified immediately.

5.8 **Maintenance of records and Operations Plan**

5.8.1 The Concessionaire shall maintain records of the quantum of ~~SW-MSW~~ as per the Schedule ~~1515~~

5.9 **Sale / Distribution of Compost / Manure / Energy**

5.9.1 The Concessionaire may adopt such processes and methods as it considers necessary or expedient for processing of ~~SW-MSW~~ at the Project Facilities, subject to complying with the provisions of the Concession Agreement, construction requirements and operation requirements.

5.9.2 Subject to Clause 2.2, the Concessionaire is free to choose the processing technologies/options for Waste to Energy Processing Facility in line with all applicable legislations including but not limited to the SWM Rules 2016 and is entitled to receive the revenues so generated through the products produced out of such processing like energy/power as per the PPA and other by-products like RDF, Compost, biogas, metals through its own marketing tie up.

5.10 **Penalty for O&M Breach**

5.10.1 The Concessionaire recognizes that the services under this Agreement constitute a public health issue and concerns the wellbeing and quality of life of the citizens. Accordingly, the Concessionaire shall perform the services with diligence and promptness and generally manage the ~~SW-MSW~~ system of the ULB as a model for the State. To ensure due performance and guard against performance breaches, Schedule ~~1212~~ sets out certain Damages for non-compliance to the O&M Requirements of this Agreement.

5.11 **Obligations relating to Change in Ownership**

5.11.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the ULB.

5.11.2 For the Concessionaire formed for the purpose of implementing this Concession, the following is mandated in case of Consortium:

- (a) The Lead Member shall subscribe to at least 51% (fifty one percent) of Equity or more of the Concessionaire;

- (b) Other Members of the Consortium (i.e. members other than the Lead Member) shall each subscribe to at least 10% (ten percent) of Equity or more of the Concessionaire;
- (c) The Lead Member for a period of 5 (five) years from the COD of the Project, shall hold Equity not less than the higher of (i) 51% (fifty one percent) of the Equity of the Concessionaire; or (ii) 5% (five percent) of the Project cost;
- (d) Other Members of the Consortium (i.e. members other than the Lead Member) for a period of 5 (five) years from the COD of the Project, shall hold Equity not less than 10% (ten percent) of the Equity of the Concessionaire;
- (e) Consortium members collectively shall hold 100% (one hundred percent) of the issued and paid up Equity of the Concessionaire at all times until the fifth anniversary of the COD of the Project;
- (f) the Lead Member shall continue to hold at least 26% of the subscribed and paid up equity share capital of the Concessionaire at all time during the Concession Period;
- (g) In case of sole Bidder, the Bidder shall continue to hold 100% of the subscribed and paid up equity share capital of the Concessionaire at all time for a period of 5 (five) years from the COD of the Project and after that shall hold a minimum of 26% of the subscribed and paid up equity share capital of the Concessionaire for the remaining Concession Period

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

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

For the purposes of this Clause 5.11.3:

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

5.12 **Employment of foreign nationals**

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

5.13 **Employment of trained personnel**

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

5.14 **Branding of Project**

- 5.14.1 The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of ‘~~Solid Waste~~**Municipal Solid Waste (MSW) to Energy Processing Facility in Gorakhpur, Uttar Pradesh**’. The Project or any part thereof

shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders save and except as may be necessary in the normal course of business. The Concessionaire shall however, have right to utilise the name of the Project to exhibit technical and financial capability of the Concessionaire for bidding for other projects.

5.15 Sole purpose of the Concessionaire

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

5.16 Securing the Power Purchase Agreement (PPA) with UPPCL

5.16.1 The Concessionaire shall have the sole and absolute responsibility of getting a valid and bankable power purchase agreement (PPA) executed with UPPCL for the sale of power. UPERC has issued UPERC (Captive and Renewable Energy Generating Plants) Regulations, 2014 alongwith the model PPA draft. The said model PPA draft shall be taken as a base document by the Concessionaire for execution of PPA with the UPPCL. The Concessionaire shall take into account the quoted % of tariff payable / receivable by Concessionaire from the ULB while submission of its tariff petition before the regulatory authority. If UPERC makes any change in the tariff for this specific Project based on the Concessionaire's petition, then the Quoted Differential Tariff / financial arrangement between the ULB and the Concessionaire shall be adjusted accordingly. The Concessionaire shall ensure that no clause of the PPA as executed with the UPPCL is in conflict with this Agreement.

5.17 Certified Emission Reductions (CERs) and Verified Emission Reductions (VERs)

5.17.1 The Concessionaire shall endeavour to obtain the fiscal incentives and benefits such as certified emission reductions (CERs) and verified emission reductions (VERs) under Kyoto Protocol/ Climate Change initiative of the Kyoto Protocol for the Project by adopting the greenhouse gas mitigation measures. The benefits of such carbon credits, if and when available, would be retained by the Concessionaire. However, ULB makes no representation or warranty whether express or implied as to whether or not the CER / VER benefits would be available to the Concessionaire and the Concessionaire should carry out its own study in that regard.

5.18 Evacuation of Contracted Capacity of Power

5.18.1 The Concessionaire shall be fully and solely responsible for the evacuation of power from the Waste to Energy Processing Facility and to connect the same with the point of interconnection with the Grid as per the UP Electricity Grid Code as amended from time to time.

6. OBLIGATIONS OF THE ULB

6.1 Specific obligations of the ULB

- 6.1.1 The ULB shall grant in a timely manner all such approvals, permissions and authorizations, which Concessionaire may require or is obliged to seek from the ULB under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided, where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be facilitated by the ULB within 90 (Ninety) days from the receipt of request from Concessionaire to make available such authorization, subject to the conditions of the applications / details submitted being complete and correct.
- 6.1.2 (a) The ULB agrees, for the purposes of the Financing Documents, to intimate to the Lenders by such notice as required under the Financing Documents:
- (i) Of the happening or likely happening of an Event of Default on the part of Concessionaire;
 - (ii) Of the termination of this Agreement by the ULB;
 - (iii) Of the occurrence, continuance and cessation of any force majeure cause; or
 - (iv) Other breach or default on the part of Concessionaire under this Agreement.
- (b) The ULB shall endeavour to conform to the commitment made to the National Green Tribunal with regard to transportation and delivery of 500 ~~MT-TPD~~ of ~~SW-MSW~~ waste (hereinafter referred to as Assured Quantity of ~~SW-MSW~~) to the Project Site;
- (c) The ULB shall request Gorakhpur Development Authority to declare and maintain, or cause to declare and maintain, a no-development zone of habitation around the Site in accordance with Applicable Laws;
- (d) The ULB hereby agrees that if there are any financial benefits or otherwise excluding any mentioned in the PPA in respect or on account of the Project, they shall accrue directly and exclusively to the Concessionaire alone and not to the ULB and the ULB hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of Concessionaire. The ULB agrees to facilitate the receipt of all such benefits by Concessionaire, and for the purpose to give all needed recommendations, no-objections, authorizations, etc.;
- (e) The ULB shall handover Project Site and Existing Assets to the Concessionaire in accordance with Clause 4.2 of this Agreement for development of Waste to Energy Processing Facility.

- (f) The ULB and/ or Construction Supervisor shall extend support to the Selected Bidder/ Concessionaire in achieving Financial Close subject to no change in the technical and commercial terms of the Concession Agreement.

6.2 General Obligations of the ULB

6.2.1 The ULB at its own cost and expense shall undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.2.2 The ULB agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (b) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

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

- (a) upon written request from the Concessionaire and subject to Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in securing Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire and subject to the provisions of Clause ~~5.125-12~~, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.3 Transportation of ~~SW-MSW~~ (Routing)

6.3.1 The ULB shall be solely responsible for transportation of Obligated Quantity of ~~SW-MSW~~ to the Project Site. The transportation of ~~SW-MSW~~ from the ULB to the Project Site shall conform to the commitments made by the GoUP to the National Green Tribunal.

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

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Concessionaire

7.1.1 Concessionaire represents and warrants to the ULB that:

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

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

7.2 Representations and warranties of the ULB

7.2.1 The ULB represents and warrants to Concessionaire:

- (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 to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorize the execution, delivery and performance of this Agreement;
- (c) That all approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for the due execution of this Agreement have been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian law.

7.3 Representations and warranties of the C&DS, UPJN

7.3.1 C&DS, UPJN represents and warrants to Concessionaire that:

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

7.4 Obligation to Notify Change

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

7.5 Obligations to comply with orders issued by National Green Tribunal

7.5.1 The Parties represent and warrant that they shall at all time comply with any order and/or direction(s) as may be issued by National Green Tribunal or any such competent authority issuing such order(s) and/or direction(s) from time to time in relation to SWM and/or WTE projects.

8. DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Site, Existing Assets, local conditions, physical qualities of ground, subsoil, and geology, ~~SW-MSW~~ characteristics, quantum and quality of ~~SW-MSW~~ generated in the ULB area and disposed off, expected yearly increase in ~~SW-MSW~~ generation in the ULB area and all information provided by C&DS, UPJN and/or ULB and/or their consultants or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. C&DS, UPJN and / or ULB and /or their consultants make no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the C&DS, UPJN and / or ULB and /or their consultants in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the C&DS, UPJN and / or ULB and /or their consultants shall not be liable for the same in any manner whatsoever to the Concessionaire, {or to any of the Consortium Members and their Associates or any person claiming through or under any of them).
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the C&DS, UPJN and / or ULB to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the C&DS, UPJN and / or ULB and /or their consultants contained in Clause 8.1.1 and shall not in any manner shift to the ULB any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire. C&DS, UPJN and / or ULB and /or their consultants shall not be liable in any manner for such risks or the consequences thereof.

PART III - DEVELOPMENT AND OPERATIONS

9. PERFORMANCE SECURITY

9.1 Performance Security for Construction Works

- 9.1.1 The Concessionaire shall, for due and punctual performance of its obligations during the Construction Period hereunder relating to the Project, deliver to the Construction Supervisor, one bank guarantee from a Bank in the form as set out in Schedule 3., for a sum of Rs. 1,50,00,000/- (Rs. One Crore Fifty Lacs Only) (hereinafter referred as “Construction Performance Security”). The Construction Performance Security in the form of performance bank guarantee has to be furnished by the Concessionaire within 30 (thirty) days of issuance of Letter of Award and before signing the Concession Agreement and the Construction Performance Security shall remain valid for a period of 120 days over and above the date of COD. Until such time the Construction Performance Security is provided and comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Construction Performance Security pursuant hereto, the C&DS, UPJN shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Performance Security is not provided by the Concessionaire on or before the execution of this Agreement, the C&DS, UPJN shall encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 9.1.3 The renewal of the Construction Performance Security, as and when required, is to be done by the Concessionaire at least one month before the date of expiry of the subsisting Construction Performance Security, failing which, the Construction Supervisor shall be entitled to invoke the Construction Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Construction Performance Security, if subsisting as on the Termination Date shall, subject to rights of the Construction Supervisor and/or the ULB to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to Concessionaire within 30 days from the Termination Date.

9.2 Appropriation of Construction Performance Security for Construction Works

- 9.2.1 Upon occurrence of a Concessionaire Event of Default resulting in a delay of commissioning of the Project beyond the Commercial Operation Date, Construction Supervisor in consultation with the ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Construction Performance Security as Damages for such Concessionaire Event of Default in the following manner:
- (a) Delay beyond Scheduled COD upto forty (40) days – Construction Supervisor shall encash 20% of Construction Performance Security on per day basis proportionate to the Contracted Capacity not commissioned;

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

9.2.2 Upon such encashment and appropriation from the Construction Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Construction Performance Security, and in case of appropriation of the entire Construction Performance Security provide a fresh Construction Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Construction Performance Security as aforesaid failing which the ULB in consultation with Construction Supervisor shall be entitled to terminate this Agreement in accordance with Article ~~2929~~. Upon replenishment or furnishing of a fresh Construction Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Event of Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Construction Supervisor in consultation with the ULB shall be entitled to encash and appropriate such Construction Performance Security as Damages, and to terminate this Agreement in accordance with Article ~~2929~~.

9.3 **Release of Construction Performance Security**

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

9.4 **Performance Security for Operation and Maintenance Period**

9.4.1 On achieving COD, the Concessionaire, to cover its liability arising from the breach of Performance Standards leading to payment of Damages as mentioned in the Schedule ~~1212~~ or any breach of this Agreement or for the liability of defects and deficiencies arising after Termination, shall provide to the ULB, Operation Performance Security of a sum of Rs. 1,50,00,000/- (Rs. One Crore Fifty Lacs Only) from a Bank, in the form set forth in Schedule 4, to be modified, mutatis mutandis, for this purpose (hereinafter referred as “Operation Performance Security”). The Operation Performance Security in the form of performance bank guarantee has to be furnished by the Concessionaire to the ULB within 45 days of achieving COD. The Concessionaire shall keep the Operation Performance Security valid throughout the Concession Period plus Post Concession Period by renewal or otherwise.

9.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Operation Performance Security is not provided by the Concessionaire to ULB within 45 days of achieving COD, the ULB may direct the Construction Supervisor to encash the Construction Performance Security at a rate of 0.2% of the Construction Performance Security for every day of delay.

9.4.3 The renewal of the Operation Performance Security, as and when required, is to be done by the Concessionaire at least one month before the date of expiry of the existing Operation Performance Security, failing which, the ULB shall be entitled to invoke the Operation Performance Security. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Operation Performance Security, if subsisting as on the Termination Date shall, subject to rights of the ULB to receive amounts at prevailing time, if any, due from Concessionaire under this Agreement, be duly discharged and released to Concessionaire within 30 days from the Termination Date.

9.5 **Appropriation of Operation Performance Security during Operation and Maintenance Period and Post Concession Period**

9.5.1 Upon the breach of Performance Standards that leads to payment of Damages or any breach of this Agreement or upon the liability of defects and deficiencies arising after the Termination, the ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Performance Security for meeting the Damages levied or for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of Article ~~3134~~. Upon such encashment and appropriation from the Operation Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Operation Performance Security, and in case of appropriation of the entire Operation Performance Security provide a fresh Operation Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Operation Performance Security as aforesaid failing which the ULB shall be entitled to terminate this Agreement in accordance with Article ~~2929~~. If there is no such encashment and appropriation from the Operation Performance Security is made, the Operation Performance Security shall be renewed annually in accordance with this Agreement, at least 30 days before the start of the Accounting Year, failing which, the ULB shall be entitled to invoke the Operation Performance Security.

10. PROJECT SITE

10.1 The Project Site

10.1.1 The site of the Project shall comprise of land described in Schedule-1 and in respect of which the Right of Way shall be provided and granted by ULB to the Concessionaire as a licensee under and in accordance with this Agreement (the "Project Site"). In addition, ULB shall also provide and grant the Concessionaire the exclusive right to use the Existing Assets. It is made clear that the Concessionaire shall only have the rights of licensee i.e. right to use the Project Site and the Existing Assets for development of the Project under this Agreement and no right, title or interest in the Project Site and the Existing Assets are transferred or to be transferred in favour of Concessionaire under any circumstance.

10.2 Licence, access and Right of Way on Project Site and Existing Assets

10.2.1 ULB hereby grants to the Concessionaire, access to the Project Site and the Existing Assets for carrying out its obligations under this Agreement, it being expressly agreed and understood that the ULB and / or C&DS, UPJN shall have no liability whatsoever in respect of any obligations being carried out or work undertaken by the Concessionaire on or about the Project Site and the Existing Assets pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the diverse obligations, undertakings and covenants of the Concessionaire herein contained, the ULB, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the date of hand over of the possession of the Site, licence and right to use in respect of the Project Site and the Existing Assets which is described, delineated and shown in Schedule 1 hereto, on an "as is where is" basis, free of any Encumbrances, to develop, finance, operate and maintain the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Project Site and the Existing Assets, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The licence, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations as specified in this Agreement.

10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the ULB to terminate the licence, upon the Termination of this Agreement for any reason whatsoever.

10.2.5 The Concessionaire hereby irrevocably appoints the ULB (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licensee right granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the ULB, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that:

- (i) trees on the Project Site are the property of the ULB except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.
- (ii) any archaeological discoveries shall belong to and vest in the ULB and the Concessionaire shall promptly report the discovery thereof to the ULB with a copy to the Construction Supervisor and follow its instructions for safe removal thereof; and
- (iii) mining rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Project Site.

10.2.7 The Project Facilities including the Project Site and the Existing Assets are and shall continue to be the property of ULB.

10.2.8 Notwithstanding any of the provisions of this Agreement, ULB shall have the right to put up advertisements on the Project Facilities and retain any and all revenue generated from such activity. The Concessionaire shall provide full support/ cooperation to the ULB in the same. For avoidance of doubt, it is clarified that the Concessionaire shall have no rights to display any advertisement on the Project Facilities or part thereof.

10.3 **Procurement of the Project Site**

10.3.1 The representatives of Construction Supervisor and / or ULB and the Concessionaire shall, on a mutually agreed date and time, inspect the Project Site and Existing Assets and prepare a memorandum containing an inventory of the Project Site and Existing Assets including the vacant and unencumbered land, buildings, any structure, civil structure, roads, plant & machinery, utilities, trees and any other immovable property on or attached to the Project Site. Such memorandum shall have appended thereto an appendix (the "Appendix"). Signing of the memorandum, in three counterparts (each of which shall constitute an original), by the authorized representatives of the ULB, Construction Supervisor and the Concessionaire shall be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use of the vacant and unencumbered Project Site and the Existing Assets during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Project Site and the Existing Assets as set forth in Schedule 1 shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the ULB to the Concessionaire.

10.3.2 The Concessionaire shall not, use the Project Facilities including the Project Site for any purpose other than to fulfil its obligations under this Agreement and for purposes incidental or ancillary thereto.

10.3.3 The Concessionaire shall in consultation with the Construction Supervisor / ULB prepare an implementation plan for various components to be established on the Project

Site and the Existing Assets, which may be required to be used/ accessed by the ULB during the Construction Period and require access by the Concessionaire for fulfilling its obligations under this Agreement.

10.3.4 Upon receiving the possession of the Project Site and the Existing Assets included in the Appendix, the Concessionaire shall complete the Construction Work thereon within a reasonable period to be determined by the Construction Supervisor in accordance with Good Industry Practice; provided that the issue of Provisional Completion Certificate shall not be affected or delayed on account of vacant possession of any part of Project Site was not handed over to the Concessionaire or any construction on such part of the Project Site remaining incomplete on the date of Tests on account of delay or denial of such possession thereto. For avoidance of doubt, it is expressly agreed that Construction Work on the Project Site shall be completed before the Scheduled Completion Date.

10.4 **Modification to the Existing Assets**

10.4.1 The Concessionaire may modify the Existing Assets for efficiently operating and maintaining the Waste to Energy Processing Facility and Scientific Landfill facility and/or for complying with any statutory requirements from time to time.

10.4.2 The right, title, interest and ownership of such modification / addition to the Existing Assets shall vest with the ULB and the Concessionaire shall not claim any title, interest, ownership and compensation towards the said modification /addition. Any modification / alteration/ additions shall be undertaken only after the written approval has been granted by the Construction Supervisor/ULB.

10.5 **Limitation of Liability Relating to Existing Assets within the Project Site**

10.5.1 Notwithstanding any of the provisions of this Agreement and subject to anything specifically excluded herein, the Parties hereby agree that, the Project Site and the Existing Assets shall be handed over to the Concessionaire on an “as-is-where-is” basis. The ULB and /or the Construction Supervisor shall, after the Appointed Date have no liability in relation to any asset forming part of the Project Site and the Existing Assets to the Concessionaire. Further, the ULB and /or the Construction Supervisor shall have no fiscal liability towards the Concessionaire nor shall it be liable for any losses caused to the Concessionaire or its contractors or any other third party arising from or relating to the Project Site / Existing Assets and the implementation of the Project.

10.6 **Project Site to be free from Encumbrances**

10.6.1 Subject to the provisions of Clause 10.3, the Project Site and the Existing Assets shall be made available by the ULB and /or the Construction Supervisor to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the ULB and the Construction Supervisor on account of any costs, compensation, expenses and charges for acquisition and use of such Project Site and the Existing Assets for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site and the Existing Assets shall not be deemed to be Encumbrances. *It is further agreed that the*

Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy and physical condition of the Project Site and / or the Existing Assets.

10.7 Protection of Project Facilities from encroachments

10.7.1 During the Concession Period, the Concessionaire shall protect the Project Facilities including the Project Site and the Existing Assets from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Project Site or the Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part thereof on the Project Facilities, the Concessionaire shall report such encroachment or occupation forthwith to the ULB and / or Construction Supervisor, as the case may be and undertake its removal at its own cost and expenses.

10.7.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Project Site and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the ULB and / or the Construction Supervisor and undertake its removal at its cost and expense.

10.8 Access to the ULB

10.8.1 The licence, Right of Way and right to the Project Site and the Existing Assets granted to the Concessionaire hereunder shall always be subject to the right of access of the ULB's/ Construction Supervisor's employees, agents and representatives for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8.2 The Concessionaire shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes, as ULB may specify / require from time to time.

10.8.3 Provided that such access or use shall not result in a Material Adverse Effect and that ULB shall, in the event of any physical damage to the Project Facilities on account thereof, ensure that the Project Facilities are promptly restored at its own cost and expenses.

10.8.4 Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/suffer any liability on account thereof.

10.9 Peaceful Possession

10.9.1 ULB hereby represents and warrants that:

(a) The Project Site and the Existing Assets

- (i) have been acquired through the due process of law; or
- (ii) belong to or have been leased to or are vested in ULB,

and that ULB has full powers to hold, dispose of and deal with the same consistent, inter-alia, with the provisions of this Agreement and that the Concessionaire shall, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected directly and/or indirectly thereby or any claim that any third party may have on any of the Existing Assets as provided by the ULB.

10.9.2 Upon the Concessionaire observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Concessionaire to be observed and performed, the Concessionaire shall remain in peaceful possession and enjoyment of the Project Site and / or the Existing Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and / or the Existing Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site and / or the Existing Assets or any part thereof, the ULB and / or the Construction Supervisor, as the case may be shall, if called upon by the Concessionaire, defend such claims and proceedings at its cost and expense and the Concessionaire shall not be liable for the same in any manner whatsoever.

10.9.3 The ULB shall bear all the costs of making available the Project Site and the Existing Assets to the Concessionaire and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Site, including the payment of compensation, if any, to such Persons and the Concessionaire shall not be liable in this behalf

10.10 Applicable Permits

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

10.11 Property taxes

10.11.1 All property taxes related to the Land given on license basis under Concession to the Concessionaire shall be payable by the ULB.

10.12 Restriction on sub-letting

10.12.1 The Concessionaire shall not sub-license or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the

Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

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

11.4 Felling of trees

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

12. DEVELOPMENT AND OPERATIONS OF THE PROJECT

12.1 Obligations prior to commencement of construction

12.1.1 Prior to commencement of Construction Works, the Concessionaire shall:

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

12.2 Project Implementation: Construction of Project Facilities

12.2.1 The Concessionaire shall adhere to the Construction Requirements and the Project Completion Schedule and achieve COD on or before the dates specified in Schedule 5.

12.2.2 The Concessionaire shall adhere to all the Construction Requirements as per Schedule 9 and shall adhere to the standards / guidelines for construction as per BIS, SWM Rules 2016 and other applicable standards / guidelines.

12.2.3 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise / capability; but in either case, the Concessionaire shall solely be responsible to meet the Construction Requirements.

12.2.4 The Concessionaire shall, before commencement of construction of Project Facilities;

- (a) Have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Construction Works of Project, to interact with the Construction Supervisor and/or the ULB and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (b) Construct, provide, incur day to day office running expenditure and maintain a reasonably furnished site office accommodation for the Construction Supervisor and/or the ULB personnel, at the Project Site.

- 12.2.5 For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests with advance intimation to the Construction Supervisor/ ULB/UPPCL who either in person or through their respective representative may choose to be present during the conduct of such tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results and keep the Construction Supervisor / the ULB/UPPCL informed.
- 12.2.6 If the Tests are successful and the Project Facilities can be safely and reliably opened for trial runs, the Independent Engineer / the ULB shall issue Readiness Certificate.
- 12.2.7 The Construction Supervisor in consultation with the ULB, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements, in case the same is not responded to within 7 (seven) days of such notice.
- 12.2.8 The Concessionaire shall construct the Project Facilities in accordance with the Project Completion Schedule set out in the Schedule 5. In the event that the Concessionaire fails to complete any of the activities / milestones (the “**Project Milestones**”) which would result in delayed commissioning, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the ULB, the ULB shall encash the Construction Performance Security for construction works as per Clause 9.2.

12.3 **Project Implementation: Operation and Maintenance**

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

Construction Supervisor and / or the Independent Engineer and /or the ULB, as the case may be. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

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

- (ii) Recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Engineer / the ULB requiring the Concessionaire to remedy a breach; and
- (iii) Repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

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

13. MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

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

13.4 Delays during construction

- 13.4.1 If the Concessionaire does not achieve any of the Project Milestones or the Construction Supervisor shall have reasonably determined that the rate of progress of Construction

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

13.5 Suspension of unsafe Construction Works

13.5.1 The Construction Supervisor in consultation with the ULB may, by notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Work if, in the reasonable opinion of the Construction Supervisor and / or the ULB, such work is unsafe and may cause potential safety hazard.

13.5.2 The Concessionaire shall, pursuant to notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Construction Supervisor and / or the ULB and thereupon carry out remedial measure to secure the safety of suspended works. The Concessionaire may by notice require the Construction Supervisor to inspect such remedial measure forthwith and make a report to the ULB recommending whether or not such suspension hereunder may be revoked. Based on the inspection of the remedial measure undertaken by the Concessionaire, the Construction Supervisor in consultation with the ULB shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Construction Supervisor and / or the ULB, and the procedure set forth in Clause 13.5.1 shall be repeated until the suspension hereunder is revoked.

13.6 Video recording

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

14. COMPLETION CERTIFICATE

14.1 Tests

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

14.2 Completion Certificate

- 14.2.1 Upon completion of Construction Works of all the Project Facilities and the Construction Supervisor determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the ULB a certificate substantially in the form set forth in Schedule 8 (the "**Completion Certificate**"). For avoidance of doubt, it is to be noted, the Completion Certificate shall be issued only if Construction Works of all the Project Facilities (viz, Waste to Energy Processing Facility, Scientific Facility and Transmission Infrastructure) are substantially complete and Test are successfully completed.

14.3 Provisional Certificate

- 14.3.1 The Construction Supervisor may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule 8 (the "**Provisional Certificate**") if the Tests are successful and all Project Facilities can be safely and reliably placed in commercial operation though certain works or things of a minor or snagging nature forming part thereof are outstanding and not yet complete, but do not affect commercial operation of the Project. For avoidance of doubt, it is to be noted, the Provisional Certificate shall be issued only if all Project Facilities (viz, Waste to Energy Processing Facility, Scientific Facility and Transmission

Infrastructure) are substantially complete and can be safely and reliably placed in commercial operation. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Construction Supervisor and the Concessionaire (the “**Punch List**”); provided that the Construction Supervisor shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Construction Supervisor and/or the ULB.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Construction Supervisor and/or ULB or due to Force Majeure, which would result in delayed commissioning, the Construction Supervisor shall encash the Construction Performance Security for construction works as per Clause 9.2.

14.4.2 Upon completion of all Punch List items, the Construction Supervisor shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Construction Supervisor and/or the ULB, shall entitle the ULB in consultation with the Construction Supervisor to terminate this Agreement and encash the Construction Performance Security.

14.4.3 If the Concessionaire fails to complete the Punch List items within said period of 90 days, the Construction Supervisor and/or the ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost incurred by the Construction Supervisor and/or the ULB in completing the Punch List items, as certified by the Construction Supervisor / the ULB, shall be reimbursed by the Concessionaire to the Construction Supervisor and/or the ULB as the case may be within 7 days from the date of receipt of a claim in respect thereof from the Construction Supervisor and/or the ULB, as the case may be.

14.5 Withholding of Provisional Certificate

14.5.1 If the Construction Supervisor determines that the Construction Works or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the ULB and the Concessionaire. Upon receipt of such a report from the Construction Supervisor and after conducting its own inspection, if the ULB is of the opinion that the Construction Works is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Construction Works and direct the Construction Supervisor to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article ~~1414~~ 1414. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the ULB may, at any time after receiving a report from the Construction Supervisor under that Clause, direct the Construction Supervisor to issue a Provisional Certificate under Clause ~~14.3~~14.3, and such direction shall be complied forthwith.

14.6 **Rescheduling of Tests**

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

15. ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Construction Works of the Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article ~~1414~~, and accordingly the commercial operation date of the Project shall be the date which is notified on such Completion Certificate or the Provisional Certificate is issued by the Construction Supervisor (the “COD”). The Project shall enter into commercial service on COD, whereupon the Concessionaire shall be entitled to receive the Obligated Quantity of ~~SW-MSW~~ from the ULB and the Project shall be able to inject Contracted Capacity to Grid as per the UP Electricity Grid Code as amended from time to time. Notwithstanding anything stated herein in this Agreement, the Project shall achieve its Commercial Operation Date within a period of 20 (Twenty) months from the Effective Date failure of which shall be treated as Concessionaire’s Event of Default.

16. OPERATION AND MAINTENANCE

16.1 Operation & Maintenance Requirements

16.1.1 The Concessionaire shall procure that at all times during the Operation and Maintenance Period, the Project conforms to the operation & maintenance requirements set forth in Schedule ~~1040~~ (the “**Operation & Maintenance Requirements**”).

16.2 Operation & Maintenance Manual

16.2.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve an operation and maintenance manual (the “**Operation & Maintenance Manual**”) for the Operation & Maintenance Requirements (Schedule ~~1040~~), Safety Requirements (Schedule ~~1343~~) and Good Industry Practice, and shall provide 5 (five) copies thereof to the ULB and 2 (two) copies to the Independent Engineer. The Operation & Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 16.2 shall apply, mutatis mutandis, to such revision.

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

16.3 Damages for breach of operation & maintenance obligations

16.3.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Operation & Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the ULB shall be entitled to recover, in addition to the specific Damages provided in Schedule ~~1242~~, Damages, to be calculated and paid for each day of delay until the breach is cured at a rate of 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer.

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

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

16.4 ULB’s right to take remedial measures

16.4.1 In the event the Concessionaire does not maintain and /or repair the Project Facilities or part thereof in conformity with the Operation & Maintenance Requirements or the Maintenance Manual, as the case may be, and fails to commence the remedial works

within 15 (fifteen) days of receipt of the O&M Inspection Report or notice on this behalf from the ULB or the Independent Engineer, as the case may be, the ULB shall, without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measure at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery as aforesaid, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the ULB as Damages. For avoidance of doubt, the right of the ULB under this Clause 16.4, shall be without prejudice to its rights and remedies under Clause 16.3

16.4.2 The ULB shall have the right, and the Concessionaire hereby expressly grants to the ULB the right, to deduct and recover the costs and Damages specified in Clause 16.4.1, directly from the Construction Performance Security deposited with the ULB.

16.5 **Overriding powers of the ULB**

16.5.1 If in the reasonable opinion of the ULB, the Concessionaire is in material breach of its obligations under this Agreement, and such breach is causing or likely to cause the Project to violate environmental norms or cause nuisance to the surrounding areas, the ULB may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

16.5.2 If the Concessionaire fails to rectify or remove such hardship or danger, the ULB may, without prejudice to any other rights or remedy available to it under this Agreement, have such hardship removed at the risk and costs of the Concessionaire. The cost incurred by the ULB in rectifying such default of the Concessionaire, as certified by the Independent Engineer / the ULB, shall be reimbursed by the Concessionaire to the ULB within 7 days from the date of receipt of a claim in respect thereof from the ULB, failing which the ULB shall have right to adjust and recover such cost against the Operation Performance Security deposited with the ULB.

16.5.3 In the event of national emergency, civil commotion or any other Indirect Political Event specified in Clause 26.3, the ULB may take over the performance of any or all of the obligations of the Concessionaire to the extent deemed necessary by it and exercise such control over the Project and give such direction to the Concessionaire as may be deemed necessary. It is agreed that the Concessionaire shall comply with such directions issued by the ULB and shall provide necessary assistance and cooperation to the ULB, on best effort basis, for performance of its obligations hereunder.

17. EFFECT OF VARIATIONS IN SW-MSW QUANTITY & QUALITY

17.1 Effect of variations in SW-MSW quantity

17.1.1 The Project is envisaged to process Obligated Quantity of SW-MSW received from ULB throughout the life of the Project.

17.2 SW-MSW Maximum Quantity

17.2.1 The Concessionaire will need to inform the ULB, through a written notice, when the 15 days average of SW-MSW quantity received exceeds the Obligated Quantity. The Concessionaire reserves the right to reject the waste supplied in excess of the Obligated Quantity of SW-MSW subject to the 15days average of SW-MSW quantity received exceeding the Obligated Quantity and the Concessionaire informing the ULB through a written notice. In case such notice is not sent to the ULB, the Concessionaire will be obligated to continue accepting and processing SW-MSW even if the 15-days average of SW-MSW received exceeds the Obligated Quantity.

17.3 SW-MSW Minimum Quantity

17.3.1 The Concessionaire will need to inform the ULB, through a written notice, when the 15days moving average of SW-MSW quantity received is less than the Minimum Assured Quantity. In case such notice is not sent to the ULB, the Concessionaire will be obligated to continue accepting and processing SW-MSW even if the 15days moving average of SW-MSW received is lower than the Minimum Assured Quantity.

In case such a notice is sent to the ULB, the Concessionaire shall compute the compensation as follows:

- (a) In case, the Concessionaire does not procure SW-MSW and the availability of Waste to Energy Processing Facility reduces below 60% PLF (Plant Load Factor) for the 15 day period due to insufficient amount of SW-MSW provided by ULB to the Concessionaire, the Concessionaire shall compute for the loss of revenue for this 15day period due to sale of lower quantum of energy by the Concessionaire to UPPCL as follows:

Limits for Delivered Quantity as a %age of Minimum Assured Quantity	Amount per day of default	For a block of 15 days
More than Minimum Assured Quantity	No compensation	0
>=90% to <100%	Rs. 10,000/- per day	Rs. 1,50,000/-
>=75% to <90%	Rs. 45,000/- per day	Rs. 6,75,000/-
>=50% to <75%	Rs. 1,25,000/- per day	Rs. 18,75,000/-
<50%	Rs. 2,25,000/- per day	Rs. 33,75,000/-

Note:

- (i) The above penalty amount has been worked out assuming that the Contracted Capacity for Waste to Energy Processing Facility is 5 MW. In case of any variation in the assumed Contracted Capacity vis-a-vis the actual Contracted Capacity, the above Penalty amount shall be

adjusted in the proportion of the variation in the actual Contracted Capacity and assumed Contracted Capacity.

- (ii) The above Penalty amount shall be escalated w.e.f the second anniversary of COD based on year-to-year increase in Tariff as determined for Waste to Energy Processing Facility by UPERC.
- (b) In case, the Concessionaire does not procure **SW-MSW** and the availability of Waste to Energy Processing Facility reduces below 60% PLF computed on an annual basis (365/366 day period) due to insufficient amount of **SW-MSW** provided by ULB to the Concessionaire, the Concessionaire shall compute for the loss of revenue due to sale of lower quantum of energy by the Concessionaire to UPPCL as follows:

Limits for Delivered Quantity as a %age of Minimum Assured Quantity	Amount per day of default
More than Minimum Assured Quantity	No compensation
>=90% to <100%	Rs. 10,000/- per day
>=75% to <90%	Rs. 45,000/- per day
>=50% to <75%	Rs. 1,25,000/- per day
<50%	Rs. 2,25,000/- per day

Note:

- (i) The above penalty amount has been worked out assuming that the Contracted Capacity for Waste to Energy Processing Facility is 5 MW. In case of any variation in the assumed Contracted Capacity vis- a vis the actual Contracted Capacity, the above Penalty amount shall be adjusted in the proportion of the variation in the actual Contracted Capacity and assumed Contracted Capacity.
- (ii) The above Penalty amount shall be escalated w.e.f the second anniversary of COD based on year-to-year increase in Tariff as determined for Waste to Energy Processing Facility by UPERC.
- (iii) The above penalty amount per day shall be multiplied by number of days of default by the ULB in supply of Minimum Assured Quantity to the Concessionaire on an annual basis. The penalty amount shall be reduced by the penalty already paid by the ULB during the year inaccordance with Clause 17.3 (a).

17.4 Effect of variations in **SW-MSW** Quality

17.4.1 If the C&D waste delivered to the Project Site is more than 25% for 15 consecutive days, the Concessionaire has the right to reject the C&D waste in excess of 25%. The ULB will be responsible to dispose the excess C&D waste at its own cost. However, the amount of excess C&D delivered to the Project Site will be deducted from the quantity of **SW-MSW** delivered in the next 7 days.

18. RECEIPT / PAYMENT OF DIFFERENTIAL TARIFF

18.1 Receipt / Payment of Differential Tariff

18.1.1 Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, ULB agrees and undertakes to pay/ receive the Differential Tariff to / from the Concessionaire as per this Article.

18.2 Differential Tariff

18.2.1 The monthly amount receivable by ULB from Concessionaire (“**Revenue Share to ULB**”) or differential tariff payable by the ULB to Concessionaire (“**Cost to ULB**”) for the Concession Period shall be computed based on the **Quoted Differential Tariff**, total quantum of energy billed to UPPCL and the total tariff (i.e. total tariff including Fixed charges and Variable charges), as determined by UPERC under CRE Regulations or tariff determined specifically for this Project.

18.2.2 The Concessionaire shall prepare a monthly statement of the Differential Tariff, as the case may be, duly certified by the Independent Engineer by the 7th day of next month. The above monthly statement of the Differential Tariff shall be supported along with the copy of monthly energy bill raised by the Concessionaire and duly accepted by the UPPCL, copy of the monthly joint meter reading statement of the Bill Meter at the grid substation duly certified by UPPCL.

18.2.3 An illustration for computation of Revenue Share to ULB / Cost payable by ULB is provided below :

The following parameters are assumed:

- a) PLF: @ 70%
- b) Tariff for year 2018-19 (as per CRE Regulations): INR 7.50 per kWh
- c) Capacity of the Waste to Energy Processing Facility : 8 MW
- d) Days in a month: 30 days
- e) Operating Hours in a day: 24 hours

Quoted Capacity in MW	PLF	Total Units based on Quoted Capacity (In Lakh Units) @ 70% PLF in a month ($c=a*b*30*24$ *1,000/1,00,000)	Tariff as per UPERC for Year 2018-19 INR per kWh	Total Energy Bill ($e=c*d$) INR in Lakhs	Quoted % of Differential Tariff (T) in %*	(Revenue Share to ULB) / Cost to ULB ($g=e*f$) INR in Lacs
(a)	(b)	(c)	(d)	(e)	(f)	(g)

In case Selected Bidder has quoted a negative Differential Tariff

8.00	70%	40.32	7.50	302.40	(4.00%)	(12.10)
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Note : In the above scenario, Rs. 12.10 lacs is receivable by ULB from the Concessionaire as Revenue Share

Quoted Capacity in MW	PLF	Total Units based on Quoted Capacity (In Lakh Units) @ 70% PLF in a month ($c=a*b*30*24$ *1,000/1,00,000)	Tariff as per UPERC for Year 2018-19 INR per kWh	Total Energy Bill ($e=c*d$) INR in Lakhs	Quoted % of Differential Tariff (T) in %*	(Revenue Share to ULB) / Cost to ULB ($g=e*f$) INR in Lacs
(a)	(b)	(c)	(d)	(e)	(f)	(g)
In case Selected Bidder has quoted a positive Differential Tariff						
8.00	70%	40.32	7.50	302.40	2.00%	6.05
<i>Note : In the above scenario, Rs. 6.05 lacs is payable by ULB to the Concessionaire as Cost to ULB</i>						

**(the % in negative would mean that the Bidder will share the revenue with ULB and the % in positive means that the Bidder will seek payment from ULB)*

18.2.4 In case UPERC makes any change in the tariff for this specific Project based on the Concessionaire's petition, then the Quoted Differential Tariff / financial arrangement between the ULB and the Concessionaire shall be adjusted accordingly.

18.3 Incentive Sharing by Concessionaire

18.3.1 The ULB would be entitled to receive financial incentives from the Concessionaire if the amount of ~~SW-MSW~~ delivered to the Project Site, from the ULB enables the Waste to Energy Processing Facility to generate power in excess of 70% PLF (or the minimum threshold limits of PLF as determined by UPERC under CRE Regulations from time to time for claiming incentive for excess power generation).

18.3.2 In case of generation of power of more than 70% PLF from the Waste to Energy Processing Facility, the ULB shall be entitled to 20% of the incentive receivable by the Concessionaire from the UPPCL in pursuance to the UPERC regulations.

Illustration

- Power generation in a month corresponding to **70% PLF = 5,00,000 Units (1 unit = 1 kWh)**
- Concessionaire generates **6,00,000 Units** in a month
- Units generated in excess of **70% PLF = 1,00,000 Units**
- Incentive payable by UPPCL of generation of electricity over and above 70% PLF = **Rs. 0.50/Kwh**
- UPPCL pays Concessionaire= **Rs. 50,000 (1,00,000 Units * Rs . 0.50 / per Kwh)**
- Concessionaire shares benefit of **Rs. 10,000 (Rs. 50,000/- * 20%) with the ULB**

18.3.3 Anycapital / revenue grant/subsidy announcedbyCentral/StateGovernmentforWtE projectsandapplicableforthe Projectshall be 100% retained by the Concessionaire.

18.4 Mechanism of Payment

18.4.1 The mechanism of payment separately for Cost to ULB and Revenue Share to ULB, as the case may be has been provided below:

Payment Mechanism for Cost to ULB

- (a) ULB shall make the payment, within 30 days from the date of receipt of the monthly statement of Differential Tariff.
- (b) ULB shall retain 5% of total payable amount as per monthly statement of Differential Tariff towards Post Closure Performance. Further, ULB shall be entitled to make deduction if any, required in respect of the amount payable by the Concessionaire as per the terms of this Agreement.
- (c) Any delay in making any payment in accordance with the monthly statement of Differential Tariff shall, without prejudice to any other consequences under this Agreement, entail payment of interest by the ULB on the amount in default at 2% over and above the prevailing benchmark prime lending rate of State Bank of India calculated for the duration of delay.

Payment Mechanism for Revenue Share to ULB

- (a) Concessionaire shall make the payment, within 30 days from the date of issue of the monthly statement of Differential Tariff to the ULB.
- (b) In addition to the above, Concessionaire shall also make an additional payment of 5% of total revenue share amount as per monthly statement of Differential Tariff towards Post Closure Performance. Further, the Concessionaire shall be entitled to make deduction if any, required in respect of the amount payable by the Concessionaire as per the terms of this Agreement.
- (c) Any delay in making any payment in accordance with the monthly statement of Differential Tariff shall, without prejudice to any other consequences under this Agreement, entail payment of interest by the Concessionaire on the amount in default at 2% over and above the prevailing benchmark prime lending rate of State Bank of India calculated for the duration of delay.

18.5 Post Closure Performance Account

- (a) Within 15 (fifteen) days from the COD, ULB shall open a special account designated as Post Closure Performance Account for making the payments in the succeeding Sub-article.
- (b) ULB shall deposit the amount retained / received towards Post Closure Performance into a special account designated as “Post Closure Performance Account”.
- (c) Subject to the Concessionaire meeting his obligations in respect to the Post Closure Period in accordance with the O&M Requirements, payments from the Post Closure Performance Account shall be made to the Concessionaire in equal quarterly installments of 1/60th of the amount balance on the commencement of the Post Closure Period for the respective cell of the Landfill Facility.

18.6 Penalty on over Disposal of Landfill Waste

- (a) The Landfill Waste shall be maximum of the threshold limits as specified in this Agreement.
- (b) A penalty of Rs 50 per MT with escalation of 5% per annum (to be reckoned from Year 2 of the Operations Period and computed on cumulative basis) shall be imposed for every MT increase in the Landfill Waste exceeding the maximum limit as specified in the preceding clause.
- (c) The penalty shall be computed taking average performance of the Concessionaire for the Landfill Facility operations for the respective calendar month.
- (d) In case, Landfill Waste is more than 5% (fiveper cent) of the threshold limits as specified in this Agreement regularly for a period of [three months], it may be treated as Concessionaire Event of Default under this Agreement.

18.7 Settlement of Compensation and Revenue Sharing between the ULB and Concessionaire

18.7.1 The settlement of compensation and revenue sharing shall be done at the end of each Financial Year.

18.8 Consequences of Payment Default

- (a) In the event of a payment default for a duration of three [3] consecutive months by the ULB, the ULB will not be entitled to the services of the Project and the Concessionaire may at its discretion suspend the acceptance of the ~~SW-MSW~~ from the defaulting ULB, till such time as the relevant payment default is cured. However, if the default continues for a continuous period of six (6) months, the same shall be treated as ULB Event of Default.
- (b) In the event of a payment default for a duration of three [3] consecutive months by the Concessionaire, the ULB may at its discretion discontinue the supply of ~~SW-MSW~~ at Waste to Energy Processing Facility, till such time as the relevant payment default is cured. However, if the default continues for a continuous period of six (6) months, the same shall be treated as Concessionaire Event of Default.

19. SAFETY REQUIREMENTS

19.1 Safety Requirements

19.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the personnel at the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule ~~1313~~ (the “**Safety Requirements**”).

19.2 Expenditure on Safety Requirements

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

20. MONITORING OF OPERATION AND MAINTENANCE

20.1 Monthly status reports

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

20.2 Inspection

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

20.3 Tests

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

20.4 Remedial measures

20.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 20.3 and furnish a report in respect thereof to the Independent Engineer and the ULB within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

20.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Facilities into compliance with the Operation & Maintenance Requirements and the procedure set forth in this Clause 20.4 shall be repeated until the Project Facilities conform to the Operation & Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the ULB shall be entitled to recover Damages from the

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

21. CONSTRUCTION SUPERVISOR AND INDEPENDENT ENGINEER

21.1 Procedure for Appointment Construction Supervisor and Independent Engineer

21.1.1 The Construction Supervisor and Independent Engineer shall be appointed for the Project.

Provided that in the event Independent Engineer is not appointed by ULB during the Concession Period, then all the roles/ duties/ responsibilities of Independent Engineer as defined in this Agreement shall be undertaken by the ULB on its own.

21.1.2 The role of the Construction Supervisor shall be as per the provisions of this Agreement and that of Independent Engineer has been detailed in Schedule 16. Their respective scope of work are briefly outlined below:

Scope of Construction Supervisor	Scope of Independent Engineer
Review/ oversee the design and supervision of construction / procurement of the Project Facilities including Waste to Energy Processing Facility and Scientific Landfill facility until 6 (six) months after the COD. The scope of work will also include receiving of Performance Security and other related activities as per this Agreement on behalf of the ULB.	Review/ oversee/ supervision of the operation and maintenance of the Project for the entire Concession Period.

21.2 Construction Supervisor

21.2.1 ULB and the Concessionaire hereby agree that C&DS, UPJN, shall be appointed as the Construction Supervisor for the Project.

21.2.2 The role and scope of work of C&DS, UPJN and its rights and obligations under this Agreement shall be limited to the role of Construction Supervisor for the Project.

21.2.3 The term of appointment of the Construction Supervisor shall be limited to the period commencing from the Effective Date until 6 (six) months after the COD.

21.2.4 Construction Supervisor shall not have any role / obligations in the Project subsequent to the period as specified in Clause 21.2.3 above and thereafter it will no longer remain a Party to the Agreement for any other matter except for any rights and obligations accruing as Construction Supervisor prior to this event and will automatically be substituted by ULB for all future purposes.

21.2.5 All fees, costs, charges and expenses payable to the Construction Supervisor in accordance with the terms of its appointment shall be borne by the ULB/GoUP. It is clarified that the Concessionaire shall not be responsible for any fees, costs, charges and expenses payable to the Construction Supervisor.

21.3 Procedure for Appointment & Scope of Independent Engineer

21.3.1 Independent Engineer shall be a third party agency, appointed atleast 45 days before the COD. The broad scope of nature of work of the Independent Engineer is set out in Schedule ~~16+6~~, but shall be refined after discussions between the ULB and the Concessionaire.

21.3.2 The ULB shall invite expressions of interest from consulting engineering firms or bodies corporate and thereupon shortlist 5 (five) qualified firms in accordance with pre-determined criteria. The ULB shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the ULB to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the ULB within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the ULB shall, after considering all relevant factors, finalise and constitute a panel of 5 (five) firms and convey its decision to the Concessionaire. The ULB shall select one firm as Independent Engineer from the above list, based on a transparent competitive bid process and a Quality and Cost based selection approach shall be adopted for the same.

21.3.3 The Independent Engineer shall be appointed for the Concession Period. The initial term of the Independent Engineer shall extend upto 3 (three) years. On expiry of the aforesaid period, the ULB may in its discretion renew the appointment, or appoint another firm from a fresh panel to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

21.4 Payments to Independent Engineer

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

21.5 Replacement of the Independent Engineer

21.5.1 The ULB may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 21.3.

21.5.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the ULB and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the ULB shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the ULB and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with

the provisions of the Dispute Resolution set out in Clause 35.1. In the event that the appointment of the Independent Engineer is terminated hereunder, the ULB shall appoint forthwith another Independent Engineer in accordance with Clause 21.3.

21.6 Authorised signatories

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

21.7 Site Office for Independent Engineer and Construction Supervisor

21.7.1 The Concessionaire shall, during the Concession Period provide and maintain a reasonably furnished site office accommodation for the representatives of Independent Engineer/ Construction Supervisor and / or ULB, at the Project Facilities. Such a site office shall have work stations including heating and cooling equipment and toilet facilities. All expenses / charges in respect of maintenance of the site office, electricity and power charges shall be borne by the Concessionaire.

22. HANDOVER OF PROJECT FACILITIES

22.1 Ownership during the Concession Period

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

- (a) That all Immovable Project Assets shall remain with the ULB till expiry of Concession Agreement or termination as permitted by the Agreement;
- (b) That all Movable Project Assets shall remain with Concessionaire and in accordance with the Financing Documents first prior charge shall be to Lenders privileges.

22.2 Concessionaire's Obligations

22.2.1 Waste to Energy Processing Facility

- (a) Concessionaire shall on the date of expiry of the Concession Period, hand back peaceful possession of the Project Facilities to the ULB free of cost and free from all Encumbrances and in good operational condition.
- (b) Upon service of the Termination Notice or at least 12 months before the expiry of the term of Agreement, a joint inspection of the Project Facilities shall be undertaken by Independent Engineer/ the ULB and Concessionaire. Concessionaire shall promptly undertake and complete such works/jobs at its own cost and expense, as may be required by the ULB at least three months prior to the expiry of Concession Period and ensure that the Project Facilities continue to meet such requirements even after the same are handed back to the ULB.

22.2.2 Landfill

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

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

22.2.4 On completion of the Concession Period, the Concessionaire shall transfer all Project Assets to the ULB, in working condition and certified by Independent Engineer, free of cost.

22.2.5 If at any time during the Concession Period, there is a saturation in the Scientific Landfill facility or if it is found inadequate for the required purpose, then both the Concessionaire and the ULB shall identify a new land for the Scientific Landfill facility

and shall mutually work on the cost aspects of procuring of such land, construction and O&M of such new Scientific Landfill Facility

22.3 The ULB's obligations

22.3.1 The ULB shall, subject to the ULB's right to encash Operation Performance Security for getting executed the works / jobs listed under Clause 22.2 at Concessionaire's cost and risk, and which have not been carried out by Concessionaire, or any outstanding dues, which may have accrued in respect of the Project during the Concession Period, duly discharge and release to Concessionaire, Bank Guarantees of the Concessionaire.

PART IV – FINANCIAL COVENANTS

23. FINANCIAL CLOSE

23.1 Financial Close

23.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (One hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the ULB in a sum calculated at the rate of 0.2% (zero point two per cent) of the Construction Performance Security for each day of delay, or for a further period not exceeding 100 (one hundred) days, subject to payment of Damages specified in Clause 4.5.4.5; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (One hundred and twenty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the ULB in procuring satisfaction of the Conditions Precedent specified in Clause 4.2.14.2.1 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.5.

23.1.2 The Concessionaire, upon occurrence of Financial Close shall provide to the ULB, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

23.2 Termination due to failure to achieve Financial Close

23.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 23.2.1 shall not apply.

23.2.2 Upon Termination under Clause 23.1.1, the Construction Supervisor shall be entitled to encash the Construction Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the ULB being in default of any of its obligations, it shall, upon Termination, return the Construction Performance Security forthwith along with the Damages due and payable under Clause 9.

24. INSURANCE

24.1 Insurance

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

24.2 Notice of the ULB

24.2.1 No later than 45 (forty-five) days prior to commencement of the Construction Period and the Operation and Maintenance Period, as the case may be, the Concessionaire shall by notice furnish to the ULB, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the ULB may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

24.3 Evidence of Insurance Cover

24.3.1 All insurances obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the ULB, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the ULB. The Concessionaire shall maintain a register of entry in order of premiums paid towards Insurance of the Project Facilities.

24.4 Remedy for failure to insure

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

24.5 Waiver of Subrogation

24.5.1 All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 24 shall include a waiver of any and all right of subrogation or recovery of the insurers thereunder against, inter alia, the ULB, and its assigns, successor, underrating and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

24.6 Concessionaire's waiver

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

24.7 Application of Insurance Proceeds

24.7.1 Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire shall designate the ULB as the beneficiary for the assets under ownership of the ULB as per Clause 22.1.1 and may designate the Lenders as the beneficiaries for the assets under the Concessionaire ownership as per Clause 22.1.1 or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement to the extent possible in the same condition as it were prior to such damage or destruction, normal wear and tear accepted.

24.8 No Breach of Insurance Obligation

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

25. ACCOUNTS AND AUDIT

25.1 Audited accounts

25.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including revenue from sale of power and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The ULB shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the ULB for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

25.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the ULB its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

25.2 Appointment of auditors

25.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

25.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the ULB, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

25.2.3 Notwithstanding anything to the contrary contained in this Agreement, the ULB shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, the Uttar Pradesh Accountant General and /or another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

25.3 Certification of claims by Statutory Auditors

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

25.4 **Set-off**

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

PART V - FORCE MAJEURE AND TERMINATION

26. FORCE MAJEURE

26.1 Force Majeure

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

26.2 Non-Political Event

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

- (a) strikes or boycotts (other than those involving contractors, or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 26.3;
- (b) any judgment or order of any court of competent jurisdiction or statutory authority or the ULB made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the ULB;
- (c) any event or circumstances of a nature analogous to any of the foregoing.

26.3 Indirect Political Event

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

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

26.4 **Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article ~~3333~~ and its effect, in financial terms, exceeds the sum specified in Clause 33.1.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political, Event and which does not result in any offsetting compensation being payable to Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

26.4A Natural Event

26.4A.1 A Natural Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (c) any event or circumstances of a nature analogous to any of the foregoing.

26.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article ~~26.26~~ with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

26.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 14 (fourteen) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 26.5.2, and, such other information as the other Party may reasonably request the Affected Party to provide.

26.6 Effect of Force Majeure Event on the Concession

26.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 23.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

26.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, if the delivery of the SW-MSW is suspended, the Concession Period shall be extended by a period equal in length to the period during which the collection of the delivery of the SW-MSW is suspended.

26.7 Allocation of costs arising out of Force Majeure

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

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

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

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

26.7.3 Save and except as expressly provided in this Article ~~2626~~, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, claims,

demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure event or exercise of any right pursuant hereto.

26.8 Termination Notice for Force Majeure Event

26.8.1 If a Force Majeure Event subsists for a period of 180 (one hundred and-eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article ~~26.26~~, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

26.9 Termination Payment for Force Majeure Event

26.9.1 If Termination is on account of a Non-Political Event, the ULB shall make a Termination Payment to Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover for assets under Concessionaire ownership. The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting.

26.9.2 If Termination is on account of an Indirect Political Event, the ULBs shall make a Termination Payment to Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover for assets under Concessionaire ownership; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity

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

26.9.3 If Termination is on account of a Political Event the ULB shall make a Termination Payment to the Concessionaire of an amount equal to Debt Due plus 100% of Adjusted Equity.

26.9.4 If Termination is on account of a Natural Event, the ULB shall make a Termination Payment to Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover for assets under Concessionaire ownership. The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting. The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting, provided that the Operation Performance Security shall be withdrawn only after substitution of the Concessionaire in accordance with the provisions of Substitution Agreement, if any.

26.10 Dispute Resolution

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

26.11 **Excuse from Performance of Obligations**

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

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

27. COMPENSATION FOR BREACH OF AGREEMENT

27.1 Compensation for default by the Concessionaire

27.1.1 Subject to the provisions of Clause 27.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the ULB by way of compensation, all direct costs suffered or incurred by the ULB as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 27.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the ULB.

27.2 Extension of Concession Period

27.2.1 Subject to the provisions of Clause 27.4, in the event that a material default or breach of this Agreement causes delay in achieving COD or leads to suspension, as the case may be, the ULB in consultation with the Construction Supervisor shall extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

27.3 Compensation to be in addition

27.3.1 Compensation payable under this Article ~~27.27~~ shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

27.4 Mitigation of costs and damage

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

28. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

28.1 Suspension upon Concessionaire Event of Default

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

28.2 ULB to act on behalf of Concessionaire

28.2.1 During the period of Suspension, the ULB shall be entitled to encash the Operation Performance Security for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses.

28.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the ULB for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the ULB for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the ULB or any other person authorised by it under Clause 28.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

28.3 Revocation of Suspension

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

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

28.4 Substitution of Concessionaire

28.4.1 At any time during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the ULB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 28.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

28.5 Termination

28.5.1 At any time during the period of Suspension under this Article ~~2828~~, the Concessionaire may by notice require the ULB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 28.4, the ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article ~~2929~~.

28.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 28.1.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the ULB upon occurrence of a Concessionaire Event of Default.

29. EVENTS OF DEFAULT AND TERMINATION

29.1 Events of Default

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

29.1.2 *Concessionaire Event of Default*

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

- (a) the Operation Performance Security has been encashed and appropriated in accordance with Clause 9.5 and the Concessionaire fails to replenish or provide fresh Operation Performance Security within 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Operation Performance Security in accordance with Clause 9.5 the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Event of Default for which whole or part of the Operation Performance Security was appropriated;
- (c) the Concessionaire fails to achieve any of the Project Milestones due in accordance with respective Scheduled Project Milestone Date, as set in the Schedule 5 and continues in default for 180 (one hundred and eighty) resulting in delayed commissioning;
- (d) the Concessionaire has failed to achieve COD within 20(Twenty) months from the Effective Date;
- (e) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the ULB;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4;
- (g) the Concessionaire fails to accept the Obligated Quantity of ~~SW-MSW~~ delivered at the Project Site by the ULB after COD for a period of 7 days consecutively provided neither the Waste to Energy Processing Facility is under maintenance nor Event of Default by UPPCL has occurred as per terms and conditions of PPA
- (h) the Concessionaire is non-compliant to the Performance Standards as specified in the Clause 12.1 of Schedule ~~12+2~~ and remains non-compliant such that it becomes an Event of Default;

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

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (u) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- (v) the Concessionaire submits to the ULB and/or the Construction Supervisor or any statement, notice or other document, in written or electronic form, which has a material effect on the ULB's rights, obligations or interests and which is false in material particulars;
- (w) the Concessionaire has failed to make any payment to the ULB within period specified in this Agreement;
- (x) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (y) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the ULB; or
- (z) The Concessionaire uses fuel other than MSW/ processed ~~SW-MSW~~ for generation of energy.

29.1.3 *ULB's Event of Default*

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

- (a) The ULB is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire.
- (b) The ULB has failed to provide the compensation to the Concessionaire for any shortfall in the ~~SW-MSW~~ quantity supplied at the ULB level as per Clause 17.3 for a continuous period of 6 months.

29.2 Termination due to Event of Default

29.2.1 Termination for Concessionaire Event of Default

- (a) Without prejudice to any other right or remedy which the ULB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the ULB shall, subject to the provisions of the “**Substitution Agreement**” (if any, with the Lenders, pursuant to which, in case of Default by Concessionaire, Lenders shall be allowed to take charge of Concessionaire's roles and responsibilities under this Agreement), be entitled to terminate this Agreement in the manner as set out under Sub-clause ~~(b)~~(b) of Clause 29.2.1. Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Sub-clause ~~(t)~~(t) of Clause 29.1.2, the ULB may terminate this Agreement by issue of Termination Notice in the manner set out under Clause 29.2.3.
- (b) If the ULB decides to terminate this Agreement pursuant to preceding Clause (a), it shall in the first instance issue Preliminary Notice to Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, Concessionaire shall submit to the ULB in sufficient detail and if applicable the manner in which inter-alia it proposes to cure the underlying Event of Default or prevent the Event of Default from reoccurring (the "**Concessionaire Proposal to Rectify**"). The same shall be reasonably considered by the ULB. In case of non-submission of Concessionaire Proposal to Rectify within the said period of 30 days, the ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting. In case Concessionaire has made a Proposal to Rectify within the period stipulated therefor, and the same is accepted by the ULB as reasonable, the Concessionaire shall be allowed a Cure Period of 60 (sixty) days. If, however the Concessionaire fails to remedy / cure the underlying Event of Default or the factors causing the Event of Default within such further period allowed, the ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security, if subsisting. For the avoidance of doubt, the ULB, at its sole discretion, can reject the Concessionaire Proposal to Rectify if it feels that it is not adequate to cure the Event of Default or prevent the Event of Default from reoccurring.

29.2.2 Termination for ULB's Event of Default

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

ULB's Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

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

29.2.3 Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Clause 29.2.1 or Clause 29.2.2, it shall issue Termination Notice setting out:

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

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

29.2.4 Obligation of Parties

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

- (a) Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- (b) The Termination Payment, if any, payable by the ULB in accordance with the Clause 29.2.6 is paid to Concessionaire on the Termination Date; and
- (c) The Project Facilities are handed back to the ULB by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to the ULB.

29.2.5 Withdrawal of Termination Notice

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

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice or as mutually agreed upon by both parties.

29.2.6 Termination Payments

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

(a) *ULB's Event of Default:*

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

Termination payment = Debt Due + 100% of Adjusted Value of the equity on Termination Date.

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

(b) *Concessionaire Event of Default:*

Upon Termination on account of a Concessionaire Event of Default after COD, the ULB shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Event of Default occurring prior to COD.

Upon Termination of this Agreement on account of Concessionaire Event of Default the Construction Performance Security / Operation Performance Security, if subsisting, shall be invoked by the Construction Supervisor / ULB. The Concessionaire expressly agrees that Termination Payment under this Clause 29.2 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not

have any further right or claim under any law, treaty, convention, contract or otherwise.

29.3 **Rights of the ULB on Termination**

- (a) Upon Termination of this Agreement for any reason whatsoever, the ULB shall have the power to:
 - (i) Enter upon and take possession and control of the Waste to Energy Processing Facility, Scientific Landfill, and Site, forthwith free from any encumbrances;
 - (ii) Prohibit Concessionaire and any person claiming through or under Concessionaire from entering upon, dealing with the Waste to Energy Processing Facility, Scientific Landfill, and Site or permit as required for pending resolution of any issues to a limited number of representatives of Concessionaire.
- (b) Notwithstanding anything contained in this Agreement, the ULB shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by Concessionaire in connection with the Project, and the handover of the Project Facilities by Concessionaire to the ULB shall be free from any such obligation.

29.4 **Survival of Rights of Parties**

- 29.4.1 Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover 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.

30. DIVESTMENT OF RIGHTS AND INTEREST

30.1 Divestment Requirements

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

- (a) notify to the ULB forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project and Project Facilities as specified in the Article ~~2222~~, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including structures and equipment, of all defects and deficiencies so that the Project is compliant with the Operation and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the ULB free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the ULB may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the ULB, absolutely unto the ULB or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the ULB or to its nominee.

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

30.2 Inspection and cure

30.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Construction Supervisor or the Independent Engineer, as the case may be, shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Operation and Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Operation and Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article ~~3134~~ shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article ~~3030~~.

30.3 Cooperation and assistance on transfer of Project

30.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience, other members of the public or the lawful occupiers of any part of the Site.

30.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the ULB, its other concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

30.3.3 The ULB shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 30.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

30.4 Vesting Certificate

30.4.1 The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the ULB shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule ~~1747~~ (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the ULB pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the ULB or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

30.5 Divestment costs etc.

30.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the ULB upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the ULB.

30.5.2 In the event of any dispute relating to matters covered by and under this Article ~~3030~~, the Dispute Resolution Procedure shall apply.

31. DEFECTS LIABILITY AFTER TERMINATION

31.1 Liability for defects after Termination

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

PART VI - OTHER PROVISIONS

32. ASSIGNMENT AND CHARGES

32.1 Restrictions on assignment and charges

32.1.1 Subject to Clauses 32.2 and 32.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the ULB, which consent the ULB be entitled to decline without assigning any reason.

32.1.2 Subject to the provisions of Clause 32.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits in Project Site, Existing Assets and Immovable Project Assets under this Agreement, except with prior consent in writing of the ULB, which consent the ULB shall not unreasonably withhold. However the Concessionaire can create lien, mortgage, charge and encumbrance on Movable Project Assets financed by it.

32.2 Permitted assignment and charges

32.2.1 The restraints set forth in Clause 32.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages / pledges / hypothecation of goods / assets other than Movable Project Assets and their related documents of title, and as security only for indebtedness to the Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For avoidance of doubt, the Concessionaire shall have the right to create encumbrance on Movable Project Assets but no right to create encumbrance, charge or lien on Project Site, Existing Assets and Immovable Project Assets including building and structure etc. built on the Project Site;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

32.3 Substitution Agreement

32.3.1 The Lenders' Representative, on behalf of Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the ULB and the Lenders' Representative, on behalf of Lenders, substantially in the form set forth in Schedule ~~1818~~.

32.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be

responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the ULB shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

32.4 Assignment by the ULB

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

33. CHANGE IN LAW

33.1 Increase in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the ULB to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the ULB shall pay the amount specified therein; provided that if the ULB shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 33.1.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

33.2 Reduction in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the ULB may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the ULB; provided that if the Concessionaire shall dispute such claim of the ULB, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 33.2.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

33.3 **Restriction on cash compensation**

33.3.1 The Parties acknowledge and agree that the demand for cash compensation under this Article ~~3333~~ shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

34. LIABILITY AND INDEMNITY

34.1 General indemnity

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

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

34.2 Indemnity by the Concessionaire

34.2.1 Without limiting the generality of Clause 34.1, the Concessionaire shall fully indemnify, hold harmless and defend the ULB and the ULB Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

34.2.2 Without limiting the generality of the provisions of this Article ~~3434~~, the Concessionaire shall fully indemnify, hold harmless and defend the ULB Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands,

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

34.3 Notice and contest of claims

34.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article ~~3434~~ (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

34.4 Defence of claims

34.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article ~~3434~~, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

34.4.2 If the Indemnifying Party has exercised its rights under Clause 34.3.1, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

34.4.3 If the Indemnifying Party exercises its rights under Clause 34.3.1, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses ~~(b)~~, ~~(c)~~ or ~~(d)~~ of this Clause 34.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

34.5 **No consequential claims**

34.5.1 Notwithstanding anything to the contrary contained in this Article ~~3434~~, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

34.6 **Survival on Termination**

34.6.1 The provisions of this Article ~~3434~~ shall survive Termination.

35. DISPUTE RESOLUTION

35.1 Dispute resolution

35.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 35.2.

35.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

35.2 Conciliation

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

35.3 Arbitration

35.3.1 Subject to the provisions of Article 35.2.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, ULB and the Concessionaire shall appoint one arbitrator each and the third to be appointed by the two arbitrators appointed by the ULB and the Concessionaire. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act. Such arbitration shall be held in accordance with the provisions of Arbitration Act and Arbitration proceedings shall be held at [Lucknow Gorakhpur](#), Uttar Pradesh and the language of arbitration shall be English.

35.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article ~~35.3.5~~ shall be final and binding on the Parties

as from the date it is made, and the Concessionaire and the ULB agree and undertake to carry out such Award without delay.

35.3.3 The Concessionaire and the ULB agree that an Award may be enforced against the Concessionaire and/or the ULB, as the case may be, and their respective assets wherever situated.

35.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

35.4 Enforcement of Award

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

35.5 Performance during dispute

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

35.6 Sharing of Cost of Arbitration

35.6.1 The costs of the arbitration panel shall be equally borne by both ULB and the Concessionaire. 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.

36. DISCLOSURE

Nothing relating to the Project Agreements or the Project shall be disclosed except as required under law.

37. REDRESSAL OF PUBLIC GRIEVANCES

37.1 **Complaints Register**

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

37.2 **Redressal of complaints**

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

38. MISCELLANEOUS

38.1 Interest and Right of Set Off

38.1.1 Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same has not been paid within the time allowed for payment thereof, shall be deemed to be a debt owned by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof, carry interest at 2% over and above the prevailing benchmark prime lending rate of State Bank of India from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under Law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 38.1.1 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a party nor be deemed or construed to be a waiver of the underlying breach of payment obligation.

38.2 Governing Law and Jurisdiction

38.2.1 This Agreement shall be governed by the laws of India. The Courts at [Lucknow Gorakhpur](#) in Uttar Pradesh shall have jurisdiction over all matter arising out of or relating to this Agreement.

38.3 Waiver

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

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

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

38.4 Survival

38.4.1 Termination of this Agreement shall not relieve either Party of any obligations already incurred hereunder which expressly or by implication survive Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of either party, shall not relieve either party of any obligations or liabilities for

loss or damage to the other party arising out of or caused by acts or omissions of such party prior to the effectiveness of such termination or arising out of such termination.

38.5 **Amendments**

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

38.6 **Notice**

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

If to ULB:

The Commissioner,
Gorakhpur Municipal Corporation
.....
Gorakhpur

If to C&DS, UPJN:

Director
Construction & Design Services,
Uttar Pradesh Jal Nigam
T.C – 38V, Vibhuti Khand, Gomti Nagar

If to Concessionaire:

[XXX
XXX
XXX]

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

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

38.7 Severability

38.7.1 If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner so that transactions contemplated hereby are fulfilled to the extent possible.

38.8 No Partnership

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

38.9 Waiver of immunity

38.9.1 Each Party unconditionally and irrevocably:

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

38.10 Depreciation and Interest

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

38.11 Delayed payments

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

38.12 Exclusion of implied warranties etc.

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

38.13 Entire Agreement

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

38.14 Third Parties

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

38.15 Successors and Assigns

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

38.16 Language

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

38.17 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ULB by:

(Signature)

(Name)

(Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of C&DS, UPJN by:

(Signature)

(Name)

(Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of the Concessionaire by:

(Signature)

(Name)

(Designation)

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

In the presence of:

- 1.
- 2.

SCHEDULES

1. SITE OF THE PROJECT

1.1 The Site

1.1.1 Site of the Project shall include the land, buildings, structures and road works as described in this Schedule.

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

1.2 Sites for Waste to Energy Processing Facility in Gorakhpur, Uttar Pradesh

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

[map to be inserted]

1.3 Site for Scientific Landfill in Gorakhpur, Uttar Pradesh

1.3.1 Map of the Land for Scientific Landfill is as shown below:

[map to be inserted]

1.4 Inventory of the Site

[to be filled at the time of granting concession]

1.5 Existing Assets

2. APPLICABLE PERMITS

(Refer Clause 4.3.1)

2.1 Applicable Permits

2.1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the ULB in accordance with Article 4 of the Agreement.

S.No.	Approval/Clearance	Concerned Agency	Responsibility
1	Prior environmental clearance	UPPCB	Concessionaire
2	Site authorization under SWM Rules	UPPCB	Concessionaire
3	License in accordance with the rules and provisions of Labour (Regulation and Abolition) Act, 1970	MoLE	Concessionaire
4	Consent to establish under Air and Water Act	UPPCB	Concessionaire
5	NOC from Uttar Pradesh Fire Services	Directorate of Fire Services	Concessionaire
6	Vehicle Registration	RTO	ULB/Concessionaire
7	Electricity Approval	UPPCL	Concessionaire
8	Power Purchase Agreement	UPERC	Concessionaire / UPPCL
9	Industrial Setup Approval	DoI	Concessionaire
10	All drawings and document approval	ULB	Concessionaire
11	Water Supply	ULB	Concessionaire
12	All other approvals, permits and licenses	Competent Authority	Concessionaire

Where;

UPPCB- Uttar Pradesh Pollution Control Board
MoLE-Ministry of Labour and Employment
UPDMS –Uttar Pradesh Disaster Management Unit
RTO- Regional Transport Office
ATC-Airport Traffic Control, [Place]
AAI- Airport Authority of India
DoI- Directorate of Industries, Uttar Pradesh

3. PERFORMANCE SECURITY FOR CONSTRUCTION REQUIREMENTS

(Refer Clause 9.1)

Director
Construction & Design Services
Uttar Pradesh Jal Nigam
T.C. – 38 – V.,
Vibhuti Khand,
Gomti Nagar,
Lucknow – 226010

WHEREAS:

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

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to C&DS, UPJN, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the C&DS, UPJN shall claim, without the C&DS, UPJN being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the C&DS, UPJN, on behalf of the Director, C&DS, UPJN, but not below the rank of a Project Manager that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the C&DS, UPJN shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the C&DS,

UPJN and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or ULB or any other ULB or body, or GoUP or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, C&DS, UPJN shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the C&DS, UPJN and / or the ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. C&DS, UPJN and / or the ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the C&DS, UPJN and / or the ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the C&DS, UPJN and / or the ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the C&DS, UPJN and / or the ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the C&DS, UPJN and / or the ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the C&DS, UPJN and / or the ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee will remain in force until compliance of the condition specified in paragraph 8 below after which, all rights of the C&DS, UPJN and / or the ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Construction Performance Security will be valid for 120 days after COD.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the C&DS, UPJN in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been

duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the C&DS, UPJN and / or the ULB that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period specified in Paragraph 8 above.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

Notes:

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

4. PERFORMANCE SECURITY FOR OPERATION & MAINTENANCE REQUIREMENTS

(Refer Clause 9.4)

The Municipal Commissioner,
Gorakhpur Municipal Corporation (ULB),
.....
Gorakhpur

WHEREAS:

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

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

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

3. In order to give effect to this Guarantee, ULB shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the ULB in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force in compliance with the conditions specified in paragraph 8 below after which all rights of the ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Operation Performance Security will be valid from the Scheduled COD till one year after the expiry of the Concession Period.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the ULB in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a

certificate signed by an officer of the ULB that the envelope was so posted shall be conclusive.

11. This Guarantee shall remain in force till the period mentioned in Paragraph 8 above.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

Notes:

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

5. PROJECT COMPLETION SCHEDULE

(Refer Clause 12.2.8)

5.1 Project Completion Schedule

- 5.1.1 The milestones stated in the table below are tentative¹ and Concessionaire can start some of the activities simultaneously to meet the Project Completion Schedule and achieve COD on or before the dates specified in this Agreement.

Scheduled COD would be 20 (Twenty) months from the Effective Date.

¹Note to Bidders: Project Milestone will be finalized prior to execution of the Concession Agreement

Sl. No	Description	Months																			
		Financial Close					Construction Period														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
1.	Preparation of the all Project drawings & approval from the required approval authority and / or Construction Supervisor from Letter of Award (LoA)																				
2.	Obtain all applicable permits such as licenses, consents, permissions, NOCs & approvals from the concerned and Govt. agencies from Letter of Award (LoA)																				
3.	Complete provision of all the utilities such as water, power, internal roads, boundary wall, lighting facility, storm water drain at Waste to Energy Processing Facility as per approved Development Plan and Drawings from Letter of Award (LoA)																				
4.	Complete construction of Waste to Energy Processing Facility and Scientific Landfill facilities at the site after completion of Sr. No. 1,2 and 3																				
5.	a) Plant installation, machinery including electrical, mechanical and instrumentation facilities/ utilities at Waste to Energy Processing Facility																				
	b) Completion of Construction Works for power evacuation facilities / Transmission Infrastructure.																				
	c) Completion of construction works for collection, storage and treatment of leachate, etc. after completion of Sr. No.1 and 2.																				
6.	Testing period to monitor the plant, machinery and equipment and Waste to Energy Processing Facility after the completion certificate received from the Construction Supervisor.																				
7.	Final commissioning with full load capacity after completion of Sr. No. 6*																				

6. DRAWINGS

(Refer Clause 4.4)

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

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

7. TESTS

(Refer Clause 14)

7.1 Tests

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

7.1.9 The relevant tests to be conducted shall be finalized by the Concessionaire in consultation with the Construction Supervisor and / or Independent Engineer from time to time.

8. COMPLETION AND PROVISIONAL CERTIFICATE

(Refer Clauses 14.2 and 14.3)

8.1 Completion Certificate

- 1 I, (Name of the Person and designation), acting as Construction Supervisor, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for Wasteto Energy Processing Facility in Gorakhpur, Uttar Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article ~~1414~~ and Schedule 7 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the CONSTRUCTION SUPERVISOR by:

(Signature)

(Name)

(Designation)

(Address)

Note: The Completion Certificate shall be issued only if Construction Works of all the Project Facilities (viz, Waste to Energy Processing Facility, Scientific Facility and Transmission Infrastructure) are substantially complete and Test are successfully completed.

8.2 Provisional Certificate

- 1 I, (Name of the Person and designation), acting as Construction Supervisor, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for Waste to Energy Processing Facility in Gorakhpur, Uttar Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 1414 and Schedule 7 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
- 2 Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the ULB or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
- 3 In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of the CONSTRUCTION SUPERVISOR by:

(Signature)

(Name)

(Designation)

(Address)

Note : The Provisional Certificate shall be issued only if all Project Facilities (viz, Waste to Energy Processing Facility, Scientific Facility and Transmission Infrastructure) are substantially complete and can be safely and reliably placed in commercial operation.

9. CONSTRUCTION REQUIREMENTS

9.1 General

9.1.1 The facilities to be provided in the Waste to Energy Processing Facility, which is to be implemented by the Concessionaire as part of the Project, have been highlighted in this Schedule.

9.1.2 The Concessionaire shall adhere to all applicable rules, regulations, acts, guidelines, standards and laws which are applicable for this Project. Some of these important rules, regulations, acts, guidelines, standards, etc. are as follows:

- (a) All applicable rules, regulations, acts, guidelines, standards and laws of Government of India and Government of Uttar Pradesh
- (b) All applicable Indian Standards (IS)
- (c) All applicable standards by the Bureau of Indian Standard (BIS)
- (d) All norms of the Indian Road Congress (IRC)
- (e) All norms of the National Building Code (NBC)
- (f) Solid Wastes Management Rules, 2016 and Construction & Demolition Rules 2016
- (g) Environment (Protection) Act, 1986
- (h) Environment (Protection) Rules, 1986
- (i) EIA Notification, 2006 and amendments
- (j) Guidelines and recommendation of Central Public Health & Environmental Engineering Organisation (CPHEEO), MoUD, GoI
- (k) Electricity Rules, 2005
- (l) Electricity Act, 2003
- (m) Uttar Pradesh Electricity Regulatory Commission (UPERC) Guidelines / Regulations / Order
- (n) All applicable norms of the Central Electricity Authority (CEA)
- (o) All applicable rules, regulations, acts, guidelines, standards of Central Pollution Control Board (CPCB) and Uttar Pradesh Pollution Control Board (UPPCB)
- (p) Motor Vehicle Act and Vehicle Emission Control
- (q) Labour Laws – Minimum Wages, Contract Labour Abolition and Regulations
- (r) Construction standards by Uttar Pradesh Public Works Department and [ULB] and any other GoUP departments

9.2 Waste to Energy Processing /Scientific Landfillfacilities

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

- (a) Location and Vicinity Maps: These shall show the site location and vicinity. The vicinity map should include the site boundary and all major roads, structures, industries, commercial and residential areas within a 2 km radius of the Site.
- (b) Site Layout: These shall show locations and dimensions of all proposed site structures including roads, buildings, fencing, amenities, utilities, etc.

- (c) Construction Phasing Plan: These shall be the ultimate use of the Site in a planned phasing approach. Interfacing of construction and operation shall be noted. At a minimum, it shall require an overall drawing (recommended scale 1:100) as well as construction phase drawings (recommended scale 1:100) showing the construction phasing details. The construction phasing details shall include details on development of Waste to Energy Processing Facility, phasing of cells, leachate collection system, landfill gas collection system, roads, and all other components of the ~~SW-MSW~~ processing /Scientific Landfill facility.
- (d) Layout Plans and Structural drawings: These shall be the layout plan and structural drawings for all the components of processing/Scientific Landfill.
- (e) Excavation and Grading Plans: These shall be the excavation and base grading for the landfill and cells and required earth work for construction. At a minimum over all drawing (recommended scale 1:100) as well other drawings (recommended scale 1:100) showing the excavation and grading plans shall be required.
- (f) Cell Construction Details: These shall show cell profiles with liner, leachate collection pipe, lateral drainage layer, ditches, access roads, final cover tie-in to the bottom liner at the edge of the fill area (recommended scale 1:100), etc.
- (g) Leachate Management Plan: The Concessionaire shall provide a drawing (recommended scale 1:100) that shows the leachate collection, transport, and treatment system. This plan shall include all inverts of the collector pipes, transport pipes, manholes, tanks, etc. The Concessionaire shall be responsible for meeting all permitting requirements for leachate treatment.
- (h) Landfill Gas Management Plan: This plan shall show landfill gas migration control and monitoring measures and venting system (recommended scale 1:100).
- (i) Odour Control Management Plan: This plan shall show odour control mechanism and management plan (recommended scale 1:100).
- (j) Construction Details: These shall show liner anchorage details, leachate management and treatment system, roadways, other infrastructure, etc. (recommended scale 1:100).
- (k) Cross Sections: These shall show typical sections through the fill area, bottom cells, slide slopes, and final cover elevations. Detailed cross sections showing the construction of ~~solid-waste~~ municipal solid waste lifts and slopes (recommended scale 1:100).
- (l) The landfill site bottom composite liner of specifications shall comply with SWM Rules and CPHEEO manual.

9.2.2 Quality Control

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

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

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

9.2.3 Construction Phasing Plan

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

9.2.4 On-Site Access Road

It is also required that the landfill design include an appropriate access road from the site entrance to the landfill working face. This access road shall be designed to accommodate vehicles having a minimum 40 ton gross weight. The access road shall

be at a minimum of 15m wide to handle two-way transfer trailer traffic from the scale house to the face of the landfill. The access road shall be designed and constructed to include ditching and drainage.

9.2.5 Separation Barrier

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

9.2.6 Side Slope Liner

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

9.2.7 Site Access Road

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

9.2.8 Site Fencing

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

9.2.9 Storm Water Drainage and Rainwater Harvesting System

The Concessionaire shall design and implement a storm water drainage and rainwaterharvesting system within the Waste to Energy Processing Facility as per the industry norms and this Agreement.

9.2.10 Lighting

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

9.2.11 Green Belt

The Concessionaire shall provide a vegetative cover in a strip of minimum width 20 m for the Scientific Landfill of site boundary. The species of the trees for providing vegetative cover shall be approved by the Construction Supervisor and / or the

Independent Engineer. The green cover requirements within the Waste to Energy Processing Facility shall be minimum of 3 m wide along the site boundary. Garden/lawns wherever possible shall be created to improve the aesthetics.

9.3 Procedure

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

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

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

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

9.3.2 During Construction

The Concessionaire shall:

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

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

9.3.3 Positions and Levels

The Concessionaire shall be responsible for:

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

9.3.4 Tests

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

9.3.5 Reporting Requirements and Documents to be provided

- (a) During the Construction Period, the Concessionaire shall submit to the Construction Supervisor and ULB, Monthly Project Progress Reports (for each calendar month or part thereof) within 5 working days of the last day of the month.

- (b) The report shall review the progress made, identify slippages, if any, and project the future activities to be undertaken (including rectifications), construction activities undertaken and would, inter alia, include all studies, surveys, investigations and tests carried out.
- (c) The Concessionaire shall submit the copies of documents in the form of three hardcopies (printed) and two in electronic form.

10. OPERATION AND MAINTENANCE REQUIREMENTS

10.1 General

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

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

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

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

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

10.2 Operations & Maintenance Manual and Plans

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

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

10.3 General Requirements

10.3.1 Installation of Close Circuit Cameras

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

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

10.3.3 Maintenance of Structures

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

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

- (c) Periodic maintenance including welding, riveting, painting, etc. shall be done for steel structures periodically (atleast once in two years)

10.3.4 Maintenance of Utilities and Services

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

10.3.5 Maintain Hygienic and Aesthetic Conditions

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

10.3.6 Hazardous Waste Disposal

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

10.4 Cleaning and Maintenance Requirements

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

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

10.5 Monitoring Procedures

10.5.1 The monitoring at integrated facility shall be carried out during implementation/ Construction Period, Operation and Maintenance Period and Post Closure Period. The monitoring plan shall be prepared in accordance to the applicable Uttar Pradesh Pollution Control Board (UPPCB) requirements.

10.6 Management of Labour and Prevention of Accidents

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

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

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

10.6.3 The Concessionaire shall report and register all occurrences of;

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

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

10.7 Facilities and Benefits for the Work Force Employed

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

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

- (a) Uniform with ID/ID Cards approved by the ULB (visible distinctly at night)
- (b) Safety and protective gears

10.8 Training, Social Programmes and Public Grievances

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

11. OPERATIONAL PLAN

(To be submitted by the Concessionaire)

The operational plans shall include the following key points:

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

12. PERFORMANCE STANDARDS AND DAMAGES

12.1 Performance Standards

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

- (a) The Concessionaire shall ensure that the ~~SW-MSW~~ Processing is in compliance with Solid Waste Management Rules 2016 and the terms and conditions of this Agreement
- (b) The Concessionaire shall ensure ~~SW-MSW~~ is processed and power is generated from Waste to Energy Processing Facility subject to no Event of Default by UPPCL side as per terms and conditions of PPA
- (c) The Concessionaire shall ensure that the process of ~~SW-MSW~~ should be continuous and will not emit smell, odor, and all precautionary measures shall be taken to ensure that such nuisance will not be created
- (d) The process remnants shall not be stored and shall be disposed off at Scientific Landfill immediately
- (e) The Concessionaire shall ensure that the quality of compost shall conform to compost quality standards and shall not be stored more than the shelf life. The Concessionaire shall ensure that the off-take arrangement of the produced compost is in place.
- (f) The Concessionaire shall ensure that the Waste to Energy Processing Facility is in compliance with the guidelines of Ministry of New and Renewable Energy, Government of India (in case waste to energy approach is being adopted for processing)
- (g) The Concessionaire shall ensure that proper pollution control measures are installed and operated for Proposed Technology used as per the industry norms, CPCB Standards.
- (h) The Concessionaire shall be free to sell products such as compost, organic manure, energy (power) and/ or other material recovered after processing the ~~SW-MSW~~, at the Project Facilities at such price and to such persons/organizations and using such marketing and selling arrangements and strategies as it may deem appropriate.
- (i) The Concessionaire shall process the recyclable materials such as plastics, paper, or other materials with environmentally sound processing at the Plant site.
- (j) The Concessionaire shall ensure that a calibration test of the weigh bridge is carried out twice in a year starting from the Appointed Date and a copy of the calibration test result is submitted to Independent Engineer immediately after

the test. Stamping of weighbridge shall be done through Weights and Measures Department (WMD), Govt. of Uttar Pradesh

- (k) Independent Engineer shall carry out an audit of the weigh bridge data maintained and made available by the Concessionaire at least once in every month starting from the appointed date and submit the result of such audit to the ULB.
- (l) The Concessionaire shall undertake to ensure that the remnant disposed in the Landfill does not exceed 15% of the total SW-MSW received at the Waste to Energy Processing Facility.
- (m) The Concessionaire shall be liable to Damages if it exceeds more than 15%.
- (n) The Concessionaire shall ensure that it maintains daily records of the quantities of SW-MSW and submit the same to the Independent Engineer on a Monthly Basis, before the expiry of 2 (Two) working days from the end of the Month:
 - i. Quantity of SW-MSW at the input of Waste to Energy Processing Facility
 - ii. Quantity of SW-MSW received at the Scientific Landfill facility
 - iii. The daily records of receipt of the SW-MSW at Waste to Energy Processing Facility /Scientific Landfill shall be maintained shift-wise by preparing respective data sheets
- (o) Independent Engineer shall review the records and certify the same within 3 (Three) working days of submission.
- (p) With effect from the COD, the Concessionaire shall not suspend at any time receiving of SW-MSW at the the Waste to Energy Processing Facility on any day during the Concession Period

12.2 Damages

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

Performance Standards	Acceptable Level	Cure Period	Penalty	Tracking mechanism	Event of Default
Waste to Energy Processing Facility					
1) Suspension of SW—MSW processing	Incidence in ≤ 16 shifts per year and ≤ 6 continuous shifts	12.3	Operation Performance Security at the rate of 0.2% each day's default	Daily Report	Event of Default in case >20 shifts per year or >8 continuous shifts
2) Total quantity of unprocessed SW—MSW stored at the Waste to Energy Processing Facility	≤ 20 days of SW—MSW quantity (calculated from the 15 days trailing average)	7 days	Operation Performance Security at the rate of 0.2% each day's default	Daily Report	Event of Default in case not cured in the cure period
3) Noncompliance to compost quality standards, if applicable	No variation	180 days	Operation Performance Security at the rate of 0.1% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
Scientific Landfill					
4) Instances when SW—MSW is found to be landfilled without processing	Nil	N/A	Operation Performance Security at the rate of 5% each day's default	Random checks	Event of Default for third instance in the concession period
5) Maximum percentage of SW—MSW (inerts & process	$\leq 15\%$ of SW—MSW quantity received at the Waste to Energy	N/A	Operation Performance Security at the rate of 0.5% each day's default	Monthly Report	Event of Default in case 3 months of average SW—MSW

Performance Standards	Acceptable Level	Cure Period	Penalty	Tracking mechanism	Event of Default
remnants) landfilled	Processing Facility				quantity landfilled exceeds 15% of the SW <u>MSW</u> quantity received*
Environmental Compliance and Other Compliance					
6) Noncompliance to air quality standards as mentioned in the SWM Rules 2016/CPCB Standards as updated time to time.	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
7) Noncompliance to ground water quality standards as mentioned in the SWM Rules 2016	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period
8) Noncompliance to any other applicable standards as mentioned in the SWM Rules 2016	No variation	30 days	Operation Performance Security at the rate of 0.2% each day's default	Checks conducted by Independent Engineer and other agencies	Event of Default in case not cured in the cure period

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

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

Performance Standards	Acceptable Level	Penalty	Tracking mechanism
Waste to Energy Processing Facility			
1) Instances of downtime of weighbridges (at the Waste to Energy Processing Facility)	Nil	Operation Performance Security at the rate of 0.1% each day's default	Daily Report

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

Note:

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

13. SAFETY REQUIREMENTS

13.1 Safety Requirements

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

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

- (h) Take an active part in all supervisory safety meetings, including the discussion of observed unsafe work practices or conditions and a review of any incidents and corrective actions. Additionally, encourage, solicit and follow up on safety related suggestions from Concessionaire's employees.
- (i) Report all injuries and incidents in a timely manner in accordance with federal and/or state laws and regulations and the Contractor Safety Requirements.
- (j) Analyze all incidents and implement immediate corrective action.
- (k) Provide job supervisors with appropriate training materials to conduct weekly safety meetings and attend said meetings to evaluate their effectiveness.
- (l) Review safety meeting reports submitted by job supervisors and take necessary action to ensure that the job supervisors hold meaningful weekly safety meetings.
- (m) Implement safety-training programs for Contractor supervisors and employees applicable to their specific responsibilities.
- (n) Maintain list of on-site personnel available for first aid and emergency treatment for injured Contractor employees.
- (o) Concessionaire will be responsible for providing a safety orientation training session for all workers before they are allowed to begin work. The orientation safety training will be conducted by Construction Supervisor and /or Independent Engineer as suggested by the ULB and will include a summary of the Contractor Safety requirements/ Heads-Up Safety Training and awareness.
- (p) At a minimum Contractor representative to adequately train its employees according to applicable safety standards. This training may include but is not limited to: fall protection, fire watch, scaffolds, forklifts, excavation, ladders, confined space entry, respiratory protection, OSHA-PSM (Process Safety Management), grounding, shoring and traffic control etc.
- (q) In the event of a work-related incident resulting in a Contractor employee injury or near miss, Contractor shall notify their appointed representative immediately.
- (r) Contractor shall provide the appointed representative with an initial report of incident, in writing, within 24 hours of the accident. Hard copy or electronic formats are acceptable.
- (s) Contractor shall provide a complete accident investigation report within three (3) working days of the incident. In the event, their investigation requires more time to investigate due to the complexity of the incident, Contractor shall communicate to the appointed Representative in writing including intimation to higher authorities of ULB. This communication shall include the issues causing the delay and an estimated investigation completion date.

- (t) All first aid injuries shall be documented for record keeping purposes. In the event a first aid case develops into a Contractor employee injury, accident reporting and investigation procedure shall be initiated as outlined previously.
- (u) In order to maintain a safe and healthy work environment in emergency situations, Concessionaire shall develop this emergency action plan to help safeguard Contractor employees while working on the Project Site / Project Facilities. All Contractor employees will be trained in the use of this plan and informed of their role in implementing it during their required safety orientation training. This policy is mandatory and must be strictly followed by all Contractors and their personnel while working on Sites.
- (v) When notified of an emergency evacuation (an audible alarm/verbal announcement will be used by Concessionaire to alert employees of an evacuation), Contractor must immediately evacuate its personnel from the Project Site, perform a head count and report missing personnel to concerned in-charge of the Facilities and take appropriate steps for investigation. When evacuating any building, structure or job site, employees should utilize the nearest exit to them. Personnel will remain at the designated site until an all-clear is announced or further evacuation steps are ordered.
- (w) Concessionaire shall comply with the latest revision Safety Rules & Procedures Permit. Contractor shall provide adequate fire protection equipment in each of its storage areas, offices and other temporary structures.
- (x) Concessionaire is responsible for orienting employees on the specific safety rules that must be followed by all persons working on Project Facilities. Other personal protective equipment (PPE) is also required in accordance with the appropriate safety standards and equipment as set by the manufacture's specifications. A list of the minimum personal protective requirements is as follows:
 - (i) The Contractor shall be responsible for providing and ensuring the use of required personal protective equipment for its employees.
 - (ii) Approved hard hats, shall be worn at all times while on the Project Site. It is required that each Contractor uses an American National Standards Institute (ANSI) approved hardhat.
 - (iii) Safety glasses, which meet applicable ANSI standards, are required at all times while on the Site and should include approved side shields. Only clear safety glasses are allowed to be used inside buildings or enclosed structures. Shaded goggles or hoods may be used while welding or cutting. Prescription safety glasses with self-tinted capabilities may be worn on-site.
 - (iv) PPE shall be worn while travelling from the security gate, while travelling through the Waste to Energy Processing Facility / Scientific Landfill, working outside or otherwise engaged in work at each station, except in areas specifically designated where PPE is not required.

- (v) Contractor's vendors and visitors will be required to meet these same above referred standards.
- (y) Good housekeeping affects safety, quality and production. It is the responsibility of Concessionaire to keep their work area clean. Concessionaire is responsible for disposal of trash and debris that is generated by their work. Trash and debris must be collected and placed in proper containers on a daily basis.
- (z) Trash shall not be randomly thrown off a floor or through openings in the floor. Trash chutes, trash boxes, or other approved means such as barricading and/or flagging shall be utilized.
- (aa) Safety requirement mentioned in the Environment Impact Assessment (EIA) Report shall be compliance.

14. ENVIRONMENTAL AND SOCIAL STANDARDS

14.1 Environmental Standards

- (a) The Concessionaire shall follow all the environmental standards for processing and Scientific Landfill facility as per Solid Wastes Management Rules, 2016 and any amendments/ revision thereto till date. It shall also follow all those additional or stricter standards as per the Applicable Laws and rules.
- (b) The Concessionaire shall meet the standards during the Construction Period as per the instruction or suggestion by the Construction Supervisor from time to time based on the environmental standards applicable.
- (c) The Concessionaire shall meet the standards during the Operation and Maintenance Period as per the instruction or suggestion by the Independent Engineer from time to time as per the design requirement and applicable standards.
- (d) The Concessionaire shall form the Environmental Monitoring Cell (EMC) to review the effectiveness of environment management system during construction and operation phase of the Project Facilities. Construction Supervisor and / or Independent Engineer shall be governing the EMC functions.
- (e) EMC shall meet regularly to review the effectiveness of the EMP (Environmental Monitoring Programme) implementation. The data collected on various EMP measures would be reviewed by EMC and if needed corrective action will be formulated for implementation purposes.
- (f) The Concessionaire through EMC shall co-ordinate all monitoring programmes at Project Site and data thus generated shall be regularly furnished to the state regulatory agencies. The Environmental Audit reports and review shall be prepared for the entire year of operations and shall be regularly submitted to regulatory authorities.
- (g) The Concessionaire shall setup a well-equipped laboratory for monitoring and analysis of environmental parameters for air quality, meteorology, water, wastewater, noise, groundwater, etc. based on the overall monitoring requirement as given in SWM Rules 2016.
- (h) The Concessionaire shall follow the QA/QC procedures for all laboratory services and strive to get the certified laboratory status from quality point of view such as ISO 9000 and other similar standards. The overall goal should also be to acquire the status of certified and recognized laboratory under MoEFCC, Government of India. The Concessionaire shall strive to get ISO 14001 certification for the entire Project.
- (i) The Concessionaire shall follow the environmental issues with management action along with responsibilities as mentioned in the following table.

Environmental Issues	Management Action	Implementation Responsibilities
Project Location		
Tree Clearance	<ul style="list-style-type: none"> EMC will prepare a detailed Transplantation and Plantation plan and monitor the implementation 	Concessionaire
Energy Conservation Plan	<ul style="list-style-type: none"> EMC will prepare a detailed Energy Conservation plan and monitor the implementation 	Concessionaire
Loss of local fauna	<ul style="list-style-type: none"> EMC to create plan and implement the same 	Concessionaire
Loss of trees & vegetation in the Project area	<ul style="list-style-type: none"> EMC will prepare a detailed plantation plan and monitor the implementation ULB to closely oversee the work of trees and vegetation removal or plantation 	ULB/ Concessionaire
Increase in the water requirement for domestic purpose	<ul style="list-style-type: none"> EMC to monitor and prevent the excess water consumption 	Concessionaire
Stress on the surrounding marine ecosystem	<ul style="list-style-type: none"> EMC will plan the earth movement in consultation with the Concessionaire and see to it that the mitigation measures are implemented by the contractor/operator 	Concessionaire
Change in land use pattern	<ul style="list-style-type: none"> Preparation of the landscaping and greenery plan 	Concessionaire
Loss of any archeological / cultural /historic site	<ul style="list-style-type: none"> The operator of the facility will plan to eliminate any odour or pollution 	Concessionaire
Processing/ Implementation		
Air Pollution	<ul style="list-style-type: none"> The EMC will look into the action of the operator on regular basis 	Concessionaire
High dust level	<ul style="list-style-type: none"> The EMC will look into the action of the contractor on a regular basis The ULB through its monitoring agency can receive a feedback and direct the agency for corrective measures 	ULB/Concessionaire

Environmental Issues	Management Action	Implementation Responsibilities
Sediment runoff	<ul style="list-style-type: none"> EMC will plan the excavation, etc. in consultation with the contractor and see to it that the mitigation measures are implemented by the contractor 	Concessionaire
Safety of workers	<ul style="list-style-type: none"> EMC to monitor and ensure the security and safety of workers 	Concessionaire
Interference with the natural drainage of the local ecosystem	<ul style="list-style-type: none"> Possible changes in natural drainage system to be avoided ULB to closely oversee any changes in natural drainage system 	ULB/Concessionaire
Flooding in other low lying areas	<ul style="list-style-type: none"> EMC to monitor the construction and layout plan 	Concessionaire
Noise Pollution	<ul style="list-style-type: none"> Make provision in the contract to limit the noise pollution EMC will monitor noise Low noise vehicles with proper maintenance and monitoring 	Concessionaire
Disposal of excavated material	<ul style="list-style-type: none"> EMC to monitor the quantity and disposal 	Concessionaire
Safety hazard during the erection and operation	<ul style="list-style-type: none"> Regular monitoring and reporting 	Concessionaire
Operation Phase		
Air pollution due to the SW <u>MSW</u> , vehicles and Waste to Energy Processing Facility	<ul style="list-style-type: none"> EMC to ensure the air pollution of facility meets the norms Regular noise monitoring and reporting 	Concessionaire
Increase in power consumption	<ul style="list-style-type: none"> EMC will prepare a detailed Energy Conservation plan and monitor the implementation with the operator of the facility 	Concessionaire
High air pollution along the various transport corridors leading to and away from the site	<ul style="list-style-type: none"> EMC will monitor pollution and inspection log of vehicles 	Concessionaire
Noise pollution due to the operational activities	<ul style="list-style-type: none"> EMC to monitor noise and give feedback for control 	Concessionaire
Noise pollution along the various transport corridors leading to and away from the landfill site	<ul style="list-style-type: none"> EMC to monitor the noise pollution 	Concessionaire

Environmental Issues	Management Action	Implementation Responsibilities
Solid Waste <u>Municipal Solid Waste</u> Management issues	<ul style="list-style-type: none"> ▪ EMC to monitor and report 	Concessionaire
Sewage/leachate treatment issues	<ul style="list-style-type: none"> ▪ to maintain the STP as per the standard prescribed norms. ▪ EMC to monitor the same 	Concessionaire
Periphery Development	<ul style="list-style-type: none"> ▪ ULB initiatives to be communicated to Concessionaire for its implementation 	Concessionaire

14.2 Social Standards

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

15. WASTE REPORTS

(Refer Clause 5.7)

15.1 Report for Waste to Energy Processing Facility

15.1.1 Daily Report for other details of the Waste to Energy Processing Facility

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

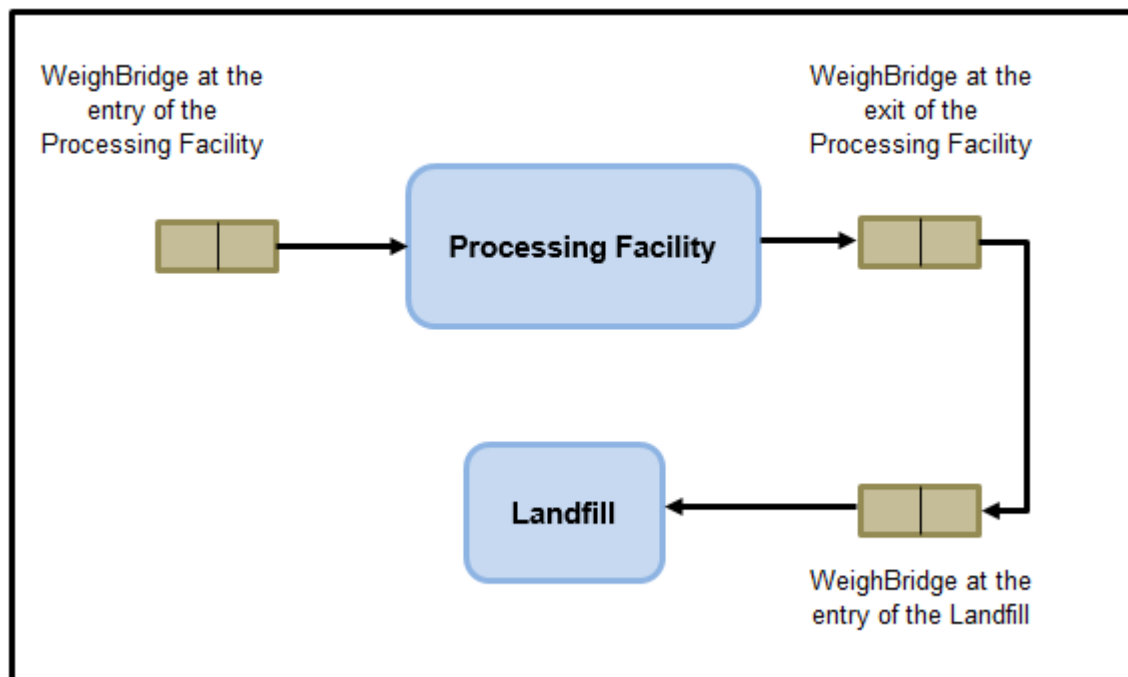
15.1.2 Monthly Report

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

15.1.3 Consolidated Monthly Report

Monthly Waste Report		
Date from:	Date to:	
Total quantity of <u>SW-MSW</u> received at the Waste to Energy Processing Facility	100%	___ (tonnes)
Total quantity of waste landfilled	___%	___ (tonnes)
Total energy sold to UPPCL		----- MU

15.2 Schematic Drawing of Weigh Bridges Locations



16. SCOPE OF WORK OF INDEPENDENT ENGINEER

(Refer Article21)

16.1 Role and functions of the Independent Engineer

16.1.1 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

16.1.2 The scope of work of the Independent Engineer shall be to review and oversee the operations and maintenance of the Project.

16.1.3 Broadly, the role of the Independent Engineer during the Operation and Maintenance Period is set out in the following paragraphs.

- (a) Independently review, monitor and wherever required by the Agreement, to approve the operation and maintenance of the Project Facilities to ensure compliance by the Concessionaire with the Construction Requirements and O&M Requirements
- (b) Verification and random checks of weighment and Testing of the SW-MSW at the Processing and Landfill Site.
- (c) Verify and submit a monthly report to the ULB on compliance by the Concessionaire with the requirement of the Agreement and with Applicable Laws.
- (d) Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- (e) Review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

16.2 Scope of Services of the Independent Engineer

The specific scope of services to be provided by the Independent Engineer in accordance with the applicable provisions of this Agreement is specified below:

16.2.1 Operation and Maintenance Period

- (i) The Independent Engineer shall aid and advise the Concessionaire in preparing the O&M Manual.
- (ii) In respect of the Operation Plan and other periodic reports received by the Independent Engineer from the Concessionaire for its review and comments during the Operation and Maintenance Period, the provisions of above Paragraph shall apply, mutatis mutandis.

- (iii) The Independent Engineer shall review the periodic status report furnished by the Concessionaire and send its comments thereon to the ULB and the Concessionaire within 7 (seven) days of receipt of such report.
- (iv) The Independent Engineer shall review the activities carried out by the Concessionaire on a weekly basis. It shall make a report of such review (the "Operation & Maintenance Review Report") stating inter alia the review relating to operations and maintenance of the Project
- (v) The Independent Engineer shall in its Operation & Maintenance Review Report specify the remedial measures that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the operations of the Project is in conformity with the O&M Requirements, O&M Plan, Operation & Maintenance Manual, Applicable Laws and Concessionaire's obligations as per the Concession Agreement. It shall monitor and review the results of actions taken by the Concessionaire in this behalf.
- (vi) As part of the O&M review, the Independent Engineer shall also determine and recommend the damages / penalties, if any in accordance with the Concession Agreement to be levied on the Concessionaire in view of non-adherence to Concessionaire's obligations as per the Concession Agreement, Operational Plan, O&M Manual, etc.
- (vii) The Independent Engineer shall monitor and review the curing of deficiencies and non-compliances by the Concessionaire.
- (viii) In the event that the Concessionaire notifies the Independent Engineer of any modifications or expansion / addition / renovation of the Project Facilities and / or procurement of equipment / vehicles, the Independent Engineer shall review the same and send its comments to the ULB and the Concessionaire within 7 (seven) days of receiving the proposal.
- (ix) Conduct random inspections of the Project Facilities by visual assessment with careful observation of the specific object/ item for identification and quantification of the deficiencies or damages to the Project Facilities and operation and maintenance of the Project Facilities.
- (x) In addition to the daily responsibilities, conduct a general inspection of the Project Facilities at least once a month and as and when exigencies require to ascertain conformity with Construction Requirements and O&M Requirements;
- (xi) Monitor Operation and Maintenance activities (including maintenance of Project Facilities and equipment, standards of service, safety and environmental issues) and the overall quality of O&M activities so as to ensure compliance by the Concessionaire with the O&M Requirements, O&M Plan and O&M Manual;
- (xii) Issue "Notice to Remedy" in event of observing non-compliance to O&M Requirements;

- (xiii) Record and report to the ULB on the incidents of Material Breach or Persistent Breach of O&M Requirements;
- (xiv) If during the course or upon review/inspection undertaken by the Independent Engineer or otherwise, it transpires that any of the Parties is in breach/default of any of its obligations under the Agreement, the Independent Engineer shall, under intimation to both the Parties, require the defaulting Party to remedy such breach/default within such time and in such manner as the Independent Engineer may deem fit and in each case the same shall be recorded.
- (xv) Monthly review of the various records and registers maintained by the Concessionaire and suggest suitable remedial measures/ procedures, where necessary;
- (xvi) Provide the services of a full time resident project representative during the period commencing from 3 (three) days from the date of appointment of the Independent Engineer until the expiry of the contract for Independent Engineer's appointment;
- (xvii) The Independent Engineer shall attend regular meetings (Project Review Meetings) with the ULB's and the Concessionaire to be held atleast once in every month. During the Operation and Maintenance Period, the Independent Engineer shall report on progress and quality of work performed by the Concessionaire and discuss problems or other pertinent matters relating to the work.

In addition to the above, the specific activities to be carried by the Independent Engineer during the Operation and Maintenance Period are:

16.2.2 **Monitoring at SW-MSW Processing Site**

The Independent Engineer's prime responsibility would be to monitor the operations at the weighbridge and waste inspection area at the Waste to Energy Processing Facility. For this purpose the Independent Engineer shall undertake, inter alia, the following activities:

- (a) Verification of the weightment and records generated at the weighbridge;
- (b) Verification of the Testing of the SW-MSW in accordance with the O&M Requirements;
- (c) Monitor, in accordance with Good Industry Practice and O&M Requirements, the operations and maintenance activities undertaken by the Concessionaire;
- (d) Review, approve or disapprove drawings, samples and other submissions of the Concessionaire to determine compliance and conformance with the O&M Requirements;
- (e) Inspect and certify the quality of compost / RDF / other products etc. being sold or otherwise disposed of, composition of Residual Inert Matter
- (f) Check the quality of materials and the workmanship of the Scientific Landfill facility, including that of the following:
 - (i) leachate collection system;
 - (ii) intermediate liner system of the Engineered Scientific Landfill;

- (iii) daily cell cover;
- (iv) gas venting and flaring system;
- (v) slope stability of the Engineered Scientific Landfill;
- (vi) final cover system.

16.2.3 Conducting *Random Inspections*

The Independent Engineer shall conduct random inspections of the Project Facilities as well as the operations in the manner as follows:

- (a) The random inspections may be carried out by visual assessment with careful observation of the specific object/item for identification and for quantification of the deficiencies or damages of the Project Facilities and operation and maintenance of the Project Facilities. For this purpose the Independent Engineer can use photographs with time and place on record.
- (b) During the random inspections, the Independent Engineer would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Contractor so as to ensure compliance with the O&M Requirements;
- (c) Take certificate from Chartered Accountant for fixed assets verification and then physically verify the fixed assets as per O&M Plan.
- (d) Issue “Notice to Remedy” in the event of non-compliance to O&M Requirements and recording the same.
- (e) Record and report to the ULB on the incidents of Material Breach or Persistent Breach of O&M Requirements;

16.2.4 *Random inspection of Project Facilities*

The Independent Engineer shall undertake inspection of the Project Facilities atleast once a month, in such sample selection as mentioned in the table below:

S. No	Project Facilities	Sample selection requirement
1	Waste to Energy Processing Facility	–
2	Scientific Landfill facility	–
3	Transport and Loading Vehicles, if any	A minimum sample of 10 % of each category of vehicles deployed for the Project. There should not be repetition of the same set of vehicles in the next round of inspection.

16.3 **PostClosure Period**

- (a) During the Post Closure Period, the Independent Engineer shall monitor and certify compliance with the Post Closure Maintenance Plan.
- (b) Attend meetings with the ULB and the Concessionaire, to be held at intervals as mutually decided upon by the Parties, to discuss problems or other pertinent matters relating to the Project. The Independent Engineer shall take notes at the meetings and provide a copy of the minutes of such meetings to each person who attended the meeting.
- (c) Approval for Closure of the Landfill Site or part thereof.

16.4 **Handback of Project Facilities to the ULB**

At the expiry / termination of the Concession Period and / or at the time of handback of the Project Facilities to the ULB, the Independent Engineer shall:

- (i) Monitor the compliance with the Handback Requirements as provided in Article 22 of this Agreement and
- (ii) Issue a certificate of compliance on satisfactory completion of Handback Requirements by the Concessionaire.
- (iii) Assist in preparation of the Post Closure Maintenance Plan

16.5 **Maintenance of Records**

The Independent Engineer would participate in the review meetings/ emergency/ extraordinary meetings held by the Parties and assist the Parties in dealing with any problem, Emergency, Force Majeure Event or other exigencies.

The Independent Engineer shall maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

- (a) Manpower deployed and other organizational arrangements of the Independent Engineer ;
- (b) Inspections undertaken and notices/instructions issued to the Concessionaire;
- (c) Review compliance by the Concessionaire with the Agreement;
- (d) Force Majeure Events;
- (e) Material and Persistent Breach of O&M Requirements and Events of Default by the Parties; and
- (f) Compliance by the Concessionaire with Handback Requirements

16.6 **Verification and Reporting by Independent Engineer**

The Independent Engineer would be required to verify/issue the following reports to the Parties:

Period/ Event	Verification	Applicable report to be issued by the Independent Engineer
Operation and Maintenance Period	<ul style="list-style-type: none"> • Verification of purchase order/s of the major equipment • Review monthly progress report submitted by the Concessionaire • Issue “Notice to Remedy” in event of non-compliance by the Concessionaire 	As per the requirement
Monitoring at Weighbridge	<ul style="list-style-type: none"> • Verify weighment slip • Verify monthly Tipping Fee statement 	Monthly O&M Inspection Report
Monitoring at Waste Inspection Area	<ul style="list-style-type: none"> • Verify recording of Test results • Verify monthly Tipping Fee statement and penalties (if applicable) 	Monthly O&M Inspection Report
Monitoring at Scientific Landfill facility	<ul style="list-style-type: none"> • Verify recording of Test results • Verify quantum of Residue Inert Waste going to Landfill and penalties (if applicable) 	Monthly O&M Inspection Report
Random Inspections of Project facilities	<ul style="list-style-type: none"> • Advise ULB on penalties payable by the Concessionaire 	Monthly O&M Inspection Report
Force Majeure/ Material and Persistent Breach of O&M Requirements/ Events of Default.	<ul style="list-style-type: none"> • Issue “Notice to Remedy” in event on non-compliance • Record Events of Default, Material/Persistent Breach of O&M Requirements, Force Majeure Events 	
Handback of Project Facilities	<ul style="list-style-type: none"> • Specify list of works/jobs to be carried out by the Concessionaire in accordance with Handback Requirements. • Specify list of items to be handed back to ULB by the Concessionaire. • Verify compliance by the Concessionaire with Handback Requirements 	Issue of compliance certificate for Handback Requirements

16.7 Other Aspects

- (i) The Independent Engineer shall assist the Parties in arriving at an amicable settlement of disputes, if any, and
- (ii) The Independent Engineer shall review safety and environment management related aspects of the Project.

- (iii) The Independent Engineer shall monitor the performance of the Concessionaire and report on incidence of Material and Persistent Breach of O&M Requirements.
- (iv) The Independent Engineer shall devise suitable specification/standard, if required. And approve any other standard proposed by the Concessionaire
- (v) The Independent Engineer shall carry out such other functions as may be specifically assigned to it under the Agreement including certification of adequacy of insurance and verification of termination payments.

17. VESTING CERTIFICATE

- 1 The Commissioner, ULB (the “**ULB**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Participating ULBs and (the “**Concessionaire**”) for Waste to Energy Processing Facility in Gorakhpur, Uttar Pradesh on design, build, finance, operate and transfer (“**DBFOT**”) basis.
- 2 ULB hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 30.1 of the Agreement on the basis that upon issue of this Vesting Certificate, ULB shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the ULB, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of the ULB by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

18. SUBSTITUTION AGREEMENT

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

AMONGST

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

WHEREAS:

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

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

18.1 Definitions and Interpretation

18.1.1 Definitions

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

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

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

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

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

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

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

18.1.2 Interpretation

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

18.2 Assignment

18.2.1 Assignment of rights and title

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

18.3 Substitution of the Concessionaire

18.3.1 Rights of substitution

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

18.3.2 Substitution by the Lenders upon occurrence of Financial Default

- (a) Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the ULB for its information and record. A Notice of Financial Default under this Clause ~~18.3~~~~18.3~~ shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- (b) Upon issuance of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- (c) At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the ULB to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article ~~28~~~~28~~ of the Concession Agreement, and upon receipt of such notice, ULB shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, ULB may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that

upon written request from the Lenders' Representative and the Concessionaire, ULB may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, ULB expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

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

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

18.3.4 Procedure for substitution

- (a) ULB and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the ULB under Sub-clause (b) of Clause 18.3.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the ULB under the Concession Agreement and towards the Lenders under the Financing Agreements.
- (b) To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the C&DS, UPJN/ ULB for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the ULB that all or any of such criteria may be waived in the interest of the Project, and if the ULB determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

- (c) Upon selection of a Nominated Company, the Lenders' Representative shall request the ULB to:
 - (i) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (ii) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (iii) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

- (d) If ULB has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the ULB, the Nominated Company shall be deemed to have been accepted. ULB thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the ULB, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 18.3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

18.3.5 Selection to be binding

The decision of the Lenders' Representative and ULB in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or ULB taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or ULB and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the ULB or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

18.4 Project Agreements

18.4.1 Substitution of Nominated Company in Project Agreements

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

18.5 Termination of Concession Agreement

18.5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the ULB to terminate the Concession Agreement forthwith, and upon receipt of such notice, ULB shall undertake Termination under and in accordance with the provisions of Article ~~2929~~ of the Concession Agreement.

18.5.2 Termination when no Nominated Company is selected

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

18.5.3 Realisation of Debt Due

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

18.6 Duration of the Agreement

18.6.1 Duration of the Agreement

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

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

18.7 Indemnity

18.7.1 General indemnity

- (a) The Concessionaire will indemnify, defend and hold the ULB and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

18.7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 18.7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

18.8 **Dispute Resolution**

18.8.1 Dispute resolution

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

18.9 Miscellaneous Provisions

18.9.1 Governing law and jurisdiction

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

18.9.2 Waiver of sovereign immunity

The ULB unconditionally and irrevocably:

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

18.9.3 Priority of agreements

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

18.9.4 Alteration of terms

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

18.9.5 Waiver

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

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

18.9.6 No third party beneficiaries

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

18.9.7 Survival

- (a) Termination of this Agreement:
- (i) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
 - (ii) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.
- (b) All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

18.9.8 Severability

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

18.9.9 Successors and assigns

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

18.9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

18.9.11 Language

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

18.9.12 Authorized Representatives

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

18.9.13 Original Document

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ULB by:

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

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

SIGNED, SEALED AND DELIVERED

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

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

In the presence of:

- 1.
- 2.