

On \_\_\_\_\_

<b>Table of Contents</b>	<b>Page No.</b>
<b>1. DEFINITION &amp; INTERPRETATION</b>	<b>5</b>
<b>2. THE PROJECT</b>	<b>11</b>
<b>3. CONDITION SUBSEQUENT</b>	<b>14</b>
<b>4. THE SITE</b>	<b>15</b>
<b>5. CONSTRUCTION OF THE DRY WASTE PROCEESING PLANT</b>	<b>16</b>
<b>6. DELIVERY OF DRY WASTE</b>	<b>17</b>
<b>7. OBLIGATION OF THE CONCESSIONAIRE</b>	<b>20</b>
<b>8. OBLIGATION OF SDMC</b>	<b>24</b>
<b>9. NO PROPERTY TAXES ON PROJECT FACILITY</b>	<b>24</b>
<b>10. COVENANT OF NON INTERFERENCE</b>	<b>24</b>
<b>11. TIMELY COMPLETION OF PROJECT</b>	<b>25</b>
<b>12. PROJECT REVIEW AND MONITORING</b>	<b>26</b>
<b>13. ADDITIONAL OBLIGATION OF CONCESSIONAIRE</b>	<b>27</b>
<b>14. EVENTS OF DEFAULT,TERMINATION &amp; EFFECT OF TERMINATION</b>	<b>30</b>
<b>15. FORCE MAJEEURE</b>	<b>33</b>
<b>16. CHANGE OF LAW</b>	<b>36</b>
<b>17. JURISDICTION</b>	<b>37</b>
<b>18. NO WAIVER OF RIGHTS AND CLAIMS</b>	<b>37</b>
<b>19. SCHEDULES AND ANNEXURES</b>	<b>37</b>
<b>20. SUPRESSION OF PREVIOUS AGREEMENT</b>	<b>37</b>
<b>21. NOTICES</b>	<b>37</b>
<b>22. LEGAL CHARGES</b>	<b>38</b>
<b>23. COUNTERPARTS</b>	<b>38</b>
<b>24. ASSIGNMENT</b>	<b>38</b>
<b>25. NO PARTNERSHIP</b>	<b>39</b>

<b>26. SEVERABILITY</b>	39
<b>27. LIABILITY AND INDEMNITY</b>	39
<b>28. REPRESENTATIVE AND WARRENTIES</b>	42
<b>29. SCHEDULE –I Description of Project Site</b>	44
<b>30. SCHEDULE- II Quoted Monthly Concession Fee</b>	45
<b>31. SCHEDULE-III Format for Bank Guarantee</b>	46
<b>32. SCHEDULE-IV Format for Land Lease Agreement</b>	49

## **CONCESSION AGREEMENT**

**THIS AGREEMENT** made on.....at Delhi.

BETWEEN

South Delhi Municipal Corporation, a statutory body constituted under the Delhi Municipal Act 1957 and having its office at.....

## **CONCESSION AGREEMENT**

### **WHEREAS**

1. SDMC is a local body constituted after trifurcation of erstwhile Municipal Corporation of Delhi which was constituted by Delhi Municipal Corporation Act, 1957 (hereinafter referred to as “the Act”) and is responsible for providing municipal and civic services to the citizens of South and Western part of Delhi State, including collection, transportation and disposal of Municipal Solid Waste (MSW) generated within their jurisdiction.
2. Government of India has formulated Solid Waste Management Rules 2016 (“SWM Rules”), which impose an obligation on SDMC to adopt suitable process for processing and disposal of MSW (as defined hereinafter). In furtherance of its functions and pursuant to the SWM Rules, SDMC desires to establish facilities to process, manage and dispose MSW;
3. SDMC is desirous of augmenting its waste management capability and expanding its waste processing, management and disposal capabilities and has decided to set up Dry Waste Processing Facility of capacity 200 TPD at Tehkhand, Okhla, New Delhi as per Solid Waste Management Rules, 2016 (“Project”);
4. SDMC had accordingly issued a Notice Inviting Tender along with Request for Proposal (RFP) on ..... for selection of developer to design, engineer, finance, construct, commission, operate and maintain the above referred Project and invited bids for undertaking the Project’
5. Pursuant to the said bidding process and the evaluation of the Bids received, the SDMC have accepted the Bid of ..... (“Successful Bidder”) and issued it the Letter of Award ..... requiring, inter-alia the execution of this Concession Agreement with....., which shall undertake and perform the obligations and exercise the rights .....under the LOA, and sign the Concession Agreement with SDMC pursuant to the LOA for undertaking the Project.
6. For the successful implementation of the Project, the Delhi Development Authority (DDA) has allotted SDMC if piece of land with all right, title and interest which is admeasuring ..... Acre and is more specifically described in Schedule I attached to this Concession Agreement at Tehkhand, Okhla, New Delhi (“Site”) and on which the Concessionaire shall design, build, own, maintain, and operate all the Project Facilities in accordance with this Concession Agreement for the Term (as defined hereinafter);
7. Pursuant to the issuance of the LOA, Concessionaire has submitted Performance Bank Guarantee in favour of SDMC;
8. The SDMC have now agreed to sign this Agreement with Concessionaire vesting it with the rights and obligations required to enable it to duly undertake the development, financing, construction, operation and maintenance of the Project.
9. SDMC has agreed to execute a Land Lease Agreement with the Concessionaire in respect of the Project Land.

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

**1. Definition and Interpretation**

**1. Definitions**

- 1.1.1 **"Agreement"** shall mean this Concession Agreement between SDMC and Concessionaire, including its schedules and annexure and includes any amendments made hereto in accordance with the provisions hereof;
- 1.1.2 **"Agreed Form"** shall mean in relation to any document, the form of the said documents most recently agreed to by the Parties and initialled by them for identification;
- 1.1.3 **"Applicable Approvals"** shall mean all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required by Applicable Laws, to be procured by the Concessionaire in connection with the construction, commissioning and operation of the Project;
- 1.1.4 **"Applicable Laws"** shall means all the laws acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which have the force of law, in the force and effect, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or order of any court of record, as may be in force an effect during the subsistence of this Agreement and applicable to the project;
- 1.1.5 **Assured Quantity** The quantity of MSW that the SDMC has to deliver at the Project Site on a daily basis measured in TPD
- 1.1.5 **"Bid"** shall mean the response to the RFP submitted by the Successful Bidder;
- 1.1.6 **"Bidder"** shall mean the Bidding Company ;
- 1.1.7 **"Bidding Company"** shall mean the reference to the single company the Bid has been submitted by;
- 1.1.8 **"Bid Due Date"** shall mean the last date for submission of the Bid, in response to the RFP;
- 1.1.9 **"Bidding Documents"** shall mean the RFP along with all its attachments and any amendments thereto or clarifications thereof;
- 1.1.10 **"Condition Subsequent"** shall mean the conditions to be fulfilled by the Concessionaire as set forth in Clause 3.1;
- 1.1.11 **"Concession"** shall mean the grant of Concession to the Concessionaire by SDMC in terms of Clause 2 of this Agreement;
- 1.1.12 **"Daily Weight Sheet"** shall have the meaning given to the term in Clause 6.3;
- 1.1.13 **"Date of Commissioning"** or **"COD"** shall mean the date notified by Concessionaire as the date on which the Plant is ready to commence commercial operations after issuance letter by SDMC certifying successful completion of Commissioning ;

- 1.1.14 **“Dry waste”** means as defined under SWM Rules, 2016 and any amendment thereof;
- 1.1.15 **Bulk Waste Generators”** means as defined under SWM Rules, 2016 and any amendment thereof;
- 1.1.16 **Commingled Dry Waste** The dry municipal waste which reaches the disposal points i.e. SLF site or Wte plant having some part of it not falling under the category of Dry Waste.
- 1.1.17 **“Encumbrances”** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the Site;
- 1.1.18 **“Effective Date”** shall mean the date on which the Authority Hand over the project land free of all encumbrances after of Issue of LOA to the Concessionaire;
- 1.1.19 **“Expiry Date”** shall mean the 14<sup>th</sup> anniversary of the Scheduled COD of the Plant unless otherwise specified herein or extended by the Parties in accordance with the terms of this Agreement;
- 1.1.20 **“Financial Closure”** shall mean the execution of all the Financing Documents required for the Project and fulfilment of all the conditions precedent specified in the Financing Documents unless waived by the Lenders for the initial draw of funds there under;
- 1.1.21 **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the facilities to be constructed, operated and maintained pursuant to the Project;
- 1.1.22 **“Government”** shall mean the Government of India or the Government of the Delhi, as the case may be;
- 1.1.23 **“Government Instrumentality”** shall mean any department, division or sub-division of the Government of India or the Government of NCT of Delhi and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat, under the control of the Government of India or the Government of NCT of Delhi, as the case may be, and having jurisdiction over all or any part of the Plant or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.24 **“Hazardous Waste”** shall have the meaning as defined under the Hazardous and Other Waste (Management and Trans-boundary Movement) Rules, 2016 and any amendment thereof;
- 1.1.25 **“Land Lease Charges”** shall have the meaning as set forth in SCHEDULE –IV;

- 1.1.26 “**Landfill Site**” means the sanitary landfill site within Central Zone notified by SDMC available for disposal of Residual Inert Matter and Rejected Waste pursuant to this Agreement.
- 1.1.27 “**Land filling**” shall mean the disposal of the Residual Inert Matter from the pre-processing/recycling facility including rejects at the Sanitary Landfill in accordance with the terms of this Agreement;
- 1.1.28 “**Lease Agreement**” shall mean the lease Agreement pursuant to which SDMC shall lease the Site to Concessionaire;
- 1.1.29 “**Lenders’ Representative**” shall mean 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, an includes his successors, assigns and substitutes;
- 1.1.30 “**Lenders**” shall mean the persons that provide the financing for the Project pursuant to Financing Documents and who hold paripassu charge on the assets, rights, title and interests of the Concessionaire;
- 1.1.31 “**Material Adverse Effect**” shall mean a material adverse effect on (a) the ability of either Party to exercise any of the rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;
- 1.1.32 “**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have Material adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.33 “**Maximum Waste Quantity**” shall mean a total of 240 (200 plus 20%) Tons per day of Dry MSW at Site as per terms of this Agreement;
- 1.1.34 “**Minimum Waste Quantity**” shall mean a total of 160 (200 minus 20%) Tons per day of Dry MSW at Site, as per the terms of this Agreement;
- 1.1.35 “**MSW**” or “**Municipal Solid Waste**” shall mean 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 diary waste, treated bid medical waste excluding industrial waste, bio medical waste and e-waste, battery waste, radioactive waste generated in the area under the Authority;
- 1.1.36 “**Waste Quantity**” shall mean Two Hundred metric tons per day (200 TPD) (with a permitted variation level of plus minus twenty percent) at Tehkhand, Okhla Site which is the quantity of Dry MSW that Concessionaire will obtain from SDMC or any Person located within the jurisdiction of SDMC, for processing at the Plant;
- 1.1.37 “**O&M Expenses**” shall mean expenses incurred by or on behalf of the Concessionaire or by the SDMC, 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) premium 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 Approvals or this Agreement;

1.1.38 **“Organic Waste”** shall mean waste that can be degraded by micro-organisms;

1.1.39 **“Performance Guarantee”** shall mean the bank guarantee submitted by the Concessionaire in the format enclosed at Schedule-III for aggregate amount and validity as per RFP document.

1.1.40 **“Person”** shall mean any individual, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity;

1.1.41 **“Plant”** shall mean the Dry Waste processing facility for handling the dry waste to be designed, constructed, operated and maintained by Concessionaire in accordance with terms and provisions of this Agreement, and Land Lease Agreement;

1.1.42 **“Preliminary notice”** shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;

1.1.43 **“Project”** shall mean the project for enabling the processing of Dry Municipal Solid Waste equivalent to the MSW Quantity 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;

1.1.44 **“Project Facilities”** shall mean, as the context may require either all or one or more of the following: (i) the Site and (ii) facilities comprising the Dry Waste Processing Plant and (iii) and Civil Structure.

1.1.45 **“Prudent Utility Practices”** shall mean the practices, methods and standards that are generally accepted internationally from time to time by waste management plants entities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of plants for handling of MSW as specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of the;

(a) operation and maintenance guidelines recommended by the manufacturers of the equipment to be incorporated in the Project;

(b) the requirements of Applicable Law; and the

(c) physical conditions at the Project Land;

1.1.46 **“Quoted Monthly Concession Fee”** shall mean Quoted Monthly Concession fee applicable for 1<sup>st</sup> year after COD payable to SDMC by the bidder;

1.1.47 **“Receipt Point”** shall mean the place within the Site, specified in writing by Concessionaire and marked on a layout plan by Concessionaire not later than four (4) months prior to Scheduled COD, at which SDMC shall be required to deliver the MSW in accordance with the terms of this Agreement;



- 1.1.48 **“Residual Inert Matter”** shall mean the waste matter including but not limited to inerts and all rejects obtained after pre-processing and post-processing of MSW.
- 1.1.49 **“Rejected Waste”** shall mean such components of a consignment of Municipal Solid Waste delivered by SDMC that are refused to be accepted by Concessionaire as per provisions of Clause 6.5.4;
- 1.1.50 **“Request for Proposal”** or “RFP” shall mean the request for proposal along with RFP, all schedules, annexure attached thereto, issued by the SDMC shall include any revision, modifications, amendments or alterations thereto;
- 1.1.51 **“Site”** shall have the meaning as set forth in Clause 4.1;
- 1.1.52 **“Scheduled COD”** shall be the date which shall be not later than 495 (four hundred and Ninety five) days from the Effective Date;
- 1.1.53 **“Successful Bidder”** shall mean the Bidder selected pursuant to the bidding process to undertake the Project through the Concessionaire pursuant to the terms of this Agreement;
- 1.1.54 **“SWM Rules”** shall mean the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments/modification thereto or re-enactments thereof, for the time being in force;
- 1.1.55 **“Technology”** shall mean the dry waste processing technology.
- 1.1.56 **“Concession period”** shall have the meaning as set forth in Clause 2.2;
- 1.1.57 **“Termination”** shall mean the early termination of this Agreement pursuant to Termination Notice given by SDMC to the Concessionaire in accordance with provisions of this Agreement by shall not, unless otherwise requires, include expiry of this Agreement due to expiry of its Term;
- 1.1.58 **“Termination Notice”** shall mean the notice issued by the SDMC to the Concessionaire in terms of this Agreement for terminating this Agreement;
- 1.1.59 **“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs;
- 1.1.60 **“Weighbridge”** shall mean the electronic weighbridge capable of performing the weighing operations as specified in this agreement and RFP document;

## 1.2 Interpretation

- (a) The word, phrases and expressions defined hereinabove in Clause 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said clause 1.1 or in this Agreement and shall be interpreted accordingly. Expression which have not been defined in this Agreement shall carry the respective meaning assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;

- (b) All words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (c) The words “include” and “including” are to be construed without limitations;
- (d) The headings of the clauses in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- (e) The Schedules and Annexure to this Agreement form an integral part of this Agreement and shall be interpreted accordingly.
- (f) The terms which are not defined herein in this Agreement shall be given a meaning which is ascribed to them in Municipal Solid Waste Management Rules, 2016 and Hazardous and Other Waste (Management and Trans-boundary Movement) Rules, 2016.

## 2. THE PROJECT

### 2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this RFP , SDMC shall grant Concession to the successful bidder who will be termed as Concessionaire who will have right ,interest and authority until the end of the Term to design, finance, build, test, commission, operate & maintain the project for dry waste processing facility of capacity 200 TPD by utilizing the Technology and maintaining the project facility at the site in accordance with Applicable Laws as well as terms and condition specifically to do the following :

- a) Lease of the site admeasuring..... Acres of land at Okhla for the purpose to the extent provided in this RFP and to pay lease rent to SDMC as per terms set forth in the land lease agreement and RFP document.
- b) To borrow or raise money or funding required for due implementation of the project and mortgage, charge or create lien or encumbrances on the whole or part of the Project Facilities (only movable machineries) excluding land and fixed structures.
- c) To design, engineer, finance, procure, construct, operate and maintain the plant and the project facility for processing dry waste.
- d) To process the dry waste by using suitable technology.
- e) To store and sell the entire processed waste products to prospective buyers as per terms, condition and rates mutually decided by the concessionaire and **buyers and to retain and appropriate the sale proceeds.**
- f) To receive at the receipt point, during each day of the term, dry waste from SDMC and bulk waste generators for the project as per applicable terms and conditions.
- g) To inspect the dry waste delivered by SDMC and to test as per terms, condition and manner set forth in this agreement.
- h) To transport the rejects to disposal site as directed by SDMC.
- i) To obtain the required utilities for construction & operation of the Project Facilities at the cost of the concessionaire.
- j) To pay SDMC the **“Concession Fee”** starting from the COD till the expiry of the Agreement as per terms condition of the Agreement.

- 2.2 Concession Period: The Concession Period shall come into force with effect from the **“Effective Date”** and shall remain valid until the expiry of 14 years since **“COD”** or **“Scheduled COD”** whichever is earlier unless terminated earlier in accordance of terms and condition of this agreement.

#### 2.3.0 Payment of Concession Fee

- 2.3.1 The Concessionaire hereby acknowledges and agrees that as set forth herein, it shall pay to SDMC by way of Monthly Concession Fee after COD during the entire Concession Period. The Concessionaire must quote the monthly rate of Concession Fee payable to SDMC during the first year of Concession after COD. The Concession Fee shall be increased @ 5% (Five Percent) every year after 1<sup>st</sup> (first) year during the entire Concession Period. The Concession Fee payable to SDMC by the Concessionaire shall be calculated in accordance of article
- 2.3.2. The Concession Fee payable under the Agreement shall be due and payable as follows:

The concession fee shall be paid by the Concessionaire in monthly instalments. The 1st (first) instalment shall be due and payable not later than [45<sup>th</sup> (Forty-fifth) day] from the Commercial Operation Date (COD) and the subsequent instalments shall be paid within 15 (fifteen) days from the end of the each month.

### 2.3.2. Yearly Increase in Monthly Concession Fee:

The Concessionaire shall quote the Monthly Concession Fee payable to SDMC by the Concessionaire applicable for first year after COD. The Monthly concession fee payable to SDMC by the concessionaire will be increased @ 5% each year for subsequent years (i.e. from 2<sup>nd</sup> years) till the Concession Period.

Calculation for Monthly Concession Fee payable during the Concession Period Shall be as under:

Monthly Concession Fee payable by the Concessionaire to SDMC during the first year post COD = X

Sr.no	Year of Operation post COD	The applicable Rate of Monthly concession fee (Rs.)
1	1 <sup>st</sup> Year	<b>X</b>
2	2 <sup>nd</sup> year	1.05*X
3	3 <sup>rd</sup> year	1.10*X
4	4 <sup>th</sup> year	1.15*X
5	5 <sup>th</sup> year	1.20*X
6	6 <sup>th</sup> year	1.25*X
7	7 <sup>th</sup> year	1.30*X
8	8 <sup>th</sup> year	1.35*X
9	9 <sup>th</sup> year	1.40*X
10	10 <sup>th</sup> year	1.45*X
11	11 <sup>th</sup> year	1.50*X
12	12 <sup>th</sup> year	1.55*X
13	13 <sup>th</sup> year	1.60*X
14	14 <sup>th</sup> year	1.65*X

### 2.3.3The Concessionaire shall, with each payment Concession fee submit:

- (a) a certificate that the amounts paid are correct and in accordance with the provisions of the Agreement;
- (b) details in respect of other Penalties payable in accordance with the provisions of this Agreement; and
- (C) net amount payable under the provisions of this Agreement.

### 2.4 Deferred Payment

In the event of sale/disposal of processed waste is less than [30% (thirty percent)] of its maximum capacity i.e. 200 MTPD in the preceding month, then the Concessionaire upon seeking a prior approval from SDMC, which SDMC may grant in its sole discretion, may defer the payment of the Concession Fee for such relevant month to the preceding month. Upon deferment of payment of Concession Fee by the Concessionaire, it shall pay to SDMC in the following month such deferred Concession Fee along with interest charged at Bank Rate (Deferred Payment). The Deferred Payment in the following month shall be payable by the Concessionaire in addition to the Concession Fee for the following Month; provided that the Deferred Payment shall not be permitted for more than 4 (four) consecutive months. Bank Rate means the rate of annual 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.

## 2.5 Delayed Payments

All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Article 2.3.1. In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Article 2.6.

2.6 The concessionaire shall make all due payments to SDMC under the provisions of this Agreement 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. In the event of delay beyond such period, the concessionaire shall pay interest for the period of delay calculated at a rate equal to 2% (two per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. Bank Rate means the rate of annual 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.

## 2.7 Disputed Amounts

SDMC shall notify the Concessionaire of the Disputed Amounts along with details thereof. Within [7(seven) days] of receiving such notice, the Concessionaire shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. SDMC may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure shall apply.

2.8 If any amount is payable by the concessionaire upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article 2.6.

2.9 All the financial payments will be payable in Indian Rupee.

## 2.9 Set-off

The Concessionaire shall not be entitled to retain or set-off any amount due to SDMC by it, but SDMC may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

If the payment or deduction of any amount pursuant to Article 2.7 is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

### **3.0 Condition Subsequent**

3.1 The concessionaire agrees and undertakes to duly perform and complete the following activities (**“Concessionaire’s Conditions Subsequent”**) within 6 (six) months from the Effective Date unless mutually extended by the SDMC (**“Concessionaire’s Conditions Subsequent Period”**) and unless such completion is affected due to the occurrence of any Force Majeure or if any of the Concessionaire’s Conditions Subsequent is specifically waived off in writing by the Authority:

- (i) The Concessionaire shall have awarded the Engineering, Procurement and Commissioning Contract (“EPC Contract”) or the main plant contract for equipments.
- (ii) The Concessionaire shall have attained the Financial Closure, and shall have submitted a true copy of the financing documents.
- (iii) Obtain all the Applicable Approvals that are required to commence and undertake construction of the plant.

### **3.2 Consequences of non-fulfilment of the Concessionaire’s Condition Subsequent**

3.2.1 If the Concessionaire does not duly fulfil the Concessionaire’s Condition Subsequent even within a period of 2 (two) months after the Concessionaire’s Condition Subsequent Period, then on and from the expiry of such period, the Concessionaire shall be entitled to extension of the Concessionaire’s Condition Subsequent Period subject to a maximum of 3 (three) months from the expiry of the Concessionaire’s Condition Subsequent Period provided the Concessionaire furnishes to the Authority additional weekly performance Bank Guarantee equivalent to 5 (Five) percent of the performance guarantee within 2 (two) business days of expiry of every week. Such additional performance Guarantee shall become a part of the Performance Bank Guarantee and all the provisions of this agreement shall be construed accordingly.

3.2.2 Unless completion of the Concessionaire’s Conditions Subsequent is affected due to the reasons attributable to the Authority or by the occurrence of any force Majeure Event, if :

- (i) the fulfilment of any of the concessionaire’s Conditions Subsequent is delayed by the Concessionaire beyond a period of 2 (two) months from the expiry of the Concessionaire’s Condition Subsequent Period and the Concessionaire fails to furnish any additional Weekly Performance Guarantee in accordance of the clause 3.2.1; or
- (ii) the Concessionaire furnishes Additional Weekly Performance Guarantee to the Authority in accordance with Clause 3.2.1 hereof but fails to fulfil the

Concessionaire's Conditions Subsequent for a period of 3 (three) months beyond the expiry of the Concessionaire's Condition Subsequent Period as mentioned in the said clause 3.1; then the Authority shall be entitled to invoke the performance guarantee and also have the right to terminate this agreement by issuing a termination notice.

### **3.3 Consequences of non-fulfilment of the Condition Subsequent by the Concessionaire on account of Force Majeure Events(s).**

3.3.1 In case of inability of the concessionaire to fulfil the Concessionaire's Condition Subsequent due to any force Majeure Event, following the consequences shall ensue:

- (i) Extension of Time : The Concessionaire's Conditions Subsequent Period shall be extended for the period of the subsistence of such Force Majeure Event, subject to a maximum extension period of 3 (three) months, continuous or non-continuous in aggregate, unless the Concessionaire and the SDMC mutually agree to increase the maximum extension period as provided herein. Consequently, the Scheduled COD shall also get extended equal to the subsistence of the Force Majeure Event, subject to the maximum Extension period. In the event the Force Majeure subsists even after the extended period in terms of this clause then parties may term of this clause then the Parties may terminate this Agreement by issuing Termination Notice.
- (ii) Allocation of Costs: In the event at this stage, the Financial Closure has been attained and the loan has been disbursed by the lenders in accordance with the Financing Documents, the Parties shall allocate the Force Costs in terms of Article of Force Majeure Event. However, in the event the Financial Closure has not been attained or the Financial Closure has been attained but the loan has not been disbursed by the Lenders in accordance with the Financing Documents, the Parties shall bear their respective Costs on account of Force Majeure Event, and no Party shall be liable to pay to the other Party any costs thereof.

### **3.4 Progress Reports**

The Concessionaire shall notify to SDMC in writing at least once a month on the progress made in satisfying the conditions in clause 3.1. Upon completion of each of the or any of the Condition Subsequent, the Concessionaire shall inform SDMC about the completion of such Condition Subsequent within a period of 3 (three) days from the date of completion of such Condition Subsequent, in writing and along with document evidencing the completion of the Condition Subsequent.

### **THE SITE**

- 4.1 Vesting of site with Concessionaire: The site of the Project shall comprise the one contiguous piece of land admeasuring two (2) Acres earmarked by SDMC at Tehkhand, Okhla, New Delhi described in Schedule-I, and in respect of which lease shall be provided and granted by the SDMC to the Concessionaire in accordance with this Agreement (collectively, the **"Site"**).
- 4.2 Lease: In consideration of the Concession granted to the concessionaire for dry waste processing for recovery of materials ,this Agreement and covenant and warranties on the part of the concessionaire herein contained, the SDMC, in

accordance with the terms and conditions set forth herein, has executed a lease deed in favour of the Concessionaire, effective from the date on which the last of the Concessionaire's Conditions Subsequent is achieved, in respect of the site as set forth in Schedule-I, until the Expiry Date and, for the purposes permitted under this agreement, and in accordance with the land lease Agreement. It is being expressly agreed and understood that the SDMC shall have no liability whatsoever in respect of survey, investigations and tests carried out or work under taken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

#### 4.3 Land Lease Agreement to terminate with the Concession Agreement.

The Concessionaire hereby agrees and ensures that the land lease Agreement shall terminate along with the termination of this Agreement.

#### 4.4 SDMC shall have an absolute & exclusive right/title/interest in the land provided and the Concessionaire shall be user of such property solely for the purposes of this agreement. The use of land by the Concessionaire does not imply of granting any title, right of ownership in any manner to the Contractor.

#### 4.5 The lease of site is not allowed to be sub- lease, to mortgage and to lien etc by the Concessionaire in any manner.

### **5 CONSTRUCTION OF DRY WASTE PROCESSING PLANT**

#### 5.1 Commencement of Construction of Dry Waste Processing Plant.

Immediately on the fulfilment of the Conditions Subsequent, the concessionaire shall undertake construction of Plant in accordance with and in order priority as per following:

- (i) Applicable laws;
- (ii) The terms and Conditions of this Agreement;
- (iii) The functional Specifications; and
- (iv) Prudent Utility Practices.

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall ensure that the technical parameters of the Project shall always be subject to the requirements as specified in points (i) to (iv) above and shall not excuse the Concessionaire from the performance of its obligations under this Agreement.

#### 5.2 Quality of Workmanship

##### 5.2.1 Concessionaire shall ensure that the Dry Waste Processing Plant is designed, built and Completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade such that, the useful life of the Plant will be at least till the Expiry Date.

##### 5.2.2 The Concessionaire shall ensure that design and construction of all equipment, facilities, components and systems of the Projects are in accordance with Solid Waste Management Rules 2016 and its subsequent amendments.

##### 5.2.3 Applicable Approvals



Concessionaire shall be responsible for obtaining the Applicable approval required for designing, financing, construction, operating and maintaining the Project and retain and renew all such Applicable Approvals in order to carry out its obligations under this Agreement in general and this Article in Particular. The Concessionaire supply to the SDMC, promptly, with copies of each application that it submits, and copies of each Applicable Approvals so obtained. For avoidance of doubt, it is clarified that the Concessionaire shall also be responsible for maintain and renewing the Applicable Approvals and for fulfilling all conditions specified therein.

#### 5.4 Type of Test Reports

The Concessionaire shall retain at the Project land and make available for inspection to the SDMC at all reasonable times, copies of the test results of all tests.

#### 5.5 Co-ordination of Construction Activities

5.5.1 The architectural & structural drawings shall be got vetted from any of the structural consultants empanelled by SDMC (the Consultants). During construction stage also the work shall be supervised by the consultants. The cost of hiring the consultants shall be borne by the Concessionaire.

5.5.2 SDMC at its own discretion can get the quality of electromechanical equipment and electrical appliances checked/tested from any 3<sup>rd</sup> Party. In case of any defects identified by such 3<sup>rd</sup> Party, the Concessionaire shall get the defects removed promptly at their own cost. The cost of engagement of such 3<sup>rd</sup> Party shall be borne by SDMC.

5.2.4 Before the 10th (tenth) day of each month during the construction phase until COD, the Concessionaire shall prepare and submit to the SDMC, monthly progress report, in the Agreed Form and such other information that may be sought by the SDMC.

### 6. Delivery of Dry Municipal Waste

#### 6.1 Delivery of Dry Municipal Waste After COD

6.1.1 SDMC assures to provide 200 TPD (**“assured quantity of waste”**) of Commingled Dry Waste to the Concessionaire free of cost at the receipt point of the plant. Such dry waste shall be given the first priority by the Concessionaire for receiving and processing.

6.1.2 If SDMC fails to provide the assured quantity of Commingled Dry Waste to the Concessionaire for a continuous period of seven days, the Concessionaire may source the balance quantity of dry waste as under subject to the condition that SDMC may subsequently resume the supply of Commingled dry waste upto the assured quantity any time by giving 7 (seven) days prior notice:

- a. The Concessionaire will be authorized to collect/procure dry municipal waste directly from the bulk waste generators in Central Zone on mutually agreed terms and condition. The Concessionaire will use their own resources/arrangement for such collection/procurement and submit the schedule of such collection to the SDMC and the waste generators. The dry waste

must be collected at least thrice a week by the Concessionaire from the bulk waste generators. The updated list of bulk generators shall be provided to the Concessionaire by SDMC from time to time. SDMC will designate the Concessionaire as **“Authorized Waste Picker”** for collection of dry municipal waste from all the bulk generators in Central Zone as per Clause 4 of the Solid Waste Management Rules, 2016. SDMC will also direct all the bulk generators for handing over the dry waste to the Concessionaire.

- b. SDMC at its sole discretion, at any time during the Concession period may authorize and direct the Concessionaire to collect the dry waste directly from the generators in other zones of SDMC i.e. South Zone, West Zone and Najafgarh Zone. In that case, the terms and conditions and modalities as defined in Clause 6.1.2 (a) shall be applicable and the Concessionaire shall be obliged to comply the direction of SDMC.
- c. The Concessionaire will be allowed to procure/receive at the designated receipt point at the plant site dry municipal waste generated under the jurisdiction of South Delhi Municipal Corporation from private parties on mutually agreed terms and conditions.

## 6.2 Delivery of Dry Municipal Waste prior to COD

At any point of time prior to COD, SDMC shall schedule the delivery of commingled Dry Municipal Waste at the receipt point free of cost on the specific request of the concessionaire by seven days prior notice clearly mentioning the quantity of waste. Provided that such quantity of waste is required for testing the functionality of the equipment. However, SDMC will have the absolute right to refuse the delivery waste if it is not convinced about the Genuity of the concessionaire requisition of waste.

## 6.3 Weigh of Dry Municipal Waste and online reporting

- (a) The concessionaire shall construct at least two weigh bridge of appropriate capacity one at the receipt point and one at the exit point of the project facility which should have video surveillance, a server room, electronic display unit and suitable technology for automatic linkage for Real-time online reporting of weighment of waste loaded vehicle, empty vehicle and net quantity of waste in format as per requirement of SDMC. The electronics/hardware and software platforms used for online reporting on daily basis shall be compatible with the existing system of SDMC and the Concessionaire shall install its hardware/software in consultation with SDMC. If required, as per discretion of SDMC each the driver of vehicle delivering waste at the site may be given slip induplicate indicating required information such as quantity of waste, vehicle no., timing etc. The weighment bridges shall got be calibrated/recalibrated as per BIS norms by the concessionaire. The weighment bridge should be certified by the weights and measures department of India/Delhi having maximum possible accuracy capable of performing the following operations.
  - (i) Generate and maintain an electronic database for each delivery and provide a print out of the details of each consignment (such print out is hereafter referred to as **“Daily Weight Sheet”** )
  - (b) The Weighbridge(s) shall be operated and maintained by the concessionaire, at no cost to SDMC.
  - (c) The Daily weight sheet shall be final and binding on the parties. Concessionaire shall be also liable to provide monthly weight sheets (consolidated daily weight sheets) to SDMC at the end of every calendar month.
  - (d) In the event the weighment bridge is not operational, the weight of MSW delivered at the receipt point during such time shall be measured by some

alternative arrangement established by the concessionaire and agreed to be SDMC, to weigh the MSW being delivered. The weighing is critical to ensure SDMC's and the Concessionaire's obligation under the project hence the concessionaire shall to get the weigh bridge repaired within 24 hours of the fault. In case the concessionaire is unable to get the weighbridge repaired within 24 hours, concessionaire shall be liable to pay a penalty of Rs. 20,000/- per day (Rupees fifty thousand per day) and SDMC shall have the right to get the weighbridge repaired on its own, but at the risk and cost of the concessionaire.

### 6.3 Maintenance of Records

The Daily Weight Sheet will be maintained on day to day basis by the Concessionaire to record the quantity of waste delivered, the quantity of waste rejected, the amount of waste processed etc. A copy of the daily weight sheet shall also be sent to appropriate offices of SDMC by e-mail by 9 AM of next day morning. The physical copy of the Daily Weight Sheet as well in electronic form shall kept safely by the concessionaire for a period of three years. The Concessionaire shall also provide soft copy of the data to SDMC at the end of every calendar year.

### 6.4 Collection from Bulk Generators in Central Zone.

- a) SDMC will allow direct collection and transportation of Dry Mpl Waste by the concessionaire in properly segregated manner under direction of SDMC. However if the Bulk generators are paying or start paying SDMC any fee (User fee, tipping fee etc.) for disposal of the waste generated by them , SDMC will have exclusive right over it and the concessionaire will have no claims in respect of such fee.

6.3 The Waste delivered at the receiving point and subsequently rejected as per mechanism described in Clause 6.5 shall be disposed off by SDMC or its nominated Agency at their own cost.

6.4 The rejects from the plant shall be disposed off by the concessionaire at his own cost at the designated disposal sites i.e. Waste to Energy Plant at Okhla or any other disposal site as per direction of Engineer in Charge.

### 6.5 Acceptance/Rejection of Commingled Dry Waste provided by SDMC.

6.5.1 Dry Waste Definition: "dry waste" means as defined in SWM Rules 2016 and any amendment thereof:

6.5.2 The Dry Waste may include but not limited to Paper, cardboard and cartons Containers & packaging of all kinds excluding those containing hazardous materials Compound, packaging (tetra pack, blisters etc.) , Plastics ,Rags, Rubber ,Wood Discarded clothing , Furniture , Metals Glass (all kinds), Inert, House sweepings and inert (not garden, yard or street sweeping).

6.5.3 Commingled dry municipal waste: The dry municipal waste which reaches the disposal points i.e. SLF site or Wte plant after segregation and alienation of its valuable components by different stakeholders such as households, informal/formal parties etc.

6.5.4 The sole criteria of acceptance/rejection of Commingled Dry Waste provided by SDMC to the Concessionaire at the receipt point shall be the **Extent of Segregation** of waste. For acceptance as Commingled Dry Waste as part of **"assured quantity of waste"**, the Commingled Dry Waste shall have minimum

dry waste component @ 80% of the total waste by weight as per tests results conducted as per Clause 6.5.5.

**6.5.5 Testing of Dry Waste:** Testing for ascertaining the extent of segregation (dry and wet waste) shall be conducted randomly on 50 (fifty) percent of the vehicles reaching the plant site for delivering the waste as a part of **“assured quantity of waste”** to be provided by SDMC as per Clause 6.1.1 on daily basis. The test must be conducted in the presence of representatives of the concessionaire appointed by SDMC for collection and transportation of Municipal Solid Waste as applicable, the representative of concessionaire appointed by SDMC for operation of the Dry Waste Processing Plant and SDMC representative or Any 3rd Party appointed by SDMC for the purpose. In case of any dispute, the decision of SDMC or any 3<sup>rd</sup> Party appointed by SDMC for the purpose shall be final and binding on all parties.

**6.5.6** The Concessionaire at their own cost must provide complete testing facility alongwith manpower required for conducting test as per Clause 6.5.5 on all days and round the clock at the plant site for determining the acceptability of the waste.

**6.6** The concessionaires shall develop processing capacity of 200 TPD dry municipal waste. However, the Concessionaire shall not process dry municipal waste in excess of 20 % of the installed capacity during any month. In case, the Concessionaire intends to increase the processing capacity of the plant, it shall make a written request to SDMC for the same. SDMC may permit the concessionaire for increasing the processing capacity after examining the proposal as per mutually agreed terms and condition. A supplementary agreement shall be signed by both the parties in this respect.

## **7.0 Obligation of the Concessionaire**

**Scope of Work:** the successful bidder “the Concessionaire” is obliged to carry out is as defined below. However, any item of work required to be carried out as per the Contract for proper and satisfactory completion of the work with good standard of workmanship shall be deemed to be included in the scope of work with no additional cost for such items, whether or not specifically included/described.

**7.1** The scope of work for the Concessionaire includes Design, Build, Finance, Operate & Transfer (DBFOT) of the Dry waste processing facility during the concession period with the capacity of the daily processing of minimum 200MT of Dry waste, working for 365 days of the year along with the sole responsibility of the successful bidder for the disposal of the by-products.

**7.2** It will be the responsibility of the Concessionaire for Preparation of Process, Hydraulic, Civil, Mechanical, Piping, Electrical and Instrumentation Design and Drawings , procurement of all electromechanical equipment including weighing bridges of capacity not less than 50MT, odour control system, its erection and commissioning as per Architectural and As-built Drawings of Civil Works.

**7.3** It will be the responsibility of the concessionaire for Procurement, supply, installation, testing and commissioning of all the mechanical equipment and machineries.

**7.4.** It will be the responsibility of the concessionaire to Procure, supply, installation, testing and commissioning of all the Electrical Equipment including HT and LT

Panels, Transformers, Cables, Cable Trays, Earthing Materials, Lighting Fittings & Fixtures, Local Push Button Stations, Junction Boxes, etc. .

- 7.5 It will be the responsibility of the concessionaire for Procurement, supply, installation, testing and commissioning of all the Instruments required for operation of this unit.
- 7.6 It will be the responsibility of the concessionaire to Procure, supply, installation, testing and commissioning as well as operation and maintenance of IT hardware and software required to be integrated with and should be compatible with existing IT set up of SDMC and capable to deliver MIS as required by the SDMC.
- 7.7 It will be the responsibility of the concessionaire to digitize the weighbridge by making provision of the required hardware, software and the operator for the same including CCTV systems.
- 7.8 It will be the responsibility of the concessionaire to Procure, supply, installation, testing and commissioning of Fire Fighting System.
- 7.9 The concessionaire shall submit his Construction Program within 14 days of issuing of Letter of Intent by SDMC describing in detail the mobilization and requirement of labour and equipment in the form of CPM analysis and notes, working process for main activities/critical activities/new activities, monitoring of work progress, financial planning and cash flow charts, survey and layout, construction methodology, quality plan including mix design requirements, approved external laboratory facilities, testing frequencies, acceptance criteria, calibrations, control of non-conformities, details of site quality records, various documentation in formats approved/issued by the Engineer, performance of tests etc., approved vendor list for various standard materials like cement, steel, bitumen, concrete frames, tiles , plumbing and electrical fixtures, wood, plywood, steel and accessories and flushed doors etc. The Concessionaire shall prepare requisite documents, its submission on time, coordination, follow-up with concern statutory for e.g. Police / Labour / Health / Power / Water / Telecommunication and other Authorities to obtain requisite permission, NOC supply and avail their facilities and to perform legal formalities to avoid any encumbrance on work programme.
- 7.10 The concessionaire needs to install suitable combination of following equipment in order to achieve size/density separation, size reduction and material handling depending on the site requirement.

<b>Electro-Mechanical Category</b>	<b>Min. Electro Equipment</b>	<b>Mechanical</b>
Screening Equipment	Trommel,	
	Vibro screen	
Size/ Shape Separator	Ballistic Separator,	
	Air Sorter,	
Ferrous/ Non-ferrous metal separator	Magnetic Separator,	
	Eddy Current Separator.	
Baler	Baling Machine	

Sorting Platform	Sorting Platform, Legs, Chutes, and similar fabrication work
Conveyor Belts (Chain/ Belt/etc.)	Chain Conveyor,
	Belt Conveyor.
Miscellaneous Equipment	Air Compressor,
	Electric Panel,
	Electrical Connection & Wiring
	Fire Fighting System,
	Dust Collection System,
	CCTV.
	Weighbridge,

7.11 It will be the responsibility of the concessionaire to Install various supplementary systems in compliance with the MSW rules 2016 like that of fire safety, odour control, leachate management etc.

7.12 Preparation and submission of As-built Drawings and mass balance diagram of the processing plant and Operation & Maintenance Manuals for Mechanical, Electrical & Instrumentation Items.

7.13 Any other item not mentioned specifically but necessary as per good engineering practice, safety norms and successful operation and guaranteed performance for the entire facility shall be deemed to be included within the scope of work to be provided by the Concessionaire at no extra cost to SDMC.

Note: - Final Layout and Machineries of the plant will be decided mutually.

7.14 The concessionaire shall be responsible for design, engineering, procurement and construction of all Civil Works (Civil Structures) which includes liquid retaining structures, foundation for all kind of structures, flooring, sheds, buildings, roads & pathways, storm water drains, sewerage, parking, septic tank etc..The detailed Architectural drawings for all the proposed civil construction shall be provided by the concessionaire along with the technical bid documents. However, the as built drawings and structural drawings shall be got vetted by authorised structural consultants of SDMC by the concessionaire at his own cost and shall be submitted to the SDMC at the time of construction.

7.15 The concessionaire shall Fabricate Shed at the project site having the following specification:

- (a) Fabricated shed having minimum area of 2000 Sqm., one side sloping with height of around 9m high at centre and to 7.5 m high at side.
- (b) 9" thick BBM wall of 2.0m high and 2.0 m high chain link with angle frame of suitable size, remaining closed with G.I. sheet External & Internal plaster, roof with steel truss with G.I sheet as per design, Cement painting for wall and oil painting as and where required.
- (c) Fabrication Shed roof should be provided by good industrial ventilator.

- (d) To construct shed with office room, curing space, storage space, toilet for labour, change room cum bathroom for working labours etc.
  - (e) Roads & pathways, storm water drains, sewerage, open parking etc.
  - (d) Platform: Concrete ramp at entrance, M-25 for total Structural shed base, drainage system for collection of leachates generated at landing platform and toilet bathroom.
  - (e) Office Room : Two rooms of suitable size not less than 150 sq.ft., Change room with Bathroom of suitable size, Monitoring room for Weighbridge, Toilet for working person minimum of two seats or as per design.
  - (f) Storage for Waste: Capacity to accommodate MSW of minimum 200 TPD daily for next 14 days.
  - (g) Storage space for By Products: Minimum Capacity to store the products generated in 15 days by processing Dry waste with minimum intake of the plant @ 200 TPD.
  - (h) The Concessionaire shall make provision for water storage in minimum 10,000 lits. for fire fighting purpose.
- 7.16 Commissioning, Operation and Maintenance of the plant for 14 years period from COD or schedule COD whichever is earlier.
- 7.17 The SDMC shall help the successful bidder in getting electricity, water, sewerage connection from the appropriate authorities. However all the cost associated with getting such connection till the entrance of the project site as well as any further work regarding the electricity line, water line, sewerage line and the payment of the electricity bill, water bill, sewerage bill will be the responsibility of the successful bidder. The concessionaire is required to visit the proposed site and make him aware of the existing site condition.
- 7.18 In case sewerage facility is not available in the area, the concession will construct septic tank at his own cost and the cleaning, maintenance of the septic tank will be the responsibility of the concessionaire.
- 7.19 Procurement and supply of all Spares, Tools & Tackles required during O&M Period.
- 7.20 Operation and maintenance of the plant will also include the sole responsibility of the timely disposal of the by-product generated from the process.
- 7.21 The system for conveyance of the rejects from the processing plant site to the landfill or any other site as specified by the SDMC will be that of the successful bidder.
- 7.22 The successful bidder holds the rights to sell the RDF, compost or the recyclables and/or dispose it of scientifically complying with MSW rules 2016 and environmental rules and regulations applicable for the same.

- 7.23 Any other item not mentioned specifically but necessary as per good engineering practice, safety norms and successful operation and guaranteed performance for the entire facility shall be deemed to be included within the scope of work and provided by the Concessionaire at no extra cost to SDMC.
- 7.24 The concessionaire shall arrange/obtain the connections of electricity, water, sewer etc from appropriate authority and bear all costs associated with the same.
- 7.25 The concessionaire shall be responsible for obtaining the applicable approvals required for designing, financing, construction, operating and maintaining the project and retain and review all such applicable approvals in order to carry out its obligation under this project in general and **article 7** in particular. The concessionaire shall supply to SDMC, promptly, with copies of each application that it submits and copies of each approvals so obtained. For avoidance of doubt, it is clarified that the concessionaire shall also be responsible for maintain and renewing all applicable approvals and for fulfilling all conditions specified therein.
- 7.26 The Concessionaire will be responsible for shifting of utilities, construction of approach road, land development, vetting of all civil/structural/electrical drawing etc. at their own cost and SDMC will not be bear any cost in this regard. The Concessionaire shall visit the project site, examine and satisfy himself regarding the status of the site before submitting his bid.
- 7.27 The Concessionaire will be solely and entirely responsible for any civil as well as criminal proceedings, claims etc. in any Court of Law, statutory authorities arising out of any accident, mishap etc. at the site during construction as well as entire operation and maintenance period. The Concessionaire will also be responsible for any fraud violation of labour laws, Company Law, Environmental Law or any statutory of obligations related to this project. The Concessionaire shall keep SDMC harmless in all such cases.

## **8.0 Obligation of SDMC**

- 8.1 SDMC will provide 2 Acres of land on as is where is basis at a nominal rent of Rs1.00 per acre per year. During the entire concession period, the land should be used only for intended purpose of setting up dry waste Processing facility. In case any violation is found, SDMC will take all punitive action including but not limited to termination of the concession.
- 8.2 SDMC will have an option to provide 200 TPD of Commingled Dry Waste free of cost at receiving point of the plant. However, in case SDMC is not able to provide the assured quantity of Dry Waste, the concessionaire source the Dry Waste as per terms and condition mentioned in clause 6 of the agreement.
- 8.3 SDMC will help the concessionaire in getting civic services (electric, water and sewer connections) from appropriate authority at the Project Site.
- 8.4 SDMC will help the concessionaire in arranging required approvals from authorities like Delhi Pollution Control Committee etc.



- 8.5 SDMC shall use its best efforts to ensure that it shall provide the Concessionaire such assistance as reasonably required for the execution of the project.
- 8.6 SDMC will not be liable to pay any tipping fee or any other financial outlay on account of the construction and operation & management of the Dry waste Processing Plant during the entire execution period except the land as per clause 8.1 and Commingled Dry Waste as per clause 6 of the Agreement.

## **9.0 NO PROPERTY TAX ON PROJECT FACILITY**

Having regard to the nature and importance of the Project aimed at reducing environmental pollution and being implemented in said discharge of the statutory liabilities and social responsibility of SDMC, and being a kind of utility service established by concessionaire for SDMC, it is agreed that concessionaire shall be exempt from the levy assessment and payment of property tax in respect of the project facilities from the Effective Date until Expiry Date. SDMC undertakes to give full effect to this provision by issuing such necessary exception as required under the act/relevant rules there under and by taking all such steps as necessary for the purpose.

## **10.0 COVENANT OF NON-INTERFERENCE**

### **10.1 Non Interference by SDMC**

- (a) SDMC covenants with Concessionaire that SDMC or any of its officers , employees or workmen shall not , at any time, during the term of this concession Agreement interfere with or obstruct in the functioning, running and overall management of the Project and in any matter in relation to or connected therewith.
- (b) SDMC shall have no right or interest to the technology that would be used by the Concessionaire in the development, operation and maintenance of the Project Facilities. SDMC agrees that any Technology that may be employed by the Concessionaire in development, operation and maintenance of the Project facilities would be proprietary technology obtained under specific license. However, the concessionaire shall ensure that the set level of automation is achieved during the operation of the plant and accordingly the minimum types and number of electromechanical equipments shall always kept and used in the plant during different processes.

### **10.2 Site Visits by SDMC**

SDMC shall have the right to send its duly authorized representatives/Any 3<sup>rd</sup> Party appointed by SDMC for the purpose to visit the plant site , after giving at least one hour notice, provided however, the representatives of SDMC shall not interfere with or prevent Concessionaire's official from discharging their functions and further SDMC representatives shall not cause the suspension of operations of the Plant and will abide by the safety and other regulations put in place by Concessionaire at the site. However, SDMC representative may ask the Concessionaire to operate plant in his presence to ascertain the satisfactory working condition of different equipments, adherence of safety precautions and compliance of other terms and condition set forth in the Agreement.

## **11.0 TIMELY COMPLETION OF THE PROJECT**

The Concessionaire agrees and undertakes to adhere to time schedule agreed herein and to commission the plant not later than its scheduled COD. The Concessionaire agrees to adhere to following time schedule:-

- i)** Day of Handing over of land free of all encumbrances after of Issue of LOA: D
- ii)** Completion of Civil Structure on or before: -D + 360 (three hundred and Sixty) days.
- iii)** Procurement, Erection, Testing of electromechanical equipment on or before: -D + 450 (four hundred and fifty) days.
- iv)** Application by the concessionaire for Commercial Operation on or before: -D + 450 (four hundred and fifty) days.
- v)** SDMC shall examine the application of the concessionaire and may raise any query/ask for plant visit/seek additional documents, information in writing from the concessionaire within 15 (fifteen) days of receipt of such application from the Concessionaire who must provide reply/respond to the request of SDMC within 15 (fifteen) days. SDMC shall Issue permission for commercial Operation if found satisfactory or reject the application citing the reason thereof in not more than a 45(forty-five) days of receiving the application or not more than 15 (fifteen) days from receiving of reply/response from the Concessionaire as Demanded whichever is later. If the Concessionaire took more than 15 (fifteen) days in replying/responding SDMC request, it will be counted as the Concessionaire's Default.
- vi)** Scheduled COD: D + 495 (four hundred and Ninty five) days.
- vii)** If the COD is not achieved on or before Scheduled COD on account of default of the concessionaire, SDMC may impose a penalty of Rs 10,000.00 per day. However if the default continues beyond 30 days, SDMC may initiate termination proceedings. No Penalty shall be levied if the COD is not achieved on account of default of SDMC.

## **12.0 Project Review and Monitoring.**

A team of in-house engineers of SDMC or the Engineer in Charge of the project or any third party/consultant appointed by SDMC for the purpose shall review the performance of the concessionaire based on the following parameters:

- 12.1 Whether minimum required machinery for processing 200 MT of waste daily as per the tender submission by the Concessionaire is deployed.
- 12.2 Whether the work is conducted by the Concessionaire as per the defined SLPs in the TENDER.
- 12.3 To levy penalty on the Concessionaire as stated in Tender in case of any deviation from the defined SLPs
- 12.4 To review the monthly record submitted by the Concessionaire regarding the quantity of the waste processed
- 12.5 Along with the monthly Concession Fee, the Concessionaire should submit

following documents to SDMC

- 12.5.1 Digitalized weighing recorded generated through the in-house weighing system.
  - 12.5.2 Daily record of the waste processed should be kept in specified format.
  - 12.5.3 Reports regarding the quality of the by-products and other tests as per specified by the MSW 2016 should be done through accredited labs and to be submitted to the SDMC quarterly.
  - 12.5.4 Measures regarding the compliances with the MSW 2016 should be reported in the format as suggested by the engineer in charge The Concessionaire shall keep the Project Facility in a clean; tidy and orderly condition free of litter, dirt and debris.
- 12.6 Penalty Clauses

Sr. No.	Penalty Description	Penalty Amount
1.	The Concessionaire fails in achieving the handing of 80% of the monthly installed capacity i.e. 6000 MT of MSW even after passing of 6 (six) months of COD. Provided SDMC is providing the minimum assured quantity of waste.	Monthly penalty equivalent to 5 (five) percent of the applicable monthly Concession Fee.
2.	The amount of reject generated in a month is greater than 30% of the Waste processed during the month even after passing of 6 (six) months of COD	Monthly penalty equivalent to 2 (two) percent of the applicable monthly Concession Fee.
3.	Non compliance to SWM rules 2016 and the other Environmental Standard notified by the regulatory authorities or as specified in the contract.	As per penalty imposed by Delhi Pollution Control Committee and any other statutory body.
4.	Non provision of 1. Any Machinery is not working/ not available Site Facilities as per SLPs 2. Site is not maintained / insanitary condition. 3. Weigh bridge is not working	1. Rs. 2000/- per item of Machinery per day. The cure period is maximum 24 (Twenty Four) Hours. 2. Rs. 2000/- on each instance. The cure period is maximum Six Hours. 3. Rs. 20,000/- per day. The cure period is maximum 24 (Twenty Four) Hours.
5	Non compliance of safety standards, use of personal protective equipment by the workers.	Rs. 2000/- per Incidence per day till the compliance of the failure in addition to the Penalties/ Actions imposed by various authorities.

**Note:-** Any failure or noncompliance or slow progress of any of the contractual works or items leading to violation of prevailing environmental Act, rules and regulations or provisions of the MSW rules 2016 leading to the adverse orders of penalty or prosecution by the competent authorities in this regard shall also be the direct liability of the contractor/Agency in addition to the penalties as provided above.

### **13.0 ADDITIONAL OBLIGATION OF THE CONCESSIONAIRE**

#### **13.1 Taxes and Duties**

The Concessionaire and their personnel shall pay all such direct and indirect taxes, duties, fees, and other impositions levied under the Government of India Act. SDMC shall not be liable to pay any direct and indirect taxes, duties, fees and other impositions levied under the Government of India Act arising out of the activities for construction, development and operation of the plant till the expiry of this concession agreement.

#### **13.2 Fraud and Corruption**

**13.2.1** “Corrupt practice” means the offering, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;

**13.2.2** “fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

**13.2.3** “collusive practices” means a scheme or arrangement between the bidders, with or without the knowledge of the authority, designed to establish prices at artificial, non-competitive levels;

**13.2.4** “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;

##### **13.2.5 Measures to be taken**

SDMC will cancel the Concessionaires engagement, if it is engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or during the execution of that contract.

#### **13.3 Theft of Machinery:**

In case of loss due to theft or damage to the assets; due to negligence of the bidder, the Concessionaire shall be responsible for making good the same immediately at its own cost with the same specifications as the lost machine within the 60 days.

#### **13.4 Accident/Mishaps during the operations and Maintenance:**

The Concessionaire shall be solely responsible for any mishap/accident at site right from registration of police complaint, facing court trials and settlement of any claim pursuant to any Court/Tribunal orders etc. SDMC shall be fully indemnified against any claim/consequences by the Concessionaire. However, occurrence of such accident shall be promptly reported in writing by the Concessionaire to SDMC within 24 hours.

#### **13.5 Hand back of the Project Facility :**

a) The concessionaire shall hand back all the land, fixed civil structure along with the fire fighting in good working condition free of all encumbrances at the end of the contract period or on termination of the concession Agreement whichever is applicable.

b) The concessionaire shall submit proof regarding up to date payment for utilities and no objection certificates from the concerned authorities for discontinuing the services.

c) The machines deployed by the Concessionaire tractor for the contract will remain with Concessionaire after end of contract period or in case of termination of concession Agreement whichever is applicable.

- 13.6** Concessionaire shall adhere to all applicable Labour Laws with their amendments from time to time including Minimum Wages Act, PF/ESIC and disbursement of salaries of working employees in time etc. It shall be the duty of the Concessionaire to ensure that proper documentation is maintained as per various labour laws.
- 13.7** Deployment of Personnel:  
The Concessionaire shall employ and provide such skilled and experienced Personnel as are required to carry out the Services.  
If SDMC finds that any of the Personnel have (a) committed serious misconduct or have been charged with having committed a criminal action, or (b) have indulged in any activity not consonance with the agreement, then the Concessionaire shall, at SDMC's written request specifying the grounds thereof, provide replacement.  
The Concessionaire shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.
- 13.8** Repair and Maintenance work of the plant:  
Concessionaire shall have the right to suspend received and processing of MSW, if required for undertaking, maintenance or repair of any of the Project Facilities. Concessionaire shall provide SDMC for 7 (Seven) days advance notice of any planned repair or maintenance work of any of the project facilities that will result in the suspension of operations of the Plant or a reduction in the capacity of the plant to process the MSW being supplied by SDMC provided however no such notice would be required in the event of any unplanned repair or maintenance caused by an emergency or accident or any such unforeseeable event. Tentative maintenance schedule shall be provided to SDMC every year in January month of each year.
- 13.9** Accounting, Inspection and Auditing:  
The Concessionaire shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the basis thereof.  
The Concessionaire shall always act, in respect of any matter relating to the Contract or to the Services, as faithful advisers to SDMC, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with third Parties.
- 13.10** Conflict of Interests:  
The Concessionaire shall hold SDMC's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 13.11** Prohibition of Conflicting Activities:  
The Concessionaire shall not engage, and shall cause their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.
- 13.12** The operations are required to be conducted by the Concessionaire for all days of the year i.e. 365 days
- 13.13** The quantity of the waste processed in a month should not be less than 80% of the installed capacity.
- 13.14** In case of any major breakdown, the Concessionaire has to inform the SDMC officials immediately, and work to resolve the issue expediently.
- 13.15** The Concessionaire is to ensure the proper housekeeping of the site at all times, create facilities and make arrangements for controlling/ mitigating the emission, pollution and contamination (Environment impact) of air, water and soil including mitigation of odour and noise pollution at his own cost as per the safety and health norms as specified in related rules and regulation in consultation with the concerned Engineer, so as to comply with MSW rules 2016 and other environmental rules and regulations prevalent in India. In the

plant premises banners, paintings etc. showcasing the awareness slogans regarding the solid waste management shall be displayed.

- 13.16** The Concessionaire shall also supply operation and maintenance manual, showing detailed operation procedures and maintenance measures. The functioning of the plant should be described in the same for understanding of the visitors.
- 13.17** The complaints received through SDMC grievance redressal mechanism in relation to issues regarding the processing unit site will be forwarded to the contractor. All complaints to be attended within 6 hours of complaint register. A record of all such complaints to be submitted to SDMC on monthly basis by 5<sup>th</sup> day of next month. The SDMC care complaint handling cell numbers should be displayed at the project site.
- 13.18** Data obtained from the digitized weigh bridge records will be considered for all purposes and no handwritten data will be accepted for the same except in case of break down and under specific intimation and approval of SDMC.
- 13.19** Proper record for daily quantity of the by-products generated and for the disposal of the by-products should be kept in the formats finalized in consultation with the engineer in charge.
- 13.20** Management of Bye products
- i.** The disposal of by-products should be sole responsibility of the Concessionaire and the same shall not be stored for more than 15 days within the premises of the plant. However, in case of occurrence any unavoidable circumstances due to which the storage of buy products is required for more than specified time frame the same shall be intimated by the Concessionaire to SDMC mentioning the reason.
  - ii.** The proceeds from the disposal of by-products/ recycled products shall be the sole property of the concessionaire and SDMC will have no claim over it.
- 13.21** The Concessionaire has to ensure that the operations of the project do not cause any nuisance to the citizens in the area. Any complain received by the SDMC from the neighbouring citizens has to be resolved by the Concessionaire by taking all necessary measures.
- 13.22** The Concessionaire should neither place nor create nor permit any other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement.

## **14.0 EVENTS OF DEFAULT, TERMINATION & EFFECT OF TERMINATION**

### **14.1 Events of Default**

Any of the following events shall constitute an Event of Default by Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in this clause:

- i)** Negligence in designing or default in design of the Project Facility that results in Material Adverse Effect to the Project; However, the Concessionaire shall not be permitted to defend termination on the ground that it has based its designing on the parameters, figures, drawings, analysis, geographic study or topography study provided along with either NIT, RFP or RFQ by the SDMC. The Concessionaire is required to undertake its own study to design, construct and commission the Project.
- ii)** Defects in construction of the complete Project which are of such nature that they cannot be rectified or that they shall have Material adverse Effect;

- iii)** Failure to remit the Liquidated Damages as stipulated relating to the delay in construction or commissioning of the Project;
- iv)** The failure of achieving COD of the Plant even after a period of 7 (seven) months from the Scheduled COD;
- v)** After the commencement of construction of the Project, the abandonment by the Concessionaire for a continuous period of 2 (two) months and such default is not rectified within 1 (one) month from the receipt of first notice from the SDMC in this regard;
- vi)** Save and except as provided in Clause 13.8, if at any time following the COD, the Plant suspend receiving and processing Dry MSW Quantity;
- vii)** The Concessionaire fails to make any payment (a) of an amount exceeding Rupees 10 (ten) lakhs required to be made to the SDMC under this Agreement, within 3 (three) months after the Due Date of an undisputed Bill raised by the SDMC on the Concessionaire or (b) of an amount up to Rupees 10 (ten) lakhs required to be made to SDMC under this Agreement within 6 (six) months after the Due Date of an undisputed Bill;
- viii)** Any of the representations and warranties made by the Concessionaire in terms of Clause 3.3 of this Agreement is found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid is found to be breached or inaccurate. Provided however, prior to considering any event specified under this sub-article to be a Concessionaire's Event of Default, the SDMC shall give a notice to the Concessionaire in writing of at least 1 (one) month;
- ix)** In the event the Concessionaire, (a) assigns or purports to assign any of its assets or rights in violation of this Agreement; or (b) transfers or novates any of its rights and /or obligations under this Agreement, in violation of this Agreement;
- x)** If (a) the Concessionaire becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of 1 (one) month, or (b) any winding up or bankruptcy or insolvency order is passed against the Concessionaire, or (c) the Concessionaire goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law.  
 Provided that a dissolution or liquidation of the Concessionaire shall not be a Concessionaire's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation, amalgamation or reorganization and where the resulting company continues to meet the financial and technical requirements as per RFP, and retains creditworthiness as that of the Concessionaire, to be decided by the SDMC in their sole discretion and it expressly assumes all obligations of the Concessionaire under this Agreement and is in a position to perform them;
- xi)** The Concessionaire repudiates this Agreement and does not rectify such breach within a period of 1 (one) month from a notice from the SDMC in this regard;
- xii)** Except where due to any SDMC's failure to comply with its material obligations, the Concessionaire is in breach of any of its material obligations pursuant to this Agreement or of any of the other Agreements for this Project where the SDMC and Concessionaire are parties, and such material breach is not rectified by the Concessionaire within 1 (one) month of receipt of first notice in this regard given by the SDMC to the Concessionaire.
- xiii)** Breach or default of the Concessionaire of any of the terms and conditions of this Agreement and/or the Land Lease Agreement, which has caused a Material Adverse Effect;

- xiv)** There is a transfer, pursuant to law either of (i) the rights and /or obligations of the Concessionaire, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect.

## **14.2 Termination for Concessionaire Event of Default**

**14.2.1** Without prejudice to any other rights or remedies which the SDMC may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the SDMC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the SDMC shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 14.2.2.

**14.2.2** In the event, the SDMC receives such representation of the concessionaire, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of termination.

Provided that the concessionaire provide for cure the default specified in the notice within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the SDMC shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

**14.2.3** In the event the SDMC give a Termination Notice to the Concessionaire pursuant to Clause 14.2.1 owing to a Concessionaire Default, the SDMC shall have the right to Issue the Takeover Notice to the Concessionaire and require the Concessionaire to transfer, within a period of 3 (three) months thereof, the ownership of the Project facilities as per the Clause 13.5.

**14.2.4** SDMC shall also be entitled to forfeit the Performance Security .

## **14.3 Termination Notice**

If SDMC, having become entitled to do so decides to terminate this Agreement pursuant to the proceeding Sub-Clause, it shall issue Termination Notice setting out:

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

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

## **14.4 Obligation of Parties**

Following issue of Termination Notice by SDMC, the both the parties, promptly take all such steps as may be necessary or required to ensure that:

- i)** Until Termination the Parties shall fully possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities.
- ii)** The Project Facilities are handed back to respective Parties as per Clause 13.5 under this Agreement, and Land Lease Agreement, by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to SDMC.



#### **14.5 Withdrawal of Termination Notice**

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

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

#### **14.6 Rights of SDMC on Termination**

Subject to the provision of Clause 14, upon Termination of this Agreement. SDMC shall have the power and authority to prohibit Concessionaire and any person, claiming through or under Concessionaire from entering upon/dealing with the Project Facilities.

#### **14.7 Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either party including its rights to claim and recover its money damages and other rights and remedies which may have in law or contract. The rights and obligations of either party under this Agreement, shall survive the termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

#### **15.1 Force Majeure**

As used in this Agreement the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 15.2, 15.3 and 15.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material adverse Effect on the Affected Party/

#### **15.2 Non-Political Event**

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

- a) Act of God, epidemic, extremely adverse weather conditions, lightings, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site).
- b) Strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Plant for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 15.3;
- c) Any failure or delay of a Concessionaire by only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

- d) Any delay or failure of an overseas Concessionaire to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- e) Any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Approvals, or (ii) on account of breach of any Applicable Law or Applicable Approvals or any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the SDMC;
- f) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through an inspection of the Site; or
- g) Any event or circumstances of a nature analogous to any of the following.

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

- a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) Any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- c) Industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period 7 (seven) days in an Accounting Year;
- d) Any civil commotion, boycott or political agitation which prevents processing of dry waste and disposal/sell of the processed products by the Concessionaire for an aggregate period exceeding 7 (seven) days in a financial year;
- e) Failure of the SDMC to permit the Concessionaire to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reasons;
- f) Any failure or delay of a Concessionaire to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- g) Any Indirect Political Event that causes a Non-Political Event; or
- h) Any event or circumstances of a nature analogous to any of the following.

**15.4 Political Event**

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

- a) Compulsory acquisition in national interest or expropriation of any Project facilities or rights of the Concessionaire or of the Contractors;
- b) Unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Financing Documents, provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such

clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- c) Any failure or delay of a Concessionaire by only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- d) Any event or circumstance of a nature analogous to any of the following

#### **15.5 Duty to report Force Majeure Event**

- a) 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:
- b) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 18 with evidence in support thereof;
- c) 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;
- d) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- e) Any other information relevant to the Affected Party's claim.

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

15.5.3 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 18.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

#### **15.6 Effect of Force Majeure on the Concession**

Upon the occurrence of any Force Majeure Event prior to the Concessionaire satisfying last of the Conditions Subsequent as set forth in Clause 3.1, the period set forth in Clause 3.1 for fulfilment of Conditions Subsequent, and Scheduled COD shall be extended by a period equal in length to the duration of the Force Majeure Event.

15.6.2 At any time after the Concessionaire satisfies last of the Conditions Subsequent set forth in Clause 3.1, if any Force Majeure Event occurs:

- a) Prior to Scheduled COD, the dates set forth for achieving Scheduled COD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b) After Scheduled COD, whereupon the Concessionaire is unable to process the MSW during the subsistence of such Force Majeure Event, the Term shall be extended by a period equal in length to the period during which the Concessionaire was prevented from processing of MSW, the SDMC shall extend the Term in proportion to the loss of such generation due to Force Majeure.

#### **15.7 Allocation of costs arising out of Force Majeure**

15.7.1 Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure

Event or exercise of any right pursuant hereto.

#### **15.8 Excuse from performance of obligations**

- 15.8.1 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 hereunder.

#### **15.9 Termination due to Force Majeure**

##### **(a) Termination**

In the event the effect of a Force Majeure Event subsists, for a duration of 6 (six) months or more within a continuous period of 2 (two) years, unless otherwise mutually agreed to between the Parties, 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, 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.

##### **(b) Termination Payment**

Upon Termination of this Agreement due to a Force Majeure Event, SDMC shall not be liable to pay any Termination Payments to Concessionaire.

#### **15.10 Liability for other losses, damages etc.**

Neither Party hereto shall be liable in any manner whatsoever to the other party in respect of any loss, damage cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

#### **16.0 CHANGE IN LAW**

- 16.1** The term "Change in Law" shall mean the occurrence of any of the following events after the Due Date:
- i.** The enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Applicable Law;
  - ii.** The repeal, modification or re-enactment of any existing Applicable Law;
  - iii.** Commencement of any Applicable Law which has not been made effective or notified until the Bid Due Date;
  - iv.** A change in interpretation of any Applicable Law by a Competent Court or an Governmental Instrumentality provided such Competent Court or the Governmental Instrumentality is the final authority under the Applicable Law for such interpretation;

- v.** Any change in the rates of any Taxes which have a direct effect on the Project;
- vi.** Change in any Applicable Approvals, available or obtained for the project, otherwise than for default of the Concessionaire;
- 16.2** Exclusion to Change in Law:  
The term "Change in Law" shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Concessionaire.
- 16.3** SDMC will have exclusive right/claim over any pecuniary income generated on account of processing of dry waste by the plant under Extended Producer Responsibility and the Concessionaire will have no claim over it.
- 16.4** Increase or decrease in Cost  
If a result of any Change in Law, the Concessionaire suffers from an increase or decrease in cost or other financial burden, the same shall be borne by the Concessionaire and SDMC will not be liable/entitled to make/receive any payment on this account.
- 17.0 JURISDICTION**  
This Agreement shall be governed by and constructed in accordance with the laws of India and only the courts of Delhi shall have jurisdiction to try all disputes and matters arising out of under this agreement.
- 18.0 NO WAIVER OF RIGHTS AND CLAIMS**  
Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favour of any party under the terms of this agreement shown or made by such a party in whose favor such a rights or claims might have vested by the virtue of this agreement shall neither constitute nor construed to be waiver of such rights or claims accruing in respect of such a party.
- 19.0 SCHEDULES AND ANNEXURES**  
All schedules and annexure and other explanatory details attached to this agreement shall be deemed to be a part of this agreement.
- 20. SUPPRESSION OF EARLIER AGREEMENTS**  
  
This Agreement represents the entire Agreement between SDMC and Concessionaire and all agreements, correspondence, notes or any other documents submitted or understanding made or reached by and between the parties inter se in respected of the subject matter of these presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this agreement.
- 21. NOTICES**  
Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of Term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery/recognized national courier, telex or facsimile and delivered or transmitted to the parties at their respective address set forth below :

**If to SDMC**

**9<sup>th</sup> Floor, Civic Centre, JLN Marg, New Delhi-110002**

**If to Concessionaire**

-----  
-----.

Or at such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time.

All notices under this Agreement shall be in English.

**22. LEGAL CHARGES**

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

**23. COUNTERPARTS**

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

**24. ASSIGNMENT**

24.1 The Concessionaire shall not assign, create or permit to subsist any Encumbrance in whole or in part, its rights and obligations under this Agreement to any third Party without the prior written consent of SDMC.

If The Concessionaire is a corporation, any dissolution, merger, consolidation, or any other reorganization of Contractor, or sale or other transfer of controlling percentage of capital stock of Contractor, or sale of more than 50% of the value of the assets of the Contractor, will be deemed as an Assignment subject to this Clause. The phrase "Controlling percentage" means the ownership of, and the right to vote, stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Contractor's capital stock issued, outstanding and entitled to vote for the election of directors. This paragraph will not apply to corporations the stock of which is traded through an exchange over the counter.

24.2 Permitted Charges

24.2.1 Notwithstanding anything contained in Clause 24.1, the Concessionaire may create in favour of the lenders any Encumbrance, subject to Article 24, over part of the receivables (receivables left after paying the Concession Fee and other payables to SDMC), or the other assets of the Project except land and fixed civil structure including fire fighting equipments or the Project documents, as security for :

- (i) the amounts payable under the financing documents executed by the Concessionaire for the purpose of availing finance for the Project; and
- (ii) any other amount agreed by the Parties,

### 27.3 Assignment by SDMC

Notwithstanding anything to the contrary contained in this Agreement, the SDMC may after giving 2 (two) months 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 SDMC, capable of fulfilling all of the SDMC's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

## 25. NO PARTNERSHIP

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

## 26. SEVERABILITY

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

## 27.0 LIABILITY AND INDEMNITY

### 27.1 General indemnity

27.1.1 The Concessionaire shall indemnify, defend, save and hold harmless SDMC and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities or enterprises, (the Authority 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 project or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the SDMC or to any User or from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, 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 Authority Indemnified Persons.

27.1.2 The SDMC shall 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 SDMC in the land comprised in the Project Site; and/or (ii) breach by the SDMC 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.

### 27.2 Indemnity by the Concessionaire

- 27.2.1 Without limiting any generality, the Concessionaire shall fully indemnify, hold harmless and defend the SDMC and the SDMC's 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 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;
  - d) Its omissions or acts of fraud, gross negligence and wilful misconduct;
  - e) Any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
    - i. loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.
    - ii. The Concessionaire hereby agrees that the fees to be paid as provided herein will be in full discharge of functions to be performed
    - iii. by him and no claim whatsoever shall be against SDMC in respect of any proprietary rights or copy right on the part of any other party relating to the plans, models and drawings. The Concessionaire shall indemnify and keep SDMC indemnified against any such claims and against all cost and expenses paid by SDMC in defending itself against such claims
- 27.2.2 Without limiting the generality of the provisions of this Article, the Concessionaire shall fully indemnify, hold harmless and defend the SDMC Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the SDMC 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 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 Plant or the Project Infrastructure, 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 SDMC a licence, at no cost to the SDMC, 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.

27.3 Notice and contest of claims



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 27 (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.

#### 27.4 Defence of claims

- 27.4.1 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 27, 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.
- 27.4.2 If the Indemnifying Party has exercised its rights under Article 27.3, 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).
- 27.4.3 If the Indemnifying Party exercises its rights under Article 27.3, 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;
  - 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;
  - 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 Article 27.4 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.

#### 27.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 27, 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.

#### 27.0 Limitation of Liability

27.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

- a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- b) breach of any Applicable Laws or any Applicable Permits;
- c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

#### 27.9 Survival on Termination

The provisions of this Article 27 shall survive Termination.

### **28. REPRESENTATIVE AND WARRANTIES**

#### 28.1 Representation and Warranties of SDMC

SDMC hereby represents, Assures, Confirms and Undertakes to the Concessionaire as follows:

- a) That it duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this agreement.

- b) That it has full power, capacity and authority to execute, deliver and perform this Agreement to authorize the execution, delivery and performance of this agreement.
- c) Nothing in this agreement conflict with constitutional authority, mandate or any law or any agreement, understanding or arrangement or any judgement, decree or order or any statue, rule or regulation applicable to it.
- d) All approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for 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.

## 28.2 Representation and Warranties of Concessionaire

Concessionaire hereby represents, assures, confirms and undertakes to SDMC as follows :

- a) That it duly incorporated under the laws of India and had to power to conduct its business as presently conducted and to enter into this Agreement.
- b) That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorize the execution, delivery and performance of this Agreement.
- c) Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgement, decree or order or any statue, rule or regulation applicable to it. This Agreement will be valid, legal and binding against it under the Indian Law.

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

SIGNED SEALED AND DELIVERED BY :

FOR SOUTH DELHI MUNICIPAL CORPORATION

Executive Engineer (DEMS)HQ of SDMC duly authorized by the Corporation vide its resolution No..... and Commissioner , SDMC vide Order dated .....

(Signature)

For Concessionaire

(Signature)

IN PRESENCE OF :

Name :

Address :

Signature :

Name :

Address :

Signature :

**SCHEDULE -I**

**Description of Project Site**

**SCHEDULE -II**

**Quoted Monthly Concession Fee.**

**SCHEDULE- III**  
**FORMAT FOR BANK GUARANTEE**

To

South Delhi Municipal Corporation (SDMC)  
Office of the Ex. Engineer .....

.....

**WHEREAS:**

(A) Following the Bidding Process for the Setting up of the Dry Waste Processing Facility at Tehkhand, Okhla, New Delhi, ....., a company incorporated under Companies Act 1956 and having registered office at .....(hereinafter referred to as the “Successful Bidder”) has been identified as the Successful Bidder and has been issued the Letter of Award

.....

..... (“**LOA**”) by the **South Delhi Municipal Corporation** (Hereinafter referred to as “**SDMC**”), a statutory body constituted under the Delhi Municipal Act 1957 and having its office at Civic Centre, Minto Road, New Delhi, Delhi 110002.

(B) The LOA further required the Successful Bidder to furnish to the SDMC having its principal office at Office of the Executive Engineer .....on behalf of the Concessionaire, Performance Guarantee for a sum of Rs. ..../- (Rupees ..... Only) (“**Guarantee Amount**”) as a security for the due and faithful performance of the obligations of the Concessionaire, under and in accordance with the terms and conditions of the Concession Agreement (the “**Agreement**”) to be executed between the Concessionaire and the SDMC for the development of the Project.

(C) We, .....(Bank Name), a Company incorporated under the Companies Act, 1956 and carrying on its business under the Banking Regulation Act, 1949 and having Registered Office at .....having one of its branches at ..... (Hereinafter referred to as “the Bank/the Guarantor” which expression shall unless, repugnant to the context or meaning thereof, include its administrators, successors and assigns) have agreed to furnish this Bank Guarantee by way of Performance Bank Guarantee.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the SDMC upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse to SDMC, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount i.e. Rs. ....(In Words.....) as the SDMC shall claim, without the SDMC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein. Provided that in case of multiple demands, the liability of the

Bank under this Guarantee shall automatically get reduced to the extent of part amount paid.

2. A letter from the SDMC, under the hand of an Officer not below the rank of Superintending Engineer or equivalent, 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 SDMC shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations from the Effective Date until 15 (Fifteen) year of the Commercial Operation Date (COD) of the Plant in terms of the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the SDMC and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the SDMC 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 SDMC to proceed against the Concessionaire before presenting to the Bank its demand under Guarantee.
5. The SDMC 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 SDMC 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 SDMC, and the bank shall not be released from its liability and obligation under these presents by any exercise by the SDMC of the liberty with references 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 SDMC or of any other matter or thing whatsoever towards the Concessionaire 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 in respect of this guarantee hereby waives all of its rights of surety ship under any such law so long as your demand or claim remains owing and outstanding.
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 SDMC 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 this 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 for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the



SDMX under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Guarantee shall come into force with effect from the Effective Date and shall cease to be effective following the expiry of a period of 1 (one) year from the expiry of concession period i.e. ....(**Expiry Date**). A demand or claim in writing is to be made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee i.e., till ..... (**Claim Expiry Date**). Consequently, any written demand or claim under this guarantee should be received by us on or before the said Claim Expiry Date.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SDMC 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 is actually received and acknowledged by the bank before the closed of business hours on or before Claim Expiry Date.
11. All terms used in capital letters but not defined herein shall have the meaning ascribed to it in the Concession Agreement.

Notwithstanding anything contained herein above;

- a) Our liability under this bank guarantee shall not exceed Rs. ..../- (Rs. .... only);
- b) This bank guarantee shall be valid upto..... (Expiry Date); and
- c) We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only, if a written claim or demand is served on the bank on or before ..... (Claim Expiry Date); and
- d) Thereafter the bank shall stand discharged from all its liability under this guarantee and all your rights under this Agreement shall stand extinguished, irrespective of the fact whether the guarantee in original is returned back to us or not.

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

SINGED, SEALED AND DELIVERED

For and on behalf of

The BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

## **SCHEDULE- IV**

### **LAND LEASE AGREEMENT**

**[This Lease Deed shall be required to be registered with the Registrar]**

### **LAND LEASE AGREEMENT**

**BETWEEN**

**SOUTH DELHI MUNICIPAL CORPORATION**

**&**

**CONCESSIONAIRE**

**FOR**

**LEASE OF LAND AT TEHKHAND, OKHLA**

This LEASE DEED made on the ..... day of ..... in the year Two Thousand and Seventeen

**BETWEEN**

**South Delhi Municipal Corporation**, a Statutory body constituted under Delhi Municipal Act, 1957, (hereinafter referred to as “**SDMC**”) **OR “Lessor”** which expression shall, unless it be repugnant to the subject or context thereof, include its Successors and Assigns)

**AND**

**Concessionaire**, a company limited incorporated under the Companies act, 1956 and having its registered office at ..... (Hereinafter referred as “**Concessionaire**” **OR “Lessee”** which expression shall unless it be repugnant to the subject or context be deemed to include its Successors and permitted Assigns)

**WHEREAS**

- A. The Municipal Corporation of Delhi (SDMC) has in order to enable the due discharge of its functions under the Delhi Municipal Corporation Act, 1957 approved the establishment of a Dry waste processing plant by the Lessee at Tehkhand, Okhla (“Project”).
- B. The SDMC has approached Delhi Development Authority, who allotted a piece and parcel of land in Tehkhand, Okhla to SDMC. The said land stand transferred in accordance with a duly registered Conveyance Deed (defined hereinafter). In terms of the Conveyance Deed, the SDMC has acquired right,

title and interest in the said Lease Land is absolutely and without any encumbrances transfer the right to lease of the said Lease Land.

- C. In order to implement the Project the Lessor has entered into a Concession Agreement ("Concession Agreement"), with SDMC on ..... in terms of which it has granted Concession to the Concessionaire to design, built, and operate a Dry waste Processing plant at the Demised Premises (as defined hereinafter).
- D. In terms of the Concession Agreement, it is the obligation of the SDMC to provide lease to the Leased Land to the Lessor for the purposes of implementing the Project and constructing, operating and maintaining the Dry waste processing plant on the Demised Premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

**NOW THE INDENTURE OF LEASE WITNESSETH AS FOLLOWS:-**

- 1. The capitalized terms that are used but not defined in this Agreement shall have the same meaning as given to them in the Concession Agreement.
- 2. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the Lease rental stipulated in Clause 3 below; the Lessor hereby demise to the Lessee, all the land which is described, delineated and shown in the Schedule hereto (hereinafter "**Demised Premises**"), to hold the said Demised Premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof or is suspended in accordance with the provisions of Concession Agreement. This lease shall become effective from the day on which all the Applicable Approvals are obtained in accordance as set out in Condition Subsequent until Concession Agreement comes to an end on Expiry Date. The Lessor further hereby agrees and authorized the Lease to undertake the construction, operation and maintenance of the dry waste processing Project and each of the Project Facilities on the Demised Premises, in accordance with the terms of the Concession Agreement with SDMC.
- 3. In consideration of the transfer of the Demised Premises under this Agreement to the Lessee, the Lessor shall be entitled to exercise all its rights as set out in the Conveyance Deed and to receive Land Lease Charges as advance rent for the financial year on or before the 10<sup>th</sup> day of the month of April of each year. Provided, however, the Land Lease Charges for the year in which CoD occurs shall be paid for balance year on pro rate basis in the month in which CoD occurs.

**The Land Lease Charges shall be at the rate of Rs. 1.00 per annum per acre from the COD till the end of the 14<sup>th</sup> year after COD.**

- 4. The Demised Premises are being vested with the Lessee, under this Agreement, free from any Encumbrances whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances upon or under the Demised Premises which materially adversely affect the rights in relation to the Demised Premises, it shall notify the Lessor, which shall, within twenty one (21) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within twenty one (21) days from

the notice thereof, the Lessee may remove or cause to be removed such encumbrances and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.

5. The Demised Premises are being vested with the Lessee, under this Agreement for the Project which SDMC is desirous of being constructed, operated and maintained on the Demised Premises for the purposes of enabling the processing the MSW in accordance with the Concession Agreement. Furthermore, the Lessee expressly and unconditionally agrees and undertakes to the Lessor that it shall under no circumstances construct or allow to be constructed or cause to be constructed in the Demised Premises by itself or by representatives/workers/agents/contractors or any other person claiming under him to construct any residential units or dwellings and the same shall not be construed or interpreted as forming part of the Project facilities directly or indirectly. The Lessor hereby authorizes and consents to the receipt of consignments of MSW, the storage and processing of MSW.
6. The Lessor hereby authorizes the Lessee, to construct, erect, and own, operate and maintain any superstructure, facility or any movable or immovable structures constituting the Plant (including each of the Project Facilities) on the demised Premises and for that purpose also remove, renovate, use or demolish any structures that are constructed or erected or placed on the Demised Premises and further that the same shall be owned by the Lessee. The Lessor hereby agrees that the construction, operation and maintenance of the Project at the Demised Premises and the receipt storage and processing of MSW at the demised Premises is being undertaken pursuant to the Concession Agreement granted by SDMC and for the purposes of enabling the SDMC to discharge its functions of managing, processing and disposing Municipal Waste.
7. The Lessor hereby covenants and assures the Lessee that:
  - a) All the land comprising the Site is of non-agricultural status and is permitted and duly authorized and earmarked for purposed of establishment, construction, operation and maintenance of the Plant and the Project Facilities, and that it shall assist in obtaining any additional Applicable Approvals that may be required for the development, construction, operation and maintenance of the Project Facilities.
  - b) The Site is free from any encroachment or Encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any authority, body or government nor is any claim of any third party subsisting in respect thereof or relating therein.
  - c) Lessor is the owner of the lands constituting the Demised Premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the Demised Premises for the Project.
  - d) It shall not demand or in any manner claim or seek to recover the rent prior to the Effective date or the Concession Agreement or increase the rent due and payable by the Lessee under the provisions of this Agreement.
  - e) It shall not interfere with or impede in any manner claim or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demand Premises.

- f) It shall not interfere with or impede in any manner claim or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the Plant; (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use, by the Lessee of the Demised Premises and the Plant;
  - g) There are no litigation, claim, demand or any proceedings, and
  - h) The Lessee shall have complete, lawful and interrupted possession, control and use of the Demised Premises.
8. The Lessee hereby covenants with the Lessor as follows:
- a) That it shall implement the Project in accordance with the Concession Agreement with SDMC, and
  - b) That it shall observe and perform all terms, covenants, conditions and stipulations of this Agreement.
  - c) That the lease of site shall not be allowed to be sub- leased, to be mortgaged or any lien is created in favour of any third party etc by the Lessee Concessionaire in any manner.
9. Lessor has lawful title, possession and control of all the lands constituting the Demised Premises and has the requisite right and authority to Lease the same to Lessee for the Term for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful Vacant Possession, enjoyment/occupation and use of the Demised Premises throughout the Term. Without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Persons claiming right, title or interest to or in the Demised Premises for the Project or challenging the validity of this Agreement, as also against any actions, proceeding, damages, losses and expenses caused to is a result or in consequence of any such claims or demands as aforesaid.
10. The Lessor hereby assures and represents to the Lessee that the vesting of the Demised Premises under this Agreement shall be irrevocable for as long as the Concession Agreement SDMC remains in force and the Lessor shall not terminate or seek to terminate this Agreement except upon the expiry or early termination of the Concession Agreement SDMC. The Parties hereby agree that on the expiry or termination of the Concession Agreement SDMC, the Demised Premises shall be handed back to the Lessor and that this Agreement shall terminate only on the handing over of the Project Facilities to the Lessor in accordance with the terms of the Concession Agreement with SDMC.
11. The Lessee also agrees that the Demised Premises shall be used only for the purposes as defined in this Lease Agreement and any deviation there from without the prior written permission of the Lessor shall be deemed to be a breach of this Lease Agreement as well as the Concession Agreement dated ..... signed between South Delhi Municipal Corporation (SDMC) and ..... (Concessionaire) and would entitle the Lessor to forthwith revoke this Lease Agreement and re-enter and re-possess the Demised Premises at the cost, risk and consequences of the Lessee.

12. The Lessor hereby recognizes that this is a commercial act being undertaken initiated to enforce any provisions of this Agreement.

IN WINESS WHEREOF the Parties have affixed therein and sealed to this Leased Agreement the day and year first hereinabove written:

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

WITNESSES: