

DRAFT CONCESSION AGREEMENT

BETWEEN

MUNICIPAL COUNCIL/ TEMPLE COMMITTEE,

[■]¹,

AND

[NAME OF THE CONCESSIONAIRE]

AND

DEPARTMENT OF ENVIRONMENT, SCIENCE AND TECHNOLOGY, GOVERNMENT OF
HIMACHAL PRADESH

(Confirming Party)

For



**SELECTION OF AGENCIES FOR SETTING UP OF DEMONSTRATION MICRO
MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES AT 10 (TEN) DIFFERENT
LOCATIONS AS A PILOT PROJECT IN THE STATE OF HIMACHAL PRADESH ON
PUBLIC PRIVATE PARTNERSHIP (“PPP”) MODE**

VOLUME II

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¹ Please insert the name of the relevant Authority.

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter referred to as the “**Agreement**”) made this [■] day of [■] 2018 at [■] (hereinafter referred to as the “**Effective Date**”)

BETWEEN

*{Name of the respective local body/ Temple Committee}*² having its office at [■] acting through its [■], hereinafter referred to as the “**Authority**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns;

AND

M/s [■], registered/ incorporated under [■], having its registered office at [■], acting through [■], authorized vide Board Resolution/ Resolution dated [■] (*as applicable*), hereinafter referred to as “**Concessionaire**” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns;

AND

Department of Environment, Science and Technology, Government of Himachal Pradesh, acting through its **Director** in its capacity as the “**Confirming Party**” to this Agreement, hereinafter referred to as “**Department**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and administrators,

collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS

- A. The Department is desirous of setting up Demonstration Micro Municipal Solid Waste Management Facilities across the State of Himachal Pradesh and has accordingly identified 10 (ten) different locations. The said Demonstration Micro Municipal Solid Waste Management Facilities are envisaged to be set up through private sector participation on Public Private Partnership (“**PPP**”) basis by inviting proposals for their installation, operation and maintenance and subsequent handover to the respective implementing agencies including the Authority herein;

² Specify the name of the Authority.

- B. In pursuance of the above, the Department had invited proposals based on a competitive bidding process through a common Request for Proposal (“**RFP**”) bearing reference no. [■] dated [■] for “SETTING UP DEMONSTRATION MICRO MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES ACROSS THE STATE OF HIMACHAL PRADESH” from eligible Bidders at all the 10(ten) locations and in response thereto received Bids from various Bidders including the Selected Bidder;
- C. The Department, after evaluating the aforesaid Bids, accepted the Bid submitted by the Selected Bidder for [■]³ and issued Letter of Award (the “**LoA**”) No. [■] dated [■] to it for “SETTING UP, OPERATION AND MAINTENANCE OF DEMONSTRATION MICRO MUNICIPAL SOLID WASTE MANAGEMENT FACILITY AT [■] ON PPP BASIS” (hereinafter referred to as the “**Project**”);
- D. The LoA was duly accepted by the Selected Bidder vide its letter no. [■] dated [■] whereby the Selected Bidder has agreed to implement the Project as the Concessionaire;
- E. The Selected Bidder has furnished the Performance Security for an amount of [■]⁴ by way of an irrevocable and unconditional bank guarantee bearing no [■], dated [■] issued by [■] Bank in favour of the Authority; and
- F. In pursuance of the above, the Concessionaire and the Authority have agreed to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated by this Agreement to implement the Project based on <<*mention the name of the technology to be used*>> in terms hereof.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

³ Specify the name of the respective location.

⁴ This amount shall be equivalent to 20% (twenty percent) of the total Project Cost.

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. “**Abandonment**” means an action on the part of the Concessionaire with the intent to not discharge its balance obligations related to the Project under the Agreement for :
 - a) a continuous period of more than 15 (fifteen) days during the Term; or
 - b) a cumulative period of more than 45 (forty-five) days during the Term other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Authority;
- 1.1.2. “**Acceptance of Concession**” shall have the meaning assigned thereto in **Article 2.5**;
- 1.1.3. “**Accounting Year**” means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.4. “**Additional Cost**” means the additional capital expenditure and/or the additional operating costs or both, as the case may be, which the Concessionaire is required to incur, post the Effective Date, on account of Change in Law;
- 1.1.5. “**Affected Party**” means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 8**;
- 1.1.6. “**Agreement**” means this Concession Agreement executed between the Authority, the Concessionaire and the Department (as Confirming Party) including its Schedules and includes any amendments made thereto in accordance with the provisions hereof;
- 1.1.7. “**Applicable Law**” means all laws, acts, ordinances, rules, regulations, notification, policies, circulars and guidelines in force and effect, including inter-alia the Solid Waste Management Rules, 2016, and shall also include judgments, decrees, injunctions, writs or orders of any court of record and/ or National Green Tribunal as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in

connection herewith. For avoidance of doubt, Applicable Laws shall include the guidelines for direct sale of city compost by compost manufacturers, as notified by Ministry of Chemical and Fertilizers, Government of India and guidelines for produce/sale of biogas/ methane;

- 1.1.8. “**Applicable Approvals**” means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;
- 1.1.9. “**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.10. “**Associate**” or “**Affiliate**” means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- 1.1.11. “**Authority’s Event of Default**” shall have the meaning assigned thereto in **Article 10.3**;
- 1.1.12. “**Bank Base Rate**” means prevailing MCLR of the State Bank of India;
- 1.1.13. “**Capital Expenditure**” or “**CAPEX**” shall mean the expenditure incurred by the Concessionaire in setting up and installation of the Processing Facility;
- 1.1.14. “**Concessionaire’s Event of Default**” shall have the meaning assigned thereto in **Article 10.2**;
- 1.1.15. “**Collection and Transportation**” refers to primary and secondary collection and transportation of Waste from the Project Area to the Processing Facility;
- 1.1.16. “**Change in Law**” shall have the meaning assigned thereto in **Article 95**;
- 1.1.17. “**Commencement Date**” shall have the meaning as assigned to it in **Article 3.1**;
- 1.1.18. “**Compliance Date(s)**” means the later of the date by which the Conditions Precedent of the Concessionaire and Authority under **Article 2.6.1** are either achieved or waived off in accordance with the terms and conditions of this Agreement;

- 1.1.19. **“Concession”** shall have the meaning as assigned thereto in **Article 2.1**;
- 1.1.20. **“Conditions Precedent(s)”** means Conditions Precedent as specified in **Article 2.6**;
- 1.1.21. **“Commercial Operations Date” or “COD”** means the date when the Concessionaire begins commercial operations of the Micro Municipal Solid Waste Management Facility pursuant to issuance of Operational Acceptance Certificate by the Authority;
- 1.1.22. **“Contractor”** means any person with whom the Concessionaire has entered into/may enter into any contract arrangement for execution of any aspect of the works comprised in the Project, with the prior approval of the Authority;
- 1.1.23. **“CPCB”** means the Central Pollution Control Board of GoI;
- 1.1.24. **“Dead Remains”** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.25. **“Dispute”** shall have the meaning assigned thereto in **Article 12.1** hereof;
- 1.1.26. **“Dispute Resolution”** means the procedure for resolution of disputes as set forth in **Article 12**;
- 1.1.27. **“Effective Date”** means the date of signing of this Concession Agreement;
- 1.1.28. **“EIA”** means the Environment Impact Assessment for the Project;
- 1.1.29. **“Emergency”** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to any part of the Project Facilities or the Project Assets;
- 1.1.30. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;
- 1.1.31. **“Event of Default”** shall have the meaning assigned thereto in **Article 10**;
- 1.1.32. **“Excluded Waste”** means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste; (ii) Bio-Medical Waste; and (iii) Dead Remains;
- 1.1.33. **“Financial Bid”** means the final quotation of the Selected Bidder in response to the RFP document, which has been accepted by the Authority, annexed hereto as **Schedule 3**;

- 1.1.34. **“Financial Year”** shall be same as Accounting Year;
- 1.1.35. **“Force Majeure”** or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in **Article 8**;
- 1.1.36. **“GoI”** means the Government of India;
- 1.1.37. **“GoHP”** means the Government Himachal Pradesh;
- 1.1.38. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the Project Facilities;
- 1.1.39. **“Government Agency”** means GoI, GoHP, the Authority, the Department or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.40. **“Hand Over of Project”** shall have the meaning assigned thereto in **Article 11**;
- 1.1.41. **“HPPCB”** means the Himachal Pradesh State Pollution Control Board;
- 1.1.42. **“Lenders”** means any financial institutions, banks, funds and who have provided loans as debt component as evidenced by the Financing Documents and shall also refer to the security trustees (if any) for bond holders or debenture holders;
- 1.1.43. **“Letter of Award”** or **“LoA”** means the letter no. [■] Dated [■], issued by the Authority to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.44. **“Material Adverse Effect”** means an adverse effect of any act or event on the ability of either of the Parties to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.45. **“Material Breach”** means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

- 1.1.46. **“Micro Municipal Solid Waste Management Facility”** shall mean the plant being set up by the Selected Bidder/ Concessionaire for the processing, management and disposal of Municipal Solid Waste by employing <<*mention the name of the technology adopted*>> technology;
- 1.1.47. **“MSW” or “Municipal Solid Waste”** means solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the jurisdiction of the Authority and shall include solid waste, and Organic Waste;
- 1.1.48. **“Operational Acceptance Certificate(s)”** shall refer to the Certificate to be issued by the Authority as set out in **Schedule 4**, upon being satisfied about the successful commissioning and functioning of the Processing Facility pursuant to trial runs for 7 (seven) consecutive days;
- 1.1.49. **“OPEX”** shall have the meaning assigned to it in **Article 7.2**;
- 1.1.50. **“O&M Expenses”** means the expense incurred in the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement;
- 1.1.51. **“Organic Waste”** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.52. **“Processing & Disposal”** refers to Processing & Disposal of Waste collected from Project Area, as defined in **Schedule 1**;
- 1.1.53. **“Performance Security”** means the irrevocable unconditional bank guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Selected Bidder (or the Concessionaire), in accordance with **Article 4.1** in the format given at **Schedule 5**;
- 1.1.54. **“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, trust, unincorporated organization, government or government body or any other legal entity;
- 1.1.55. **“Post-COD Period”** means the period starting on and from the COD and ending on the Transfer Date;

- 1.1.56. **“Pre-COD Period”** means the period commencing from the Effective Date and extending upto the COD;
- 1.1.57. **“Preliminary Notice”** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.58. **“Processing Facility”** means the facility (Micro Municipal Solid Waste Management Facility) created by the Concessionaire for treatment of Municipal Solid Waste;
- 1.1.59. **“Project”** shall mean the processing of Waste in the Project Area and discharging the Scope of Services more specifically set out in **Schedule 1**;
- 1.1.60. **“Project Agreements”** means any material contracts or agreements entered into by the Concessionaire after Effective Date relating to the implementation of the Project;
- 1.1.61. **“Project Area”** means the area presently under municipal boundaries of the Authority or any extension thereof during the Term;
- 1.1.62. **“Project Assets”** means all physical and other assets relating to and forming part of the Project including (a) rights over the Site in the form of license rights (as applicable), Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, Processing Facility, electrical systems, communication systems, and administrative office; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables and security deposits ; (f) insurance proceeds; and (g) Applicable Approvals and authorisations relating to or in respect of the Project;
- 1.1.63. **“Project Facilities”** means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.64. **“Proprietary Material”** shall be as defined in **Article 14.1**;
- 1.1.65. **“Residual Solid Waste”** means and includes the Waste and rejects from the Waste collected for processing which are not suitable for recycling or further processing;
- 1.1.66. **“Rupees” or “Rs”** refers to the Indian National Rupee;

- 1.1.67. “**Schedules**” means any of the annexures, appendices, supplements or documents annexed to this Agreement as Volume III and as amended from time to time;
- 1.1.68. “**Site(s)**” means the land parcels made available to the Concessionaire for implementing the Project, and includes land required for setting up of the Processing Facility;
- 1.1.69. “**Selected Bidder**” means M/s, who was declared as the Successful Bidder for location from amongst the participating Bidders through competitive bidding process pursuant to the Request for Proposals dated [■] and who shall act as the Concessionaire herein this Agreement for implementing the Project;
- 1.1.70. “**SWM Rules**” means the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments/ modifications thereto or re-enactments thereof, from time to time;
- 1.1.71. “**Tax**” means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.72. “**Term**” means the time period of 10 (ten) years commencing from the Effective Date to the extent extended by any permitted time extensions as expressly provided under the terms of this Agreement;
- 1.1.73. “**Termination**” means early termination of this Agreement pursuant to Termination Notice in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- 1.1.74. “**Termination Date**” means the date specified in the Termination Notice as the date on which Termination occurs/ comes into effect;
- 1.1.75. “**Termination Notice**” means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.76. “**Termination Payments**” means the payments payable pursuant to Article 10.4.6 and Article 10.4.7 of this Agreement;
- 1.1.77. “**Third Party**” means any Person other than the Parties to this Agreement;

- 1.1.78. “**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.79. “**Tests**” means the tests to be carried out by the Concessionaire at its cost, in the presence of personal from the Authority as may be required for getting statutory clearances/ Applicable Approvals or asked by the Authority in respect of the Processing Facility to ensure that the same conforms to the requirements as per Good Industry Practice and Applicable Law or Applicable Approvals;
- 1.1.80. “**User Charge**” means the fees chargeable from Waste Generators for door to door collection of Waste as per the rates notified from time to time by the Authority/ Concessionaire under Applicable Law;
- 1.1.81. “**Vacant Possession**” means delivery of possession of the Site(s) free from all Encumbrances to the Concessionaire and the grant of all rights and all other rights appurtenant thereto;
- 1.1.82. “**VGF-CAPEX**” shall have the meaning assigned thereto in **Article 7.2**;
- 1.1.83. “**Waste**” means Municipal Solid Waste, Bio-degradable waste, Organic Waste generated by Waste Generators residing/ located in the area falling within the jurisdiction/ ambit of the Authority;
- 1.1.1. “**Waste Generators**” means hotels, restaurants, households, temples, etc. generating Waste and located within the Project Area;

1.2. Interpretation

- 1.2.1. In this Agreement, unless the context otherwise requires:
- i. the words, phrases and expressions defined hereinabove in **Article 1.1** or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said **Article 1.1** or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;

- ii. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- iii. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- iv. all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- v. the words “include” and “including” are to be construed without limitation;
- vi. the headings of the Articles in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- vii. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in force and effect as though they were expressly set out in the body of the Agreement;
- viii. provisions related to door to door Collection and Transportation of Municipal Solid Waste shall be applicable to the Concessionaire as per Appendix II of the Request For Proposal (hereinafter referred to as “**RFP**”) wherever the concerned Authority has not undertaken to do the same;
- ix. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates;
- x. references to Recitals, Articles and Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles and Schedules of to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- xi. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

xii. time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

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

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

1.3. Measurements And Arithmetic Conventions

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

1.4. Priority of Agreements, Articles and Schedules

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

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

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

- i. Between 2(two) or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- ii. Between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- iii. Between any 2(two) Schedules, the Schedule relevant to the issue shall prevail;

- iv. Between the written description on the drawings and the Specifications and Standards, the latter shall prevail; and
- v. Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

2. THE CONCESSION AND CONDITIONS PRECEDENT

2.1. Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants and authorises the Concessionaire to Design, Build, Finance, Operate, Maintain and Transfer (“**DBFOMT**”) the Project and to exercise and/ or enjoy such rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (the “**Concession**”).

2.2. Rights Associated with the Grant of Concession

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

- a) to design, build, finance, operate and maintain the Project either by itself or through any Contractor in accordance with the terms and conditions of this Agreement;
- b) upon achieving COD, to manage, operate and maintain the Processing Facilities either by itself or through any Contractor in accordance with the terms and conditions of this Agreement;
- c) subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into sub-contracts or agreements with such persons, as it may deem necessary and appropriate, for performing its obligations under this Agreement; and
- d) to obtain financing for the Project in the form of equity and/ or debt in accordance with the terms and conditions of this Agreement as well as the financing agreements to be executed with the Lenders;

Provided that the Authority shall be informed by the Concessionaire as to the creation of any security interest in favour of the Lenders within a period of 14 (fourteen) days from the date such security interest comes into existence and provide to the Authority within such time, notarized true copies of any and all documents/ agreements relating thereto.

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

- a. to store, use, appropriate, market and sell or dispose-off all the constituents/ products/ by-products from the Waste, including but not limited to compost, power generated, recyclables, methane (biogas), bio CNG, etc. and to further retain and appropriate any revenues generated from the sale of such products/by-products;
- b. to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement, for the purposes of the due implementation of this Project;
- c. to modify, adapt, upgrade the technology deployed for the processing of the MSW, as may be required from time to time, based on Good Industry Practices to improve the operations of the Processing Facility and other related requirements of the Project.

2.3. Term

The effective Term shall be for a period of 10 (ten) years commencing from the Effective Date (the “**Term**”) and shall be further extendable for such period as may be mutually agreed by the Parties, during which the Concessionaire is authorised to implement the Project in accordance with the provisions hereof;

Provided that in the event of Termination, the Term shall mean and be limited to the period commencing from the Effective Date and ending on the Termination Date. For avoidance of doubt, the Term shall also include the time period required by Parties for fulfilment of the Conditions Precedent obligations, and in case of any extensions thereof or by other reason as envisaged in terms hereof, Term shall be proportionately extended.

2.4. Renewal of Concession

The Authority shall have the option to agree to renew or extend the Concession after the expiry of the Term on same terms and conditions.

2.5. Acceptance of Concession

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

2.6. Conditions Precedent

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement except under this Article 2.6 shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”). The obligations of a Party under this Article 2.6 shall be effective from the Effective Date.

2.6.1. Conditions Precedent for Authority

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

- a) allocated/ demarcated site for setting up of Processing Facility as a part of the Project on a “Right to Use” basis;
- b) facilitated and ensured that unencumbered Site is handed over to the Concessionaire;
- c) facilitated the Concessionaire in terms of support and participation by its representatives to the concerned departments or competent authorities for obtaining of all Applicable Approvals, if requested by the Concessionaire; and
- d) obtained the environmental and other clearances including clearances pursuant to EIA for the Project.

2.6.2. Conditions Precedent for Concessionaire

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

- a) submitted to the Authority a Manual of Implementation Procedure for setting up of the Processing Facility in line with the note/ presentation made by it at the bidding stage, bringing out in detail the various steps and methodology for

implementation of the Project, including the timelines for achieving various activities prepared in compliance with terms of this Agreement, also taking into account compliance with Applicable Laws and Good Industry Practice;

- b) procured and raised the requisite debt and equity necessary to finance the Project;
- c) confirmed that all the representation and warranties set forth in the Proposal of the Selected Bidder and in this Agreement are true and correct;
- d) obtained all Applicable Approvals for initiating the Project; and
- e) obtained the unencumbered possession of the Site from the Authority.

Provided that upon request in writing by the Concessionaire, the Authority may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article.

2.6.3. Satisfaction of Conditions Precedent

- a) Each Party shall make all reasonable endeavours at its respective cost and expense to satisfy the respective Conditions Precedent in full within a period of 30 (thirty) days reckoned from the Effective Date (the **“Compliance Period”**) unless agreed otherwise between the Concessionaire and the Authority.
- b) The later of the date within such time when the Authority or the Concessionaire fulfils its Conditions Precedent (unless the Authority waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence respectively (the **“Compliance Date”**).

2.6.4. Non Compliance with Conditions Precedent

- (a) In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time under Article 2.6.3 and the Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Concessionaire and the Authority and both the Concessionaire and the Authority shall subsequently be entitled to claim any rights or perform any obligations under this Agreement and the Authority shall not be liable

in any manner whatsoever to the Concessionaire or Persons claiming through or under it.

- (b) In the event this Agreement fails to come into effect on account of non-fulfilment of the Concessionaire's Conditions Precedent, the Authority shall be entitled to call on the Performance Security.
- (c) In the event the Conditions Precedent for the Authority have not been satisfied within the stipulated time, then the Concessionaire shall have the option to either : (i) mutually extend the time period for satisfaction of the Conditions Precedent of the Authority; or (ii) terminate this Agreement, in which event, the Authority shall pay to the Concessionaire, reasonable development costs as mutually decided between the parties. In case of extension of time period for fulfilment of Conditions Precedent of the Authority beyond a period of 30 (thirty) days commencing from the Effective Date, the effective Term shall be deemed to be proportionately extended for the same period.
- (d) In the event this Agreement fails to come into effect on account of the non-fulfilment of the Authority's Conditions Precedent, the Authority shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Authority against the Concessionaire. In case of any outstanding claim, the Authority shall return the Performance Security after appropriating the relevant amount of the outstanding claim against the Concessionaire.
- (e) Notwithstanding anything contained herein, the Parties shall have the option to extend the time for fulfilling the Conditions Precedent by mutual agreement and not to elect the option for terminating this Agreement.

ARTICLE 3

3. SITE

3.1. Handover of Site

- a. The Authority to ensure that they shall, within 30 (thirty) days from the Effective Date (the “**Commencement Date**”), handover to the Concessionaire, the Site on license along with “Right to Use” basis, free from any Encumbrance, for the purpose of implementing the Project.
- b. Upon the Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 3, have the right to enter upon, occupy and use the same or to make it as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- c. The term of the license as referred under sub-article (a) shall be co-terminus with this Agreement and upon expiry of this Agreement due to efflux of time or due to early Termination on account of default, the term of the license granted to the Concessionaire shall also expire simultaneously and the Concessionaire shall hand over possession of the Site in accordance with the terms of this Agreement.

3.2. Rights, Title and Use of the Site

- a. The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement and for this purpose shall also include the regulation of entry to the Site by the third parties.
- b. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project, including the Site.
- c. The Concessionaire shall not, without the prior written approval of the Authority, use the Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- d. The Concessionaire shall allow free access to the Site to the members of the any authorized officer and employees of the Authority for inspection of the Site and the works being undertaken by the Concessionaire.
- e. The Concessionaire shall allow access to and use of the Site maintaining the existing utilities or for installing new utilities or for such other public purposes as the Authority may specify.

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

3.3. Right of Way and Peaceful Possession

The Authority shall provide the Site together with the necessary Right of Way to the Concessionaire and warrants that such Right of Way:

- a) have been acquired through the due process of law;
- b) belong to, or has been leased to the Authority and is vested in the Authority; and
- c) that the Authority has full powers to hold, dispose of and deal with the Site consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, shall have no liability which may arise in relation to any claim regarding payment of compensation on account of land acquisition or rehabilitation or resettlement of any Persons affected thereby.

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

3.4. Applicable Approvals

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

ARTICLE 4

4. THE CONCESSIONAIRE'S OBLIGATIONS

The Concessionaire shall have the following obligations:

4.1. Performance Security

- a. The Concessionaire shall, for the due and punctual performance of its obligations hereunder relating to the Project prior to the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee from a scheduled bank acceptable to the Authority, in favour of the “{*Name of the Authority*}”, in the form as set out in **Schedule 5**, (“**Performance Security**”) for a amount of Rs. [■] during the Term.
- b. The Performance Security shall be kept valid and in force for the entire duration of the Term, through periodical renewals, at least 1 (one) month prior to the expiry of the subsisting Performance Security. In the event the Concessionaire fails to provide the renewed/ extended/ enhanced Performance Security at least 1 (one) month prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the Term, the Authority shall have the right to call on the subsisting Performance Security. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the Term, in accordance with the provisions hereof, shall constitute Concessionaire Event of Default in terms hereof.
- c. In the event, the Concessionaire is in default or breach of the due, faithful and punctual performance of its obligations under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Authority for or against the Concessionaire under this Agreement or against the Authority in respect of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of services within the time period specified herein, or in respect of any dues, demands damages or claims against the Concessionaire.
- d. The decision of the Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority

to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.

- e. In the event of encashment of the Performance Security by the Authority, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from Authority provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of this Agreement by the Concessionaire, which shall entitle the Authority to terminate this Agreement in accordance with the provisions hereof.
- f. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

4.2. General Obligations

The Concessionaire shall:

- (a) perform and fulfil all of the Concessionaire's obligations with respect to the Project under this Agreement and the Selected Bidder's obligations under the LoA;
- (b) obtain all Applicable Approvals as required by or under the Applicable Laws and be in compliance thereof at all times during the Term;
- (c) arrange the financing for the Project, including mobilization of debt and equity;
- (d) to install and make operational the Project based on <<*insert the name of the technology adopted*>> within 90 (ninety) days from the Effective Date;
- (e) *{to collect door to door Waste from the Waste Generators and transport the same to the Processing Facility;⁵}*
- (f) to trial run the Processing Facility for a period of 7 (seven) consecutive days after setting up the same and rectify/ cure any defects or shortcomings that may be observed and/ or pointed out by the Authority prior to achieving COD, to ensure the compliance of the Processing Facility with the provisions of this Agreement and Applicable Laws;
- (g) *{collect and retain notified User Charges from the Waste Generators on a monthly basis };*⁶

⁵ Delete in case the Collection and Transportation is undertaken to be done by the Authority.

- (h) store the Residual Solid Waste and residual inert, if any, in containers for safe storage as per MSW Rules and guidelines set forth by any competent authority including National Green Tribunal in this regard;
- (i) make endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers;
- (j) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (k) have the right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement, however it is clarified that irrespective of such sub-contracting, the Concessionaire alone shall be responsible for meeting the requirements of this Agreement and all acts of commission and omission of such Contractor. Further, the Concessionaire shall act as the single point of contact between the Authority and such Contractor(s) for any communications;
- (l) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed or that of the staff of its any Contractor in relation with the Project and hereby agrees to keep the Authority indemnified against any claims, damages, expenses or losses in this regard. The Concessionaire shall ensure that under no circumstances, the employees and workmen of the Concessionaire or any Contractor, are otherwise deemed to be employees of the Authority;
- (m) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Term;
- (n) obtain single point water and electrical connections and make regular payment associated with the same (which shall be facilitated by Authority, though the responsibility shall be that of the Concessionaire);
- (o) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (p) upon receipt of a request thereof, afford access to the Project to the authorised representatives of the Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;

⁶ Delete in case the Collection and Transportation and collection of User Charges is undertaken to be done by the Authority.

- (q) ensure that the Project is operational on all calendar days of the year;
- (r) prepare a operation & maintenance manual bringing out in detail the operation and maintenance requirements/ guidelines covering routine maintenance, safety and environment aspects, etc., no later than 30 (thirty) days from the date of COD;
- (s) be responsible for the conduct of its staff employed for this Project while on duty;
- (t) operate, maintain, repair and renovate the Project Assets, in accordance with, inter alia, the Applicable Laws, Applicable Approvals and the requirements of this Agreement;
- (u) procure, acquire and put into place at its own cost and expenses all the Project Assets required by the Concessionaire to implement the Project during the Pre-COD Period so as to achieve COD within the time stipulated in this Agreement;
- (v) promptly rectify and remedy any defects or deficiencies, if any pointed out by the Authority in the Inspection Reports and furnish a report within the stipulated time period in respect thereof to the Authority;
- (w) to carry out all necessary test(s)/ trail runs and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- (x) pay all Taxes, duties and outgoings, including utility charges relating to the Project;
- (y) transfer the Project to the Authority upon expiry or early Termination of this Agreement, in accordance with the provisions thereof.

4.3. No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a) Force Majeure Event, subject to Article 8;
- b) Authority's Event of Default;
- c) Compliance with the instructions of the Authority or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

4.4. Penalties & Damages

In case the Concessionaire fails to fulfil the obligations as set under this Agreement, penalties for non-fulfilment/ damages shall be imposed according to provisions of Schedule 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the

aggregate liquidated damages levied in terms hereof on the Concessionaire by the Authority exceed Rs. 50,000 (Rupees Fifty Thousand only) in any quarter, the same shall be deemed as Concessionaire Event of Default and shall entitle the Authority to terminate the Agreement.

4.5. Concessionaire's Representative

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

4.6. Employment of Trained Personnel

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

4.7. Obligations Relating to Project Agreements

- a) It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement executed with the Contractor(s), and no default under any Project Agreement or any other agreement shall relieve the Concessionaire from its obligations or liability hereunder.
- b) The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the

terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and its failure to review and/ or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

- c) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination.
- d) The Concessionaire expressly agrees to include the covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party of each of the Project Agreements, where under such counter party shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination.

4.8. User Charges⁷

- a) The Concessionaire shall be liable to collect User Charges from Waste Generators at the rates to be notified from time to time by the Authority as per the calculations or as per the cost of vehicles and manpower requirements of the Concessionaire.
- b) The Authority shall provide all the help needed for the collection of User Charges. The Concessionaire shall issue receipt in lieu of payment of monthly User Charges. Such receipt issued for the collection of the User Charges shall in addition to other particulars explicitly mention “on behalf of the {*Name of the Authority*}⁸, Himachal Pradesh” as per the SWM Rules, 2016. The backside of the receipt shall have printed the consequences likely to arise in case of non-payment of User Charges. The Concessionaire shall get the format of receipt approved from the Authority. Moreover to give legal enforcement for timely payment of User Charges, notice for non-payment will be given by the Authority and penalties on defaulters will be enforced in accordance with power allocated to the concerned authorities.

⁷ This Clause shall be deleted in case the Authority is undertaking the Collection and Transportation of Waste.

⁸ Insert the name of respective Authority.

4.9. Achieving Commercial Operations Date (COD)

- a) Subject to the provisions of Article 6, the Concessionaire shall achieve COD within a period no later than 3 (three) months from the Effective Date.
- b) The Processing Facility shall be considered to be operational when the Operational Acceptance Certificate is issued by the Authority and accordingly the Commercial Operations Date of the Project shall be the date on which such Operational Acceptance Certificate is issued by the Authority (the “**COD**”). The Project shall enter into commercial operation and services on COD whereupon the Concessionaire shall be obligated to carry out its Operation & Maintenance related obligations under this Agreement and also entitled to process the MSW for commercial gains.
- c) **Damages for delay** : If COD does not occur within the period specified in Clause (a) above and such delay is not on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.20% (zero point two per cent) of the CAPEX per week until COD is achieved, subject to a maximum of 5% (five percent) of CAPEX, beyond which it shall be treated as a Concessionaire Event of Default.

ARTICLE 5

5. OBLIGATIONS OF THE AUTHORITY AND THE DEPARTMENT

5.1. Authority's Obligations

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

The Authority shall:

- (a) Identify, allocate and handover parcel of land admeasuring [■] at [■] to the Concessionaire for the purpose of setting up of 0.5 to 5 MTPD Micro Municipal Solid Waste Management Facility;
- (b) facilitate in a timely manner all such Applicable Approvals which the Concessionaire may require or is obliged to seek from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations;
- (c) *{undertake door to door collection of Municipal Solid Waste and transport the same to secondary collection points or the Processing Facility, as the case may be. In case the Authority is undertaking to transport the collected MSW upto secondary collection points, the Concessionaire shall be responsible for further transportation of the same to the Processing Facility;}*⁹
- (d) facilitate the Concessionaire in obtaining the electricity and water connection for the Micro Municipal Solid Waste Management Facility;
- (e) make timely payments of VGF-CAPEX and OPEX to the Concessionaire as specified in Article 7; and
- (f) co-ordinate and co-operate with the Concessionaire for the smooth implementation of the Project in terms hereof
- (g) Issuance of Operational Acceptance Certificate pursuant to trial/ test runs for 7 (seven) consecutive days as set out under Article 6.1.3.

5.2. Department's Obligation

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

- (a) where appropriate, coordinate with the Concessionaire in securing Applicable Approvals;

⁹ Retain whichever is applicable.

- (b) coordinate with the Authority to perform its function in a timely manner towards the Concessionaire; and
- (c) if required may be called upon to assist in case of dispute resolution according to Article 12.

ARTICLE 6

6. MONITORING AND INSPECTION

6.1. During Pre-COD Period

6.1.1. Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority, a monthly report bringing out in detail the progress made by the Concessionaire with respect to its scope of work, including inter-alia the setting up of the Processing Facility, and any such information as may be considered essential by the Authority.

6.1.2. Inspection

During the Pre-COD Period, the Authority shall inspect or cause to be inspected the Processing Facility and Project Assets at least once a month or at such shorter intervals as may be considered essential by the Authority to ensure that the same are in line with the Implementation Manual submitted by the Concessionaire during the Conditions Precedent period, scope of the Project Applicable Law and thereupon make report of such inspection (the “**Pre-COD Inspection Report**”).

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

6.1.3. Test running of the Project Facility

For determining that the Processing Facility and Project Assets conform to the specifications and requirements of this Agreement, the Authority shall require the Concessionaire to test run the Processing Facility at its own cost for a period of 7 (seven) consecutive days and such test running shall be closely monitored by the Authority.

In the event that results of the test run conducted under this Article 6.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the Authority in this behalf within 7 (seven) days of the discovery of such defects or deficiencies. For the avoidance of doubt, it is agreed that test running pursuant to this Article 6.1.3 shall be undertaken in addition to and independent of any tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good

Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Authority forthwith.

6.2. Post COD Period

6.2.1. Monthly Status Reports

During Post COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the maintenance requirements, the quantity of Waste processed, the extent of by-products generated & proceeds received from sale of those by-products, compost/ energy/ biogas etc. generated by the Plant, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

6.2.2. Inspection

The Authority shall inspect or cause to be inspected the execution of the Project at least once in 2 (two) months or at such shorter intervals as deemed fit by it. It shall make a report of such inspection (the “**Post COD Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with reference to the maintenance requirements, operation and maintenance manual, or requirements as set forth in the Maintenance Manual, this Agreement including Schedules, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the Authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

6.2.3. Remedial Measures

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

In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire as per **Schedule 2** (Penalties and Damages).

ARTICLE 7

7. PAYMENTS

Subject to the provisions of this Agreement, the Authority shall pay to the Concessionaire : Viability Gap Funding for Capital Expenditure (“VGF-CAPEX”) and Annual Recurring Charges (“OPEX”) in the mode and manner as specified below.

7.1. Annual Recurring Charges (the “OPEX”)

- 7.1.1. Post COD, the Authority shall pay to the Concessionaire, an annual OPEX amount of Rs.[■] (Rupees in words), for undertaking operation and maintenance of the Processing Facility, at the end of each calendar year.
- 7.1.2. The Concessionaire shall raise an invoice within 7 (seven) days of the end of the calendar year for the payment of annual OPEX amount for such calendar year. The Authority shall make the payment of the annual OPEX amount within a period of 30 (thirty) days from the date of invoice subject to due verification and satisfaction of the Authority. In case there is any failure or default of any of the Concessionaire’s Obligations, the Authority may defer the payment to be made to the Concessionaire as set out in this Agreement till the default is rectified or the Authority may make the payment subject to the deduction of the relevant penalty/ ies as set out in the Schedule 2 of this Agreement. In case Commercial Operations Date is achieved in between the calendar year, then the OPEX amount for the first calendar year shall be paid on pro-rata basis for the balance months comprising of such calendar year.

7.2. Viability Gap Funding for Capital Expenditure (“VGF-CAPEX”)

Subject to the provisions of this Agreement, the Authority shall pay to the Concessionaire VGF-CAPEX of Rs [■] (*Rupees in words*). The VGF-CAPEX shall be payable by the Authority in 4 (four) equal quarterly instalments commencing from Commercial Operations Date. After achieving Commercial Operations Date, the Concessionaire shall make a written request to the Authority for payment of the first quarterly instalment of VGF-CAPEX. The Authority shall release the same within 15 (fifteen) days of receipt of such request. The balance 3 (three) quarterly instalments shall be released in the similar manner at the end of each block of 3 (three) months.

7.3. Mode of Payment

The Authority shall make the payment of VGF-CAPEX and annual OPEX by way of online transfer of funds in a designated bank account of the Concessionaire.

The details of the bank account are as follows:

Name of the Bank: [■]

Branch Office: [■]

Bank Account No.: [■]

IFSC Code: [■]

7.4. Delay in release of Payment

In the event of delay by the Authority in making the payment of the invoiced amount of the OPEX (duly verified as payable by the Authority) and/ or VGF-CAPEX within the time specified under Article 7.1, except where such delay is due to default of the Concessionaire or a Force Majeure event, the Authority shall be liable to pay to the Concessionaire simple interest for the delayed period not exceeding 90 (ninety) days at the Base Bank Rate. In an event, when such delay in making the payment exceeds 90 (ninety) days (as mentioned above) then the same shall be construed as Authority Event of Default in terms of Article 11.3 of this Agreement.

ARTICLE 8

8. FORCE MAJEURE

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

8.1. Force Majeure

For the purpose of this Agreement, "**Force Majeure Event**" means any of the non-political event and/or political event as set out below including the impact/ consequence thereof which:

- (a) is beyond the control of the Party claiming to be affected thereby (the "**Affected Party**"),
- (b) causes Material Adverse Effect and prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- (c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

8.2. Non-Political Event

The "**Non-Political Events**" will include:

- i. earthquake, flood, inundation, landslide, hurricane, cyclone;
- ii. fire caused by reasons not attributable to the Concessionaire or any of the employees or agents of the Concessionaire;
- iii. acts of terrorism;
- iv. strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;
- v. war, hostilities (whether war be declared or not);
- vi. invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war in the area of the Project;
- vii. ionising radiation, contamination by radio activity from nuclear fuel, any nuclear waste, radioactive toxic explosion nearby; and
- viii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, enforcement of this Agreement or exercise of any of its rights under this Agreement by Authority.

8.3. Political Events

The "**Political Events**" shall include action of authorities having Material Adverse Effect including but not limited to:

- i. expropriation, compulsory confiscation or takeover by any competent authority of any Project Assets or rights of the Concessionaire.
- ii. any unlawful, unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreement (other than a consent obtaining of which is Condition Precedent) and provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractors inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

8.4. Notice of Force Majeure Event

- (a) As soon as practicable and in any case within 7 (seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/ mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and/ or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within 5 (five) days of notification by the Affected Party in accordance with the preceding Article 8.2 (a) above, the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/ survey of the Project Facility in order to:
 - i. assess the impact of the underlying Force Majeure Event;
 - ii. to determine the likely duration of Force Majeure Period; and
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Article 8.2(b) as also any information, details or document, which the Parties may reasonably require.

8.5. Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Article 8.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has made all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project as a result of the Force Majeure Event and to restore the Project Facility, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

8.6. Termination due to Force Majeure Event

(a) Termination

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

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding Article 8.6(a), it shall issue Termination Notice setting out;

- i. in sufficient detail the underlying Force Majeure Event;

- ii. the Termination Date which shall be a date occurring not earlier than 60 (sixty) days from the date of Termination Notice;
- iii. the estimated Termination Payment including the details of computation thereof; and
- iv. any other relevant information.

(c) Obligation of Parties

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

- i. the Termination Payment, if any, payable by the Authority upto the Termination Date, in accordance with the following Article 8.6(d) is paid to the Concessionaire on the Termination Date; and
- ii. the Project Site is handed back to the Authority by the Concessionaire on the Termination Date free from all Encumbrance in accordance with the provisions of Article 11 (Handover of Project) of this Agreement.

(d) Termination Payment in case of Termination due to Force Majeure Event

- i. **Upon Termination of this Agreement due to a Political Event**, the Concessionaire shall be entitled to receive Termination Payment in the manner as set out under Article 10.4.6 of this Agreement which specifies the manner of Termination Payments in case of Authority's Event of Default.
- ii. **Upon Termination of this Agreement due to Non-Political Event**, the Concessionaire shall be entitled to receive and appropriate the insurance proceeds in accordance with the provisions of this Agreement; Performance Security, if subsisting, shall be released.

Provided Authority shall be entitled to deduct from such Termination Payment any amount due and recoverable from the Concessionaire as on the Termination Date.

8.7. Liability for other losses, damages etc.

Save and except as expressly provided in this Article, 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.

8.8. Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute

Resolution Procedure as set out in Article 12; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

ARTICLE 9

9. CHANGE IN LAW

9.1. Change in Law

Change in Law shall mean the occurrence or coming into force of any of the following, after the Effective Date:

- a) the enactment of any new Applicable Law;
- b) the repeal, modification or re-enactment of any Applicable Law; and
- c) a change in the interpretation or application of any Applicable Law by a court of record.

9.2. Change in Law shall not include:

- a) coming into effect, after the Effective Date, of any provision or statute which is already in place as of the Effective Date;
- b) any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Effective Date which is a matter of public knowledge; and
- c) any change in the rates of the Taxes which have a direct effect on the Project.

9.3. Increase in Costs due to Change in Law

- a) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden (the “**Additional Cost**”), the aggregate financial effect of which exceeds 5% (five percent) of the sum of (VGF-CAPEX + OPEX), in any Accounting Year, the Concessionaire may so notify the Authority and provide the information’s as provided in sub-article (c) below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising therefrom shall be dealt with as per terms of Article (d) below.
- b) Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify Authority of the following:
 - i. the nature and the impact of Change in Law on the Project;

- ii. the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
 - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost;
 - iv. the relief sought by the Concessionaire.
- c) Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount equivalent to 50% (fifty percent) of Additional Cost based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 9.3 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

ARTICLE 10

10. EVENTS OF DEFAULT AND TERMINATION

10.1. Events of Default

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

10.2. Concessionaire's Event of Default

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

- a) The Concessionaire has failed to process the Waste at the Project Area for a continuous period of 3 (three) days or an aggregate period of 7 (seven) days in any calendar month. This period shall be exclusive of the maintenance schedule of the Processing Facility;
- b) The Concessionaire is in Material Breach of any of its obligations under this Agreement in respect of which a specified time period has not been specified in this Agreement and the same has not been remedied for more than 30 (thirty) days;
- c) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- d) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- e) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- f) Abandonment of the Project by the Concessionaire;
- g) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

- h) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days;
- i) The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement;
- j) *{“No collection of waste for consecutive 7 (seven) days after starting collection from the Waste Generators or from designated secondary collection points, as the case may be.”}*¹⁰

10.3. Authority’s Event of Default

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

- a) the Site has not been handed over to the Concessionaire within 30 (thirty) days of Effective Date;
- b) the Authority has failed to make any payments including Payments (under Article 7) due to the Concessionaire and more than 90 (ninety) days have elapsed since such default in pursuance of Article 7.4 above;
- c) the Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- d) the Authority has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- e) the Authority has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect.
- f) any representation made or warranties given by the Authority under this Agreement have been found to be false or misleading.

10.4. Termination Due to Event of Default

10.4.1. Termination For Concessionaire Event of Default

¹⁰The provision shall be deleted in case the Waste is Collected and Transported by the Authority.

- i. Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Authority shall, be entitled to terminate this Agreement in the manner as set out under Article 10.4.

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 10.2, the Authority may terminate this Agreement by issue of Termination Notice in the manner set out under Article 10.4.3 after giving the Concessionaire an opportunity of hearing.

- ii. If the Authority decides to terminate this Agreement pursuant to preceding Article 10.4.1(i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “**Concessionaire's Proposal to Rectify**”). In case of non submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice, and appropriate amount of the Performance Security.
- iii. If the Concessionaire’s Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, the Authority shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security.

10.4.2. **Termination for the Authority Event of Default**

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the Authority’s Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding Article (i) it shall in the first instance issue Preliminary Notice to the Authority. Within 30 (thirty) days of receipt of Preliminary Notice, the Authority shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the “**Authority’s Proposal to Rectify**”). In case of non - submission of the Authority’s Proposal to Rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- iii. If Authority's Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, the Authority shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Authority fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

10.4.3. **Termination Notice**

If a Party has become entitled to do so and decide to terminate this Agreement pursuant to the preceding sub article 10.4.1 or 10.4.2, 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 (sixty) days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and
- iv. any other relevant information.

10.4.4. **Obligation of Parties**

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

- i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;
- ii. the Termination Payment, if any, payable by the Authority in accordance with the following sub - Article 10.4.6 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and
- iii. the Project are handed back to the Authority as instructed by the Authority, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the Authority.

10.4.5. **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 leading to the issue of Termination Notice.

10.4.6. Termination Payment for the Authority Event of Default

Upon Termination of this Agreement on account of the Authority Event of Default, the Concessionaire shall be entitled to receive Termination Payment in the manner as set out below:

a) Termination during Pre-COD Period:

If the Agreement is terminated any time during the Pre-COD Period, then the Concessionaire shall not be entitled to receive any Termination Payment of any nature whatsoever.

b) Termination during Post-COD Period:

If the Agreement is terminated any time during the Post-COD Period, then the Concessionaire shall be entitled to receive Termination Payment comprising of:

- i. 100% (hundred percent) VGF-CAPEX to be paid to the Concessionaire by the Authority; and
- ii. 50% (fifty percent) of the amount equal to difference of total Capital Expenditure (“CAPEX”) and the total VGF-CAPEX paid to the Concessionaire.

Illustration:

The Concessionaire has incurred Capital Expenditure (CAPEX) of Rs. x in setting up the Processing Facility and has achieved COD in terms of the Concession Agreement. Post achievement of COD, the Concessionaire is entitled to receive total amount of Rs. y as VGF-CAPEX in 4 (four) instalments. Commencing from the COD, the Authority has paid 2(two) instalments of VGF-CAPEX of amount equal to Rs. y₁ and Rs. y₂ to the Concessionaire and the further 2(two) instalments of Rs. y₃ and Rs. y₄ remain to be paid by the Authority. The following table illustrates the payment status of VGF-CAPEX:

| Instalment | Amount of Instalment | Paid/ Payment Pending |
|--------------------------|-----------------------------|------------------------------|
| <i>First Instalment</i> | <i>y₁</i> | <i>Paid</i> |
| <i>Second Instalment</i> | <i>y₂</i> | <i>Paid</i> |
| <i>Third Instalment</i> | <i>y₃</i> | <i>Pending</i> |
| <i>Fourth Instalment</i> | <i>y₄</i> | <i>Pending</i> |

In an event, if the Agreement gets terminated due to Authority Event of Default after the payment of 2(two) instalments as described above then, the Concessionaire shall be entitled to receive total Termination Payment (T) in the following manner :

Termination Payment (T) = [100 % of (remaining VGF-CAPEX)] + [50% of difference of Capital Expenditure and VGF-CAPEX]

$$T = (y_3 + y_4) + 50/100 * (x-y)$$

10.4.7. Termination Payment for Concessionaire Event of Default

Upon Termination of this Agreement on account of Concessionaire Event of Default no Termination Payment shall be made to the Concessionaire and the Authority shall be entitled to call on the Performance Security of the Concessionaire and the Authority shall be entitled to call on/ forfeit the Performance Security of the Concessionaire.

10.5. Rights of the Authority on Termination

- a) Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Concessionaire, have the power and authority to:
 - i. enter upon and take possession and control of the Project Facility and Project Assets forthwith; and
 - ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facility and Project Assets.
- b) Notwithstanding anything contained in this Agreement, the Authority shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the hand back of the Project Facilities and Project Assets by the Concessionaire to the Authority shall be free from any such obligation/ fee/ penalties/ taxes.
- c) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay

interest at a rate equal to 3% (three per cent) above the Bank Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the Authority upon actual or constructive transfer of the Project Assets by the Concessionaire to the Authority and/or Authority clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.

- d) The Concessionaire expressly agrees that Termination Payment under this Article 10.5 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- e) The Authority and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, the Authority shall be entitled to pay the Termination Payment [to the extent required] to the Lenders' Representative for procuring discharge/ release of any charge/ hypothecation created by Concessionaire on the moveable Project Assets for securing payment of debt due; and for this purpose the Lender is entitled to receive from the Authority, without any further reference to or consent of the Concessionaire, the debt due upon Termination of the Agreement.

10.6. Accrued Rights of Parties

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

ARTICLE 11

11. HANDOVER OF PROJECT

11.1. Ownership during the Term of Agreement

Without prejudice and subject to the Agreement, the ownership of the Project except the Project Area, including all improvements made therein by the Concessionaire, during the Term, shall at all times remain with the Concessionaire.

11.2. Condition Survey

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

11.3. Concessionaire’s Obligations Upon Termination

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

- a) The Concessionaire shall subject to the provisions of this Agreement:
 - i. hand over to the Authority or its nominated agency free of cost the Project Facility;
 - ii. hand over/ transfer to the Authority all its rights, titles and interest in or over the assets comprised in the Project and the Project Assets (including movable assets

which the Authority agrees to take over) which are required to be transferred to the Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

- iii. hand over to the Authority all documents, proprietary material, including as built designs, drawings, data, engineering, manuals and records relating to the Project Assets and Project.

For the avoidance of doubt that only the assets of the Concessionaire shall be taken over, free of cost and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the Authority. The Concessionaire's employees shall be the Concessionaire's/Selected Bidder's responsibility even after the expiry of the Term;

- iv. transfer/ assign or cause to be transferred/ assigned to the Authority the operation and maintenance of the Project along with all documents and proprietary materials in an event where the Concessionaire fails to run the Project successfully or intends to suspend or shut down the operations of the Project Facility;
 - v. transfer/assign or cause to be transferred/ assigned to the Authority any Project Agreements which are (a) valid and subsisting; (b) capable of being transferred to the Authority; and (c) those the Authority has chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Authority;
 - vi. at its cost, transfer to the Authority all such Applicable Approvals which the Authority may require and which can be legally transferred; and
 - vii. at its cost remove from the Project Area all such moveable assets which are not taken over by or transferred to the Authority. In the event the Concessionaire fails to remove such objects within the stipulated time, the Authority may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- b) All proceeds of insurance claims shall be deposited in a separate account and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto unless and until all dues of/damages payable to the Authority or any Government Agency or in respect of the Project have been cleared and no amounts

payable/ refundable to either of them by the Concessionaire pursuant to this Agreement are outstanding.

- c) The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.
- d) The Authority shall be entitled to encash any subsisting Performance Security/bank guarantee(s) provided by the Concessionaire, if the Termination is on account of Concessionaire's Event of Default.

11.4. Cooperation and assistance on transfer of Project

- (a) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to avoid any undue delay or inconvenience to the public.
- (b) The Parties shall provide to each other as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority or its agent may reasonably require for operation of the Project after the Transfer Date.

11.5. Divestment Certificate

- (a) On the Termination Date the Authority shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of this Agreement, as the case may be. In the event the Authority notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.
- (b) Upon Termination (due to Force Majeure Event or Event of Default or expiry of the Term by efflux of time), the divestment by the Concessionaire of all rights, title and interest in the Project and the Project Assets and the Project Facilities shall be deemed to be complete on the Termination Date but no later than 30 (thirty) days thereafter, by when all the requirements of this Agreement shall be fulfilled. The Authority shall upon fulfilment of the requirements of this Agreement issue a certificate (the "**Divestment Certificate**"), with a copy thereof endorsed to the other Authority's, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project and the Project Assets and the Project Facilities and the vesting thereof in the Authority pursuant hereto.

ARTICLE 12

12. DISPUTE RESOLUTION

12.1. Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Authority (the “**Dispute**”) shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Article (b) below.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal Business hours to all non-privileged records, information and data pertaining to any Dispute.
- (c) Either Party may require such Dispute to be referred to the Director, DEST (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 12.2 below.

12.2. Arbitration

12.2.1. Procedure

Subject to the provisions of **Article 12.1**, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by Principal Secretary Law, GoHP as Sole Arbitrator. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The expenses of arbitration shall be borne equally by both the Parties.

12.2.2. Place of Arbitration

The place of arbitration shall be [■], Himachal Pradesh.

12.2.3. Language

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

English as language shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

12.2.4. Enforcement of Award

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

12.3. Performance during Dispute

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

ARTICLE 13

13. INSURANCE

13.1. Insurance Cover

The Concessionaire shall, at its cost and expense, purchase and maintain effective from the Compliance Date and during the Term such insurance policies for such maximum sums as are necessary and customary under Financing Agreements and Applicable Laws, and/or in accordance with Good Industry Practice (or may in the future become available) on commercially reasonable terms and reasonably required to be maintained consistent with projects and facilities of the size and type of the Project, including but not limited to the following:

- a) Builders'/Contractors' all risk insurance;
- b) Erection insurance and/or break down insurance;
- c) Public liability insurance applicable for the Term, Closure and Post Closure Period;
- d) Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws;
- e) Comprehensive Third Party liability insurance including injury or death to Persons who may enter the Project Area;
- f) Insurance policies related to any of the Concessionaire's obligations hereunder;
- g) Any other insurance that may be considered necessary by the Authority/ GoHP/ Lenders of the Concessionaire, if any, to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) or otherwise, including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (f).

13.2. Insurance Companies and Costs

- (a) The Concessionaire shall insure all insurable Project Assets comprised in the Project.
- (b) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Authority, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

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

13.3. Evidence of Insurance Cover

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

13.4. Application of Insurance Proceeds

All moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution or replacement of the Project or any part thereof, which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution or replacement to the extent possible in such manner that the Project or any part thereof, shall, after such repair or renovation or restoration or substitution or replacement be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

13.5. Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policies so as to keep the policies in force and valid throughout the Term and furnish copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) days' clear notice of cancellation is provided to the Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Authority by exercising right of set off or otherwise from the Performance Security.

ARTICLE 14

14. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

14.1. Proprietary Material

- (a) The property in all technology, used for the Project, including intellectual property rights involved, whether registered or not, (the “**Proprietary Material**”), which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, build, operation and maintenance of the Project, shall be and remain at all times the property of the Concessionaire and shall vest exclusively in the Concessionaire.
- (b) The Concessionaire, as beneficial owner, hereby grants to the Authority a perpetual non-exclusive license to use such Proprietary Material in connection with the Project. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically get extended to the Authority for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- (c) Nothing in this Article 14.1 shall be construed to grant the Authority or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

14.2. Confidentiality

- (a) The Authority shall not at any time divulge or disclose or suffer or permit its employees, advisors or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data concerning the Project;
- (b) The Concessionaire and the Authority shall not at any time divulge or disclose any information concerning the contents of this Agreement except to its directors, officials, employees, Contractors, consultants, agents or representatives on a need to know basis or as may be required by Applicable Law or any judicial process.
- (c) The Authority shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.

- (d) The Concessionaire shall ensure that all its directors, employees, Contractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non-disclosure agreements reasonably required by the Authority, which have been duly approved by the Authority, with respect to the Project.
- (e) The aforesaid provisions regarding confidentiality shall not apply to the any information :
 - i. obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
 - ii. already in the public domain otherwise than by breach of this Agreement; or
 - iii. disclosed due to a court order or under any Applicable Law.

14.3. Survival

The Concessionaire and the Authority accepts and confirms that the provisions of this Article 14 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 15

15. REPRESENTATIONS AND WARRANTIES

15.1. Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

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

15.2. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

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

15.3. Representations And Warranties of Authority

The Authority represents and warrants to the Concessionaire that:

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

15.4. Disclosure

In the event that any occurrence or circumstance comes to the attention, of either Party, that renders any of its aforesaid representations or warranties untrue or incorrect; such Party shall

immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

15.5. Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, all the information and documents provided by the Authority or any Government Agency, the market and demand conditions, information relating to the Authority and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 15.5(a) above and hereby confirms that the Authority, any Government Agency and their consultants and advisors shall not be liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.
- (c) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Authority, any Government Agency or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.

15.6. Obligation to Notify Change

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

ARTICLE 16

16. MISCELLANEOUS

16.1. Assignment and Charges

- a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Authority.
- b) Restraint set forth in sub-Article (a) shall not apply to:
 - i. Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire; and
 - ii. Encumbrance over moveable assets/ goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) in favour of the Lenders for the Project.

Provided, no Encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Site, assets and equipment's provided by the Authority for the Project.

Provided further that irrespective of security hereinabove permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to the Authority, upon expiry or earlier termination of this Agreement, their respective Project Assets free of all Encumbrances whatsoever.

- c) The Concessionaire shall not create nor permit the subsistence of any further Encumbrance over the Project Area.

16.2. Interest and Right to Set-Off

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

Provided the stipulation regarding interest for delayed payments contained in this Article 16.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due

by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

16.3. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at [■]¹¹ shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

16.4. Waiver

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

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

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

16.5. Survival

Termination of this Agreement shall not relieve the Concessionaire or the Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of any Party, shall not relieve any Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

16.6. Amendments

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

¹¹ Jurisdiction of Courts shall be determined based on the municipal limits of the Authority.

16.7. Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier or e-mail and delivered or transmitted to the Parties at their respective addresses as specified below or such address, facsimile number or e-mail address as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

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

To the Concessionaire :

Attn:

Name: [■]

Designation: [■]

Address: [■]

E-mail: [■]

Fax : [■]

Phone No. : [■]

To the Authority :

Attn:

Name: [■]

Designation: [■]

Address: [■]

E-mail: [■]

Fax : [■]

Phone No. : [■]

16.8. Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other

instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to Dispute Resolution under this Agreement or otherwise.

16.9. No Partnership

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

16.10. Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language and true translation into English language if other than English is used at the costs and expenses of the Party sending such communication, notice, documentation and proceedings.

16.11. Exclusion of Implied Warranties etc.

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

16.12. Counterparts

This Agreement may be executed in 3 (three) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

16.13. Liability for Review

Except to the extent expressly provided in this Agreement:

- a) no review, comment, certification, verification or approval by the Authority and/ or Authority's or any Government Agency of any Project Agreement, design, detailed engineering, or document, accounts, invoice etc. submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction,

operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and

- b) the Authority and/ or Authority's advisors or the Government Agencies shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in sub-article (a) above.

16.14. Unforeseen Event

Any event or condition that has not been explicitly covered under the provisions of this Agreement shall be resolved after discussion and mutual agreement between the Parties.

16.15. Liability and Indemnification

- a) The Concessionaire shall indemnify, defend and hold harmless (the “**Indemnifying Party**”) the Authority during the Term from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgements, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Approvals or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ; or (iv) as provided elsewhere herein.
- b) The Concessionaire shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep

indemnified and hold harmless the Authority and/ or Authority's and its advisors in this behalf.

- c) The Authority shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of Waste into the Project for any reason whatsoever.
- d) The Concessionaire shall keep the Authority indemnified during the Term against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Agency and third parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Project Area or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.
- f) The provisions of this Article 16 shall survive the expiration or prior termination of this Agreement.

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

SIGNED, STAMPED AND DELIVERED
BY:

For the AUTHORITY

Authorised Signatory on behalf of Authority

Name[■]

Designation :[■]

(Signature & Seal)

SIGNED, SEALED AND DELIVERED
BY:

For the CONCESSIONAIRE

Authorised Signatory of Concessionaire,
duly authorized vide [■]

Name : [■]

Designation :[■]

(Signature & Seal)

SCHEDULES
VOLUME III

SCHEDULE - 1

SCOPE OF SERVICES

1. Obligation to set-up Processing Facility

- 1.1. The Concessionaire shall be obligated to set up at its cost and expense, a Micro Municipal Solid Waste Management Facility at the earmarked Site, for processing of Waste prior to its final disposal, as per the implementation schedule submitted by the Concessionaire. The implementation schedule shall be submitted in MS Word format.
- 1.2. The Concessionaire shall be permitted to sell any by-product produced from processing of the Waste, and such sale can be made to any third party/ end user.
- 1.3. The Concessionaire shall have the Processing Facility fully set up and obtain an Operational Acceptance Certificate from the Authority for the newly installed Facility within a period no later than 90 (ninety) days from the Effective Date. The Concessionaire shall also be obligated to promptly rectify and remedy defects or deficiencies that are pointed by the Authority and furnish a report in respect thereof to the Authority.
- 1.4. In the event, the Concessionaire is unable to achieve COD of the Micro Municipal Solid Waste Management Facility within the period of 90 (ninety) days from the date of signing of Agreement, the Concessionaire may be granted an additional mutually agreed period without levy of any damages. In case of failure to comply within the mutually agreed additional period given to the Concessionaire, the Authority shall be entitled to forfeit Performance Security as damages for such default. Provided however, if the delay to achieve COD is due to any Force Majeure event or delay on the part of any Government authority to grant the requisite approvals within time or due to delay on the part of competent authority in issuing Operational Acceptance Certificate, no such Liquidated Damages shall be levied.

2. Processing & Disposal of Waste

- 2.1. *The Concessionaire shall undertake the Collection and Transportation of Waste from the designated points/areas established by the Authority commencing from the Commencement Date.*¹²
- 2.2. The Concessionaire shall setup Processing Facility on the designated land provided by the Authority. The land provided shall only be used for the purposes of the Project.
- 2.3. *The Concessionaire shall collect notified User Charges from Waste Generators on a monthly basis. Record of the same will be maintained by the Concessionaire and submitted at the end of each month along with the copies of the receipts, to the Authority.*¹³
- 2.4. *The Concessionaire shall arrange for all vehicles, devices, community bins at its own cost to Collect and Transport Waste generated in the Project Area.*¹⁴

¹² Delete in case the Collection and Transportation of Waste is being undertaken to be done by the Authority as per Appendix II of the RFP.

¹³ Delete in case the Collection and Transportation of Waste is being undertaken to be done by the Authority as per Appendix II of the RFP.

¹⁴ Delete in case the Collection and Transportation of Waste is being undertaken to be done by the Authority as per Appendix II of the RFP.

- 2.5. The Concessionaire shall take all Applicable Approvals in sequence and comply with the provisions therein from time to time.
- 2.6. The Concessionaire shall design, construct, operate and maintain all the Project Assets including Processing Facility in compliance with all applicable laws at its own cost.
- 2.7. For the Processing Facility, use technology for project as specified in technical proposal in line with the Applicable Laws including but not limited to SWM Rules.
- 2.8. The Concessionaire shall at its cost and expense procure all machinery and equipment for Processing Facility. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project.
- 2.9. The Processing Facility shall achieve COD within a period of 90 (ninety) days from the date of signing of the Agreement i.e. the Effective Date. The Concessionaire shall submit monthly progress reports during the above period to Authority.
- 2.10. The Concessionaire shall operate and maintain the Processing in accordance with the Applicable Laws.
- 2.11. The Concessionaire shall ensure that the inert/processing rejects generated from the Processing Facility should not be in excess of 20% (twenty percent) of input Waste. Concessionaire will also ensure treatment and discharge of Leachate generated from Processing Facility as per SWM Rules 2016.
- 2.12. All penalties, levies due to any non-compliance will be borne by the Concessionaire.
- 2.13. The Concessionaire shall be solely entitled to receive all the revenue generated through products produced out of such processing like compost, biogas, electricity etc.
- 2.14. The Concessionaire shall maintain daily records of quantum of incoming, processed Waste, rejects, products and product quality in the formats approved by the Authority. The monthly report shall be submitted by the Concessionaire to the Authority. The monthly report may be subject to verification by Authority.
- 2.15. Concessionaire shall all time comply with the statutory norms of CPCB/ HPPCB for pollution control.
- 2.16. Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of air & water.
- 2.17. The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility.
- 2.18. The workers involved in Waste handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE).

SCHEDULE - 2

PENALTIES Penalty to be levied on Concessionaire

| S. No. | Default | Monitoring Mechanism | Cure Period | Penalty |
|---|---|--|---|------------------------------|
| Collection of the Waste | | | | |
| a. | { <i>Door to door collection is not provided to Waste Generators</i> } ¹⁵ | User complaint/ verification/ inspection by the Authority | No collection of Waste for 2 consecutive days | Rs. 5/ day/ Waste Generator |
| | | | No collection of Waste for 5 consecutive days | Rs. 10/ day/ Waste Generator |
| b. | { <i>Collection from secondary collection points as designated by the Authority</i> } ¹⁶ | User complaint/ verification/ inspection by the Authority | No collection of Waste for 2 consecutive days | Rs. 5/ day/ Waste Generator |
| | | | No collection of Waste for 5 consecutive days | Rs. 10/ day/ Waste Generator |
| Secondary Storage & Transportation | | | | |
| c. | Non-clearance of bins/ dhalao for consecutive 2 days | Spot inspection conducted by Authority/ any User complaint | One day | Rs. 100 per instance |
| d. | Transportation of MSW in non – covered vehicles | Spot inspection conducted by Authority/ any User complaint | One day | Rs. 150 per instance |
| e. | Non-operation of transfer station for one day | Spot inspection conducted by Authority/ any User complaint | One day | Rs. 500 per instance |
| Waste Processing | | | | |

¹⁵ Delete in case the Collection and Transportation of Waste is being undertaken to be done by the Authority as per Appendix II of the RFP.

¹⁶ Delete in case the Collection and Transportation of Waste is being undertaken to be done by the Authority as per Appendix II of the RFP.

| | | | | |
|----|---|---|--------------------------------------|---|
| a. | Failure to achieve COD within 90 (ninety) of the Effective Date | Inspection by the Authority/Progress Report | 90 (ninety) days from Effective Date | 0.1% of the Performance Security per day of delay beyond 90 (ninety) days |
|----|---|---|--------------------------------------|---|

SCHEDULE - 3

FINANCIAL BID

(As submitted by the Bidder in the format prescribed in RFP)

SCHEDULE - 4

OPERATIONAL ACCEPTANCE CERTIFICATE

(Format as decided by the Authority)

SCHEDULE - 5

FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE

[ON STAMP PAPER OF APPROPRIATE VALUE]

Bank Guarantee No. []

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

IN FAVOUR OF:

_____ with its principal office at _____, Himachal Pradesh, (hereinafter referred to as "**Beneficiary**", which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

WHEREAS:

- (A) _____ (the "**Concessionaire**"), {Name of the Authority} (the "**Authority**") and the Department of Environment, Science and Technology (the "**Department**") have entered into a Concession Agreement dated (the "**Agreement**") whereby the **Authority** has agreed to the Concessionaire undertaking the _____ (hereinafter the "**Project**"), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [■] Lakhs (Rupees [■]) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during its term i.e. the Term (as defined in the Agreement).
- (C) We,through our Branch at (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

- i. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the term of the Agreement under and in accordance with the provisions of the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

- ii. *A letter from the Authority, under the hand of an Officer not below the rank of Chief Executive Officer in the Authority 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 Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations any time during the term of the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority 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.*
- iii. *In order to give effect to this Guarantee, the Authority 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.*
- iv. *It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.*
- v. *The Authority 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 Authority 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 Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.*
- vi. *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 Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.*
- vii. *Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the term of the Agreement in accordance with the provisions thereof or unless a demand or claim in writing is made by the on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.*
- viii. *The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority 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.

- ix. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.*
- x. This Guarantee shall come into force with immediate effect and shall remain in force and effect during the term of the Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.*

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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