



*Gangtok Municipal Corporation*

**REQUEST FOR PROPOSAL**

**FOR**

**Installation of Incineration & allied machines including Operation & maintenance for three Year for “Municipal Solid Waste Treatment Project” at Martam Sikkim**

**FOR**

**GANGTOK MUNICIPAL CORPORATION (GMC)**

**Name & Address details of Contracting Agency: Gangtok Municipal Corporation**

**Date: 12/12/24**

**Table of Contents**

Notice Inviting Request for Proposal .....	4
Definitions .....	6
1. Introduction .....	7
1.1 Project Background .....	8
1.2 General Information .....	9
2. Brief description of Bidding Process .....	9
2.1 General .....	10
2.2 Schedule of Bidding Process.....	11
2.3 Instructions to Bidders.....	12
2.4 Amendment of RFP.....	13
2.5 Preparation and Submission of Bids.....	13
2.6 Bid Security .....	13
2.7 Correspondence .....	14
2.8 Format and Signing of Bid.....	14
2.9 Bid Due Date.....	16
2.10 Late Bids .....	17
2.11 Modification and Withdrawal of Bids .....	17
2.12 Confidentiality.....	17
2.13 Clarifications .....	17
2.14 Proprietary data .....	17
2.15 Correspondence with the Bidder .....	17
2.16 Eligibility of Bidder.....	17
2.17 Other Documents.....	19
2.18 Change in composition of the Consortium .....	20
3. Criteria for Evaluation .....	20
3.1 Tests of responsiveness.....	20
3.2 Bid Evaluation–Part I–Technical Bid .....	21
3.3 Bid Evaluation–Part II–Financial Bid .....	26
3.4 Notification and Issue of Letter of Award .....	28
4. Fraud and Corrupt Practices .....	28
5. Pre-bid Conference .....	29

6	Miscellaneous .....	29
7	Scope of Work.....	29
8	CONFIDENTIAL INFORMATION AND PROPRIETARY DATA.....	32
9	GOVERNING LAW AND JURISDICTION.....	33
	APPENDICES .....	34
	APPENDIX- I: Format for acknowledgement of RFP document .....	34
	APPENDIX-II: FORMAT FOR COVERING LETTER CUM PROJECT UNDERTAKING ..	35
	APPENDIX-III: PROFORMA OF BANK GUARANTEE FOR BID SECURITY .....	36
	APPENDIX-IV: POWER OF ATTORNEY FOR SIGNING OF APPLICATION .....	39
	APPENDIX-V: POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM.....	40
	ANNEXES .....	42
	ANNEXURE-I: DETAILS OF BIDDER.....	42
	ANNEXURE-II: Financial Capacity of the Bidder (In Rs.crore) .....	43
	ANNEXURE-III: Details of Eligible Projects .....	45
	ANNEXURE-IV: Statement of Legal Capacity.....	46
	ANNEXURE-V: Format for Financial Bid .....	47
	ANNEXURE-VI: Format for Joint Bidding Agreement .....	49
	Definitions & Interpretations.....	50

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**GANGTOK MUNICIPAL CORPORATION “GMC”**

**Notice Inviting Request for Proposals**

**No. GMC/6870/III/24/RFP 2**

**Dated: 12/12/24**

Request for proposal (bids) are hereby invited on behalf of Gangtok Municipal Corporation hereinafter also referred to as GMC or ULB, from eligible entities for the below-mentioned work:

Name of Work	Indicative Project Cost (In Cr)	Plant Capacity (In TPD)	Bid Security/ EMD	Performance Security	RFP Document Fee
Selection of Agency for Installation of Incineration & allied machines including Operation & maintenance for three Year for <i>“Municipal Solid Waste Treatment Project” at Martam Sikkim</i>	NA	30-40 TPH	<b>5.00 Lakhs</b>	<b>Rs 75.00 lakh tentative</b>	Rs.50,000/- (plus applicable taxes)

1. RFP documents can be seen on the website [www.gmcsikkim.org](http://www.gmcsikkim.org) Application for sale of RFP Document may be submitted to the undersigned as per specified schedule by the interested and eligible entities. Challan for Document Fee may be obtained from the Senior Account Officer, GMC, Deorali, Gangtok during working hours within the specified time.
2. The prospective bidder shall be required to submit a EMD and Performance Security either in the form of a Demand Draft / challan in favor of Commissioner Gangtok Municipal Corporation payable at Gangtok or in the form of Bank Guarantee as specified in the RFP document.
3. The RFP may be postponed, modified or cancelled at any time due to administrative reasons and no claim shall be entertained on this account.
4. For further details and tendering schedule, visit website [www.gmcsikkim.org](http://www.gmcsikkim.org) or Contact Divisional Engineer, GMC

**Commissioner**

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**Disclaimer**

1. The information contained in this Request for Proposal document (the “RFP”), or subsequently provided to Bidder(s) by or on behalf of GMC or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP, as well as any other terms and conditions under which such information is provided. The RFP Document includes both the Bidding Document and the Agreement Document which includes all the pages sold to the interested eligible bidders viz., document includes all the pages from the front cover to the last page.
2. This RFP is not an agreement and is neither an offer nor an invitation by GMC to prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful in making their key submissions, technical bids, and financial bids pursuant to this RFP. This RFP includes statements reflecting various assumptions and assessments made by GMC in relation to the Project.
3. Such assumptions, assessments, and statements do not claim to contain all the information that each Bidder may require. This RFP may not be suitable for all persons, and it is not possible for GMC, its employees, or advisors to consider the investment objectives, financial situations, and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements, and information contained in this RFP may not be complete, accurate, adequate, or correct. Each Bidder should conduct its own investigations and analyses and verify the accuracy, adequacy, correctness, reliability, and completeness of the assumptions, assessments, statements, and information contained in this RFP, and obtain independent advice from appropriate sources.
4. Information provided in this RFP to Bidder(s) covers a wide range of matters, some of which may depend on the interpretation of law. The information provided is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. GMC accepts no responsibility for the accuracy or interpretation of any legal opinions expressed herein.
5. GMC, its employees, and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules, regulations, or principles of tort, restitution, or unjust enrichment, for any loss, damages, costs, or expenses that may arise from or be incurred or suffered due to anything contained in this RFP, including the accuracy, adequacy, correctness, completeness, or reliability of the RFP and any assessments, assumptions, statements, or information contained therein, or arising in any way from the pre-qualification of Bidders for participation in the Bidding Process.
6. GMC also accepts no liability of any nature, whether resulting from negligence or otherwise, for reliance by any Bidder on the statements contained in this RFP.
7. GMC may, in its absolute discretion and without any obligation to do so, update, amend, or supplement the information, assessments, or assumptions contained in this RFP.
8. The Bidder shall bear all costs associated with or related to the preparation and submission of its Bid, including but not limited to preparation, copying, postage, delivery fees, expenses related to any demonstrations or presentations required by GMC, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder, and GMC shall not be liable

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

in any manner for these or any other costs or expenses incurred by a Bidder in the preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

**DEFINITION**

The words and expressions beginning with capital letters and defined in this RFP shall, unless repugnant to the context, have the meaning ascribed herein. The words and expressions beginning with capital letters but not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein. The undermentioned words and expressions used in this RFP shall have the meaning set out below:

<b>Applicable Law</b>	Shall mean all laws, brought into force and effect by the Government of India or the State Government of Sikkim, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of the Concession Agreement
<b>Applicable Permits</b>	Shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of the Concession Agreement
<b>Concession Agreement</b>	Shall mean the agreement to be executed by the selected bidder with GMC for discharging obligations related to the Project and includes any amendment or modification made to the said agreement in accordance with the provisions thereof
<b>Concession Period</b>	Shall mean the period of three (03) Years excluding construction period of 9 months from the date of handing over the site free from all encumbrances
<b>Concessionaire</b>	Shall mean the Selected Bidder to implement the Project and sign the Concession Agreement with the GMC.
<b>“Commercial Operations Date” or “COD”</b>	means the date when the treatment facility / processing plant achieves commercial operations, pursuant to the provisions of the Concession Agreement;
<b>ULB</b>	Shall mean the Gangtok Municipal Corporation “GMC”
<b>Disposal</b>	Means disposal of segregated fractions as per MSW Rules; the word transportation wherever used shall deem to mean disposal and are to be understood as being synonymous.
<b>Financial Capacity</b>	Shall have the meaning ascribed to it in Clause 3.2 (B)
<b>MSW or Municipal Solid Waste or Waste or Solid Waste</b>	Shall mean the Municipal Solid Waste as described under the Solid Waste Management Rules, 2016.
<b>Project</b>	Redesigning, Retrofitting, Up gradation, Augmentation and Integration of Existing Waste to Compost / Bio methanation Municipal Solid Waste Treatment Facility at Martam including operation, maintenance and disposal of segregated fractions for three years.

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

## **1. Introduction**

### **1.1 Project Background**

The GMC has initiated the bidding process for the selection of a concessionaire (“Concessionaire”) to undertake the development of a Municipal Solid Waste Management processing facility, including a pre-processing unit for the processing of mixed waste, and for providing the services detailed in the Concession Agreement requiring the **“Municipal Solid Waste Treatment Project” co-processing of RDF at Martam** For three years”. GMC has decided to carry out the Bidding Process (defined hereinafter) for the selection of the Concessionaire to whom the Project may be awarded.

#### **1.1.1. Brief particulars of the Project are as follows**

Name of the Project	Estimated Project Cost (In Rs.cr.)	Capacity in TPD
Installation of Incineration & allied machines including Operation & maintenance for three Year for <b>“Municipal Solid Waste Treatment Project” at Martam Sikkim</b>	NA	30-40 TPH

#### **1.1.2 Project-Related Services**

The Selected Bidder will be required to provide the following project-related services, including but not limited to:

- Design, Engineering, Supply, Installation, Commissioning and Operation & Maintenance of the Incinerator at MSW Processing Facility at Martam, District Gangtok, for the Co-Processing of RDF.
- The concession period will be for 3 years, excluding the construction period.
- The construction period will be 9 months from the date of handing over the site, free from all encumbrances and fulfillment of conditions precedent.
- The selected operator shall have the right to refuse waste that is inappropriate for incinerating, provided proper reasoning and evidence for refusal are presented.
- Manage a quality testing facility and lab to address user complaints, if any, and maintain its records.

### **1.1.3 Current MSW Generation**

The current estimated MSW generation is about 70 TPD, expected to reach 100 TPD by 2027. The Bidder is free to conduct its own assessment of MSW generation in the serviced area. The Selected Bidder will be responsible for the design/redesign, retrofit, upgrade, development, construction, operation, and maintenance of the designed capacity to process the entire wet waste/MSW generated in the project area, including setting up a processing plant with a capacity of at least 100 TPD, and catering to future increases in MSW generation during the concession period as per the Solid Waste Management Rules, 2016. The selected bidder/operator will also be responsible for the transportation of inert/processing reject material to the designated landfill site.

### **1.1.4 Submission of Proposals**

The GMC will receive bids and other documents pursuant to this Request for Proposal (“RFP”), which may be modified, altered, amended, or clarified from time to time. Proposals and other documents shall be prepared and submitted in accordance with the terms of this RFP. The Proposals will be evaluated by the Technical Evaluation Committee (TEC).

### **1.1.5 Indicative Project Cost**

The indicative cost of the Project (the “Indicative Project Cost”) is specified in Clause 1.1.1 above. However, the assessment of actual costs will need to be made by the Bidders.

### **1.1.6 Draft Concession Agreement**

The Draft Concession Agreement outlines the detailed terms and conditions for granting the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the "Concession").

## **1.2 General Information**

### **1.2.1 Intent of the RFP**

The statements and explanations contained in this RFP are intended to provide Bidders with a proper understanding of the subject matter. They should not be construed as limiting the scope of services and obligations of the Concessionaire as set forth in the Concession Agreement or GMC’s right to amend, alter, change, supplement, or clarify the scope of the Project or the terms herein. Consequently, any omissions, conflicts, or contradictions in the Bidding Documents, including this RFP, should be interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the GMC.

### **1.2.2 Submission of Bids**

The GMC will receive bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents provided by the GMC, as modified, altered, amended, and clarified from time to time (collectively the “Bidding Documents”). The Bid shall be prepared and submitted in accordance with these terms on or before the specified Bid Due Date.



### 1.2.3 Execution of the Concession Agreement

The Selected Bidder will be required to execute the Concession Agreement with GMC (the “Concession Agreement”).

## **2. Brief Description of Bidding Process**

### **2.1 General**

The Gangtok Municipal Corporation has adopted a single-stage bidding process consisting of the submission of a technical bid and a financial bid (both terms are defined hereafter) (the “Bidding Process”) for the selection of the Bidder for award of the Project. Any person intending to participate in the Bidding Process is required to study the RFP and satisfy themselves as to their eligibility before purchasing the RFP documents and participating in the bid to avoid failing the requirements stipulated in the eligibility criteria in the Technical Bid.

Eligibility and qualification of the bidder (the “Bidder”, which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted (“Technical Bid”) with respect to eligibility and qualifications criteria prescribed in this RFP. The financial bid submitted (“Financial Bid”) shall be opened only for those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP.

**2.1.1** Bidders shall be required to examine the Project in greater detail and carry out, at their cost, such studies with respect to the Estimated Project Cost for the project before submitting their respective bid for the award of the Project.

**2.1.2** The bids are to be submitted in hard copy. The physical hard copy submission of the Technical Bid shall be in accordance with Clause 2.8.4.

**2.1.3** The Bidders may be called for a technical presentation to share their approach and methodology for undertaking the Project, including their views on the Project milestones and timelines.

**2.1.4** The Gangtok Municipal Corporation reserves the right to visit at its own cost, one or more Project Area(s) listed by the Bidder in its list of experience, to independently verify and satisfy itself about the quality of work performed and also verify the certificates filed by the Bidder.

**2.1.5** Any queries or request for additional information concerning this RFP shall be submitted to the Commissioner GMC. Bidders are advised to be specific and pose clause wise queries in an unambiguous manner. The GMC reserves the right not to respond to vague and frivolous queries.

The subject of the query shall mention the following:

“QUERIES/REQUEST FOR ADDITIONAL INFORMATION: RFP for Martam Treatment Facility.

The pre-bid queries should be submitted in the format specified below to be considered for response. Pre-bid queries not submitted in the prescribed format shall not be responded to

**REQUEST FOR PROPOSAL**  
“Municipal Solid Waste Treatment Project”

S.No.	Particulars	Details
1.	Organization	
2.	Document Name	
3.	Page Number	
4.	Clause Number	
5.	Query	
6.	Suggestion, if any	
7.	Name & Designation Of point of contact	
8.	Contact No.& Email ID	

## 2.2 Schedule of Bidding Process

The GMC would endeavor to adhere to the following schedule: However, GMC may, at its own discretion, revise or extend any of the timelines set-forth in this schedule:

S.No.	Activity/ Stage	Start Date & Time	Expiry Date & Time	Remarks
1.	Publication of RFP	12.12.24	19.12.2024	Can be down loaded from website free of cost
2.	Sale of RFP	16.10.2024	12.12. 2024	During working hours
3.	Physical Submission of Bids (Bid Due Date)	15.01.2025 10.00 a.m.	15.01.2025 up to 02.00 p.m.	1. EMD/ Bid Security Envelope, 2. Technical Bid Envelope 3. Financial Bid Envelope
4.	Open EMD/BS& Technical/PQ bid	15.01.2025 at 2.30 p.m.		Bid Security/EMD Envelope, Technical Bid Envelope
5.	Technical Evaluation	15.01.2025	16.01.25	Technical Bid Envelope
6.	Open Financial/ Price-Bid	16.01.25 subject to completion of technical evaluation		Financial Bid Envelope

2.2.1 The date and time will be binding on all the Bidders. The Bidders are required to examine their eligibility and complete the stage within the stipulated time as per the schedule. Bids submitted without the EMD and Performance Security will be summarily rejected.

2.2.2 The pre-bid meeting will be held on 24<sup>th</sup> Dec 2024, in the office of Commissioner GMC at Deorali, Gangtok Sikkim. At 14.00 hours.

2.2.3 Any queries relating to Bidding Documents should be addressed to the Commissioner GMC, Deorali,

Gangtok before the pre-bid meeting.

2.2.4 Physical hard copy submission of documents mentioned in Clause 2.9, shall be ensured.

2.2.5 Bidders interested in participating in tender shall check his/her eligibility before purchasing the RFP document. Key dates are subject to change, in case of any amendment in schedule due to any reason shall be notified in the website herein before mentioned.

### **2.3 Instructions to Bidders**

#### **2.3.1 Number of Bids and Associated Costs**

No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any other Consortium, as the case may be. Bidders shall be responsible for all costs associated with the preparation of their Bids and their participation in the Bidding Process. The GMC will not be responsible or liable for such costs, regardless of the conduct or outcome of the Bidding Process.

#### **2.3.2 Cost of RFP Document Fee**

The cost of the RFP document is Rs. 50, 000/- (only). This fee is non-refundable.

#### **2.3.3 Submission of RFP Document Fees**

The Bidder shall pay the Gangtok Municipal Corporation a non-refundable sum of Rs.50, 000/- (Rs. Fifty Thousand only) to be paid online through Challan or Demand Draft

#### **2.3.4 Submission of Bid Security**

The Bid Security deposit fee should be submitted in the form of a Bank Guarantee or Demand Draft. The original hard copy of the Bank Guarantee or Demand Draft must be submitted as per Appendix III.

#### **2.3.5 Right to Accept and Reject Any or All Bids**

(i) Notwithstanding anything contained in this RFP, the GMC reserves the right to accept or reject any Bid and to annul the Bidding Process, rejecting all Bids at any time without any liability or obligation for such acceptance, rejection, or annulment, and without assigning any reasons.

(ii) The GMC reserves the right to verify all statements, information, and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure to undertake such verifications shall not relieve the Bidder of its obligations or liabilities hereunder, nor will it affect any rights of the GMC.

(iii) The GMC reserves the right to reject any Proposal and appropriate the Bid Security if it is found during the evaluation, or at any time before the signing of the Concession Agreement or after its execution, that:

- a. The Bidder has made a material misrepresentation or furnished any materially incorrect or false information; or
- b. The Bidder does not provide, within the time specified by the GMC, the supplemental information requested for the evaluation of the Proposal.

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

(iv) Any misrepresentation or improper response shall lead to disqualification of the Bidder. If the Bidder is a Consortium, the entire Consortium shall be disqualified/rejected. The Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire, either by the issuance of the Letter of Award (“LoA”) or by entering into the Concession Agreement. If the Bidder has already been issued the LoA or has entered into the Concession Agreement, as the case may be, this shall, notwithstanding anything to the contrary contained herein or in the RFP, be liable to termination by a written communication from the GMC/ULB to the Bidder, without the GMC being liable in any manner to the Bidder or Concessionaire. In such an event, the GMC shall liquidate and appropriate the Bid Security or EMD, as mutually agreed upon, as genuine pre-estimated compensation and damages payable to the GMC for, inter alia, time, effort, costs, and resources, without prejudice to any right or remedy that may be available to the GMC.

(v) Further, in the case of disqualification or rejection occurring after the appointment of the Selected Bidder, or if the selected Bidder does not sign the Concession Agreement, then the GMC shall take any measures it deems fit at its sole discretion, including annulling the Bidding Process and proceeding with re-tendering the Services.

**Other Instructions**

(i) The Bidders shall submit details of their Financial Bid in the provided templates.

(ii) The Financial Bid, Technical Bid documents, and EMD/Bid Security envelopes should be placed in separate sealed envelopes. These sealed envelopes, along with the documents listed in the Technical Bid, shall be sealed in another cover and delivered to this office before the date and time mentioned in the RFP Notice.

(iii) Bidders must strictly abide by the stipulations set forth in the notice inviting RFP. While tendering for the work, Bidders shall adopt only the three-envelope system.

(iv) The three envelopes shall be sealed separately and inserted into another cover with the Bidder’s name written on it.

(v) Bids not accompanied by the Bid Security or that do not strictly follow the requirements set out in the Bidding Documents are liable to be rejected summarily.

(vi) Bids that are subjective or dependent upon the quotations of another bidder shall be summarily rejected.

(vii) Bids from bidders that do not satisfy the eligibility criteria (i.e., Technical Capacity and Financial Capacity as set out in Clause 3.2 of the RFP Document) shall be rejected summarily without assigning any reason. No claims whatsoever will be considered in such cases of rejection.

**2.4 Amendment of RFP**

2.4.1 At any time prior to the deadline for submission of Bids, the GMC may, for any reason, whether at its own initiative or in response to clarifications requested by Bidders, modify the terms of this RFP by issuing any addendum or corrigendum.

2.4.2 To provide the Bidders with reasonable time to take an addendum or corrigendum into account, or for any other reason, the GMC may, at its sole discretion, extend the Bid Due Date.

## **2.5 Preparation and Submission of Bids**

### **2.5.1 Language and Currency**

2.5.1.1 The Bid and all related correspondence and documents shall be written in the English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language, provided that they are accompanied by an appropriate translation into English. Supporting materials that are not translated into English shall not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

2.5.1.2 The currency for the purpose of the Bid shall be Indian Rupee (INR).

### **2.5.2 Validity of Bid**

2.5.2.1 The Bid shall indicate that it would remain valid for a period of 180 (One Hundred Eighty) days from the Bid Due Date (Bid Validity Period). GMC reserves the right to reject any Bid that does not meet this requirement.

2.5.2.2 Prior to the expiry of the original Bid Validity Period, GMC may request the Bidders to extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Bid but would be required to extend the validity of its Bid Security for the period of extension.

## **2.6 Bid Security**

**2.6.1** The Bidder will be required to deposit, along with the Proposal, a Bid Security as specified, in the form of a demand draft or a bank guarantee from a nationalized bank/Scheduled Bank in India or the State Bank of Sikkim. For avoidance of doubt, Scheduled bank shall mean a bank as defined under Section 2 (e) of the Reserve Bank of India Act, 1934. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

**2.6.2** The Bid Security, if given in the format of a bank guarantee, shall be valid at least for the duration of the Bid Validity Period exclusive of a claim period of 180 (hundred eighty) days and may be extended as may be mutually agreed upon between the Authority and the Bidder from time to time. The Bid Security, if given in the format of a demand draft, shall be valid at least for the duration of the Bid Validity Period. The Bid Security would be required to be extended if so required by the GMC.

**2.6.3** The Bid Security shall be returned to unsuccessful Bidder(s) within a period of thirty (30) days from the date of the announcement of the Successful Bidder. The Bid Security submitted by the Successful Bidder shall be released upon furnishing of the Performance Security in the form and manner stipulated in the Concession Agreement.

### **2.6.4 The Bid Security shall be forfeited in the following cases:**

- 2.6.4.1 If the Bidder fails to meet the requirements set out in Clause 2.4.10 or any other specific requirements.
- 2.6.4.2. If the Bidder withdraws its Bid during the interval between the Bid Due Date and expiration of the Bid

Validity Period; and

2.6.4.3. If the Successful Bidder fails to provide the Performance Security within the stipulated time or any extension thereof provided by the GMC

2.6.4.4. For grounds provided in the Bid Security

**2.6.5.** Bidder(s) may note that the GMC will not entertain any deviations to the RFP Document at the time of submission of the Bid or thereafter. The Bid to be submitted by the Bidder(s) will be unconditional and unqualified and the Bidder(s) would be deemed to have accepted the terms and conditions of the RFP Document with all its contents including the Concession Agreement. Any conditional Bid shall be regarded as non-responsive and would be liable for rejection.

## **2.7 Correspondence**

2.7.1.

All necessary correspondence/enquiries in hard copies should be submitted in writing to the following:

ATTN. OF	: Shri R. B. Bhandari
DESIGNATION	: Commissioner
ADDRESS	: Gangtok Municipal Corporation, Deorali, Gangtok

2.7.2. No interpretation, revision, or other communication from the GMC regarding this solicitation shall be valid unless it is in writing and is signed by the authorized signatory of the GMC. The GMC may choose to send written copies of responses, including a description of the enquiry, to all Bidder(s) or will upload them on the website [[http://\(http:gmcsikkim.org/\)](http://gmcsikkim.org/)].

## **2.8 Format and Signing of Bid**

2.8.1 The Bidder shall provide all the information sought under this RFP, ensure physical submission of the original copy of the Enclosures of Bid, as specified in this RFP. The GMC will evaluate only those Bids that are received in the required formats and complete in all respects. Any and all conditional Bids shall be liable to be summarily rejected.

2.8.2 The physical hard copy of the Technical Bid shall be submitted by the Bidder in the following two separate envelopes:

1. Proof of deposit of Bid Security - Envelope 'ED'
2. All the documents in support of eligibility criteria and Technical Bid containing all information and documents as specified in Clause 2.16 & 3.2 - Envelope 'TI'

The envelopes 'ED' and 'TI' shall be kept in a big outer envelope, which shall also be sealed. In the first instance, the Envelope - 'ED and TI' of all the Bidders shall be opened in the presence of such bidders who either themselves or through their representatives choose to be present. After that, the responsive Financial Bid will be opened as per the schedule.

The physical hard copy as mentioned, which is to be submitted, shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder, who shall also initial each page in blue ink. In the case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions, or

any other amendments made to the Bid shall be initialed by the person(s) signing.

The Bid Security Envelope shall contain the original copy of the Bid Security Deposit instrument.

**Envelope 'TI' - Technical Bid Envelope**

The Technical Bid Envelope shall contain the information and scanned copies of the documents/certificates as required to be submitted, supporting eligibility criteria and Technical Bid as specified in Clause 2.16. Additionally, a list of all such documents shall be shared with the GMC. This list shall contain all the information about documents/certificates as submitted in the physical Technical Bid envelope as per Clause 2.8.4.

**Envelope 'CI' - Financial Bid Envelope**

To be submitted mandatorily in a sealed envelope - "Financial Bid". The Price Bid should not be submitted in any other envelope.

The bidder can submit their RFP documents as per the dates mentioned in the schedule above, subject to the following conditions:

- a. The RFP without Bid Security money will not be opened.
- b. The RFP of the bidder who does not satisfy the Eligibility and Technical Bid Criteria in the bid documents is liable to be rejected summarily without assigning any reason and no claim whatsoever on this account will be considered.
- c. The Bid submitted by the Bidder shall remain open for acceptance during the Bid Validity Period. If any Bidder withdraws his Bid before the said period, any modifications in the terms and conditions of the Bid, the said Bid Security shall stand forfeited. Bids would require to be valid for 180 days from the date of submission.

**2.8.4 Technical Bid Envelope shall include scanned copies of:**

- a) Acknowledgement of RFP Document and Notification of Intent to Submit Bid Appendix as per APPENDIX-I
- b) Covering Letter cum Project Undertaking as per APPENDIX-II
- c) Bid Security in the form of Bank Guarantee as per APPENDIX–III or demand draft (Separate Envelope - ED, as mentioned in 2.9.2)
- d) Power of Attorney for signing the Bid (if required) as per the format at APPENDIX-IV;
- e) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at APPENDIX-V;
- f) Copies of Bidder's duly audited balance sheet and profit and loss account for the preceding three years at APPENDIX- VI
- j) Details of Eligible Project as per ANNEXURE–III
- k) Statement of Legal Capacity as per ANNEXURE–IV

**2.8.5 Financial Bid as per the format set out in Annexure–V:**

Financial Bid shall be made indicating expected Grant/Processing Fee for executing the Scope of Project as defined in the TOR. For the avoidance of doubt, the Financial Bid shall only be submitted online as per the provision of this RFP, and there shall be no physical submission of such Financial Bid. Physical submission of the Financial Bid shall lead to the Bid being summarily rejected.

**2.8.6** The physical hard copy submission of the following original documents should be done by the bidders as per the mentioned dates in Section 2 – Schedule of Bidding:

- i. Bank Guarantee or Demand draft for Bid Security
- ii. Power of Attorney for Authorized Signatory
- iii. Power of Attorney of the Lead Member, if there is any consortium
- iv. Joint Bidding Agreement in case of consortium
- v. Documents/Certificates mentioned in Clause 3.2 (Bid Evaluation of this RFP)

2.8.7 Envelopes should be sealed and stamped in a single envelope, earmarked with “REQUEST FOR PROPOSAL FOR MUNICIPAL SOLID WASTE TREATMENT FACILITY FOR Gangtok Municipal Corporation”.

**2.8.8 The envelopes shall be addressed to:**

DESIGNATION: Commissioner

ADDRESS: GMC, Deorali, Gangtok

If the envelope is not sealed and marked as instructed above, the Bid may be deemed to be non-responsive and would be liable for rejection. The GMC assumes no responsibility for the misplacement or premature opening of such Bid submitted.

**2.9 Bid Due Date**

2.9.1 Bids should be submitted before 1400 hours IST on the Bid Due Date mentioned in the Schedule of Bidding Process, to the address provided in Clause 2.7.1 in the manner and form as detailed in this RFP Document. Applications submitted by either facsimile transmission or telex will not be acceptable.

2.9.2 The GMC, at its sole discretion, may extend the Bid Due Date by issuing an Addendum.



## **2.10 Late Bids**

Any Bid received by GMC after 1400 hours IST on the Bid Due Date will be returned unopened to the bidder.

## **2.11 Modification and Withdrawal of Bids**

The Bidders are not allowed to modify or withdraw the Bids once they are submitted.

## **2.12 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the shortlisted Bidder(s) shall not be disclosed to any person not officially concerned with the process. The GMC will treat all information submitted as part of Bid in confidence and will ensure that all who have access to such material treat it in confidence. GMC will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure.

## **2.13 Clarifications**

To assist in the process of evaluation of Bids, GMC may, at its sole discretion, ask any Bidder for clarification on its Bid. The request for clarification and the response shall be in writing. No change in the substance of the Bid would be permitted by way of such clarifications. However, such clarification(s) may, without prejudice, include clarifications with respect to minor deviations found in the Bid and shall be provided within the time specified by GMC for this purpose. If a Bidder does not provide clarifications sought under this Clause above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, GMC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of GMC.

## **2.14 Proprietary Data**

All documents and other information supplied by GMC or submitted by the Bidder to GMC shall remain or become the property of GMC. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. GMC will not return any Bid or any information provided along therewith.

## **2.15 Correspondence with the Bidder**

Save and except as provided in this RFP, GMC shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

## **2.16 Eligibility of Bidder**

### **2.16.1. Basic pre-qualification criteria:**

**2.16.1.1** The Bidder for pre-qualification may be a single entity or a group of entities (the “Consortium”) coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be a member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium. A Bidder may be a natural person or a body corporate including but not limited to a company incorporated under the Companies Act, 1956/2013 or under the applicable laws of the jurisdiction of its origin, or a society registered under the Societies Registration Act, 1860, or any other applicable governing law, or a trust registered under the Indian Trusts Act, 1882, or any other governing law for public trusts, or a partnership, limited liability partnership, or a sole proprietorship registered under the relevant applicable governing law, or any combination of them with a formal intent to enter into a Joint

**REQUEST FOR PROPOSAL**  
*"Municipal Solid Waste Treatment Project"*

Bidding. The Bidder must ensure that they meet the technical qualification criteria as indicated in Clause 3.2.1 before purchasing and/or submitting their bid, so as to be eligible to participate in the bid. Agreement or under an existing agreement to form a Joint Venture/Consortium. A Joint Venture/Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.17.1.2 below.

**2.16.1.3** The total number of members in a Consortium shall not exceed two (2). A Consortium shall be eligible for consideration subject to conditions set out in the RFP.

**2.16.2.** A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, GMC shall be entitled to forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to GMC under the Bidding Documents or otherwise. Determining the Conflict of Interest shall be the prerogative of GMC.

**2.16.3.** Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- a. The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate (or any constituent thereof) is less than 25% of the paid up and subscribed capital of the other Bidder, its Member or Associate (or any constituent thereof); or
- b. A constituent of such Bidder is also a constituent of another Bidder; or
- c. Such Bidder, its Member or Associate receives or has received any direct or indirect subsidy, grant, loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, loan or subordinated debt to any other Bidder, its Member, or Associate thereof; or
- d. Such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- e. Such Bidder, its Member or Associate receives or has received any direct or indirect subsidy, grant, loan or subordinated debt from any other Bidder, its Member, or Associate, or has provided any such subsidy, grant, loan or subordinated debt to any other Bidder, its Member, or Associate thereof; or
- f. Such Bidder has a relationship with another Bidder, directly or through common third parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- g. Such Bidder has participated as a consultant to GMC or other participating ULBs in the preparation of any documents, design, or technical specifications of the Project. A Bidder shall be liable for disqualification if any legal, financial, or technical adviser of GMC in relation to the Project is engaged by the Bidder, its Member, or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member, or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 5 (five) years from the date of commercial operation of the Project.

h. Any entity which has been barred/blacklisted by the Central/State Government, or an entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid (even if the litigation is pending on the same dispute (barred/blacklisted) under the jurisdiction/arbitration/laws), would not be eligible to submit a Bid, either individually or as a member of a Consortium.

**Explanation:**

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the “Associate”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of a Bidder bidding individually or as a Consortium Member for the Project shall be provided to demonstrate that a person is an Associate of the Bidder bidding individually or the Consortium, as the case may be.

**Explanation:**

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.17.3 shall include each member of consortium

**2.17 Other Documents**

**2.17.1** The Bidder shall enclose with its application to be submitted as per the format, complete with its Appendices and Annexes, the following:

- i. Certificate(s) and/or agreement(s) and/or duly executed work order(s) and/or Letter of Award from its concerned client(s) in support of above work undertaken clearly stating quantities collected/transported/installed capacities of the processing plant designed, operated, and maintained/installed capacities of landfill designed, operated, and maintained as the case may be.
- ii. Certificate(s) from its statutory auditors/Chartered Accountant in support of its Financial Capacity.

**2.17.2** The Bidder should submit a Power of Attorney as per the format at Appendix-IV, authorizing the signatory of the Bid to commit the Bidder, duly supported by a charter document or board resolution in favor of the executant. In the case of a Consortium, the Members should submit a Power of Attorney in favor of the Lead Member as per format at Appendix-V, duly supported by a charter document or board resolution in favor of the executant.

**2.17.3** Where the Selected Bidder is a single entity, he/she shall be required to execute the Concession Agreement with GMC for implementing the Project.

**2.17.4** In case the Selected Bidder is a Consortium, it shall comply with the following additional requirements:

- a) Number of members in a consortium shall not exceed 2 (two).
- b) Subject to the provisions of sub-clause (a) above, the Bid shall contain the corporate information of each member of the Consortium.
- c) Members of the Consortium shall nominate one member as the lead member (the “Lead Member”), who shall have the power of attorney. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum and shall be in addition to such other obligations as may be contained in the Concession Agreement. A breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. The nominations as Lead Member shall be supported by the issuance of a Power of Attorney, as per the format at Appendix-V, signed by all the other members of the Consortium.
- d) One of the members of the Consortium must fulfil technical capacity and the other must fulfil financial capacity separately, joint financial capacity of the Consortium members will not be accepted.
- e) The Bid should include a brief description of the roles and responsibilities of individual members of the Consortium, particularly with reference to financial, technical, and operation and maintenance (O&M) obligations.
- f) A copy of the Joint Bidding Agreement should be attached to the Bid (as per format provided in Annexure VI)
- g) The Selected Bidder shall maintain books of accounts in accordance with, Applicable Laws and provisions of the Concession Agreement.

**2.17.5** Any entity that has been barred by the Central/State Government, or any entity controlled by the Central/State Government, from participating in any project, and the bar subsists as of the date of Bid, shall not be eligible to submit a Bid for the Project, either individually or as a member of a Consortium.

**2.17.6** A Bidder, including any Consortium Member or Associate, should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by the imposition of a penalty by an arbitral or judicial authority, nor has been expelled from any project or contract by any public entity, nor had any contract terminated by any public entity for breach by such Bidder, Consortium Member, or Associate.

#### **2.18 Change in Composition of the Consortium**

By submitting the Bid, the Bidder shall be deemed to have acknowledged that it meets the qualification criteria set out under this RFP. The Bidder further acknowledges and undertakes that in case it is declared as the Selected Bidder by GMC, the Lead Member of the consortium shall be responsible for all aforementioned obligations, and shall be in addition to such other obligations as may be contained in the Concession Agreement. A breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause shall apply only when the Bidder is a Consortium.

### **3. Criteria for Evaluation**

#### **3.1 Tests of Responsiveness**

3.1.1. Prior to evaluation of the Bid(s), GMC will determine whether each Bid is responsive to the requirements of the RFP Document. A Bid shall be considered responsive if:

- a) It is received as per format prescribed under the RFP;
- b) It is received by the Bid Due Date including any extension(s) granted by GMC;
- c) It is signed, sealed, bound together in hardcover, and marked as stipulated in the RFP document;
- d) It is accompanied by the Power of Attorney as specified in RFP and in the case of a Consortium, the Power of Attorney as specified in RFP.
- e) It contains all the information and documents (complete in all respects) as requested in this RFP;
- f) It contains information in formats specified in this RFP;
- g) It does not contain any condition or qualification; and
- h) It is not non-responsive in terms hereof.

3.1.2. GMC reserves the right to reject any Bid which in its opinion is non-responsive and no request for modification or withdrawal shall be entertained by GMC in respect of such Bid.

3.1.3. Conditional Bids shall not be considered. Any Bid found to contain conditions attached will be rejected.

#### **3.2 Bid Evaluation – Part I – Technical Bid**

**3.2.1** To be considered technically qualified (“Technically Qualified”), a Bidder shall have to fulfil the following criteria:

**A Technical Capacity:** GMC is seeking bids for the installation of an Incineration System for the generated RDF of MSW: A system that can incinerate with proper pollution control system with minimal manual intervention. The incinerator machine must have greater than 98% operational efficiency and a capacity of processing at least 30-40 TPH of RDF part of MSW. The incinerator must be durable, with minimum maintenance requirements and easy availability of support and spare parts, given the mountainous terrain and remote location of the facility.

**A.** For demonstrating technical capacity and experience (the “Technical Capacity”), the Bidder shall have to fulfil the following conditions:

a. The Bidder shall either be an original equipment manufacturer having a certified product for an incinerator unit (see Table of Specifications of Machine given after (b) below) for solid waste management, or an authorised dealer of such incinerator system, having written unconditional support from the manufacturer, duly extending its support during operation and maintenance, for disposal of RDF of municipal mixed solid waste.

b. The Bidder shall demonstrate receipt of work order/commissioning of 10 TPH capacity incinerators for MSW in India or any other country.

**Table: Machine Specifications**

Sl.No	Component	Specifications
1	Incinerator System	30 - 40 TPH
2	Input	MSW RDF

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

3	Loading System	Automatic with conveyor & hopper
4	Working Temperature	800-1200 Degree Celsius
5	Fuel	HSD & 3 Phase 440V Electricity
6	Materials of construction	MS 16 mm
7	Combustion fan	Centrifugal to provide flow of oxygen & air to incineration chambers
8	Cyclone Separator	MS 8mm with GI Piping having microns ratings of 2-200 microns
9	Wet Scrubber	High-pressure jet type having PH-modified water and caustic soda scrubbing materials with a recirculation water tank.
10	Droplet separator	Cyclone type to remove moisture & water droplets from entering into ID fan
11	Bag House Filter	Three stages with the screening of micron ratings between 5-200 microns
12	Control Panel	Digital PLC with HMI screen with appropriate gas analyzer to measure – PM 2.5, CO <sub>2</sub> , NO <sub>2</sub> , CO, O <sub>3</sub> , SO <sub>2</sub>
13	Chimney	-Bottom dia-1500mm -Top dia: 400 mm -Heatproof paint -Lightning arrestor -Aviation lamp monkey cage ladder till top of the chimney Min, 30m height

\*Along with the above three parameters the Bidder shall submit a preliminary design, equipment arrangement, layout plan, approach and methodology for efficient operationalization, processing and disposal of municipal solid waste including the Re-designing, augmenting, upgrading and integrating the available infra in the existing facility and within the available area.

**B. Financial Capacity:** For demonstrating financial capacity, the Bidder shall have to fulfil the following conditions (the “Financial Capacity”):

1. The Bidder shall be required to have a cumulative turnover of at least Rs. 5 crores during the last three (3) financial years, at the close of the preceding financial year prior to the Bid Due Date.

C. In case of a Consortium, the combined Technical Capacity and Financial Capacity of those members should satisfy the above conditions of eligibility; provided that for a period of 3 (three) years from the COD of the Project, the Lead Member shall hold full power of attorney.

D. In the event that a Bidder submits a Bid for the Project and the Bidder does not meet the Technical or/and Financial Capacity as described under Clause 3.2.1 (A) and (B) above, the Bidder shall be disqualified and the Financial Bid of such Bidder shall not be opened.

### **3.3 Bid Evaluation – Part II – Financial Bid**

**3.3.1** The shortlisted Bidders adjudged as responsive and Technically Qualified at the end of the evaluation of Part I – Technical Bid shall be notified and informed of the date and time of opening of Part II – Financial Bids.

**3.3.2** Financial Bid of all the short-listed Bidders who meet the Technical Capacity and Financial Capacity requirements will be opened.

**3.3.3** The Selected Bidder shall be paid as per payment schedule.

**3.3.4** Financial Bid Parameter

The Selected Bidder shall be paid as per the payment schedule. The Bidder shall quote in the financial bid for:s

a. **Capital investment** (CAPEX) for the set-up of the incinerator system.

b. **Disposal cost** in INR/MT for the incineration of the generated RDF.

It is hereby clarified, clearly recorded, and understood by the Bidder that the processing fee shall be paid as per the mechanism set out below and as particularly specified in the Concession Agreement:

a) Once the Commercial Operation Date of the Project Facility is achieved in accordance with the terms of the Concession Agreement, the Concessionaire shall, subject to due processing, be entitled to receive the Processing Fee amount for the MSW/ Wet Waste processed and disposal fee for segregated fractions to the designated site.

b) The Processing Fee payable in respect of the MSW/Wet Waste processed and disposal of processing rejects/inert to the designated site shall, with effect from the Commercial Operation Date, be escalated at the end of every year based on the WPI index.

### **3.3.5 Goods & Service Tax (GST)**

GST, if applicable, shall be indicated in the bid for each activity as per Applicable Laws in addition to the agreed CAPEX Price, Processing Fee, and Disposal Fee.

**3.3.6** Financial Bid of short-listed Bidders who qualify after evaluation of Part I–Technical Bid shall be opened in the presence of the representatives of shortlisted Bidders, who choose to attend. The Financial Bid of the shortlisted Bidders shall be read out and recorded.

**3.3.7** The Bidder who quotes the lowest price L1 for [Capex + Disposal Fee x 50 x 365 x 3] in accordance with the above procedure would be declared as the Selected Bidder.

**3.3.8** In the event that two or more Bidders quote exactly the same validated Financial Bid Parameter for the project, then the GMC reserves the right either to:

- i. Invite fresh Bids from such Bidders; or
- ii. Take any such measure as may be deemed fit in its sole discretion, including annulment of the bidding process; or
- iii. Identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence

of the Tied Bidders, who choose to attend; or

iv. Identify the selected bidder as per the technology, methodology and financial benefit.

### **3.3.9 Financial information for purposes of evaluation**

The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same.

### **3.4 Notification and Issue of Letter of Award**

The Selected Bidder shall be issued a Letter of Award within 15 days of the opening of the Financial Bid subject to approvals by the Government authority.

## **3 Fraud and Corrupt Practices**

The Applicants participating in the bidding process and responding to the RFP and their respective officers, employees, agents, and advisers shall observe the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the GMC may reject an Application without being liable in any manner whatsoever.

To the Applicant if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process.

Without prejudice to the rights of the GMC under the RFP hereinabove, if an Applicant is found by the GMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Applicant shall not be eligible to participate in any tender or RFP issued by the GMC during a period of 2 (two) years from the date such Applicant is found by the GMC to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

For the purposes of this RFP, the following terms shall have the meaning hereinafter respectively assigned to them:

a) “Corrupt Practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the GMC/Participating ULBs who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the GMC/ Participating ULBs, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical advisor of the GMC/Participating ULBs in



relation to any matter concerning the Project;

b) “Fraudulent Practice” means misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

c) “Coercive Practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

d) “Undesirable Practice” means (i) establishing contact with any person connected with or employed or engaged by the GMC/Participating ULBs with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a conflict of interest;

e) “Restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

### **5. Pre-bid Conference**

A Pre-bid conference of the interested parties shall be convened at the designated date, time, and place. During the course of the Pre-bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of GMC. GMC shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent, and competitive Bidding Process.

### **6. Miscellaneous**

The Bidding Process shall be governed by, and construed in accordance with, the laws of India, and the High Court or its subordinate Courts at Gangtok shall have the exclusive jurisdiction over all disputes arising under, pursuant to, and/or in connection with the Bidding Process.

GMC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- Suspend and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- Consult with any Bidder in order to receive clarification or further information;
- Pre-qualify or not to pre-qualify any Bidder and/or to consult with any Bidder in order to receive clarification or further information;
- Retain any information and/or evidence submitted to GMC by, on behalf of, and/or in relation to any Bidder; and/or
- Independently verify, disqualify, reject, and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Bid, the Bidder agrees that GMC, its employees, agents, and advisers are irrevocably, unconditionally, fully, and finally indemnified from any and all liability for claims, losses, damages, costs, expenses, or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder and the Bidding Documents, pursuant hereto, and/or in connection with the Bidding Process, to the fullest extent permitted by Applicable Law, and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.

**7. Scope of Works**

- a. The project to be developed on DBOT basis (Design, Build, Operate, and Transfer).
- b. Installation of Incinerator & allied machines including Operation & maintenance for three Year for “Municipal Solid Waste Treatment Project” at Martam Sikkim
- c. GMC shall take all Applicable Permits, license and approvals from competent authority in sequence and comply with the provisions therein from time to time.
- d. The Concessionaire shall carry out all necessary studies and surveys for assessment of site conditions for site development and Redesigning and retrofitting, upgradation, and augmentation of the Solid Waste Management Facility.
- e. Procure all machinery and equipment for the Processing Facility. The Concessionaire shall comply with proprietary rights, agreements, and methods, processes, and systems used or incorporated in the Project.
- f. The incinerator system shall be commissioned with successful trial runs within a period of twelve months or the implementation schedule submitted in the technical proposal (whichever is minimum) from the date of signing the concession agreement. The Concessionaire shall submit monthly progress reports during the above period to GMC. The Concessionaire shall operate and maintain the Facility in accordance with the Applicable Laws.
- g. All penalties and levies due to any non-compliance will be borne by the Concessionaire.
- h. The revenue generated through carbon credits, if any, shall be transferred to Concessionaire.
- i. The Concessionaire shall erect at least 1 (one) signboard with details (capacity, contact details, and signage) about the Processing Facility in local language, Hindi, and English, of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance, in a manner that is ordinarily visible to any person using such an entrance.
- j. The Concessionaire shall display the layout at the entrance and indicate warning signs in the Facility.
- k. The Concessionaire shall also set up a board displaying the discharge parameters (water & air).
- l. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons, and other Personal Protective Equipment (PPE) as necessary.

**Bidder's KPI**

- I. Bidder will ensure max of 330 days of plant operations
- II. Residue of incineration should not be more than 25% of the incoming waste and should be handed properly (to be informed by the authority); in case of high fraction, a report to be submitted to GMC for ensuring checks.

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**III. Environmental Parameters:**

- a. Bidder will ensure meeting the SPCB/CPCB's parameters.
- b. Bidder will ensure dust, air pollution, and noise levels are as per guidelines prescribed by CPHEEO on Ambient Air Quality at the Processing Site and in the vicinity.

**Penalties & Damages:**

S.No.	Default	Monitoring Mechanism	Cure Period	Penalty
Waste processing				
1.	Weigh bridge is non-operational at Processing facility to breakdown for a consecutive Period of 4 days	N.A	-	-
2.	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	N.A	-	-
3.	CCTV break down	N.A	-	-
4.	Non compliance in fly/odour control measures	N.A	-	-

**8 CONFIDENTIAL INFORMATION AND PROPRIETARY DATA**

**8.1 Proprietary Data**

All documents and other information provided by the Authority or submitted by a Bidder to the Authority will remain or become the property of the Authority, as the case may be. Bidders should not use any information provided by the Authority in connection with the Bid Process for any purpose other than the preparation and submission of their Bids.

**8.2 Confidentiality Obligations of the Authority**

The Authority will treat all information submitted as part of a Bid as confidential and will require all those who have access to such material to treat it in confidence. The Authority may not divulge any such information or any information relating to the evaluation of Bids or the qualification of Bidders unless:

- (a) such publication is contemplated under this RFP;

- (b) such publication is made to any person who is officially involved with the Bid Process or is a retained professional advisor advising the Authority or the Bidder on matters arising out of or in connection with the Bid Process;
- (c) it is directed to do so by any statutory authority that has the power under law to require its disclosure;
- (d) such publication is to enforce or assert any right or privilege of the statutory authority and/or the Authority or as may be required by law (including under the Right to Information Act, 2005); or
- (e) in connection with any legal process.

## **9 GOVERNING LAW AND JURISDICTION**

### **9.1 Governing Law**

The Bid Process, this RFP, and the Bids shall be governed by, and construed in accordance with, the laws of India and the State of Sikkim.

### **9.2 Exclusive Jurisdiction**

The competent courts at Gangtok, Sikkim shall have exclusive jurisdiction over all disputes arising under, pursuant to, and/or in connection with the Bid Process, this RFP, and the Bids.

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

Date:

To

The Commissioner,  
Gangtok Municipal Corporation,  
Deorali, Gangtok, Sikkim.

Dear Sir,

Re: Request for Proposal for “Municipal Solid Waste Treatment Project”

The undersigned hereby acknowledges and confirms receipt of the Request for Proposal (RFP) Document for the captioned Project from the GMC and conveys its intention to submit a Bid for the Project on Public Private Partnership mode.

Name of the Bidder .....

Signature of the Authorised Person .....

Name of the Authorised Person .....

Date:.....

Note:

On the Letterhead of the Bidder or Lead Member of Consortium. To be signed by the Lead Member in case of a Consortium.

The acknowledgement should be sent within 5 days of purchase of the RFP Document.

\

**APPENDIX II: FORMAT FOR COVERING LETTER CUM PROJECT UNDERTAKING**

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

Date:

To  
Commissioner,  
GMC,  
.....

.....

Re: Request for Proposal for “Municipal Solid Waste Treatment Project”

Dear Sir,

We have read and understood the Request for Proposal (RFP) Document in respect of the Project provided to us by GMC. We hereby submit our Bid for the captioned project.

We are enclosing our Bid in one (1) original plus one (1) copy and two (2) soft copies in a compact disc (CD), with the details as per the requirements of the RFP Document, for your evaluation.

We confirm that our Bid is valid for a period of 180 (One Hundred Eighty) days from (Bid Due Date).

We hereby agree and undertake as under:

Notwithstanding any qualifications or conditions, whether implied or otherwise, contained in our Bid, we hereby represent and confirm that our Bid is unqualified and unconditional in all respects and we agree to the terms of the Draft Concession Agreement, a draft of which also forms a part of the RFP Document provided to us.

Dated this ..... Day of,

Name of the Bidder .....

Signature of the Authorised Person .....

Name of the Authorised Person .....

Note: Use Letterhead of Bidder

Note: Use the Letterhead of the Bidder

**APPENDIX-III: PROFORMA OF BANK GUARANTEE FOR BID SECURITY**

B.G No.

Dated:

1. In consideration of you, the Commissioner, Gangtok Municipal Corporation, having its office at Deorali, Gangtok, Sikkim, having agreed to receive the Bid of [a company registered under the provisions of the Companies Act, 2013] and having its registered office at [and acting on behalf of its consortium] (hereinafter referred to as the “Bidder” whose expression shall, unless it be repugnant to the subject or context thereof, include its/their executors, administrators, successors, and assigns), for the Municipal Solid Waste Treatment Project (hereinafter referred to as “the Project”). Pursuant to the RFP document dated \*\*\* issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at [registered office address] and one of its branches at Gangtok (hereinafter referred to as “the Bank”), at the request of the Bidder, do hereby in terms of the RFP Document, irrevocably, unconditionally, and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to ..... an amount of INR ..... Lakh (.....) as bid security (herein referred to as the “Bid Security”) encashable/payable at any of our branches including our Gangtok branch at Sikkim as our primary obligation without any demur, reservation, recourse, contest, or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Commissioner, Gangtok Municipal Corporation, stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive, and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Commissioner Gangtok Municipal Corporation, is disputed by the Bidder or not, merely on the first demand from the Commissioner Gangtok Municipal Corporation, stating that the amount claimed is due to the Commissioner Gangtok Municipal Corporation, by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. \*\*\*/- (Rupees \*\*\*\*\* only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (One hundred eighty) days from the Bid Due Date inclusive of a claim period of 45 (Forty-five) days or for such extended period as may be mutually agreed between the Commissioner Gangtok Municipal Corporation, and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Commissioner Gangtok Municipal Corporation, shall be the

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents.

6. including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Commissioner Gangtok Municipal Corporation, that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Commissioner Gangtok Municipal Corporation, and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Commissioner Gangtok Municipal Corporation, shall be entitled to treat the Bank as the principal debtor. The Commissioner Gangtok Municipal Corporation, shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Commissioner Gangtok Municipal Corporation, and the Bank shall not be released from its liability under these presents by any exercise by the Commissioner Gangtok Municipal Corporation, of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Commissioner Gangtok Municipal Corporation, or any indulgence by the Commissioner Gangtok Municipal Corporation. Municipal Corporation, and the Bank shall not be released from its liability under these presents by any exercise by the Commissioner Gangtok Municipal Corporation, of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Commissioner Gangtok Municipal Corporation, or any indulgence by the Commissioner Gangtok Municipal Corporation, to the said Bidder or by any change in the constitution of the Commissioner Gangtok Municipal Corporation, or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to our Bank at Gangtok and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Commissioner Gangtok Municipal Corporation, to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Commissioner Gangtok



**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

Municipal Corporation, may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Commissioner Gangtok Municipal Corporation, in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligation contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

By the hand of Mr./Ms. [Name], its [Title] and authorised official.

(Signature of the Authorised Signatory) (Official Seal

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

(To be executed on Stamp Paper of Rs. 100/-)

Know all men by these presents, we (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint, and authorize Mr./Ms. (name) son/daughter/wife of \_\_\_\_\_, presently residing at \_\_\_\_\_, who is presently employed with us/the Lead Member of our Consortium and holding the position of \_\_\_\_\_, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds, and things as are necessary or required in connection with or incidental to the submission of our application for pre-qualification and submission of our bid for the “Municipal Solid Waste Treatment Project” for Gangtok Municipal Corporation (GMC) proposed or being developed by the GMC, including but not limited to signing and submission of all applications, bids, and other documents and writings, participating in Pre-Applications and other conferences, and providing information/responses to the GMC, representing us in all matters before the GMC, signing and execution of all contracts including the Concession Agreement and undertakings consequent to the acceptance of our bid, and generally dealing with the GMC in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof, and/or till the entering into of the Concession Agreement with the GMC and Designated ULB.

AND

we hereby agree to ratify and confirm, and do hereby ratify and confirm, all acts, deeds, and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney, and that all acts, deeds, and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF, we, \_\_\_\_\_, the above-named Principal, have executed this Power of Attorney on this \_\_\_\_ day of \_\_\_\_\_, 2024.

For

.....

(Signature, name, designation, and address)

Witnesses:

1.....

2.....

**APPENDIX-V: POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM**

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

(To be executed on Stamp Paper of Rs. 100/-)

Whereas the Gangtok Municipal Corporation (GMC) has invited applications from interested parties for the Municipal Solid Waste Treatment Facility in Martam, District Gangtok, Sikkim (the “Project”).

Whereas, ..... (collectively the Consortium), being Members of the Consortium, are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project.

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds, and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

We, ..... Having our registered office at .....,  
M/s..... Having its registered office at .....,  
M/s..... Having its registered office at .....,  
M/s..... Having its registered office at ....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s..... Having our registered office at ..... being one of the Members of the Consortium, as the Lead Member and true lawful attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process; and in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds, or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids, and other documents and writings.

participate in bidders and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the GMC, and/or any other Government Agency or any person, in all matters in connection with or relating or arising out of the Consortium’s bid for the Project and/or upon award thereof till the Concession Agreement is entered into with the GMC.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds, and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney, and that all acts, deeds, and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2024

For .....

(Signature)

.....

(Name & Title)

.....

(Name & Title)

Witnesses:

- 1.
- 2.

.....

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Also, wherever required, the Bidder should submit for verification the extract of the charter documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

**ANNEXURE-I: DETAILS OF BIDDER**

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

1. Details of Bidder

- (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/or commencement of business:

2. Brief description of the Company

Including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual (s) who will serve as the point of contact/communication for the .....

- (a) Name:
- (b) Designation:
- (c) Company:
- (d) Address:
- (e) Telephone Number:
- (f) E-Mail Address:

4. Particulars of the Authorised Signatory of the Bidder:

- (a) Name:
- (b) Designation:
- (c) Address:
- (d) Phone Number:

5. In case of a Consortium:

- (a) The information above (1-4) should be provided for all the Members of the Consortium.
- (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.18.4 (e) should be attached to the Application (as per format provided in Annexure VI)
- (c) Information regarding the role of each Member should be provided as per table below:

S.No.	Name of Member	Role	Percentage of equity in the Consortium
1.			
2.			
3.			
4.			

d. The following information shall also be provided for each Member of the Consortium: Name of Bidder/Member of

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**Consortium**

Sl. No.	Criteria	Yes	No
1.	Has the Bidder constituent of the Consortium been barred by the [Central/State] Government, or any entity controlled by it from Participating in any project (BOT or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/Consortium paid liquidated damages of more than 5% (five per cent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

- 6 A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

<b>Bidder Type</b>	<b>Member Code</b>	<b>Net Worth</b>
<b>Single entity Bidder</b>		
<b>Consortium Member 1</b>		
<b>Consortium Member 2</b>		
<b>TOTAL</b>		

Instructions:

1. The Bidder/its constituent Consortium Members shall attach copies of the balance sheets, financial statements, and Annual Reports for 3 (Three) years preceding the Application Due Date. The financial statements shall:

- a. Reflect the financial situation of the Bidder or Consortium Members and its/their Associates where the Bidder is relying on its Associate's financials;
- b. Be audited by a statutory auditor;
- c. Be complete, including all notes to the financial statements; and
- d. Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. For the purposes of this RFP, the term net worth means the following:

a. “Net worth” for a company shall mean the aggregate value of the paid-up share capital and all reserves created out of profits of the company and securities premium account after deducting the aggregate value of the accumulated losses, deferred expenditure, and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation, and amalgamation.

- i. Net worth for Partnership Firm would mean: [Fixed Assets + Trade Receivables + Current Assets] – [Firms Loan + Current Liabilities]
- ii. Net worth for Trust or Society would mean: Capital/Corpus + Free Reserves.
- iii. Net worth for Individual Person shall mean: Assets (including cash) LESS All Liabilities.
- iv. Net worth for Sole Proprietorship would mean: Total Assets - Total Liabilities.

3. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted (as per format provided in Annexure VI).

4. The Bidder shall provide an Auditor's certificate/Chartered Accountant certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth.

**ANNEXURE-III: Details of Technical/ Financial Eligibility to be submitted in compliance with Clause 3.2.1**

**Indicate the List and enclose necessary certificates/documents demonstrating the eligibility as per the above clause.**

**Instructions:**

1. Bidders are expected to provide information in respect of each parameter in this Annexure. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each parameter.
3. Experience for any activity relating to an Eligible parameter shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted.

Certificate from respective OEM/ clients must be furnished.



**ANNEXURE-IV: Statement of Legal Capacity**  
**(To be forwarded on the letterhead of the Bidder/Lead Member of Consortium)**

Ref.

Date:

To

.....  
.....  
.....

Dear Sir:

We hereby confirm that we/our members in the Consortium (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document. We have agreed that ...(insert member's name) will act as the Lead Member of our Consortium.

We have agreed that (insert individual's name) will act as our representative/will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name, and designation of the authorized signatory)

For and on behalf of

.....

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**ANNEXURE-V: Format for Financial Bid**

Two Pages including schedule of payments

Date:

To

.....

.....

Re: Request for Proposal for Municipal Solid Waste Treatment Project at Martam on DBOT (Design, Build, Operate, and Transfer) structure.

Dear Sir,

We are pleased to submit our Financial Bid for the Municipal Solid Waste Treatment Project for Gangtok Municipal Corporation under the DBOT (Design, Build, Operate, and Transfer) structure.

Sr. No	Description	Amount in Figures	Amount in Words
1.	Capex Cost for Design, Build and Commissioning of the Incinerator System for RDF at existing MSW facility at Martam, Sikkim		
	GST on 1 if any Cess on 1 if any		
2.	Disposal Cost/Operation of the incinerators for RDF (INR/Ton)		
	GST on 2 if any Cess on 2 if any		

Processing fee includes the cost of processing, disposal, maintenance, insurance, permit fees, and all incidentals thereto and shall also be referred to as operation cost as mentioned in the Schedule of Payments below.

Price including the applicable taxes: Rs ..... ( Rupees .....In Words)

I agree that the payment to be made by the Authority shall be on achievement of Project Milestones as per Schedule below:

**Schedule of Payment / Payment Schedule**

Sl No	Project Milestone	Percentage of payment
<b>A. CAPEX PART</b>		
1	Signing of Agreement after submission of Performance Security	20% of CAPEX cost as accepted
2	Completion of Site Development Works	20% of CAPEX
3	Delivery of Machinery and Equipment	30% of CAPEX
4	Completion of super structure/shed	5% of CAPEX
5	Installation of Machines	10% of invoice value of each machine

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

6	Commissioning of trial run	Balance amount of bidders CAPEX Cost less 5%; viz, cumulative payment on achieving this milestone shall not exceed 95% of the bidders CAPEX cost including Taxes
7	Achievement of COD	Cumulative payment on achieving this stage shall be 100% of the bidders CAPEX Cost
<b>B. OPEX PART</b>		
1	On submission of Performance Security for Operational Phase	25% of annual processing and disposal cost submitted by the bidder and accepted (viz., operation cost for one quarter shall be released)
2	After 3 months of operation and submission of detailed documents and actual invoice of the processed and disposed quantity	25% of annual processing and disposal cost submitted by the bidder and accepted (viz., operation cost for next quarter shall be released) +/- amount to be added or deducted based on the quantity processed and disposed in the previous quarter.
3	After 6 months of operation and submission of detailed documents and actual invoice of the processed and disposed quantity	25% of annual processing and disposal cost submitted by the bidder and accepted (viz., operation cost for next quarter shall be released) +/- amount to be added or deducted based on the quantity processed and disposed in the previous quarter.
4	After 9 months of operation and submission of detailed documents and actual invoice of the processed and disposed quantity	15% of annual processing and disposal cost submitted by the bidder and accepted (viz., 15% of operation cost shall be released) +/- amount to be added or deducted based on the quantity processed and disposed in the previous quarter.
5	After 12 months of operation and submission of detailed documents and actual invoice of the processed and disposed quantity	Balance 10% of annual processing and disposal cost submitted by the bidder and accepted (viz., 10% of operation cost) +/- amount to be added or deducted based on the quantity processed and disposed in the previous quarter.
Same cycle shall be repeated for the next year (s) till the subsistence period of Agreement		

In witness thereof, I/we submit this Financial Bid under and in accordance with the terms of the RFP document no.

.....

Yours faithfully,

Authorized signatory (Name & seal of the bidder),

Date: Place

**ANNEXURE-VI: Format for Joint Bidding Agreement**

**Joint Bidding Agreement**

**(Refer Clause 2.18.4(e))**

**(To be executed on Stamp paper of appropriate value)**

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

AMONGST

1. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context, include its successors and permitted assigns)

AND

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context, include its successors and permitted assigns)

WHEREAS,

(A)[..... “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns] has invited applications (the “Applications”) by its Request for Proposal No. .... dated (the “RFP”) for development, operation, and maintenance of the Solid Waste Treatment Project at Martam (the “Project”). The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and

(B) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

## **DEFINITIONS AND INTERPRETATIONS**

A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organised and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

### **Consortium**

The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

### **Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority/Participating ULBs and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

### **Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

Party of the Second Part shall be {the Technical/financial Member of the Consortium; }

### **Joint and Several Liability**

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project.

And in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

### **Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

- First Party:
- Second Party:
- Third Party:
- Fourth Party:

6.2 The selected bidder (single entity or consortium) shall hold: (i) 100% (one hundred percent) shareholding in the paid-up and subscribed equity of the concessionaire until the expiry of 3 years from COD/Commissioning; and (ii) thereafter hold at least 51% (fifty-one percent) shareholding in the paid-up and subscribed equity during the remaining Concession Period. All other members of the Consortium, apart from the Lead Member, shall hold a minimum of 10% (ten percent) or more of the paid-up and subscribed equity of the SPV for a minimum period of 3 (three) years from the commercial

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

operation date of the Project in accordance with the provisions of the Draft Concession Agreement and thereafter shall hold a minimum shareholding proportionately in the paid-up and subscribed equity of the SPV.

6.3 In case the selected bidder is a consortium, the lead member shall fulfill the above shareholding requirement.

6.4 The Parties undertake that they shall collectively hold at least 100% (one hundred percent) of the subscribed and paid-up equity of the SPV at all times until the third anniversary of the commercial operation date of the Project.

6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

### **Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

(i) require any consent or approval not already obtained

(ii) violate any Applicable Law presently in effect and having applicability to it;

(iii) violate the memorandum and articles of association, by-laws, or other applicable organizational documents thereof;

(iv) violate any clearance, permit, concession, grant, license, or other governmental authorization, approval, judgment, order, or decree or any mortgage agreement, indenture, or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) create or impose any liens, mortgages, pledges, claims, security interests, charges, or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrance, or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

### **Termination**

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for the award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon the return of the Bid Security by the Authority to the Bidder, as the case may be.

**REQUEST FOR PROPOSAL**  
*“Municipal Solid Waste Treatment Project”*

**Miscellaneous**

This Joint Bidding Agreement shall be governed by the laws of India.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

<b>SIGNED, SEALED AND DELIVERED</b> For and on behalf of <b>LEAD MEMBER</b> by:        (Signature) (Name) (Designation) (Address)	<b>SIGNED, SEALED AND DELIVERED</b> For and on behalf of <b>SECOND PART</b>        (Signature) (Name) (Designation) (Address)

**Notes:**

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.



**GANGTOK MUNICIPAL CORPORATION**  
**DEORALI, SIKKIM.**

## **Agreement**

**“Design, Build, Commission, and Operation of Incineration System at  
Municipal Solid Waste Treatment Facility at Martam  
including Operation & Maintenance  
for Three Years”  
here-in referred to as “Municipal Solid Waste Treatment Project”**

**For Gangtok Municipal Corporations**

**RFP No..... Dated: 27/09/2024**

**Last date & time for submission of bids: 30th October 2024 by 1400 Hrs.s**

**Website: <https://gmcsikkim.org> Email: [gmc.sikkim@gmail.com](mailto:gmc.sikkim@gmail.com)**



## Contents

PART I – PRELIMINARY .....	3
DEFINITIONS AND INTERPRETATION .....	4
PART II – THE CONCESSION .....	14
SCOPE OF THE PROJECT .....	14
GRANT OF THE CONCESSION .....	15
CONDITIONS PRECEDENT AND EFFECTIVENESS .....	17
OBLIGATIONS OF THE CONCESSIONAIRE .....	21
OBLIGATIONS OF THE AUTHORITY AND THE CONFIRMING PARTY .....	23
REPRESENTATIONS AND WARRANTIES .....	25
DISCLAIMER .....	27
PART III – DEVELOPMENT AND OPERATIONS .....	28
PERFORMANCE SECURITY AND O&M SECURITY .....	28
PROJECT SITE .....	30
UTILITIES, ASSOCIATED ROADS AND TREES .....	34
SITE ENGINEER .....	35
CONSTRUCTION PERIOD .....	36
MISCELLANEOUS .....	43
MONITORING OF CONSTRUCTION .....	47
COMPLETION CERTIFICATE .....	48
ENTRY INTO COMMERCIAL SERVICE .....	51
OPERATIONS AND MAINTENANCE PERIOD .....	52
SAFETY REQUIREMENTS .....	60
MONITORING OF OPERATION AND MAINTENANCE .....	60
KEY PERFORMANCE INDICATOR .....	62
PART IV – FINANCIAL COVENANTS .....	63
GRANT & PROCESSING FEE .....	63
DISPUTE RESOLUTION .....	65
DIVESTMENT OF RIGHTS AND INTEREST .....	67
INSURANCE .....	68
PART V – FORCE MAJEURE AND TERMINATION .....	69
EVENTS OF DEFAULT .....	69
SUSPENSION OF THE CONCESSIONAIRE’S RIGHTS .....	72
FORCE MAJEURE .....	75
CHANGE IN LAW .....	79
INDEMNITY .....	80
EOHS Obligations .....	81

# PART I – PRELIMINARY

## AGREEMENT

This Agreement (Agreement) is executed on this [•] day of [•] at [•]:

### AMONGST

- (1) GMC, a statutory body, with its registered office at Deorali, Gangtok -737101 acting through office of the Municipal Commissioner (hereinafter referred to as the Authority, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

### AND

- (2) [.....]insert name of the [Selected Bidder/] 1 Concessionaire], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at .....[insert address] acting through [insert name of the authorized signatory and his/her designation] duly authorized by resolution dated [insert date of the Board Resolution] (hereinafter referred to as the [Selected Bidder/]2 Concessionaire, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

The Authority, the Concessionaire and the Confirming Party shall collectively be referred to as the Parties and individually as party.

Whereas

**IT IS AGREED as follows:**

# ARTICLE 1

## DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Municipal solid Waste (MSW)	Means organic wet waste or mixed waste that will be pre-processed and after filling the capacity of the bio gas plant the remaining wet waste shall be degraded by micro-organisms into simpler stable compounds through composting produced by households, commercial enterprises & Institutions agricultural establishments, healthcare units (non-bio-medical) including agriculture and dairy waste, food waste, animal by-products exclude Prohibited Waste and C&D waste specifically.
Waste Delivery Schedule	means the schedule according to which the Authority shall undertake the delivery of Acceptable Waste to the Concessionaire for handling and processing at the SWM processing Facility, and which shall be notified to the Concessionaire at least [3 (three)] months prior to the Scheduled COD.
Acceptance Certificate	means the certificate issued by the Authority to the Concessionaire upon successful completion of the Trial Operations of the SWM processing Facility.
Acceptance Tests Schedule	has the meaning ascribed to it in Clause 16.1.c
Accounting Year	means the Accounting Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
Acres	means a unit of land area equal to 43560 sq.ft.
Adjoining Property	means any land and/or property adjoining or adjacent to the Site, including all conduits, roads, footpaths, walls, fences, buildings and other structures and other apparatus on, under or within such land and/or property.
Affected Party	means the Party affected by a Force Majeure Event.
Agreement	means this agreement entered into between the Parties, along with all schedules and annexures to this agreement and includes any Variation Orders and other amendments made in accordance with this agreement.
Alternate Disposal Location	means the location notified by the Authority as a part of the RFP to which the Concessionaire is required to transport the Residual Inert Matter and/or Residual Waste for disposal in accordance with the instructions of the Authority.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government, any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project Facilities, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the Generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules and SWM Rules.
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, findings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws.
Arbitration Act	means the Indian Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Selected Bidder, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls the Concessionaire, the Selected Bidder or Member of the Selected Bidder, as the case may be.

Associated Infrastructure	means the infrastructure facilities associated with the operation of the Project Facilities or otherwise required to be provided by the Concessionaire, including weighbridges, site office, administrative buildings, security room, boundary wall/security fence, laboratories, ambient air quality monitoring stations, utilities, a waste Segregation pre- processing Facility for Segregating Mixed waste etc., as described in greater detail in the Scope of Work and the Technical Specifications.
Authority	has the meaning ascribed to it in the array of Parties.
Authority Applicable Permits	means the Applicable Permits which are required to be obtained by the Authority to undertake the Project, as applicable.
Authority Event of Default	has the meaning ascribed to it in Clause 26.1
Authority Related Parties	means any of the following: a. an officer, servant, employee or agent of the Authority, acting in that capacity. any contractor or subcontractor of the Authority and their directors, officers, servants, employees or agents, acting in that capacity; or any Person acting on behalf of the Authority. For the avoidance a doubt, 'Authority Related Parties' does not include the Concessionaire.
Authority's Representative	means any officer nominated by the Authority, from time to time, to act on its behalf and liaise with the Concessionaire for the purposes of this Agreement and notified as such in writing to the Concessionaire.
Availability Guarantee	has the meaning ascribed to it in Clause 21.1.
Availability Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the SWM processing Facility to achieve the Availability Guarantee, which are to be calculated in accordance with Schedule.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the single-stage bidding process, with two sub-stages undertaken by the Authority to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Execution Date.
Bid Security	means the unconditional, irrevocable bank guarantee submitted by the Concessionaire to the Authority during the Bid Process.
Bids	means the bids submitted in response to the RFP for qualification and award of the Project.
Biodegradable Waste	means any waste that can be degraded by micro-organisms into simpler stable compounds.
Composting	means the process of enzymatic decomposition of organic matter by microbial action in the presence of oxygen (i.e. aerobic process) by forming windrows to produce compost.
By-Products	means the by-products recovered while pre-processing of the Waste at the Project Facilities like recyclable dry waste and RDF etc. which meet the standards as specified.
C&T Contractors	means the contractors appointed by the Authority for collection and transportation of waste.
Change in Law	means the occurrence of any of the following events after the Bid Due Date: a. the modification, amendment, variation, alteration or repeal of any existing Applicable Law; b. the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; c. changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority; d. the introduction of a requirement for the Concessionaire to obtain any new Applicable

	<p>Permit or the unlawful revocation of an Applicable Permit; or</p> <p>e. the introduction of any new Tax or a change in the rate of an existing Tax.</p> <p>It is clarified that Change in Law shall not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire;</p>
Clause	means a clause of this Agreement.
COD Certificate	means the certificate issued by the Authority to the Concessionaire after issue of the Acceptance Certificate and satisfaction of the conditions set out in Clause 17.1(a), evidencing the date on which the SWM processing Facility has entered commercial operations.
COD Conditions Completion Notice	has the meaning ascribed to it in Clause 17.1(a).
Commercial Operations Date or COD	means the date on which the COD Certificate is issued (or deemed to be issued) to the Concessionaire.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Concession	has the meaning ascribed to it in Clause 3.1
Concession Period	has the meaning ascribed to it in Clause 3.4
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Per- mits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the Project Facilities, as set out in Schedule.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 26.3
Concessionaire Payments	means the payments to be made by the Authority to the Concessionaire in the form of [the Grant] [and/or] [the Processing Fee]
Concessionaire Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> <li>a. the Selected Bidder or Associates of the Selected Bidder.</li> <li>b. an officer, servant, employee or agent of the Concessionaire acting in that capacity.</li> <li>c. any Subcontractor engaged by the Concessionaire and Their directors, officers, servants, employees or agents acting in that capacity; or</li> <li>d. any Person acting on behalf of the Concessionaire.</li> </ul>
Concessionaire's Representative	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the Authority for the purposes of this Agreement and notified as such in writing to the Authority.
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Clause 4.2, the obligations of the Authority that are set out at Clause 4.3 and the obligations of the Parties that are set out at Clause 4.4, and 'Condition Precedent' means any one of these.
Confidential Information	means any part of this Agreement, or any material provided to any Party pursuant to this Agreement, all which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Confirming Party	has the meaning ascribed to it in the array of Parties.
Construction Completion Certificate	means a certificate issued by the Authority in accordance with Clause 16.1(a), to certify the completion of the construction works in relation to the Project Facilities has been achieved in accordance with the requirements of this Agreement.
Construction Period	has the meaning ascribed to it in Clause 13.6.

Construction Plan	means the detailed construction plan for the Project Facilities to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve completion of the works in relation to the construction of the Project Facilities, to achieve the COD by the Scheduled COD. The Construction Plan shall be approved by the Authority in accordance with Clause 13.3
Cost	means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-Stop Date	has the meaning ascribed to it in Clause 4.5(b).
Daily Waste Quantity	means the weight of Waste received by the Concessionaire daily.
Delay Event	has the meaning ascribed to it in Clause 13.6.2
Delay Liquidated Damages	has the meaning ascribed to it in Clause 14.8(a).
Delivery Point	means the SLF or the Alternate Disposal Location (as notified By the Authority), in accordance with this Agreement.
Design Capacity	means the quantity of Acceptable Waste that the SWM processing Facility should be designed to handle and process in a day, which shall be [100] TPD.
Designs and Drawings	means the detailed designs and drawings, technical information, plans, specifications, calculations, and models prepared by the Concessionaire for the Project Facilities, on the basis of the Technical Specifications and which are approved by the Authority in accordance with Clause 13.2
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 28.1.(iii).
Availability Guarantee	has the meaning ascribed to it in Clause 21.1.A
Discharge Liquidated Damages	means the liquidated damages payable by the Concessionaire to Authority for a failure of the SWM processing Facility to achieve the Discharge Guarantee, which are to be calculated in accordance with the Agreement..
Dispute	has the meaning ascribed to it in Clause 23.2
Dispute Meeting	has the meaning ascribed to it in Clause 23.2
Dispute Notice	has the meaning ascribed to it in Clause 23.2
DPR	means a detailed project report prepared in accordance with Clause 13.2.1
Effective Date	means the date on which all the Conditions Precedent have been satisfied, or waived, by the Parties in accordance with this Agreement.
EHS Guidelines	means the guidelines available.
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of the Authority or the Concessionaire, may endanger the environment or lives or security of people at or around the Site (including any ragpickers) or that poses an imminent threat of material damage to any property (including the Project Facilities) at or around the Site.
EMP	means an environmental management plan to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 31.1
Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
Financial Proposal	means the financial proposal submitted by a bidder in accordance with the RFP for undertaking the Project.

Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.
Forced Unavailability	means an interruption of or a reduction in the availability of the SWM processing Facility that is the result of: <ol style="list-style-type: none"> <li>1. the Design Capacity being reached as notified by the Concessionaire to the Authority</li> <li>2. a suspension of the performance of the O&amp;M obligations pursuant to Article 27, to the extent any such event is not attributable to the Concessionaire; or</li> <li>3. delivery of Prohibited Waste or Non-biodegradable Waste to the Concessionaire; or</li> <li>4. Force Majeure Event; or</li> </ol> instructions issued by a Government Authority to the Authority or the Concessionaire to curtail the the processing and disposal of rejects from the SWM processing Facility, provided that such instructions are not attributable to the Concessionaire's failure to operate the SWM processing
GoI	means the Government of India.
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in the construction, operation, and maintenance of waste to energy facilities in India of the type and size similar to the Project Facilities.
Government Authority	means the GoI, any State Government, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or any State Government exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Agreement.
Grant	means an amount in INR quoted by the Selected Bidder in its Bid, being the capital support to be paid by the Authority to the Concessionaire in instalments during the Concession Period, upon satisfactory completion of the Project Milestones set out in Payment Schedule, in accordance with the terms of this Agreement.]
[Gross Revenue	means: <ol style="list-style-type: none"> <li>(a) all pre-tax revenues from the sale of the compost by the Concessionaire;</li> </ol>
Intellectual Property Rights	means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Invoice	means an invoice for payment of the Concessionaire Payments, submitted by the Concessionaire to the Authority in accordance with Article 22.
KPI Adherence Report	has the meaning ascribed to it in Clause 21
KPIs	means the key performance indicators set out in Clause 21.1 which the Project Facilities must achieve during the O&M Period.
Lead Member	means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.
LOI	has the meaning ascribed to it in Recital H.



Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights Or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.
Member	means, where the Selected Bidder is a consortium, a member of the Selected Bidder.
Milestone Completion Certificate	means, in respect of any Project Milestone, a certificate issued by the Authority in accordance with Clause 16.1(a), to certify that such Project Milestone has been achieved in accordance with the requirements of this Agreement.
Minor Casualty	means any fire or other casualty that results in physical damage to the Project Facilities to the extent that the total cost (as estimated by the Site engineer) of repairing and/or replacing the damaged portion of the Project Facilities to the same condition as previously existed would not exceed the amount of INR 50000 (Rupees fifty thousand only).
Mixed Waste	means un-Segregated wet and dry waste or Biodegradable Waste and Non-biodegradable Waste, that is produced by households, commercial enterprises, healthcare units (non-bio-medical) including, solid or semi-solid domestic waste, sanitary waste (as defined under the SWM Rules), commercial waste, institutional waste, horticulture waste, agriculture and dairy waste, catering and market waste and other non-residential wastes, food waste, paper, cardboard, wood, textiles, rubber, leather, plastics, metal and glass, but excludes Prohibited Waste and C&D Waste .
MoEFCC	means the Ministry of Environment, Forest and Climate Change, GoI.
Non-biodegradable Waste	means any waste that cannot be degraded by micro-organisms into simpler stable compounds.
Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 28.1.ii
Notice of Arbitration	has the meaning ascribed to it in Clause 23.2
O&M	means operation and maintenance.
O&M Agreement	means the agreement for the operation and maintenance of the Project Facilities executed between the Concessionaire and the O&M contractor named therein.
O&M Expenses	means expenses incurred by the Concessionaire or by the Authority, as the case may be, for all O&M works in relation to the Project, including: <ul style="list-style-type: none"> <li>a. cost of salaries and other compensation to employees;</li> <li>b. cost of materials, supplies, utilities and other services;</li> <li>c. premium for insurance;</li> <li>d. all taxes, duties, cess and fees due and payable for O&amp;M; and</li> </ul> all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs.
O&M Inspection	has the meaning ascribed to it in Clause 18.4.c,d
O&M Liquidated Damages	means the damages payable for breach of O&M Standards.
O&M Period	means the period commencing on COD and ending on the Hand-back Date during which the Concessionaire is required to operate and maintain the Project Facilities.
O&M Plan	means the plan required to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 18.2, for the operation and maintenance of the Project Facilities.
O&M Security	has the meaning ascribed to it in Clause 9.3.
O&M Standards	means the requirements and performance standards for the operation and maintenance of the Project Facilities.



Offtake Agreement	means any agreement entered into between the Concessionaires and the Off taker for sale and purchase of the Compost.
Off taker	means any person that agrees to purchase all or part of the Compost from the Concessionaire during the Concession Period.
OHS Plan	means an occupational health and safety management plan to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 14.4, which shall include a Site safety plan.
Party	has the meaning ascribed to it array of Parties.
Payment Certificate	has the meaning ascribed to it in Article 22.
Performance Security	has the meaning ascribed to it in Clause 9
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
DBOT	Means DESIGN BUILD OPERATE AND TRANSFER.
Pre-Construction Works	means the works required to be undertaken by the Concessionaire to ensure that the Site is suitable and stable for construction of the SWM processing Facility and shall include conducting geophysical and geotechnical studies and investigations, assessing the soil bearing capacity, conducting tests to determine the design and construction requirements and carrying out piling, soil filling, concrete filling etc. The detailed description of the Pre-Construction Works required to be performed by the Concessionaire is as indicated in the RFP Document
Project Agreements	means this Agreement, the Financing Documents, the EPC Contract, the O&M Agreement, any Offtake Agreements and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to the Project.
Prohibited Waste	[means hazardous waste (as defined under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016), bio-medical waste (as defined under the Bio- Medical Waste Management Rules, 2016), construction and demolition waste (as defined under the Construction and Demolition Waste Management Rules, 2016) industrial waste, e-waste (as defined under the E-Waste (Management) Rules, 2016), waste from batteries (as defined under the Batteries (Management and Handling) Rules, 2001, radioactive waste (as defined under the Atomic Energy (Safe disposal of Radioactive Wastes) Rules, 1987), sludge, sewage waste, ash, dirt, soil, and silt.]
Project	has the meaning ascribed to it in Scope.
Project Facilities	means the SWM processing Facility and the Associated Infrastructure, which need to be constructed, installed, operated and maintained by the Concessionaire in accordance with this Agreement (including the Technical Specifications), and the term Project Facility shall be construed accordingly.
Project Milestones	means the four construction milestones, according to which the Grant will be paid to the Concessionaire in accordance with Article 22, and ‘Project Milestone’ shall mean any one of them, as the context may require.
Patented Technology	Patented technology used by the Concessionaire to develop the SWM processing Facility, as specified by the Concessionaire in its Designs and Drawings.
Receipt Point	means the location at the Site, to be mutually agreed between the Parties as part of the Construction Plan, at which the authority (or any C&T Contractors on behalf of the Authority) will be required to deliver the Acceptable Waste to the Concessionaire in accordance with this Agreement.
Residual Inert Matter	means the waste matter produced after processing of the Acceptable Waste at the SWM processing Facility.

Residual Waste	means the residual waste that is left after Segregation of the Mixed Waste, which is not capable of being used by the Concessionaire for processing at the SWM processing Facility to produce compost and which the Concessionaire shall be required to dispose of in accordance with the terms of this Agreement.
RFP	Means Request for Proposal
Right of Way	means all privileges, easements and other rights of way for enabling unfettered and unrestricted access and/or right of use of the Site.
Rupee or Rs. or INR	means Indian Rupees, the lawful currency of India.
Safety Requirements	has the meaning ascribed to it in Clause 19.1.
Schedule	means a schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled COD	means the date which is 9 months from the Effective Date, by which the Concessionaire is required to achieve the COD.
Scheduled CP Completion Date	has the meaning ascribed to it in Clause 4.5(a).
Scheduled Maintenance	means a planned maintenance of the SWM processing Facility that: a. has been scheduled and allowed by the Authority in accordance with the Scheduled Maintenance Programme; and is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of the SWM processing Facility, as the case may be.
Scheduled Project Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant Project Milestone.
Scope of Work/ Work / Project/ construction	Shall have interchangeable meaning and means the scope of work for construction and O&M of the Project Facilities but not limited to the Redesigning, Retrofitting, Upgradation, Augmentation, Integration Of Existing Waste To Compost / Bio Methanation Municipal Solid Waste Treatment Facility at Martam including Operation, Maintenance and Disposal of Segregated Fractions for Three Years and all associated activities incidental to the performance of this scope.
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Segregation	shall have the meaning as ascribed to the term in the SWM Rules and the terms “Segregate” and “Segregated” shall also have similar meanings.
Selected Bidder	means the bidder selected by the Authority for award of the Project.
Site	means the land area on which the Concessionaire shall develop /redevelop the Project Facilities.
SLF	means the sanitary landfill identified by the Authority for safe and scientific disposal of the Residual Inert Matter and any Residual Waste.
Sq. ft.	means square feet.
Subcontract	means a contract entered by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.

Subcontractor	means the Concessionaire's counter party under any Subcontract.
SWM Rules	means the Solid Waste Management Rules, 2016, issued by the MoEFCC on 8 April, 2016, as may be amended from time to time.
Taxes	means any Indian taxes including levies, imposts, cesses, duties and other forms of taxation, including income tax, goods and services tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, stamp duty or capital duty (whether central, state or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Authority, but excludes any interest, penalties and other sums in relation thereto imposed on any account whatsoever.
Technical Capacity	means the technical capacity and experience of the Selected Bidder /Member determined in accordance with the RFP.
Technical Specifications	means the technical specifications for design, development, construction, commissioning, operation and maintenance of the Project Facility.
Tests on Completion	has the meaning ascribed to it in Clause 16.1.c
Tests on Completion Notice	has the meaning ascribed to it in Clause 16.1.c
Throughput Guarantee	has the meaning ascribed to it in Clause 21.1(b).
Throughput Liquidated	means the liquidated damages payable by the Concessionaire
Damages	to the Authority for a failure of the SWM processing Facility to achieve the daily Throughput Guarantee, which are to be calculated in accordance with Schedule [•].
Total Project Cost	means the total capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of: the capital cost of the Project, as set forth in the financial Bid ; the actual capital cost of the Project on COD;
TPD	means tonnes per day.
TPY	means tonnes per year.
Trial Operations	means the operation of the SWM processing Facility on a trial basis for a period of not less than 15 day from the date on which the Trial Operations Commencement Notice is issued for the SWM processing Facility or such longer period as may be determined in accordance with Clause 16.1(c).
Trial Operations	has the meaning ascribed to it in Clause 16.1.d
GMC	Means the Gangtok Municipal Corporation and has the meaning given to it in the array of Parties.
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by the Authority or proposed by the Concessionaire, in accordance with Article 31.
Variation Order	means an order issued by the Authority certifying its approval of a proposed Variation and recording the terms and conditions on which the proposed Variation is required to be implemented.
Weighbridges	means the weighbridges to be installed by the Concessionaire at the Receipt Point to weigh each consignment of waste delivered by the Authority or the C&T Contractors on its behalf.
Willful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.

SWM processing Facility	means the waste to compost facility to be set up by the Concessionaire in accordance with the terms of this Agreement (including the Scope of Work and Technical Specifications), which shall be capable of handling and processing Acceptable Waste up to the Design Capacity.
-------------------------	---

## 1.2 Rules of Interpretation

In this Agreement, unless the context otherwise requires :

1. Any reference to a statutory provision shall include such provision as modified or re- enacted or consolidated from time to time.
2. The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
3. Headings in this Agreement are for convenience of reference only.
4. The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
5. References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
6. The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
7. Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue pro rata monthly and from the respective due dates as provided for in this Agreement.
8. A requirement that a payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day.
9. Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
10. The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form. Ambiguity in spellings, sentence formation, grammar, paragraph formatting etc shall be interpreted solely by the Authority.
11. The terms of the RFP form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement. In the event of any discrepancy between this Agreement and the RFP, the provisions set out in this Agreement shall prevail.
12. Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the Authority for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Authority shall be responsible to and indemnify the Concessionaire for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.
13. Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Authority, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
14. The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
15. The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for

the loss and damage that shall be suffered by the non- defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement and are not in the nature of a penalty.

### **1.3 Units of Measurement**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the 3rd (third) digit of 5 (five) or above being rounded up and below being rounded down.

### **1.4 Priority of agreements, clauses and schedules**

- a. The provisions of the Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules.
- b. In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
  - (i) between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses.
  - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules.
- c. In the event of any discrepancy between various documents issued by or provided to the Authority as a part of the Bid Process, the following order of priority shall apply:
  - (i) the LOI issued to the Selected Bidder.
  - (ii) the Technical and Financial Proposal submitted by the Selected Bidder and Schedule of Payment.
  - (iii) the written clarifications, if any, issued to the bidders; and
  - (iv) the RFP
  - (v) the offered Bid.

## **PART II – THE CONCESSION**

### **ARTICLE 2 SCOPE OF THE PROJECT**

- 2.1 The scope of the Project shall be as set out in Scope of Work and shall include:
  - a. designing, developing, constructing, completing and commissioning the Project Facilities by the Scheduled COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the DPR, the Construction Plan, the EMP, the OHS Plan and Good Industry Practices; and
  - b. operating and maintaining the Project Facilities in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the O&M Plan, the EMP, the OHS Plan and Good Industry Practices to ensure compliance with the KPIs; and
  - c. sale of Compost to the Off taker (s) if any and disposal of the By-Products, Recyclable Materials, Residual Inert Matter and Residual Waste in accordance with the requirements of this Agreement; and
  - d. hand back of the Project Facilities upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

# ARTICLE 3

## GRANT OF THE CONCESSION

### 3.1 Concession

On and from the Effective Date, and subject to, and in accordance with the requirements of this Agreement, Applicable Laws and Applicable Permits, the Authority grants to the Concessionaire the exclusive right, license and authority to:

- a. design, develop, construct, complete and commission the Project Facilities; and
- b. upon completion of construction and commissioning of the Project Facilities, operate and maintain the Project Facilities during the O&M Period, for the Concession Period (the Concession), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

### 3.2 Rights Associated with the Grant of Concession

The grant of the Concession set out in Clause 3.1 shall oblige or entitle the Concessionaire to the following: perform and fulfil all of the Concessionaire's obligations under, and in accordance with, the requirements of this Agreement.

1. access to the Site, for the sole purpose of implementing the Project.
2. apply for and obtain all the Concessionaire Applicable Permits required to undertake the Project.
3. undertake the Pre-Construction Works in accordance Scope of Work.
4. design, engineer, procure, develop, construct, install, complete and commission the Project Facilities in order to achieve the COD by the Scheduled COD.
5. upon completion of construction of the Project Facilities, undertake the Trial Operations and performance testing of the SWM processing Facility.
6. upon successful completion of the Trial Operations and performance tests, operate and maintain the Project Facilities for the O&M Period, either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire.
7. receive, handle and process the Waste up to the Design Capacity to process and dispose off the rejects.
8. receive, handle and Segregate Mixed Waste up to the Maximum Permissible Mixed Waste Quantity.
9. transport the Residual Inert Matter and/or Residual Waste to the Delivery Point.
10. store, use, appropriate, dispose of or market and sell all products of the Acceptable Waste including but not limited to the Compost, the By-Products and any Recyclable Materials in accordance with Applicable Laws.
11. with reasonable assistance from the Authority, obtain the utilities required for enabling the construction of the Project Facilities.
12. supply and deliver the Compost to the Off taker(s) in accordance with the terms of the Off take Agreement(s);
13. transfer the Site and the Project Facilities to the Authority upon the expiry of the Concession Period or termination of this Agreement, after rectification of any defects in the Project Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements.
14. receive the Concessionaire Payments, subject to compliance with the terms and performance of the obligations under this Agreement

**3.3 Appoint Subcontractors, agents, advisors and consultants** and enter into Subcontracts to undertake the Project, provided that subcontracts of a value not more than 35% of the project cost can be executed

### 3.4 Concession Period

The Authority grants the Concession to the Concessionaire for a term commencing on the Execution Date and for a period of 3 years from the COD Date (the Concession Period) during which the Concessionaire is authorized and obligated to implement the Project in accordance with this



Agreement, provided that:

- a. if the Concession Period is extended by the Authority in accordance with Clause 3.5 below, the Concession Period shall include the period by which the Concession Period is so extended; and
- b. in the event of an early termination of the Agreement by either Party in accordance with the terms of this Agreement, the Concession Period shall mean and be limited to the period commencing on the Execution Date and ending on the date of termination of the Agreement.

### **3.5 Extension of Concession Period**

The Concession Period may be extended for a period of 3 years by mutual agreement of the Parties either on the same terms and conditions, or on modified terms and conditions. Provided that, any such mutually agreed extension of the Concession Period shall be recorded in writing, by way of an amendment to this Agreement, by no later than [30 (thirty)] days prior to the expiry of the Concession Period.

### **3.6 Re-bidding of the Project on Expiry of the Concession Period**

- (a). The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to invite bids and grant a concession with respect to the SWM processing Facility for a period after the expiry of the Concession Period.
- (b). The Authority agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms of the relevant bid documents issued at the time. Subject to that during the project his LDs paid does not exceed 15% of the performance security or there are not more than 5 concessionaire defaults for six consecutive months.
- (c). During such bidding, the Concessionaire shall have a first right of refusal to match the proposal submitted by the lowest bidder, or highest ranked bidder subject to the following:
  - (i) the Concessionaire is otherwise eligible to participate in the bid process in accordance with the terms of the relevant bidding documents.
  - (ii) the Concessionaire's bid is within the range of plus-minus (+/-) [10% (ten per cent)] of the lowest (or highest) evaluated bid received.
- (d). If the successful bidder is not the Concessionaire, then the Concessionaire shall allow the core team (consisting of maximum of four persons) of the successful bidder to enter the Site at least [30 (thirty)] days before the date of expiry of the Concession Period to monitor work and undertake inspections of the Project Facilities. Provided that, during such period, the Authority shall ensure that such persons who are given access to the Site and the Project Facilities do not cause any interference with the operations and maintenance of the Project Facilities by the Concessionaire or any loss or harm to the Concessionaire's property and personnel at the Site.

# **ARTICLE 4**

## **CONDITIONS PRECEDENT AND EFFECTIVENESS**

### **4.1 Effectiveness**

- a. For the purposes of this Clause 4.1, the date on which the notice of completion of the last Condition Precedent specified in this Article 4 is issued by the Authority to the Concessionaire will be treated as the Effective Date.

### **4.2 Concessionaire Conditions Precedent**

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- a. Prepare the Construction Plan and designs and submit to the Authority for their approval in accordance with Clause 14.3.
- b. Provide the Performance Security to the Authority.
- c. Prepare and submit the EMP Report to the Authority for their approval in accordance with Clause 5.1
- d. Obtain all Concessionaire Applicable Permits that are required for achieving Financial Closure and for commencement of construction of the Project Facilities (including the environmental clearance) at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;
- e. Submit to the Authority certified true copies of the constitutional documents of the Concessionaire.
- f. Submit to the Authority a confirmation from the Concessionaire, in original, of the correctness of their Representations and Warranties set out in Article 7 of this Agreement. Conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and solutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement have been taken, fulfilled or done;
- g. If [the Selected Bidder/a Member/Associate has submitted unaudited annual accounts or audited annual accounts for the Accounting Year immediately preceding the last Accounting Year along with the Bid, the Concessionaire shall submit to the Authority: (i) a certified copy of [the Selected Bidder's/Member's/Associate's]28 duly audited balance sheet, annual report and profit and loss account for the latest Accounting Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member/Associate]29 met the Financial Capacity specified in the RFP as of the Bid Due Date;
- h. If [the Selected Bidder/a Member/Associate] has submitted a certificate from a chartered accountant to demonstrate that it meets the Financial Capacity specified in the RFP on the date not more than [7 (seven)] days prior to the Bid Due Date, the Concessionaire shall submit to the Authority,: (i) audited accounts for the period for which it submitted the chartered accountant certificate; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member/Associate] met the Financial Capacity specified in the RFP as of the Bid Due Date; and
- i. Submit to the Authority a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire.

### **4.3 Authority Conditions Precedent**

The Authority shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- a. grant the Concessionaire Right of Way to the Site, free of Encumbrances and encroachments in accordance with Article 10.
- b. Clause 4.2(c), review and approve the Construction Plan in accordance with Clause 13.3
- c. provide access road(s) to the Site, which are capable of being used for transportation of equipment



and material to the Site for the construction of the Project Facilities.

- d. facilitate the Concessionaire in obtaining all Concessionaire Applicable Permits if requested by the Concessionaire, including permits in relation to environmental protection and conservation.

#### **4.4 Other Conditions Precedent**

- a. The Authority and Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):
- b. The Confirming Party shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

#### **4.5 Satisfaction of Conditions Precedent**

- a. Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within [180 (one hundred and eighty) days from the Execution Date (the Scheduled CP Completion Date).
- b. If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the Scheduled Date due to:
  - (i) Force Majeure Event.
  - (ii) Change in Law.
  - (iii) in case of the Concessionaire, delay by the relevant Government Authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied for such Concessionaire Applicable Permit within the specified timelines, having paid the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
  - (iv) delay by the other Parties in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent, then the Scheduled Completion Date shall be extended on a day-for-day basis for the period of such delay, provided that the Scheduled CP Completion Date shall not be extended beyond the date which is 30 days from the Scheduled Completion Date CP Long-stop Date).
- c. Each Party shall cooperate and use its reasonable efforts to assist the other Parties in satisfying the Conditions Precedent.
- d. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent.
- e. Each Party shall promptly inform the other Parties when any Condition Precedent for which it is responsible has been satisfied. The Authority shall, within [7 (seven)] days of the satisfaction of all the Conditions Precedent in accordance with this Article 4, issue a notice to the Concessionaire in which it shall declare the Effective Date of the Agreement.

#### **4.6 Consequences of failure to satisfy Conditions Precedent If:**

- (i). the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the Scheduled Date of submission of the drawings and designs within the stipulated time of 60 days after issue of LOI, as may be extended in accordance with Clause 4.5(b), then it shall be liable to pay liquidated damages for each week of delay beyond the Scheduled Completion Date at the rate of INR 150 per day until the submission of the necessary documents.
- (ii). the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the Scheduled CP Completion Date, as may be extended in accordance with Clause 4.5(b), then it shall be liable to pay liquidated damages for each week of delay beyond the Scheduled CP Completion Date at the rate of [0.02] % of the Performance Security up to the CP Long-stop Date. The Authority

may recover such damages from the Performance Security.

- (iii) the Authority fails to satisfy any of the Conditions Precedent that it is required to fulfil by the Scheduled CP Completion Date, as may be extended in accordance with Clause 4.5(b), then it shall be liable to pay liquidated damages for each week of delay beyond the Scheduled CP Completion Date at the rate of [0.2]% of the Performance Security, up to the CP Long-stop Date. The Authority shall pay such liquidated damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Concessionaire.  
It is clarified for the avoidance of any doubt that if either the Concessionaire or the Authority fail to satisfy any of their Conditions Precedent by the Scheduled CP Completion Date due to the Confirming Party failing to satisfy its Condition Precedent as per Clause 4.4(b), or if both the Concessionaire and the Authority have failed to fulfil any of their Conditions Precedent by the Scheduled CP Completion Date (including any Conditions Precedent under Clause 4.4(a)), then neither the Concessionaire nor the Authority shall be liable to pay liquidated damages under this Clause 4.6.
- b. The Parties acknowledge that the damages specified in Clause 4.6(a)(i) and Clause 4.6(a)(ii) above are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the non-defaulting Party(ies) because of the delay in fulfilment of the Conditions Precedent and consequently, occurrence of the Effective Date.
- c. Subject to Clause 4.6(e), if the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Authority has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- d. Subject to Clause 4.6(e), if the Authority fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Concessionaire has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- e. The Concessionaire and the Authority shall be permitted to waive or relax any Condition Precedent required to be fulfilled by the other Party or agree to an extension of the CP Long-stop Date for satisfaction of the Conditions Precedent required to be fulfilled by the other Party.
- f. If the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it, other than due to the reasons set out in Clause 4.5(b) or due to the Confirming Party failing to satisfy its Condition Precedent as per Clause 4.4(b), by the CP Long-Stop Date and this Agreement is terminated in accordance with this Clause 4.6, then:
  - (i) the Concessionaire shall not be entitled to receive any payment or compensation from the Authority for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Agreement (including preparing, the Construction Plan, the DPR and the ESIA Report) prior to the termination of this Agreement.
  - (ii) the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement.
  - (iii) the Authority shall hand over to the Concessionaire the Construction Plan, the EMP Report and any other document and Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement; and
  - (iv) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labor camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.

- g. If the Authority or the Confirming Party has failed to satisfy any of the Conditions Precedent required to be satisfied by them or the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it due to the reasons set out in Clause 4.5(b), in each case by the CP Long-Stop Date, and this Agreement is terminated in accordance with this Clause 4.6, then:
- (i) the Authority shall return the Performance Security submitted by the Concessionaire.
  - (ii) the Authority shall reimburse the Concessionaire for the reasonable documented costs incurred by the Concessionaire in preparing the Construction Plan, designs plans and the EMP Report less any liquidated damages paid by the Authority under Clause 4.6(a), provided that such costs shall be capped at a sum no greater than [10 (ten)] % of the Total Project Cost]
  - (iii) the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement.
  - (iv) the Authority shall hand over to the Concessionaire the Construction Plan, designs, plans, the EMP Re- port and any other document and Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement.
  - (v) the Authority shall not use any soft copies of the Construction Plan, designs plans, the EMP Report and any other document and Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement, without the prior written consent of the Concessionaire; and
  - (vi) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labor camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.
- h. Upon termination of this Agreement pursuant to this Clause 4.6, other than to the extent specified in this Clause 4.6, no Party shall have any liability to the other Party in connection with this Agreement.

## ARTICLE 5

### OBLIGATIONS OF THE CONCESSIONAIRE

#### 5.1 General Obligations of the Concessionaire

The Concessionaire shall:

1. at agreed cost and expense, procure and undertake the design, engineering, procurement, development, construction, commissioning, operation and maintenance of the Project Facilities in a manner that is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan, EMP, the OHS Plan and Good Industry Practice.
2. operate and maintain the Project Facilities throughout the O&M Period in a manner that is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan, EMP, the OHS Plan and Good Industry Practice.
3. design, engineer, procure, construct, operate and maintain the Associated Infrastructure in accordance with the requirements of this Agreement.
4. maintain and comply with the terms and conditions of all Applicable Permits in undertaking the construction and O&M of the Project Facilities.
5. perform and fulfil all obligations under the Financing Documents.
6. procure, as required, all necessary rights (including proprietary rights), licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project.
7. discharge its obligations as a reasonable and prudent person and make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Subcontractors in connection with the performance of its obligations under the Agreement.
8. ensure that the SWM processing Facility is capable of handling and processing Waste up to its Design Capacity catering to the entire concession period on a daily basis.
9. within [30 (thirty)] days of the Execution Date, and in any event, prior to the commencement of any work at the Site, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Project Facilities, and liaise with Authority's Representative and the Site engineer during the Concession Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to Authority.
10. provide all necessary assistance to the Authority in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement.
11. take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the Adjoining Properties, in accordance with the approved EMP, OHS Plan, and all Applicable Laws.
12. ensure that all excavated materials, earthworks, waste materials, Residual Inert Matter and hazardous substances are stored and/or disposed in accordance with this Agreement, the EMP, OHS Plan, Applicable Laws and Applicable Permits.
13. obtain and maintain adequate insurances as per this Agreement.
14. provide and maintain a buffer zone around the SWM processing Facility.
15. procure and maintain an adequate supply of water for the construction, operation and maintenance of the Project Facilities;
16. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
17. hand back the Project Facilities to the Authority upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

## **5.2 Obligations relating to Project Agreements**

- A. It is expressly agreed that the Concessionaire shall, always, be liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability under this Agreement.
- B. The Concessionaire shall submit to the Authority copies of all Project Agreements or any amendments or replacements thereto within 15 (fifteen) days from the date of their execution.
- C. The Concessionaire shall not make any addition, replacement or amendment to any of the Financing Documents without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of increasing the financial liability of the Authority under this Agreement, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for the restructuring or rescheduling of the Debt Due to the extent that such restructuring or rescheduling does not increase the financial liability of the Authority under this Agreement.
- D. 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 or suspension (the Covenant). The Parties agree that in the event the Authority does not exercise such rights of substitution within a period not exceeding [90 (ninety)] days from the Hand- back Date, the Project Agreements shall be deemed to cease to be in force and effect on the Hand-back Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of termination or suspension.
- E. The Concessionaire shall also procure that such Project Agreements shall also include a covenant that all disputes arising out of such Agreements shall be settled between the Concessionaire and the counter party(ies) and that the Authority or its advisors/contractors/consultants shall not be impleaded in such disputes whatsoever.

## **5.3 Land Use**

The Concessionaire shall ensure optimum utilization of the Site and land available and shall not use the same for any purpose unconnected with, or which is not incidental to the Project.

## **5.4 Processing of Waste**

The technologies adopted for processing Solid Municipal Waste shall be those proposed in the Concessionaire's Bid submitted in response to the RFP.

## **5.5 Employment of Trained Personnel**

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

## **5.6 Branding of the Project**

The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of “ Martam Treatment and Sanitary Landfill Facility in Sikkim”.

## **5.7 Obligations relating to Information**

- A. Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority or the Confirming Party for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information forthwith in the manner and form required by the Authority or the Confirming Party.
- B. After receiving a notice from the Authority or the Confirming Party for comments on the accuracy and text of any information relating to the Concessionaire’s activities under or pursuant to this Agreement which the Authority or the Confirming Party proposes to publish, the Concessionaire shall provide such comments in the manner and form required by the Authority or the Confirming Party.

## **5.8 Obligations in relation to Other Charges**

- A. The Concessionaire shall make timely payments for all utility services in respect of the Site, including water, sewerage, electricity, telecommunication, internet and cable charges, etc. on its own account.
- B. The Concessionaire shall hold harmless and keep the Authority indemnified from any fine, penalty, charges, levies, damages and losses that arise on account of any claims, suits, demands and proceedings due to the non-payment or delayed payment of such charges.

## **5.9 Sole purpose of the Concessionaire**

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

# **ARTICLE 6**

## **OBLIGATIONS OF THE AUTHORITY AND THE CONFIRMING PARTY**

### **6.1 General Obligations of the Authority**

The Authority shall:

- 1. comply with all its obligations under Applicable Laws.
- 2. make reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits.
- 3. grant, in a timely manner all such approvals, permissions and authorizations 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;
- 4. provide reasonable assistance to the Concessionaire in obtaining permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities that may be required for the Project, including providing reasonable assistance to the Concessionaire in procuring the water supply for the construction, operation and maintenance of the Project Facilities;
- 5. within [30 (thirty)] days of the Execution Date, and in any event, prior to the commencement of any construction of the Project Facilities, appoint a Person with sufficient skill and expertise to act as Authority’s Representative. The Authority’s Representative shall liaise with the Concessionaire’s Representative and the Site engineer during the Concession Period. At any time during the Concession Period, Authority may replace Authority’s Representative with prior written notice to the Concessionaire.
- 6. grant to the Concessionaire, Right of Way and peaceful and actual possession of the Site in accordance



- with the timelines in this Agreement and ensure that the Concessionaire enjoys peaceful access to the Site
7. not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.
  8. declare and maintain, or cause to declare and maintain, a no-development zone of habitation around the Site in accordance with Applicable Laws;
  9. make the SLF or any Alternate Disposal Location available in time to allow the Concessionaire to deliver any Residual Inert Matter generated from the Trial Operations and operation of the SWM processing Facility and any Residual Waste;
  10. upon progressive completion of the works for the construction of the Project Facilities, allow inspection of the works by the concerned authority and issue the [Milestone Completion Certificates<sup>37</sup> / Construction Completion Certificate to the Concessionaire;
  11. monitor and review the operations and performance of the Project Facilities, including the obligation to review the records and reports that the Concessionaire is required to maintain, during normal working hours.
  12. supply adequate quantities of Acceptable Waste required by the Concessionaire for it to conduct the Trial Operations and performance testing of the Project Facilities.
  13. ensure that Acceptable Waste is delivered to the Concessionaire at the Receipt Point and is not dumped at any other place on or about the Site.
  14. ensure that any excess Acceptable Waste (i.e., Waste beyond the Design Capacity of the SWM processing Facility), which is not utilized at the SWM processing Facility is diverted to an alternate location.
  15. ensure that no Prohibited Waste is delivered to the Concessionaire and if any Prohibited Waste is delivered at the Site, then cause such Prohibited Waste to be promptly and safely removed from the Site. [make the Grant payments, on satisfactory completion of the relevant Project Milestones in accordance with Article 22;]<sup>39</sup> and
  16. make the Processing Fee payments, after approval of the Processing Fee Statement, in accordance with Article 22

# ARTICLE 7

## REPRESENTATIONS AND WARRANTIES

### 7.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Substitution Agreement.
- b. it has taken all necessary action to authorize the execution, delivery and performance of this Agreement, the Substitution Agreement.

### 7.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to Authority that:

1. it is duly organized, validly existing and of good standing under the laws of India.
2. it has the financial standing and capacity to design, construct, complete, operate and maintain the Project Facilities in accordance with this Agreement.
3. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof.
4. 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.
5. the information furnished in the Bid of the Selected Bidder or in response to the RFP, and as updated on or before the date of this Agreement is true and accurate in all respects as on the Execution Date.
6. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
7. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the Government of Sikkim.
8. which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
9. it has complied with all Applicable Laws and Applicable Permits in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement.
10. the Selected Bidder [and any Member of the Selected Bidder] is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to LOI and has agreed to unconditionally accept the terms and conditions set forth in this Agreement.
11. all its rights and interests in the Project shall pass to and vest in the Authority on the Hand-back Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or act of the Authority and none of the assets of the Project shall be acquired by it or be subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided for in this Agreement;
12. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.



13. it shall at no time undertake or permit any change in ownership except as permitted by Clause 5.10; and no representation or warranty by it contained in this Agreement or in any other document furnished by it to Authority, GMC in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty.

### **7.3 Authority's Representations and Warranties**

Authority represents and warrants to the Concessionaire that:

1. it is duly organized, validly existing and in good standing under the laws of India;
2. it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement.
3. it has taken all necessary approvals to execute this and perform its obligations under this Agreement.
4. this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof.
5. 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 GMC which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
6. it has complied with all Applicable Laws and Applicable Permits in all material respects.
7. the Site is not subject to any mortgage, lien, charge or any other Encumbrance.
8. it does not have any liability for any Taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
9. all information provided by it in the RFP and this Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

### **7.4 Acknowledgement**

- a. The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement based on the representations, warranties and undertakings made by the Parties hereunder.
- b. If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. 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 a Party under this Agreement.
- c. Authority and Authority Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise because of:
  - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by Authority to the Concessionaire; or
  - (ii) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

## ARTICLE 8

### DISCLAIMER

- 8.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of Work, Technical Specifications, the Site, existing structures, local conditions, physical qualities of ground, subsoil, and geology, waste characteristics and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Concessionaire Related Parties or any person claiming through or under any of them.
- 8.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1 above shall not vitiate this Agreement or render it voidable.
- 8.4 In the event that any Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1 above, that Party shall immediately notify the other Parties, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III – DEVELOPMENT AND OPERATIONS  
ARTICLE 9  
PERFORMANCE SECURITY AND O&M SECURITY

- 9.1. The Concessionaire shall have submitted to the Authority, prior to the Execution Date, an unconditional and irrevocable bank guarantee for an amount equal amount equal to 5 % of the Capex. Until the Performance Security has been submitted to the Authority, the Bid Security shall remain in force and effect, and upon the submission of the Performance Security, the Authority's Representative shall release the Bid Security to the Concessionaire. Notwithstanding anything to the contrary in this Agreement, in the event that the Performance Security is not provided by the Concessionaire on or before the execution of the work, the Authority may encash the Bid Security and appropriate the proceeds thereof as damages, and all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the LOI shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire.
- 9.2. The Performance Security shall remain valid for a period until 30 (thirty) days] after the COD.
- 9.3. To secure the performance of its obligations during the O&M Period, the Concessionaire shall be required to submit a bank guarantee substantially in the format as the Performance Security for an amount equivalent to 5% of annual O&M cost, at least 30 (thirty) days prior to the COD. The O&M Security may have an initial validity period of 1 (one) year and must be renewed on a year-on-year basis, before the expiry of the 11th (eleventh) month of the relevant year, until the expiry of the Concession Period.
- 9.4. The Performance Security shall secure the due performance of the Concessionaire's obligations up to the COD and the O&M Security shall secure the due performance of the Concessionaire's obligations from the COD till the expiry of the Concession Period. The cost of procuring the Performance Security and the O&M Security shall be borne solely by the Concessionaire.
- 9.5. If the Performance Security is scheduled to expire before the timeline mentioned in Clause 9.2, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Authority shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.
- 9.6. If the O&M Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year after the COD, then the Authority shall be entitled to draw down the total amount available under the O&M Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security
- 9.7. The Authority shall be entitled to utilize such retained amount in the same manner as it would
- 9.8. utilize the Performance Security or the O&M Security, as the case may be.
- 9.9. Upon receipt of a renewed or replacement Performance Security, or O&M Security the Authority shall return the unutilized cash security amount for the Performance Security, or O&M Security, to the Concessionaire.
- 9.10. The interest earned on any retained amounts or cash security shall be to the account of the Authority and the Authority shall not be required to pass on such sums to the Concessionaire.
- 9.11. The Authority shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honor any of its obligations, responsibilities or commitments up to the COD, or any amount due and payable by the Concessionaire to the Authority.

- 9.12. The Authority shall have the right to draw on the O&M Security and claim up to the amount guaranteed upon the Concessionaire's failure to honor any of its obligations, responsibilities or commitments after the COD till the expiry of the Concession Period, or any amount due and payable by the Concessionaire to the Authority
- 9.13. The Authority shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Security or the O&M Security, as the case may be. However, the Authority shall provide the Concessionaire with a copy of any demand notice issued by the Authority under the Performance Security or the O&M Security, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Performance Security or the O&M Security.
- 9.14. If the Authority makes a demand under the Performance Security or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than [15 (fifteen)] days of such demand, restore the value of such Performance Security or O&M Security to the amount stated in Clause 9.1 or Clause 9.3.

## ARTICLE 10

### PROJECT SITE

#### 10.1 The Site

- a. The Site of the Project Facilities shall comprise the land as available land at the existing landfill and in respect of which the Rights of Way shall be provided and granted by the Authority to the Concessionaire on a leave and license basis under and in accordance with this Agreement.
- b. The Site would include (but not be limited to) the land for setting up of Project Facilities and its access road.
- c. Without prejudice and subject to the Agreement, the ownership of the Project except the Site, including all improvements made therein by the Concessionaire, during the Concession Period, shall always remain with the Concessionaire till the completion of operations period and thereafter it shall be handed over to the Authority in good working condition.

#### 10.2 Grant of License over the Site

- a. The Authority shall, on and from the Execution Date, grant the Concessionaire access to the Site, along with all necessary Right of Way to enter upon the Site for conducting any site inspection and studies that may be required for preparing the Construction Plan, designs and EMP report.
- b. Within 15 days from the Execution Date, the Authority shall handover to the Concessionaire the Site on as is where is basis, free of any Encumbrances and from such date, the Authority shall grant the Concessionaire a license over the Site, along with all necessary Right of Way to enter upon, access, and occupy the Site. Provided that, license to use the Site granted to the Concessionaire shall always be subject to the right of the Authority and its nominated contractors to enter upon and access the Site. The license granted to the Concessionaire shall include the exclusive right to:
  - (i) undertake the Pre- Construction Works.
  - (ii) design, construct and commission the Project Facilities at the Site.
  - (iii) operate and maintain the Project Facilities during the O&M Period.
  - (iv) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement.
  - (v) use access roads, gates, fences and utilities at or about the Site; and
  - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply net- works and other utilities required to undertake the Project at the Site.
- c. Any charges payable for clearing and removing encumbrances, squatters, housing allottees from the Site, granting access to the Concessionaire and obtaining all necessary Right of Way will be paid directly by the Authority.
- d. The Authority shall provide the Site to the Concessionaire free of Encumbrances and encroachments. If the Concessionaire discovers any hazardous substances at the time of handover of the Site, the Authority will remove such hazardous substances at its own cost and expense.
- e. The Concessionaire shall not without the prior written consent or approval of Authority use the Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by Authority.
- f. The full ownership and title over the Site shall, at all times during the Concession Period, vest with the Authority.
- g. The Authority warrants that the Concessionaire shall, subject to Clause 10.1(a), occupy the Site,

from such time that access is granted to the Concessionaire and until the expiry of the Concession Period. If the Concessionaire is obstructed by any Person claiming to be affected by the Project, including construction of the Project Facilities at the Site or if any injunction is granted by a court against the construction of the Project Facilities at the Site, the Authority shall, if called upon by the Concessionaire, take appropriate actions to tackle or defend such claims and proceedings.

- h. Subject to any substitution rights exercised by the Lenders, the license and the Right of Way granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

#### 10.3 Right, Title and Interest in the Project Facilities

- a. The full ownership, rights and title to the Project Facilities constructed or installed by the Concessionaire pursuant to this Agreement shall vest with the Concessionaire during the Concession Period.
- b. Except as otherwise provided in this Agreement, the Concessionaire shall not:
  - (i) sell or create any Security over the Project Facilities or any part thereof, except in accordance with the terms of the Financing Documents;
  - (ii) dispose of any assets forming part of the Project Facilities, other than for the purposes of replacement due to normal wear and tear; or
  - (iii) transfer, assign or novate all of its rights and obligations under this Agreement and in contravention of the terms of this Agreement, without the prior written consent of the Authority (such consent not being unreasonably withheld or delayed).

#### 10.4 Site Data and Verification

- a. The Authority has made available to the Concessionaire, the layout plans of this Agreement and all other relevant data, studies and reports in the Authority's possession in connection with the Site and the Project Facilities.
- b. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- c. The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analyzed and verified the accuracy and reliability of the studies, reports and data provided by Authority and any other information available with respect to the Project Facilities and the Site and to have satisfied itself as to all the relevant matters including:
  - (i) the nature of the Site, including the subsurface conditions, ecosystem, water table, drainage, subsoil, the load bearing and other characteristics of the Site;
  - (ii) the suitability of the Site for undertaking the construction and operation of the Project Facilities;
  - (iii) the adequacy of the utilities available till the battery limits of the Site;
  - (iv) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
  - (v) the nature of design, construction work and O&M services necessary to perform its obligations under this Agreement;
  - (vi) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
  - (vii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
  - (viii) the precautions, and methods of working necessary to prevent any public nuisance; and
  - (ix) all other matters that may affect the performance of its obligations under this Agreement.

- d. The Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Authority, then the Authority and the Concessionaire may mutually arrive at a decision regarding any extension of [the relevant Scheduled Project Milestone Completion Date or]44 the Scheduled COD and/or compensation for additional costs incurred due to such error or discrepancy. Provided that, the Concessionaire shall not be entitled to any extension as mentioned above, nor shall it be open to the Concessionaire to justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites' conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by the Authority shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.4(c) above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

#### **10.5 Unforeseen Site Conditions**

Without prejudice to Clause 10.4 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, including as a result of a failure by any contractor appointed by the Authority to rehabilitate the Site or level the Site prior to its handover to the Concessionaire, the Concessionaire may seek a Variation. Upon receipt of a request for a Variation due to unforeseen Site conditions, if, in the opinion of the authorized Engineer, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices or if such conditions are the result of the Authority not having fulfilled its obligations under the Agreement, in each case as evidenced by a notice issued by the authorized Engineer to the Authority and the Concessionaire, then Authority shall issue a Variation Order. Any decision of Authority regarding the existence of any unforeseen Site conditions shall be final and binding.

#### **10.6 Site Related Covenants**

The Concessionaire agrees and undertakes that:

1. the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
2. the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site where such encroachment or unauthorized occupation occurs after the date on which the Site is handed over to the Concessionaire in accordance with Clause 10.2(b);
3. the Concessionaire shall not use the Site for any purpose unconnected with the Project;
4. the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
5. the Concessionaire shall be wholly responsible for safety at and security of the Site and the Project Facilities;
6. the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
7. all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or



thing of value, the Concessionaire shall inform the Authority of such discovery and carry out the instructions of the Authority in this regard;

8. the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties; and
  - (i) the Concessionaire shall use all reasonable endeavors not to do or permit to be done anything which might:
  - (ii) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
  - (iii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
  - (iv) cause any contamination or damage to any Adjoining Property, and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused. If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of any Government Authority to undertake such construction works and/or the O&M services. The Authority shall provide all assistance to the Concessionaire for procuring such approvals.

#### **10.7 Access to the Authority Related Parties and Government Authorities**

The Concessionaire shall ensure that the Authority Related Parties and relevant Government Authorities have access to the Site and the license granted to the Concessionaire over the Site shall always be subject to:

- a. the rights of the Authority, the Authority's Representative, other Authority Related Parties, and the Site engineer to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the Authority shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project Facilities in any manner whatsoever; and
- b. the rights of the Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose. If any physical damage is caused to the Site or the Project Facilities as a result of such access and use of the Site by the Authority, the Site engineer, the Authority Related Parties or Government Authorities, then the Authority shall bear the costs of remedying such damage and restoring the Site and the Project Facilities.



# ARTICLE 11

## UTILITIES, ASSOCIATED ROADS AND TREES

### 11.1 Existing Utilities and Roads

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

### 11.2 Shifting of Obstructing Utilities

The Authority (depending on the respective jurisdiction) shall, subject to Applicable Laws, undertake the shifting of any utility at its own cost including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and to the extent that such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project.

### 11.3 New Utilities and Roads

- a. The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the construction of the Project Facilities, including all temporary power and water connections, lighting facilities, tele- phone connections, internet connections, etc. at the Site.
- b. The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws.
- c. The Concessionaire shall not be entitled to any extension of time or costs or in any other manner be relieved from the performance of its obligations in relation to Project Facilities to comply with its obligations under Clause 11.1, 11.3(a) and 11.3(b) above.
- d. The Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities.

### 11.4 Felling of Trees

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

## ARTICLE 12

### SITE ENGINEER

#### **12.1 Appointment and duties and functions of the site Engineer**

- a. Within [30 (thirty) days] of the Execution Date, the Authority shall appoint an appropriately qualified Person as the site Engineer.
- b. the site engineer will be responsible for the overall supervision of the site.
- c. The site engineer shall make reports and notes on a daily progress of the project and report it to the higher authorities on a weekly basis.
- d. The site engineer shall issue completion certificates after inspection of the project and inform the authorities of any alterations and variations made to the designs submitted.
- e. The site engineer shall ensure the quality of work being executed by the concessionaire and may raise queries about the work and submit a detailed report to the authorities regarding the quality of work.

# ARTICLE 13

## CONSTRUCTION PERIOD

### 13.1 Commencement and Duration

The period for construction of the Project Facilities shall commence on and from the Effective Date and shall continue until the COD (the Construction Period).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Effective Date, be entitled to commence:

- 13.1.1 soil or geophysical investigation or testing at the Site;
- 13.1.2 the Pre-Construction Works; and
- 13.1.3 appointment of Subcontractors for the construction works for the Project Facilities

### 13.2 Designs and Drawings

#### 13.2.1 Detailed Project Report

13.2.1.1 - Within 1 months from the Execution Date, the Concessionaire shall prepare and submit to the Authority a DPR in accordance with the requirements submitted in its bid. The DPR shall include details of the Patented technology, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, and financial analysis.

13.2.1.2 - The Authority shall review and provide comments, if any, on the draft DPR to the Concessionaire or notify the Concessionaire of their approval of the draft DPR within 30 (thirty) days from the date of receipt of the draft DPR from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft DPR if the Authority identifies any deficiencies or shortcomings in the draft DPR. If the Concessionaire receives any comments, suggestions or instructions to modify the draft DPR (including any plan included within the DPR) from the Authority then the Concessionaire shall incorporate the suggestions made the Authority and and modify the draft DPR to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised DPR to the Authority for their approval. The process set out in this Clause 13.2.1.1. shall continue until the DPR is approved by the Authority and in accordance with this Clause 13.2.1.2 Within [7 (seven)] days from the approval of the DPR, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the DPR to the Authority.

13.2.1.4 - The Concessionaire shall design, engineer and construct the Project Facilities strictly in accordance with the approved DPR. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved DPR without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the DPR does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the DPR in accordance with this Clause 14.2(a).

Notwithstanding any approval of the DPR by the Authority, the Concessionaire shall be solely liable for achieving the COD by the Scheduled COD. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the DPR and complying with the requirements of this Clause 13.2.1.1.

#### 13.2.2 Designs and Drawings

13.2.2.1- The Concessionaire shall prepare the Designs and Drawings in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The Designs and Drawings shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth development of the Project Facilities. The Project Facilities should be designed in a manner such that the Concessionaire can obtain an environmental clearance for the SWM processing Facility, an authorization under the SWM Rules for setting up the SWM processing Facility and a

consent to operate for the operation of the Project Facilities.

- 13.2.2.2 - the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the draft Designs and Drawings to the Authority along with the DPR. By submitting the Designs and Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the Designs and Drawings, including the field construction criteria related thereto, are in conformity with the Technical Specifications, Applicable Laws and Good Industry Practice.
- 13.2.2.3 - The Authority shall monitor the work as per the final DPR and the Designs & Drawings.
- 13.2.2.4 – No deviation from the approved DPR, Designs and Drawings shall be permitted except with mutual agreement.
- 13.2.2.5 - The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of the Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Designs and Drawings in accordance with this Clause 13.2. If the Concessionaire undertakes any construction work for the Project Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and the Authority shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.
- 13.2.2.6 - Notwithstanding any approval of the Designs and Drawings by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 13.2.

### **13.2.3 Use of Proposed Technology**

- 13.2.3.1 - The Concessionaire shall design and develop the SWM processing Facility on the basis of the selected technology, approved by the Authority as part of the Designs and Drawings.
- 13.2.3.2 - If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the SWM processing Facility.
- 13.2.3.3 - If the Selected Bidder does not own the Patented technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the Authority be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.
- 13.2.3.4 - Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the SWM processing Facility to the Authority at no additional cost to the Authority.
- 13.2.3.5 - The Concessionaire shall indemnify the Authority for any claims, losses, damages and costs suffered by the Authority as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.

## **13.3 Construction Plan**

- 13.3.1 Within [45] days from the Execution Date, the Concessionaire shall prepare and submit to the Authority a detailed Construction Plan. The Construction Plan shall be prepared in accordance with the requirements set out and must include:
  - (i) the detailed plan for completing the construction of the Project Facilities in order to complete the Project Mile- stones by the Scheduled Project Milestone Completion Date and achieve the COD

- by the Scheduled COD;
- (ii) a quality assurance plan setting out the activities and actions, proposed to be undertaken and the construction materials, equipment, and machinery to be used for the construction of the Project Facilities to ensure that the Project Facilities comply with the requirements of the Technical Specifications and Applicable Laws; and
  - (iii) an emergency response plan setting out in detail the procedures to be followed by the Concessionaire, its Sub-Contractors, agents and employees upon the occurrence of an Emergency.
- 13.3.2** The Authority shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Construction Plan within [7 (seven)] days from the date of receipt of the draft Construction Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Construction Plan if the Authority identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan (including any plan included within the Construction Plan) from the Authority, then the Concessionaire shall incorporate the suggestions made the Authority and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised Construction Plan to the Authority for their approval. The process set out in this Clause
- 13.2.1.1 shall continue until the Construction Plan is approved by the Authority in accordance with this Clause
- 13.2.1.1. Within [7 (seven)] days from the approval of the Construction Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Construction Plan to the Authority.
- 13.3.3 - The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the Construction Plan does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the
- Project Facilities prior to approval of the Construction Plan in accordance with this Clause 13.2. Notwithstanding any approval of the Construction Plan by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Construction Plan and complying with the requirements of this Clause 13.2.
- 13.3.4** - If, after completing the Pre-Construction Works, the Concessionaire is of the view that the Construction Plan approved under this Clause 13.2 needs to be amended or modified in any way so as to incorporate any learnings from the Pre-Construction Works, it shall revise the Construction Plan and submit it to the Authority and the process set out in Clause 13.2 shall follow for approval of the revised Construction Plan. Within [7 (seven)] days from the approval of the revised Construction Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Construction Plan to the Authority.
- 13.4 Subcontracting**
- 13.4.1** - The Concessionaire shall, within [30 (thirty)] days of the approval of the Construction Plan in accordance with Clause 13.2 above, submit to Authority, the draft Subcontractor management plan, which outlines the works and services (including procurement of equipment and materials) which the Concessionaire proposes to Subcontract, along with the estimated value of each Subcontract, details of the Subcontractor and methods by which the Concessionaire will ensure the Subcontractors comply with the terms of this Agreement, the Construction Plan, the DPR, the EMP and OHS Plan, the O&M Plan, Applicable Laws and Applicable Permits. The Authority shall review and provide

comments, if any, on the draft Subcontractor management plan to the Concessionaire or notify the Concessionaire of their approval of the draft Subcontractor management plan within [30 (thirty)] days from the date of receipt of the draft Subcontractor management plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft Subcontractor management plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Subcontractor management plan from the Authority, then the Concessionaire shall incorporate the suggestions made by the and modify the draft Subcontractor management plan to address any such comments. Thereafter, the Concessionaire shall submit the revised Subcontractor management plan to the Authority for their approval. The process set out in this Clause 13.5 shall continue until the Subcontractor management plan is approved by Authority in accordance with this Clause 13.5 Within [7 (seven)] days from the approval of the Subcontractor management plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the Subcontractor management plan to Authority. The Concessionaire shall not make any subsequent modification or amendment to the approved Subcontractor management plan without the prior written approval of Authority.

- 13.4.2** -The Concessionaire may enter into Subcontracts to perform any part of its Scope of Work, in accordance with the approved Subcontractor management plan, provided that notwithstanding the approval of the Subcontractor management plan, subcontracts of a value not more than 35% of the project cost can be executed by the Concessionaire.
- 13.4.3** -The Concessionaire shall provide a copy of each proposed Subcontract of a value not more than 35% of the project cost, along with details of the relevant Subcontractor, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement and the approved Subcontractor management plan.
- 13.4.4** -Within [15 (fifteen)] days of receipt of a draft Subcontract under Clause 13.4 above, the Authority shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- 13.4.5** -The approval of any Subcontractor and the corresponding Subcontract by the Authority shall be subject to the following conditions:
- (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire;
  - (ii) the Subcontract is on terms consistent with this Agreement;
  - (iii) the Subcontract contains provisions that provide, at the Authority's option, for the subcontract to be novated or assigned to the Authority or its nominee without any further consent or approval from the Concessionaire or the Subcontractor or entitle the Authority or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of the Authority shall always be subject to the substitution rights of the Lenders under this Agreement; and
  - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.
  - (v) If the Authority does not notify its approval or rejection of any Subcontract to the Concessionaire within [15 (fifteen)] days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by the Authority.
  - (vi) Within [7 (seven)] days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the Authority for its records.
  - (vii) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the Authority and the process set out in this Clause 14.5 shall apply in such case.
  - (viii) Notwithstanding the approval of the Subcontractor management plan or any Subcontractor by the Authority, the Concessionaire shall be and remain liable under this Agreement for all work and services



subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

### **13.5 Concessionaire's Pre-Construction and Construction Obligations**

The Concessionaire shall design, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the EMP, OHS Plan, the Designs and Drawings, the Construction Plan the DPR and other provisions of this Agreement.

**13.5.1** - For this purpose, from the Execution Date and during the Construction Period, the Concessionaire shall: complete Pre-Construction Works in accordance with Scope of Work and Technical Specifications. Subject to Clause 4.3(a) and Article 26, the Concessionaire shall not be entitled to any extension of time or costs on account of any delays in completing the Pre-Construction Works.

**13.5.2** - Complete the work [corresponding to each Project Milestone by the Scheduled Project Milestone Completion Date and]49 [so as to ensure that the SWM processing Facility achieves COD on or before the Scheduled COD] in a manner that:

1. is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the DPR, the EMP, OHS Plan, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
2. the Project Facilities are free from all defects in design, materials, and workmanship;
3. the Project Facilities are safe, reliable and fit for purpose;
4. the SWM processing Facility is capable of handling and processing the Acceptable Waste up to the Design Capacity;
5. the Project Facilities are capable of Segregating Mixed Waste up to the Maximum Permissible Mixed Waste Quantity; and
6. all aspects of the Project Facilities, including the processes and materials employed in the construction, operation, and maintenance of the Project Facilities comply with the Applicable Laws in relation to environment, health, and safety, including in particular the SWM Rules, and there is no damage to the environment resulting from the construction of the Project Facilities.
7. reasonably consider and act upon the comments/suggestions made by Authority during any meetings with the Concessionaire;
8. rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by the Authority;
9. ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all labour charges, fees, cess, payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the Building and Other Construction Workers Welfare Cess Act, 1996. The Concessionaire shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the Authority from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislations);
10. arrange for all equipment, machinery, tools and other resources, including trucks for transportation

of the Residual Inert Matter and/or Residual Waste to the Delivery Point during Trial Operations, required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources, in accordance with the quality assurance plan submitted as part of the Construction Plan. The Authority may provide the Concessionaire an indicative list of vendors for procurement of equipment for the Project Facilities, and the Concessionaire may, at its discretion, procure equipment from such vendors;

11. take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
12. maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the Project Facilities in accordance with Applicable Laws; and
13. prepare and keep up-to-date, "as-built" records of the execution of the work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site and be made available to Authority for review and verification. The Concessionaire shall provide [4 (four)] hard copies and [1 (one)] soft copy on a USB drive, of the complete set of "as-built" drawings for the Project Facilities to Authority as a condition precedent to the issuance of the COD Certificate.

### **13.6 Construction Timelines**

**13.6.1** - The Concessionaire shall comply with the DPR, the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities so as to ensure that the SWM processing Facility achieves COD on or before the Scheduled COD.

**13.6.2** The Concessionaire shall be entitled to a day-for-day extension of [the relevant Scheduled Project Milestone Completion Date or, as the case may be,] the Scheduled COD, if the completion of construction, Trial Operations, and testing of the Project Facilities is delayed due to any of the following reasons (each such event, a Delay Event):

1. occurrence of a Force Majeure Event, provided that the requirements of Article 26 have been complied with;
2. a Change in Law;
3. undue delay by the relevant Government Authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
4. undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
5. delay by the Authority in approving the O&M Plan in accordance with Clause 18.2;
6. a suspension of construction of the Project Facilities pursuant to Clause 27.1 which is not attributable to the Concessionaire;
7. delay by the site engineer in inspecting the completed portion of the works or notifying the Concessionaire of any defects or deficiencies in the works in accordance with Clause 16.1.(iii);
8. delay by the Authority in issuing the Milestone Completion Certificate in accordance with Clause 16.1.b, Construction Completion Certificate in accordance with Clause 16.1.b
9. delay by the site engineer in issuing the Trial Operations Commencement Notice in accordance with Clause 16.1(a);
10. delay by the Authority in supplying adequate quantities of Acceptable Waste to undertake the Trial Operations;
11. delay by the Authority in (i) notifying the Concessionaire of any defects in the Project Facilities; or (ii) issuing the Acceptance Certificate,



12. delay by the Authority in issuing the COD Certificate in accordance with Clause 17.1 for reasons not attributable to the Concessionaire;
  13. undue delay by Authority in obtaining any Applicable Permit required to be obtained by it under this Agreement; or
  14. any variation proposed by Authority or necessitated by actual Site conditions in the Scope of Work, Technical Specifications or the Designs and Drawings. The Concessionaire shall promptly provide the Authority (with a copy to ) with a notice upon becoming aware of any Delay Event listed in this Clause 13.6. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire. The issuance of the notice under this Clause 13.6 within [7 (seven)] days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 13.6.
- 13.6.3** - Without prejudice to the Concessionaire's obligations to notify the Authority regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 13.6; and (ii) give the Authority access to such records and documents or provide the Authority with copies, if so requested.
- 13.6.4** - If the Concessionaire claims an extension of time in accordance with Clause 13.6 and Authority is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 13.6, then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- 13.6.5** - If two or more of the Delay Events listed in Clause 14.7(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 13.6.
- 13.6.6** - Except as provided in Clause 13.6, the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
- (i) delay caused in complying with any instructions of Authority which are attributable to any act or omission of the Concessionaire;
  - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines; or
  - (iii) unavailability or shortage of equipment, materials, or any other resources.
- 13.6.7** - Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner.

## ARTICLE 14

### MISCELLANEOUS

#### 14.1 Survival

- a. Any cause or action which may have occurred in favor of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Concession Period or by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- b. The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Concession Period or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

#### 14.2 - Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement and the RFP constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

#### 14.3 - Non-exhaustive Remedies

**14.3.1** Save and except as provided in this Agreement, the remedies available to the Concessionaire under this Agreement are not exhaustive and the Concessionaire and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.

**14.3.2** Save and except as provided in this Agreement, the exercise of any rights by any Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

#### 14.4 Notices

**14.4.1** Any notice or request in reference to this Agreement shall be written in English language and shall be sent by email, registered post, courier or facsimile and shall be directed to the other Party at the address mentioned below:

Authority :	Attention: Commissioner Gangtok Municipal Corporation,
Address: Tel:	Deorali, District Gangtok, Sikkim.
Fax:	
Email:	
Concessionaire :	Attention:
Address:	
Tel:	
Fax:	
Email:	

**14.4.2** - Any notice or demand served by registered post or courier shall be deemed to be duly served [48 (forty eight)] hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered post or courier, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.

**14.4.3** - Any Party may change the above address by prior written notice to the other Parties.

#### **14.5 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of the courts at Gangtok Sikkim.

#### **14.6 Counterparts**

This Agreement may be executed in [2 (two)] counterparts, each of which, when executed and delivered, will be an original, and the [2 (two)] counterparts together shall constitute one and the same instrument.

#### **14.7 Language**

**14.7.1** - The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.

**14.7.2** - All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

#### **14.8 Confidentiality**

**14.8.1** No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Concession Period and for a period of [5 (five)] years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including Authority Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.

**14.8.2** This Clause 14.8 shall not apply to Confidential Information, which:

- (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
- (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
- (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
- (iv) is disclosed by the Concessionaire to the Lenders, any actual or bona fide potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
- (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- (vi) is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;

- (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any Persons to whom a Party is entitled to disclose Confidential Information under this 14.8;
- (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- (xii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project. Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 14.8 above.

**14.8.3** A Party making a disclosure of Confidential Information pursuant to Clause 14.8 shall,

- (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
- (ii) be liable for any breach of such obligations by such representatives and Associates.

**14.8.4** In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 14.8 above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

**14.8.5** The recipient party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:

- (i) return, and use all reasonable endeavors to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
- (ii) destroy, and use all reasonable endeavors to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information, provided that the recipient party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient party or such Affiliate and/or which the recipient party or its Associates is required to retain by Applicable Law if it continues to keep such Confidential Information confidential in accordance with this Agreement.

## **14.9 Amendments**

**14.9.1** Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.

**14.9.2** - A Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by the other Parties, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions

or review take place.

- 14.9.3** Agree that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- 14.9.4** Agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets; and
- 14.9.5** consent to the enforcement of any judgment or award against them in any such proceedings.

In witness whereof the Parties hereto have signed this Agreement on this..... day of.....

(AUTHORITY)

By:

Name:

Title:

(CONCESSIONAIRE)

By:

Name:

Title:]

[Insert name of the Concessionaire]

# ARTICLE 15

## MONITORING OF CONSTRUCTION

### 15.1 Monthly Progress Reports

During the Construction Period, the Concessionaire shall, submit monthly reports to the site engineer (with a copy to the Authority), no later than [7 (seven)] days after the end of each month, which should set out the following:

- a. extent of progress of construction activities performed by the Concessionaire for the Project Facilities;
- b. comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
- c. details of any accident or hazardous incident at the Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
- d. status of rectification of defects and/or deficiencies discovered by the Authority. The Concessionaire shall promptly give such other relevant information as may be required by the authorities.

### 15.2 Inspection

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

### 15.3 Tests

- a. For determining that the construction works conform to the Technical Specifications, the authorities may require the Concessionaire to carry out, or cause to be carried out, tests, in accordance with Good Industry Practice, for quality assurance. The costs incurred on the tests shall be borne solely by the Concessionaire.
- b. If the results of any tests conducted under this Clause 15.3 establish any defects or deficiencies in the construction works, the Concessionaire shall carry out remedial measures and furnish a report to the site engineer in this regard. The site engineer shall have the right to verify such reports and if required, request the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the construction works into compliance with the Technical Specifications, and the procedure set forth in this Clause 15.3 shall be repeated until such construction works conform to the Technical Specifications.

### 15.4 Suspension of Unsafe Construction Works

- a. Upon recommendation of the site engineer to this effect, the Authority may, by notice, require the Concessionaire to suspend forthwith the whole or any part of the construction work if, in the reasonable opinion of the Authority, such work is unsafe and a potential safety hazard.
- b. The Concessionaire shall, pursuant to a notice under this Clause 15.4, suspend all or part of the construction works for such time and in such manner as may be specified by the Authority and carry out remedial measure to secure the safety of the suspended works. The Concessionaire may by notice, require the site engineer to inspect such remedial measures adopted and submit a report to the Authority recommending whether such suspension may be revoked. Upon receiving the recommendations of the site engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out further remedial measures that are necessary, in the reasonable opinion of the Authority, and the procedure set forth in this Clause 15.4 shall be repeated until the suspension is revoked.

# ARTICLE 16

## COMPLETION CERTIFICATE

### 16.1 Completion of Works

#### a. Completion of Construction

- (i) Upon completion of construction of all the works in relation to the Project Facilities, as specified in the Construction Plan and the DPR, the Concessionaire shall issue a notice to the Authority, , requiring the Authority to cause the site engineer to inspect the completed works. The purpose of such inspection shall be to determine whether the works have been completed in accordance with the requirements of Clause 13.6.
- (ii) If the site engineer is satisfied that the works have been completed in accordance with the requirements of Clause 13.6, then it shall submit a report to the Authority to this effect within [3 (three)] days of such inspection and there- after, the Authority shall issue a Construction Completion Certificate to the Concessionaire, within [7 (seven)] days from the date of the 's report.
- (iii) If the site engineer is of the view that the works do not satisfy the requirements of Clause 13.6, then the site engineer shall have the right to provide comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 13.6. Upon receipt of such comments, suggestions, or instructions from the site engineer, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Authority. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the site engineer is satisfied that the works have been completed in accordance with the requirements of Clause 13.6 and the Authority issues the Construction Completion Certificate in accordance with this Clause 16.1(a).
- (iv) If:
  - a. the site engineer fails to inspect the completed portion of the works, within [7 (seven)] days from the date of receipt of a notice from the Concessionaire under Clause 16.1 above;
  - b. the site engineer fails to provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the works, within [7 (seven)] days from the date of inspection of such works; or
  - c. the Authority fails to issue the Construction Completion Certificate, within [7 (seven)] days from the date of inspection of the works, then, such delay shall be treated as a Delay Event under Clause 13.6

#### b. Completion of Project Milestones

- (i) Upon completion of construction of the works corresponding to a Project Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to the Authority, with a copy to the, requiring the Authority to cause the site engineer to inspect the completed works covered by the relevant Project Milestones. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Project Milestones have been completed in accordance with the requirements of Clause 13.6.
- (ii) If the site engineer is satisfied that the works for the relevant Project Milestone have been completed in accor- dance with the requirements of Clause 13.6, then it shall submit a report to the Authority to this effect within [3 (three)] days of such inspection and thereafter, the Authority shall issue a Milestone Completion Certificate to the Concessionaire for such completed Project Milestone, within [7 (seven)] days from the date of the 's site engineer's report.
- (iii) If the site engineer is of the view that the works for the relevant Project Milestone do not satisfy the requirements of Clause 13.6, then the site engineer shall have the right to provide comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that



the works comply with the requirements of Clause 13.6. Upon receipt of such comments, suggestions, or instructions from the site engineer, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Authority. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the site engineer is satisfied that the works for the relevant Project Milestone have been completed in accordance with the requirements of Clause 13.6 and the Authority issues a Milestone Completion Certificate in accordance with this Clause 16.1. If:

- A. the site engineer fails to inspect the completed portion of the works covered by the relevant Project Milestone, within [7 (seven)] days from the date of receipt of a notice from the Concessionaire under Clause 16.1(a)(i) above;
- B. the site engineer fails to provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Project Milestone, within [7 (seven)] days from the date of inspection of such completed portion of the works; or
- C. the Authority fails to issue the Milestone Completion Certificate, within [7 (seven)] days from the date of inspection of the completed portion of the works covered by the relevant Project Milestone, then, such delay shall be treated as a Delay Event under Clause 13.6

**c. Tests on Completion**

- i. Upon issuance of the [Milestone Completion Certificate for the last Project Milestone] 63 / [Construction Completion Certificate] 64 by the Authority, the Concessionaire shall proceed to conduct the tests on completion in accordance with this Clause 16.1(b) and the Technical Specifications (the Tests on Completion).
- ii. The Concessionaire shall notify the Authority of the date(s) on which the Tests on Completion shall be conducted by the Concessionaire, at least [7 (seven)] days prior to such date(s) (the Tests on Completion Notice).
- iii. The Concessionaire shall, on the dates specified in the Tests on Completion Notice, carry out the Tests on Completion under the supervision of the site engineer to demonstrate that the Project Facilities have been constructed and installed in accordance with the Technical Specifications.
- iv. If, pursuant to the Tests on Completion, the site engineer identifies any defects or deficiencies in the Project Facilities, then the Concessionaire shall remedy such defects or deficiencies identified by the site Engineer. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Tests on Completion demonstrate, to the site engineer's satisfaction, that the Project Facilities have been constructed and installed in accordance with the Technical Specifications. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
- v. If the site engineer is satisfied that the Project Facilities have been constructed and installed in accordance with the Technical Specifications, then the site engineer shall inform the Authority within [7 (seven)] days of completion of the tests, with a copy to the Concessionaire, that the Project Facilities are ready for Trial Operations (the Trial Operations Commencement Notice).

**d. Trial Operations and Acceptance Tests**

- i. Subject to Clause 16.1 below, within [15] days of issuance of the Trial Operations Commencement Notice, the Concessionaire shall commence the Trial Operations of the WSWM processing Facility in accordance with the Technical Specifications, to determine whether the SWM processing Facility meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations for handling and processing of Acceptable Waste and production of the Compost in accordance with this Agreement. The Concessionaire shall undertake the Trial Operations of the SWM processing Facility, for a minimum period of [1] month from the date on which the Trial Operations of the SWM processing Facility commence.
- ii. At least [30 (thirty)] days prior to commencement of the Trial Operations, the Concessionaire



- shall notify the Authority of the quantity of Acceptable Waste (not exceeding the Daily Guaranteed Acceptable Waste Quantity) required by it on a daily basis to undertake the Trial Operations of the SWM processing Facility. The Authority shall ensure that such quantities of Acceptable Waste is delivered to the Concessionaire at the Receipt Point during the Trial Operations to enable the Concessionaire to demonstrate that the SWM processing Facility meets the Technical Specifications and the KPIs. The Authority shall also ensure that during the period of Trial Operations, the SLF or an Alternate Disposal Location is available for scientific disposal of the Residual Inert Matter or any Residual Waste during such Trial Operations period.
- iii. During the Trial Operations, the site engineer shall monitor the performance of the SWM processing Facility on a regular basis and shall have the right to test the compliance of the SWM processing Facility with the KPIs, Technical Specifications, Designs and Drawings, Applicable Laws and Applicable Permits.
  - iv. Within [15] days of the issuance of the [Milestone Completion Certificate for the last Project Milestone 65]/ [Construction Completion Certificate 66], the Concessionaire shall prepare and submit a copy to the Authority, a schedule of acceptance tests to be carried out for the SWM processing Facility as a part of the Trial Operations to demonstrate that the SWM processing Facility is capable of achieving the KPIs (Acceptance Tests Schedule).
  - v. Within [5 (five)] days from the date of receipt of the Acceptance Tests Schedule under Clause 16.1 above, the Authority may request the Concessionaire to vary the date(s) of the acceptance tests and the Concessionaire shall accommodate such request, provided that, such date(s) shall be no later than [7 (seven)] days from the date(s) specified in the Acceptance Tests Schedule received from the Concessionaire under Clause 16.1 above.
  - vi. The Concessionaire shall, on the dates specified in the Acceptance Tests Schedule, carry out the acceptance tests under the supervision of the site engineer to demonstrate that the Project Facilities are capable of achieving the KPIs and comply with the Technical Specifications.
  - vii. If the site engineer is not satisfied with the results of the acceptance tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities identified by the site engineer or revealed through the acceptance tests. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the acceptance tests demonstrate that the SWM processing Facility is capable of achieving the KPIs site engineer is satisfied that the Project Facilities have been completed in accordance with Clause 13.6 and are safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
  - viii. It is clarified that no Liquidated Damages for failure to achieve the KPIs will be payable by the Concessionaire during the Trial Operations period.
  - ix. After the expiry of [1] month from the date of commencement of Trial Operations or after successful completion of the acceptance tests, whichever is later, the Concessionaire shall issue a report to the Authority, stating that the Trial Operations have been successfully completed, along with details of compliance with the KPIs, performance of various components of the Project Facilities and details of defects identified during the Trial Operations and steps taken by the Concessionaire to rectify such defects.
  - x. If, the site engineer is satisfied that the Project Facilities are capable of meeting the KPIs on a consistent basis and are otherwise in compliance with the Technical Specifications, and capable of safe and reliable operations, then, the site engineer shall issue a notice to notify the Authority recommending the issue of the Acceptance Certificate. The Authority shall issue the Acceptance Certificate within 7 (seven) days of receiving the notification.
  - xi. If, the Authority believes that the Project Facilities do not comply with the KPIs, or Technical Specifications, then the Authority shall notify the Concessionaire within [7 (seven)] days of receiving the Concessionaire's report and the Concessionaire shall rectify any defects identified by the Authority or resubmit a report in accordance with Clause 16.1. This process shall continue until the Authority issues an Acceptance Certificate in accordance with Clause 16.1 above.

- xii. If the Authority: (i) fails to notify the Concessionaire of any defects in the Project Facilities within [7 (seven)] days of receiving the Concessionaire's report; or (ii) the Authority fails to issue the Acceptance Certificate within [7 (seven)] days of receiving the Concessionaire's report, then such delay shall be treated as a Delay Event in accordance with Clause 13.6.
- xiii. Notwithstanding anything contained in Clause 16.1, if the Concessionaire fails to successfully complete the Trial Operations, including the acceptance tests, within [6 (six)] months from the original Scheduled COD due to the reasons specified in Clause 16.1 above, then such failure will be treated as an Authority Event of Default, and the consequences set out in Article 28 shall follow.

## ARTICLE 17

### ENTRY INTO COMMERCIAL SERVICE

#### **17.1 Commercial Operations Date**

- (a) The Concessionaire shall, upon satisfaction of the conditions set out in this Clause 17.1(a) below, issue a notice to the Authority, with a copy to site engineer, requesting the Authority to issue the COD Certificate (COD Conditions Completion Notice). The Authority shall issue the COD Certificate, with a copy, to the Concessionaire, within 7 (seven) days from the date of receipt of the COD Conditions Completion Notice. The conditions to be satisfied prior to the Concessionaire issuing the COD Conditions Completion Notice are:
  - (i) the Authority having issued the Acceptance Certificate;
  - (ii) the Concessionaire having provided and maintained a buffer zone around the SWM processing Facility.
  - (iii) the Concessionaire having obtained all Applicable Permits necessary for operation of the SWM processing Facility (including but not limited to all approvals for the safety, installation and energization of any electrical equipment and the consent to operate from the relevant Government Authorities);
  - (iv) the Concessionaire having submitted to the Authority the Scheduled Maintenance Program
  - (v) program for the first-year post COD;
  - (vi) the Concessionaire having submitted the O&M Security to the Authority;
  - (vii) the O&M Plan having been approved by the Authority;
  - (viii) the Waste Acceptance, Segregation and Rejection Plan being approved by the Authority;
  - (ix) the Concessionaire having notified the Authority of the actual capital cost of the Project; and
  - (x) the Concessionaire having provided [4 (four)] hard copies and [1 (one)] soft copy on a USB drive, of the complete set of "as-built" drawings for the Project Facilities to the Authority.
- (b) If the Authority fails to issue the COD Certificate to the Concessionaire within [7 (seven)] days from the date of the issue of the COD Conditions Completion Notice, without reason, or if the conditions set out above cannot be satisfied due to reasons not attributable to the Concessionaire (such as a delay in completion or making available for use the SLF or an Alternate Disposal Location), then:
  - (i) the Authority shall pay the Concessionaire liquidated damages at the rate of [0.1]% of the Performance Security for each day of delay, subject to a maximum delay of [6 (six)] months from the date of the COD Conditions Completion Notice. The Authority shall pay such liquidated damages within [30 (thirty)] days of receipt of an invoice for such liquidated damages from the Concessionaire. The Authority acknowledges that the damages payable by the Authority pursuant to this Clause 17.1(b) are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Concessionaire as a result of the delay in the issuance of the COD Certificate, and not

as penalty; and

- (ii) if, upon the expiry of [6 (six)] months from the date of the COD Conditions Completion Notice, the Authority's failure to issue the COD Certificate continues due to reasons not attributable to the Concessionaire, the COD Certificate shall be deemed to be issued.
- (c) The date on which the COD Certificate is issued (or deemed to be issued) to the Concessionaire shall be the COD of the Project Facilities.

## ARTICLE 18

### OPERATIONS AND MAINTENANCE PERIOD

#### **18.1 Commencement and Duration**

The period for the operation and maintenance of the Project Facilities shall commence on and from the COD and shall continue until the expiry of the Concession Period, unless terminated earlier in accordance with Article 28.

#### **18.2 O&M Plan**

- (a) At least [60 (sixty)] days prior to the Scheduled COD, the Concessionaire shall prepare and submit a detailed O&M Plan for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, EMP, OHS Plan, Applicable Laws and Applicable Permits. The O&M Plan shall specify the operation procedures and maintenance procedures (separately for each component of the Project Facilities). If there are any errors or deficiencies in the Technical Specifications, the O&M Plan shall take in account, address or rectify such errors or deficiencies.
  - (b) The Authority shall review and provide comments, if any, on the draft O&M Plan to the Concessionaire, or notify the Concessionaire of their approval of the draft O&M Plan, within [30 (thirty)] days from the date of receipt of the draft O&M Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft O&M Plan if the Authority identify any deficiencies, inaccuracies or shortcomings in the draft O&M Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Plan from the Authority, then the Concessionaire shall modify the draft O&M Plan to correct any shortcomings, inaccuracies or deficiencies identified by the Authority and/or address, in writing, the Authority's comments on the draft O&M Plan and submit the revised O&M Plan to the Authority for their approval. The process set out in this Clause 18.2(b) shall continue until the O&M Plan is approved by the in accordance with this Clause 18.2(b). The Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the approved O&M Plan to the Authority.
  - (c) The Concessionaire shall revise the O&M Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.2(b) will apply as is to the approval of the revised plan.
  - (d) The Concessionaire shall undertake the O&M of the Project Facilities strictly in accordance with the approved O&M Plan. The Concessionaire could deviate from or make some reasonable amendment to the approved O&M Plan with the prior written approval of the Authority. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the O&M Plan in accordance with this Clause 18.2.
  - (e) Notwithstanding any approval of the O&M Plan by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Plan. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Plan and complying with the requirements of this Clause 18.2.
- (a) Concessionaire's rights and obligations during the O&M Period
  - (i) The Concessionaire shall operate and maintain the Project Facilities in a

- manner that: results in the Project Facilities achieving the KPIs;
- (ii) is compliant with the O&M Standards, Applicable Law and the terms of Applicable Permits;
  - (iii) ensures the Project Facilities are capable of handling and processing Acceptable Waste up to its Design Capacity on a daily basis, including Segregating, handling, processing, storing and disposing of Mixed Waste
  - (iv) is safe and reliable, subject to normal wear and tear of the Project Facilities;
  - (v) ensures safe and reliable transportation of the Residual Inert Matter and/or any Residual Waste to the Delivery Point;
  - (vi) ensures that there is no damage to or deterioration of the environment resulting from the operation of the Project Facilities;
  - (vii) ensures that there is zero liquid discharge from the operations of the Project Facilities including leachate runoff from the processing of Acceptable Waste mixing with and polluting any surface water, ground water, stream, pond, or other water body/source;
  - (viii) ensures that there is no leakage from the operations of the Project Facilities which could endanger the environment, persons or property at or about the Site;
  - (ix) ensures that the Project Facilities comply with all emission control norms specified under Applicable Law, failing which the Concessionaire shall be liable to pay any penalties and/or fines levied by any Government Authority under Applicable Law;
  - (x) ensures safe and proper handling of any Prohibited Waste delivered at the Site;
  - (xi). is in compliance with Applicable norms (FCO) and standards relation to the production and quality of compost
  - (xii). maintains the safety and security of personnel, material and property at the Site, in accordance with the ap- proved EMP, OHS Plan, Applicable Laws and Applicable Permits;
  - (xiii). ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EMP, OHS Plan, Applicable Laws and Applicable Permits.

### **18.3 During the O&M Period, the Concessionaire shall:**

- 2.2 ensure that it reasonably considers and acts upon the comments/suggestions made by the Authority during any meetings of the Concessionaire with its Subcontractors;
- 2.3 provide the Authority and the site engineer with reasonable access to the Site during office hours to monitor and inspect the Project Facilities;
- 2.4 ensure that all equipment, machinery, tools and other resources required to undertake the O&M of the Project Facilities are arranged for and take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not unreasonably hinder or cause excess interference with local traffic in the vicinity of the Site;
- 2.5 develop and implement a safety and surveillance programme for the Project Facilities and adopt appropriate measures and safeguards for the security of the environment, life, and property at the Site.

### **18.4 Delivery of Waste**

#### **a. Delivery of Acceptable Waste**

- (i) From the COD and until the expiry of the Concession Period or early termination of this Agreement, the Authority shall, or shall cause its C&T Contractors to, deliver Acceptable Waste to the Concessionaire for processing at the SWM processing Facility, in accordance with the Acceptable Waste Delivery Schedule.
- (ii) The Concessionaire will not be required to receive and accept any quantities of Acceptable Waste in excess of the Design Capacity. Further, the Concessionaire shall not accept any waste, including any Acceptable Waste, which is not delivered by the Authority, or any C&T Contractors appointed by Authority.

#### **b. Delivery of Mixed Waste**

- (i) The Authority shall ensure that the Mixed waste delivered to the Concessionaire at the Receipt Point on

any day of the O&M Period does not include Prohibited Waste and C&D Waste .

- (ii) If the amount of Prohibited Waste and C&D Waste in Mixed waste delivered to the Concessionaire on any day exceeds, then the Concessionaire may, in its sole discretion:
  - A. elect to Segregate, process and handle such Waste Quantity in accordance with Clause 18.8, in which case such Waste Quantity shall be deemed to be Acceptable Waste for the purpose of assessing if the Daily Guaranteed Acceptable Waste Quantity was delivered by the Authority to the Concessionaire under Clause 18.5(a) above; or
  - B. reject such Waste Quantity in accordance with Clause 18.6 below.

#### **18.5 Weighment, Inspection, Acceptance, and Rejection of Waste**

- a. As part of the Associated Infrastructure, the Concessionaire shall provide [1] weighbridges (Weighbridges) in accordance with the Technical Specifications, to weigh the waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point and the Residual Inert Matter generated from the operations of the SWM processing Facility.
- b. The Concessionaire shall weigh each truck carrying a consignment of waste to the Site at the Weighbridges as follows:
  - (i) Each truck entering the Site must obtain an identification number from the Concessionaire's personnel posted at the gate.
  - (ii) At the Weighbridges, the weight of the truck loaded with the consignment of waste will be taken and the Concessionaire shall record the following details (to the extent applicable) in the format to be approved by the Authority as part of the O&M Plan:
    - A. date of entry into the Site;
    - B. registration number of the truck;
    - C. time of entry into the Site;
    - D. total weight of the loaded truck; and
    - E. zone/circle/ward from which the waste has been collected and delivered to the Concessionaire.
    - F. Unloaded Weight of Truck(to be recorded only once for same truck)
- c. **Visual Inspection prior to Unloading**
  - (i) Once a truck carrying a consignment of waste has been weighed at the Weighbridge, the Concessionaire shall undertake a visual inspection of the consignment of waste to determine if any Prohibited Waste or Mixed Waste has been delivered.
  - (ii) If, upon such visual inspection of a consignment of waste prior to unloading, the Concessionaire:
    - A. determines that such consignment includes any Prohibited Waste, then the Concessionaire may refuse to accept such consignment and proceed to reject the consignment without allowing it to be unloaded; or
    - B. determines that such consignment includes only Prohibited Waste & C&D waste, then the Concessionaire may refuse to accept such Mixed Waste and reject the consignment without allowing it to be unloaded; or
    - C. determines that such consignment includes Mixed Waste, and where the Concessionaire elects to accept such Mixed Waste, it shall unload the Mixed Waste.
- d. **Inspection after Unloading**
  - (i) Once a truck carrying a consignment of waste has been weighed at the Weighbridge, and the Concessionaire has completed its visual inspection prior to unloading, then, subject to the Concessionaire's right to reject the entire consignment of waste in accordance with Clause 18.6(c) above, the Concessionaire shall unload the waste for further inspection.
  - (ii) If pursuant to a further inspection of a consignment of waste after unloading, the Concessionaire determines that such consignment includes any Prohibited Waste or any Mixed Waste, then the Concessionaire shall:
    - A. proceed to weigh the Prohibited Waste (if any) in order to determine the quantity of Prohibited



Waste & C&D waste (the Unloaded Prohibited Waste Quantity).

- (i) If, there exists any Unloaded Prohibited Waste Quantity, then the Concessionaire shall have the right to reject the Unloaded Prohibited Waste Quantity.
- (ii) The Concessionaire shall physically separate and set aside the Unloaded Prohibited Waste Quantity, for inspection by the site Engineer.
- (iii) The Concessionaire shall promptly (and in any event within [24] hours of delivery of the relevant consignment of waste that includes Prohibited Waste) notify the Authority of the rejection of any consignment of Prohibited Waste and, along with details of the truck carrying the Prohibited Waste and details of who supplied the Prohibited Waste and such other details as the Authority may require.
- (iv) Upon receipt of a notice from the Concessionaire regarding delivery of any Prohibited Waste and C&D waste to the Site, the Authority shall have the right to cause the site engineer to inspect the relevant waste consignment within [24] hours of receipt of such notice from the Concessionaire. If the site engineer certifies in writing that the Mixed Waste does not exceed the Maximum Permissible Mixed Waste Quantity or the waste is not Prohibited Waste, then the Concessionaire shall be required to accept the waste for Segregation, processing, and handling at the SWM processing Facility, in which case such waste shall be deemed to be Acceptable Waste delivered to the Concessionaire for determining if the Authority has delivered the Daily Guaranteed Acceptable Waste Quantity. If the site engineer certifies that the waste is Prohibited Waste and C&D Waste Quantity which has been delivered, then, and subject to the Concessionaire's right under Clause 18.5(b), the Authority shall (or shall cause the C&T Contractors to) remove such waste from the Site within [12] hours of inspection of such waste. If the Authority chooses to accept the Concessionaire's determination of Prohibited Waste and C&D Waste Quantity (and not require the site engineer to under- take a separate inspection), then, the Authority shall cause the Unloaded Prohibited Waste Quantity, and/ or, subject to the Concessionaire's right under Clause 18.5(b), the Unloaded Prohibited Waste and C&D Waste Quantity to be removed from the Site within [12] hours of receipt of the notice from the Concessionaire. All costs associated with the removal and transportation of the Unloaded Prohibited Waste and C&D waste Quantity from the Site, including additional costs incurred by the Concessionaire to load the Unloaded Prohibited Waste and C&D Waste Quantity onto trucks, shall be borne by Authority (or direct the C&T Contractors).
- (v) In handling any Prohibited Waste and C&D Waste Quantity that has been delivered to the Site, the Concessionaire shall comply with the Waste Acceptance, Segregation and Rejection Plan, the EMP, the OHS Plan, Applicable Laws and Applicable Permits.

**e. Calculation of the Acceptable Waste Delivered**

- i. After inspection and unloading of the waste, the Concessionaire shall weigh the truck at the time of exit of the truck from the Site. The Concessionaire shall record the weight of the empty truck or, the truck carrying the Prohibited Waste and C&D Waste Quantity not accepted in accordance with Clause 18.6(c), as the case may be, and the time of exit of the truck in the in the format to be approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan.
- ii. The difference between the weight of the truck carrying the waste, as recorded at the time of entry of the truck into the Site, and the weight of the truck recorded at the time the truck exits the Site, will be treated as the weight/volume of the total waste unloaded at the Receipt Point (the Total Unloaded Waste).
- iii. The Total Unloaded Waste less any Unloaded Prohibited Waste Quantity that the Concessionaire chooses to accept pursuant to Clause 18.5(b)), will be treated as the weight/volume of Acceptable Waste actually received by the Concessionaire for processing at the SWM processing Facility (the Daily Acceptable Waste Quantity). Provided that, any Unloaded Prohibited Waste & CD Waste Quantity that the Concessionaire chooses to accept pursuant to Clause 18.5(b) shall be counted towards the Daily Acceptable Waste Quantity received by the Concessionaire.
- iv. The Daily Acceptable Waste Quantity, Mixed Waste quantity and Unloaded Prohibited Waste Quantity, and details specified in Clause 18.6, will be recorded in a daily weight sheet, in the format

approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan. The daily weight sheets must be certified by the site Engineer.

- v. If the Weighbridges are unavailable for any reason, then the Concessionaire has to make alternate arrangements for weighing of trucks at its own cost and in a manner acceptable to the Authority. If the Concessionaire is unable to make acceptable alternate arrangements to weigh the trucks carrying the waste, then the following formula will be used to estimate the quantity of waste delivered to the Concessionaire on the days that the weighbridges are unavailable:

$$W = W_{avg} * N$$

Where,

W = weight of the Acceptable Waste delivered to the Concessionaire at the Receipt Point during the period when the Weighbridges are not available;

$W_{avg}$  = the average Daily Acceptable Waste Quantity, per truck delivered at the Receipt Point over [30 (thirty) days] immediately preceding the date on which the Weighbridges were first unavailable; and

N = the number of truckloads of consignment of waste, received by the Concessionaire at the Receipt Point during the period that the Weighbridges are not available.

#### **18.6 Segregation of Mixed Waste**

- a. The Concessionaire shall set up a waste Segregation system for Segregation of the Mixed Waste in accordance with the Waste Acceptance, Segregation and Rejection Plan. The Segregation system shall be setup in accordance with the Technical Specifications, Applicable law and the terms of any Applicable Permits and shall include providing adequate number of sorting machines to sort and Segregate the Mixed Waste up to the Maximum Permissible Mixed Waste Quantity.
- b. The Concessionaire shall be required to provide at the Site adequate storage facilities for the various wastes that are recovered after the Segregation of Mixed Waste.
- c. Any Biodegradable Waste that is Segregated from the Mixed Waste will be processed at the Facility as if such waste was Acceptable Waste and any Recyclable Materials, RDF recovered from the Segregation of the Mixed Waste may be disposed by the Concessionaire if possible or transported to cement factory.
- d. Any Residual Waste (including any Non-biodegradable Waste) left after Segregation of the Mixed Waste, and that cannot be processed at the Project Facilities or be sold as Recyclable Materials, shall be delivered by the Concessionaire at the Delivery Point for disposal

#### **18.7 Delivery of Residual Inert Matter and Residual Waste**

- a. The Concessionaire shall procure the trucks and other vehicles required for the transportation of the Residual Inert Matter and any Residual Waste to the Delivery Point and shall ensure that such trucks and vehicles are operated and maintained in a manner which poses no risk of harm or damage to the environment, life or property in the course of transportation to the relevant disposal or delivery location.
- b. The Concessionaire shall load the Residual Inert Matter and/or any Residual Waste onto trucks and have the weight of each truck taken at the Weighbridges. The Concessionaire shall record the following details with respect to each truck which is used to transport the Residual Inert Matter and/or any Residual Waste:
  - i. date of exit from the Site;
  - ii. registration number of the truck; and unladen weight;
  - iii. time of exit from the Site; and

- iv. total loaded weight of the truck
- c. The details specified in Clause 18.7, will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance, Segregation and Rejection Plan. The daily weight sheets must be certified by the site Engineer.
- d. The Concessionaire shall be responsible for safe and reliable transportation of the Residual Inert Matter and/or any Residual Waste to the Delivery Point and ensure that there is no spillage or leakage which could cause public nuisance or otherwise endanger environment, life or property.
- e. From the COD and until the expiry of the Concession Period, the Authority shall cause the SLF or the Alternate Disposal Location to accept the Residual Inert Matter and/or any Residual Waste for disposal.
- f. If at any time during the O&M Period, the SLF or the Alternate Disposal Location is unavailable to accept the Residual Inert Matter and/or the Residual Waste, and the Authority instructs the Concessionaire to deliver the Residual Inert Matter and/or any Residual Waste to an alternate location, which is more than [12] kms from the Site, then, the Authority shall reimburse the Concessionaire for any incremental transportation cost incurred by the Concessionaire.

#### **18.8 Utilities**

- a. The Concessionaire shall maintain at its cost, all utilities necessary for undertaking the O&M of the Project Facilities, including all power connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- b. The Concessionaire shall be responsible for arranging for adequate supply of water for use in the operation of the SWM processing Facility during the O&M Period. The charges for any water supplied to the Concessionaire for utilization at the SWM processing Facility shall be as per the tariff to be notified by [municipal authority / insert relevant entity for water supply] and the Concessionaire shall be responsible to pay all such charges directly to municipal authority / insert relevant entity for water supply.

#### **18.9 Design Capacity Utilization**

- a. During each day of the O&M Period, the Concessionaire shall ensure that the SWM processing Facility can accept and process Acceptable Waste up to its Design Capacity.
- b. The Concessionaire shall notify the Authority as soon as it becomes aware that the volume of Acceptable Waste received at the Receipt Point is more than the Design Capacity.
- c. If the volume of Acceptable Waste received at the Receipt Point is more than the Design Capacity, as a result of which the Concessionaire is unable to accept the Acceptable Waste at the SWM processing Facility, then such a situation shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified the Authority. In such cases, the Authority shall (or shall cause the C&T Contractors to) remove any excess waste from the Site within [12] hours of receiving a notice from the Concessionaire. The Authority has the right to verify the capacity utilization of the Facility at any time during the O&M Period.

#### **18.10 Maintenance and Repair of the SWM processing Facility**

- a. During the O&M Period, the Concessionaire shall maintain the SWM processing Facility and repair any damage to the SWM processing Facility either by itself, or through an approved Subcontractor,



in accordance with the O&M Plan, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers such that the SWM processing Facility is:

- i. in good working condition (subject only to wear and tear and Force Majeure) and capable of achieving its useful economic life in accordance with the Designs and Drawings; and
  - ii. capable of meeting the KPIs.
- b. For the first year of the O&M Period, the Concessionaire shall, at least [1 (one)] month before the Scheduled COD, submit to the Authority its scheduled maintenance programme for the SWM processing Facility, specifying the Scheduled Maintenance periods for the SWM processing Facility and the impact of such Scheduled Maintenance periods on the Availability of the SWM processing Facility (Scheduled Maintenance Programme). For every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least [1 (one)] month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs.
- c. Within [15 (fifteen)] days of receipt of the Scheduled Maintenance Programme, the Authority shall notify the Concessionaire of its approval of such schedule.
- d. If the Authority does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the availability of the SWM processing Facility to accept and process the Acceptable Waste, the Authority shall advise the Concessionaire within [15 (fifteen)] days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the availability of the SWM processing Facility may be minimized. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If the Authority fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested. Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 18.13, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon [60 (sixty)] days' prior written notice to the Authority. The Authority shall respond to such request within [10 (ten)] days and shall not unreasonably withhold its permission for such re-scheduling.
- e. Within [5 (five)] days of any re-scheduling of a Scheduled Maintenance in accordance with Clause 18.10 above, the Concessionaire shall provide to the Authority, the amended Scheduled Maintenance Programme, which shall then be the "Scheduled Maintenance Programme".
- f. The Concessionaire shall, at its own cost, replace any components or parts of the Project Facilities, including the Weighbridges, that are damaged or worn out or, in the Concessionaire's judgement, are no longer practicable to repair as a result of normal wear and tear.
- g. If at any time during the O&M Period, the SWM processing Facility is damaged by a Minor Casualty, the shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the SWM processing Facility to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- h. If at any time during the O&M Period, the SWM processing Facility is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out at Clause 27.1.B will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the

Concessionaire shall repair, replace and restore the damaged SWM processing Facility to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

#### **18.11 O&M Personnel**

- a. The Concessionaire shall engage (either directly or through an approved Subcontractor) adequate number of suit- ably skilled and qualified personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 18.
- b. The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable labour laws.
- c. Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.
- d. The Authority is not and shall not be treated as the “principal employer” of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify the Authority against all losses, claims, costs and damages that the Authority may suffer due to the Concessionaire’s or any of its Subcontractor’s failure to comply with applicable labour laws.

#### **18.12 Subcontracting**

- a. In accordance with the Subcontractor management plan prepared by the Concessionaire and approved by Authority under Clause 13.4, the Concessionaire may enter into Subcontracts to perform any of its O&M obligations, pro- vided that a Subcontract of a value not more than 35% of the Project cost could be executed by the Concessionaire.
- b. The provisions of Clause 13.4 shall apply to all Subcontracts executed by the Concessionaire for any O&M aspects of its Scope of Work.

## ARTICLE 19

### SAFETY REQUIREMENTS

#### 19.1 Safety Requirements

The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities, and shall comply with the safety requirements set out in this Article 19.

#### 19.2 Guiding Principles

a. The Safety Requirements aim at minimising threat of injuries, loss of human life and damage to property resulting from accidents on, or in relation to the construction, operation and maintenance of the Project Facilities, irrespective of the person(s) at fault.

b. The Safety Requirements shall apply to all phases of construction, operation and maintenance of the Project Facilities with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.

#### 19.3 Obligations of the Concessionaire

a. The Concessionaire shall abide by the following to ensure safety of Project Facilities, human life and property:

- i. instructions issued by the Authority;
- ii. Applicable Laws and Applicable Permits;
- iii. provisions of this Agreement;
- iv. relevant standards/guidelines contained in internationally accepted codes; and
- v. Good Industry Practice.

b. The Concessionaire shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by the Concessionaire Related Parties.

c. The Concessionaire shall be responsible for undertaking all the measures under its control to ensure the safety and security of the Project Facilities.

d. The Concessionaire agrees that the Authority shall be entitled to inspect the Project Facilities to verify adherence to Safety Requirements and the Concessionaire shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

#### 19.4 Expenditure on Safety Requirements

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

## ARTICLE 20

### MONITORING OF OPERATION AND MAINTENANCE

#### 20.1 Monitoring and Reporting

##### A. Environmental Monitoring

1. The Concessionaire shall operate the Project Facilities and process the Acceptable Waste at the SWM processing Facility strictly in accordance with the O&M Plan, EMP, the Waste Acceptance, Segregation and Rejection Plan, OHS Plan, SWM Rules, other Applicable Laws and Applicable

Permits and in a manner that causes no damage to the environment, including any air pollution, odors, pests, insects, litter, soil or ground water contamination.

2. The Concessionaire shall ensure that there is zero liquid discharge caused due to the O&M of the SWM processing Facility. If an incident occurs at the Site, as result of which there is any liquid discharge on the Site or Adjoining Property, the Concessionaire shall ensure proper collection, clean-up and disposal of any such liquid discharge in accordance with the EMP and O&M Plan.
3. The Concessionaire shall carry out continuous environmental monitoring of the SWM processing Facility in accordance with the EMP, O&M Plan and Applicable Laws. The monitoring schedule and parameters will be set out in the EMP.
4. For the purposes of the continuous environmental monitoring of the SWM processing Facility, the Concession- aire shall install and maintain an online monitoring system as part of the Project Facilities, in accordance with the Technical Specifications and Applicable Laws to monitor compliance with the KPIs.

#### **B. Records and Reporting Requirements**

The Concessionaire shall deliver to the Authority, the following within the specified timelines:

1. no later than [7 (seven)] days after the close of each month, a monthly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the O&M Plan, [O&M Standards], EMP and the OHS Plan and identify and state in reasonable detail the defects and deficiencies that require rectification., and shall give such other relevant information as may be required by the site Engineer;
2. reports relating to any activity, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Site or the Project Facilities or any Adjoining Property, and any action taken to mitigate the effect of such incident as soon as reasonably practicable but no later than [12 (twelve)] hours after the occurrence of such event or circumstance.
3. reports on any critical breakdowns or failures in the Project Facilities, including any of the Weighbridges, within [12 (twelve)] hours of such occurrence.
4. reports on accidents or other incidents in relation to the O&M personnel or any third party, including any non-compliance with the EMP or the OHS Plan, along with the actions taken to minimize recurrence, within [72 (seventy- two)] hours of such occurrence.
5. daily weight sheets prepared in the format approved by the Authority as part of the O&M Plan/Waste Acceptance, Segregation and Rejection Plan, recording the details specified in Clause 18.6 at the end of each day (i.e., on or before [•] hours every day).
6. 2 (two) Monthly reports on the quantum of compost (in MT) produced from the SWM processing Facility
7. [monthly/quarterly] report compiling the data collected from the environmental monitoring system, on or before the [7th (seventh)] day of the following [month/quarter];
8. monthly report on compliance with the KPIs, details of sale of the By- Products and Recyclable Materials, and details of any Emergency during the relevant month, on or before the [7th (seventh)] day of the following month. The monthly progress report must be certified by the Site engineer before it is submitted to the Authority.
9. copies of any reports, notices or responses submitted for compliance/non- compliance with Applicable Laws or Applicable Permits, within [2 (two)] days of receipt of such notice from or submission of replies to the relevant Government Authority; and
10. reports on any material litigation, to which the Concessionaire is a party, and any adverse orders or judgments passed by any Government Authority that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

#### **20.2 Inspection**

The Site engineer shall inspect the Project Facilities at least once a month. It shall make a report of such inspection (the O&M Inspection Report) stating in reasonable detail the defects or deficiencies,

if any, with particular reference to the O&M Plan, [O&M Standards], KPIs, EMP and the OHS Plan, and send a copy thereof to the Authority and the Concessionaire within [7 (seven)] days of such inspection.

### **20.3 Tests**

For determining that the Project Facilities conforms to the O&M Plan and [the O&M Standards], the Site engineer shall require the Concessionaire to carryout, or cause to be carried out, tests specified by it. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of furnish the results of such tests to the Site engineer. The costs incurred on the Tests shall be borne solely by the Concessionaire.

### **20.4 Remedial Measures**

- a. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set out in the O&M Inspection Report or in the test results referred to in Clause 20.3 and furnish a report to the Authority within [15 (fifteen)] days of receiving the O&M Inspection Report or the test results, as the case may be.
- b. The Site engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine if such remedial measures have brought the Project Facilities into compliance with the O&M Plan [and O&M Standards] and the procedure set forth in this Clause 20.4 shall be repeated until the Project Facilities conforms to the O&M Plan [and O&M Standards].
- c. If after the COD, the Concessionaire ceases to operate the SWM processing Facility for a period of [•] consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Clause 27.1 or Clause 27.2, which is not attributable to the Concessionaire, without the prior written consent of the Authority, then the Authority shall be entitled to step-in and undertake the O&M of the SWM processing Facility until the Concessionaire demonstrates to the satisfaction of the Authority that it can and will resume normal operation and maintenance of the SWM processing Facility. The exercise of the Authority's rights under this Clause 20.1.A shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the SWM processing Facility, provided that, any revenue earned from the O&M of the SWM processing Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the SWM processing Facility).

## **ARTICLE 21**

### **KEY PERFORMANCE INDICATOR**

#### **21.1 Key Performance Indicators**

##### **A. Availability Guarantee**

1. The Concessionaire shall ensure that the Availability of the Project Facilities on every day during the O&M Period shall be [90] % (the Availability Guarantee). Provided that during the period of a Scheduled Maintenance that is undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with Clause 18.13 for the Project Facilities, the Concessionaire shall ensure that the Availability Guarantee of the Project Facilities is at least [90] %.

The 'Availability' of the Project Facilities will be determined as a ratio of the number of hours in a day during which the Project Facilities are available to accept and process Acceptable Waste up to its Design Capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.

2. In computing the Availability of the Project Facilities, the Concessionaire agrees that the Project Facilities will be deemed to always be Available, other than during the period of:
  - a. an unscheduled outage affecting the Project Facilities.
  - b. suspension of the O&M services for the Project Facilities, for reasons attributable to the Concessionaire (in accordance with Clause 27.1 and 27.2); or
  - c. an Emergency affecting the Project Facilities, attributable to the Concessionaire,
  - d. during which the Project Facilities will be deemed to be not Available.
3. Notwithstanding anything contained in this Agreement, the Project Facilities will be deemed to be Avail- able in case of the following:
  - a. Forced Unavailability; or
  - b. an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire.
4. If the Concessionaire is unable to achieve the Availability Guarantee on any day of the O&M Period, then the Concessionaire shall be liable to pay Availability Liquidated Damages calculated in accordance with the formula set. Provided that, the Concessionaire shall not be liable to pay any Availability Liquidated Damages during the Trial Operations period.
5. The Availability Liquidated Damages payable by the Concessionaire for its failure to achieve the Availability Guarantee, if any, shall accrue during a month on a daily basis but will be payable by the Concessionaire for the entire month in aggregate, within [7 (seven)] days from the end of each month during the O&M Period].

**B. Throughput Guarantee**

- i. The Concessionaire shall ensure that it accepts all quantities of Acceptable Waste delivered by the Authority at the Receipt Point up to the Design Capacity. On any day during the O&M Period, if the Concessionaire is unable to accept quantities of Waste equivalent to [100] TPD (the throughput Guarantee), then the Concessionaire shall be liable to pay throughput Liquidated Damages calculated.
- ii. The Concessionaire shall be exempt from achieving the Throughput Guarantee in case of the following:
  - a. Forced Unavailability; or
  - b. an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire.
- iii. The Throughput Liquidated Damages payable by the Concessionaire for its failure to meet the Throughput Guarantee, if any, shall accrue during a month on a daily basis but will be payable by the Concessionaire for the entire month in aggregate, within [7 (seven)] days from the end of each month during the O&M Period].

## PART IV – FINANCIAL COVENANTS

### ARTICLE 22

#### GRANT & PROCESSING FEE

- 22.1** In consideration of the works and services required to be performed by the Concessionaire for designing, constructing, operating and maintaining the Project Facilities in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, by way of cash support, the amount quoted by the Selected Bidder in its Bid), subject to, and in accordance with, the provisions of this Article 22 (Grant).



**22.2** The Concessionaire shall be deemed to have satisfied itself regarding the sufficiency of the Grant. No adjustments shall be made to the Grant payable to the Concessionaire, except for any adjustment in accordance with Clause 32.2 (as a consequence of a Change in Law) or any permitted Variation. The Grant shall be disbursed by the Authority in accordance with the provisions of Clause 22.3.

### **22.3 Grant Payments**

#### **A. Grant Disbursal**

- i. Subject to this Clause 22.3(c), the Grant will be paid by the Authority to the Concessionaire in the following instalments as per the Payment Schedule /Schedule of Payments as given in the Financial Bid.
- ii. Within [7 (seven) days] of issue of the Milestone Completion Certificate for a Project Milestone, or the COD Certificate (or deemed COD Certificate), as the case may be, the Concessionaire shall submit an Invoice to the Authority for the amount of the Grant linked to such Project Milestone. Any Invoice raised by the Concessionaire for the Grant shall be accompanied by a copy of the relevant Milestone Completion Certificate and/or the COD Certificate, as the case may be, issued by the Authority, provided that in case the COD Certificate is deemed to be issued under Clause 17.1 then the Invoice raised by the Concessionaire shall be accompanied by a copy of the COD Request Notice.
- iii. Within [30 (thirty)] days of receipt of an Invoice from the Concessionaire pursuant to Clause 22.3 above, the Authority shall verify, certify and pay the amounts due and payable to the Concessionaire.
- iv. Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 23
- v. A certificate issued by the Authority in accordance with Clause 22.3 shall be referred to as a Payment Certificate
- vi. Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to issue a Payment Certificate unless:
  - a. the Performance Security remains valid and in effect at the time;
  - b. the insurances to be obtained by the Concessionaire in accordance with Article 25 are valid and in effect;
  - c. the Concessionaire Applicable Permits for design, construction and completion of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
  - d. the Concessionaire has complied with the EMP and OHS Plan in undertaking the design, construction and O&M of the Project Facilities; and
  - e. there is no subsisting Concessionaire Event of Default.

### **22.4 Processing Fee**

- a. As consideration for accepting, handling, Segregating, processing and disposing of MSW/Wet waste in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, an amount equal to the amount quoted by the Selected Bidder in its Bid and the Payment Schedule /Schedule of Payment, per ton of Acceptable Waste accepted and processed by the Concessionaire at the Receipt Point in a month (Processing Fee), provided that no Processing Fee shall be paid during

the Trial Operations period.

- b. The Concessionaire shall, on the [5th (fifth)] day of every month after the COD, or in case the [5th (fifth)] day of a month is a holiday, then on the following working day of such month, submit to the Authority a statement (Fee Statement) setting out the following details:
  - i. the quantities of Total Mixed Waste delivered by the Authority at the Receipt Point during the preceding month, along with copies of the daily weight-sheets for the Total Unloaded Waste signed by the site engineer.
  - ii. the quantities of Mixed Waste that has been accepted and Segregated by the Concessionaire, providing separate details of the quantity of Biodegradable Waste Segregated from the Mixed Waste and any Residual Waste that cannot be processed at the Project Facilities (including any Non-Biodegradable Waste), along with copies of the daily weight-sheets for the Mixed Waste signed by the site engineer.
- c. The Processing Fee Statement shall be accompanied by an Invoice setting out the total amounts payable by the Authority towards the Processing Fee

## **22.5 Taxes**

- a. The Grant and Processing Fee payable are inclusive of all Taxes.
- b. The Authority may deduct from the [Grant] [and] [Processing Fee] and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.
- c. The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- d. Upon a request from the Concessionaire, the Authority will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the Authority shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.
- e. The Concessionaire shall indemnify the Authority from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.
- f. Any Taxes payable in relation to the Site shall be borne by the Authority.

# **ARTICLE 23**

## **DISPUTE RESOLUTION**

### **23.1 Amicable Settlement**

In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (a Dispute), the representatives of the Parties shall, within [15 (fifteen)] days of service of a written notice from one Party to the other Parties (the Dispute Notice) hold a meeting (the Dispute Meeting) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of Authority in Deorali, Gangtok, Sikkim.

### **23.2 Dispute Resolution by Arbitration**



**a. Arbitration Procedure**

If a Dispute is not resolved within [30 (thirty)] days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any Party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally re- solved in the manner set out in this Clause 23.1 by issuing a notice to the other Parties (Notice of Arbitration). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

**b. Appointment of Arbitrator**

If a Dispute is referred to arbitration by a Party, such Dispute shall be resolved by 3 (three) arbitrators comprising of one arbitrator appointed by the Concessionaire, one arbitrator appointed by the Authority and the third arbitrator appointed by the first two arbitrators appointed by the Parties. If a Party fails to appoint an arbitrator within [30 (thirty)] days after service of the Notice of Arbitration, such arbitrator shall be appointed in accordance with the Arbitration Act.

**c. Venue, Language and Rules of Arbitration**

The venue of the arbitration shall be Gangtok, Sikkim and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

**d. Award and Apportionment of costs**

- i. The arbitration award of the arbitrator shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing.
- ii. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

**e. Law Governing the Arbitration**

The arbitration shall be governed by the laws of India.

## ARTICLE 24

### DIVESTMENT OF RIGHTS AND INTEREST

#### **24.1 Transfer of the Site and the Project Facilities**

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Site and the Project Facilities to the Authority, or any other entity nominated by Authority in accordance with this Article 30.

#### **24.2 Inspection of the Site and the Project Facilities**

- i. No later than [30 (thirty)] days from the end of the [•]th year from the COD or [30 (thirty)] days from the date of termination of the Agreement, as the case may be, the Authority shall or shall cause the Site engineer to carry out a survey of the Site and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- ii. The Authority shall notify the Concessionaire at least [7 (seven)] days prior to the date on which it wishes to carry out the survey of the Site and the Project Facilities.
- iii. If the survey carried out by the Authority or the Site engineer shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the Authority shall notify the Concessionaire of the rectification and/or maintenance work which is required to be undertaken by the Concessionaire to ensure that the condition of the Site and the Project Facilities, is restored to the Hand-back Conditions.
- iv. The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within [30 (thirty)] days from the receipt of a notice from the Authority in accordance with Clause 30.1.(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request the Authority to carry out a final survey and inspection of the Site and the Project Facilities. The Authority shall carry out the final survey within [7 (seven)] days of receipt of a notice from the Concessionaire pursuant to this Clause 30.1.(d).

If the Authority is satisfied with the results of the final survey, then the Authority shall notify the Concessionaire within [7 (seven)] days of carrying out the final survey that the Site and the Project Facilities, comply with the Hand- back Conditions. If the Authority is not satisfied with the results of the final survey, then the Authority shall, or shall cause the Site engineer, to estimate the cost of restoring the Site and the Project Facilities, to the Hand-back Conditions and recover such cost from the Concessionaire, including through deduction of such cost from the from the Performance Security, O&M Security, or the Termination Compensation, as the case maybe payable t the concessionaire.

## ARTICLE 25

### INSURANCE

- 25.1 The Concessionaire shall, obtain and maintain the policies of insurance set out in this Article 25 in the minimum coverage amounts and during the specified periods for the Project Facilities. In addition, the Concessionaire shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Concessionaire, the Lenders or the Authority in accordance with this Article 25.
- 25.2 During the Construction Period, the Concessionaire shall obtain and maintain such insurances for such maximum sums as may be required under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices.
- 25.3 During the O&M Period, the Concessionaire shall obtain and maintain insurance policies including but not limited to the following:
- a. loss, damage or destruction of the SWM processing Facility, at replacement value;
  - b. comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
  - c. the Concessionaire's general liability arising out of the Project;
  - d. liability to third parties for goods or property damage;
  - e. workmen's compensation insurance; and
  - f. any other insurance that may be necessary to protect the Project Facilities, the Concessionaire and its employees, including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items to (e) above.

# PART V – FORCE MAJEURE AND TERMINATION

## ARTICLE 26 EVENTS OF DEFAULT

### **26.1 Authority's Events of Default**

An Authority Event of Default means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or any Force Majeure Event and where the Authority has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of [60 (sixty)] days:

- i. a breach by the Authority of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of a notice being given by the Concessionaire;
- ii. a breach by the Authority of its obligations under Clause 6.1.6 and Clause 6.1.7, in relation to its rights, title and interest in the Site;
- iii. if successful completion of Trial Operations, including the acceptance tests, is not achieved due to the reasons set out in Clause 17.1 within [6 (six)] months from the Scheduled COD;
- iv. a failure by the Authority to pay the Concessionaire any undisputed amounts due and payable under this Agreement within [60 (sixty)] days from the date on which such payments were due, and where such undisputed amounts are not recovered pursuant to Article 22;
- v. a suspension of the construction or O&M of the Project Facilities by the Authority in breach of Clause 27.1;
- or
- vi. any representation made or warranties given by Authority under this Agreement being found to be false or misleading in any material respect.

### **26.2 Termination Notice upon occurrence of a Concessionaire Event of Default**

- a. Without prejudice to the other provisions of this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority may initiate termination by delivering a Termination Notice to the Concessionaire. The Termination Notice shall specify with reasonable detail the grounds on which termination is sought.
- b. If, within [15 (fifteen)] days from the date of the Termination Notice, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the Authority or the Authority is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, the Authority shall withdraw the Termination Notice, in writing.
- c. If, within [15 (fifteen)] days from the date of the Termination Notice, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of the Authority or the Authority is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, the Authority shall issue a notice to the Lenders to exercise their substitution rights.

- d. If, within [30 (thirty)] days from the date of receipt of the Termination Notice pursuant to Clause 26.2 or such longer period as may be mutually agreed between the Authority and the Lenders, the Lenders have notified their intent to substitute the defaulting Concessionaire, then the nomination and approval of a substitute concessionaire will apply.  
Provided that, the Lenders may, instead of exercising the right of substitution, procure that the default specified in the Termination Notice is cured within a period of [60 (sixty)] days from the date of the Termination Notice, and upon such curing of the default, the Authority shall withdraw the Termination Notice.
- e. If, within [30 (thirty)] days from the date of receipt of the Termination Notice pursuant to Clause 26.2 or such longer period as may be mutually agreed between Authority and the Lenders, the Lenders have not notified their intent to substitute the defaulting Concessionaire, then, Authority shall terminate the Agreement and the consequences set out in Clause 26.7 shall apply.
- f. Notwithstanding anything contained in this Clause 26.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

- 26.3 Concessionaire Event of Default** means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of an Authority Event of Default or any Force Majeure Event, and where the Concessionaire has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of [60 (sixty)] days:
- a. Failure on the part of the Concessionaire to submit the designs, drawings and plans of layout of working shade, machinery, electrification regarding the upgradation of the landfill within 60 days from the issue of LOI, which results in the Concessionaire's aggregate liability pursuant to Article 4.6
  - b. The Concessionaire fails to complete the works for a Project Milestone within 9 (nine) months of the Scheduled Project Milestone Completion Date.
  - c. The Concessionaire fails to achieve the COD within 9 nine months of the Scheduled COD other than on account of a Delay Event;
  - d. a failure to achieve the KPIs which results in the Concessionaire's aggregate liability for Liquidated Damages pursuant to Article 21;
  - e. a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of issuance of written notice from Authority specifying such breach and requiring the Concessionaire to remedy the same;
  - f. any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
  - g. breach by the Concessionaire of its obligations under Clauses 12 (Site Engineer), 10 (Project Site);
  - h. breach of the Concessionaire's obligations under Clause 5.10 (Change in Ownership);
  - i. failure of the Concessionaire to obtain, renew and maintain any Concessionaire

- Applicable Permit;
- j. failure of the Concessionaire to comply with any Applicable Law;
- k. failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan in accordance with Clause 5.1;
- l. the Concessionaire abandons the construction and operation of the Project Facilities without the prior written consent of the Authority; or
- m. the breach of the Concessionaire's obligations under any of the Project Agreements that has or may have a Material Adverse Effect.

#### **26.4 Termination Notice upon occurrence of an Authority Event of Default**

- a. Without prejudice to the other provisions of this Agreement, upon the occurrence of an Authority Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Termination Notice, which shall specify with reasonable detail the grounds on which termination is sought.
- b. If, within [15 (fifteen)] days from the date of the Termination Notice, the Authority rectifies or remedies the Authority Event of Default to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the Authority or the Authority Event of Default has ceased to exist, the Concessionaire shall withdraw the Termination Notice, in writing.
- c. If, within [15 (fifteen)] days from the date of the Termination Notice, the Authority Event of Default has not been remedied or the Authority has not taken steps or proposed to take steps to remedy the Authority Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Agreement and the consequences set out in Clause 26.4 shall follow.
- d. During the subsistence of an Authority Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

#### **26.5 Consequences of termination of the Agreement post the Effective Date**

In case of termination of the Agreement (including for any termination due to the occurrence of a Force Majeure Event in accordance with Article 28 after the Effective Date:

- a. the Concessionaire shall cease all work in relation to construction or O&M, as the case may be, of the Project Facilities;
- b. the Concessionaire shall cease the Trial Operations, if the Trial Operations of the SWM processing Facility have commenced and are ongoing;
- c. the Concessionaire shall take all necessary steps to safeguard and protect the Project Facilities (at whatever stage of completion) and all other equipment, materials and goods on the Site;
- d. in case of termination of this Agreement due to an Authority Event of Default, the Authority shall return the Performance Security or the O&M Security, as the case may be, within [30 (thirty)] days from the date of the Termination Notice;
- e. in case of termination of this Agreement due to a Concessionaire Event of Default, the

Authority shall have the right to forfeit the Performance Security or the O&M Security;

- f. the Concessionaire shall hand over the Site and the Project Facilities (provided that, in case of termination of the Agreement due to a Force Majeure Event, the Concessionaire shall hand over the Site and the Project Facilities to the Authority on an “as is where is” basis), to the Authority or its nominee in accordance with the Hand-back Requirements.
- g. the Authority shall have the right to succeed, upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Subcontractors and/or Offtakers only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Subcontractors and/or Offtakers (including any penalties or other dues claimed by any Offtaker) as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Subcontractors and/or Offtakers, and the Authority shall not in any manner be liable for such sums, penalties or other dues. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Compensation.

## **26.6 Accrued Rights and Liabilities**

- a. Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of a Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of a Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- b. Nothing in Article 26 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

## **ARTICLE 27**

### **SUSPENSION OF THE CONCESSIONAIRE’S RIGHTS**

#### **27.1 Suspension by the Concessionaire**

##### **A. Suspension of construction or O&M of the Project Facilities**

- i. The Concessionaire acknowledges that suspension of the construction of any Project Facility pursuant to Clause 27.1 shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire,



provided that any suspension of construction of the Project Facilities pursuant to Clause 27.1 for reasons not attributable to the Concessionaire shall be treated as a Delay Event.

- ii. Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than [3 (three)] days after such occurrence, notify the Authority of such occurrence.
- iii. If, upon notification, the Authority does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the relevant Project Facility, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 23, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

**B. Mitigation, Resumption and Termination**

- i. The Concessionaire shall make best endeavors to:
  - a. mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.1 above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the SWM processing Facility, provided that, any revenue earned from the O&M of the SWM processing Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the SWM processing Facility); and
  - b. resume the construction or O&M services of the relevant Project Facility within [24 (twenty-four)] hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.1 or such longer period as may be approved by the Authority, and notify the Authority of the resumption of the works or services.
- ii. Without prejudice to Clause 27.1(b)(i):
  - a. if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1 continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 28.1; and
  - b. if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1 continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and such event is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in



Article 28 shall apply.

**27.2 Suspension by Authority**

**A. Suspension of construction and/or O&M of the Project Facilities**

- i. At any time during the Concession Period, the Authority may suspend, whether partially or wholly, the construction or O&M of a Project Facility, in any of the following events or circumstances:
  - a. upon the occurrence of an Emergency; or
  - b. if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the Construction Plan, the DPR, the EMP, OHS Plan, the O&M Plan, the Waste Acceptance, Segregation and Rejection Plan or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).
- ii. The Concessionaire acknowledges that suspension of the construction of the Project Facilities shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire, provided that any suspension of construction of the Project Facilities pursuant to Clause 27.2 for reasons not attributable to the Concessionaire shall be treated as a Delay Event.

**B. Mitigation, Resumption and Termination**

- i. The Concessionaire shall make best endeavors to:
  - a. mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.2 above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the SWM processing Facility, provided that, any revenue earned from the O&M of the SWM processing Facility shall be to the account of the Concessionaire (subject to payment of all Costs incurred by the Authority in undertaking the O&M of the SWM processing Facility); and
  - b. resume the construction or O&M services of the relevant Project Facility within [24 (twenty-four)] hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.2 or such longer period as may be agreed between the Parties, and notify the Authority of the resumption of the works or services.
- ii. Without prejudice to Clause 27.2 :
  - a. If suspension of the construction or O&M of the relevant Project facility pursuant to Clause 27.2 continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period and the Emergency is attributable to the Concessionaire, or a suspension pursuant to Clause 27.2(a)(i)(B) continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, then such suspension shall amount to a Concessionaire

- b. Event of Default in accordance with Clause 28.1; and if suspension of the construction or O&M of the relevant Project Facility pursuant to Clause 27.2 continues for a consecutive period of [90 (ninety)] days or a cumulative period of [180 (one hundred and eighty)] days over the Concession Period, and the Emergency is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in Article 28 shall apply.

## ARTICLE 28

### FORCE MAJEURE

#### **28.1 Force Majeure Events**

- A. A Force Majeure Event means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
- i. beyond the reasonable control of the Affected Party;
  - ii. such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
  - iii. which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
  - iv. such that it/they has/have a Material Adverse Effect.
- B. A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 26.1:
- i. Non-Political Force Majeure Events
    - a. acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
    - b. fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
    - c. chemical or radioactive contamination or ionising radiation;
    - d. epidemic, pandemic, plague or quarantine;
    - e. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection;
    - f. strikes or boycotts (other than those involving the Concessionaire, its Subcontractors or its employees) interrupting supplies or services for a continuous period of [7 (seven)] days and an aggregate period exceeding 14 (fourteen) days and not being an Indirect Political Force Majeure Event;
    - g. accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Project Facilities; and
    - h. any failure or delay by a Subcontractor but only to the extent caused by another Non-Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor.

**ii. Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:**

- a. heavy rainfall;
- b. unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
- c. a delay in the performance of any Subcontractor;
- d. a termination of any Offtake Agreement;
- e. non-performance resulting from normal wear and tear; or
- f. non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

**iii. Indirect Political Force Majeure Events**

1. hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the [the relevant State Government] or occurring in [insert the State where the Project Facilities are located];
2. invasion, armed conflict, coup d'état, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the State of Sikkim and or West Bengal or occurring in Sikkim where the Project Facilities are located];
3. strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
4. any protests by rag pickers who are meant to be relocated and resettled by the Authority;
5. any protests/agitation by members of the public against development of the Project Facilities at the Site;
6. delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit;
7. failure of the Authority to permit the Concessionaire to continue perform its obligations under this Agreement, with or without modifications, in the event of stoppage of any works after discovery of any geological or archaeological finds or for any other reason;
8. any failure or delay of any Subcontractor but only to the extent caused by another Indirect Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor;
9. the imposition, by any Government Authorities, of any lockdowns, curfews or mandatory quarantine rules arising out of the occurrence of any Non-Political Force Majeure Event or otherwise, which prevents the construction and/or O&M of the Project Facilities for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
10. suspension of the construction or O&M of a Project Facility pursuant to an Emergency not attributable to the Concessionaire under, and in accordance with, Clause 27.1 and Clause 27.2 ; and
11. any event or circumstances of a nature analogous to any of the foregoing.

**28.2 Notice of Force Majeure Events**

- i. The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the FM Notice), as soon as the same arises or as soon as reasonably

practicable and in any event within [3 (three)] days after the Affected Party knew of its occurrence. The FM Notice shall set out (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof; (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement and (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event.

- ii. If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- iii. Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 28.

### **28.3 Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed [120 (one hundred and twenty)] days for a Non-Political Force Majeure Event, [90 (ninety)] days for an Indirect Political Force Majeure Event and [60 (sixty)] days for a Direct Political Force Majeure Event from the date of issuance of the FM Notice.

### **28.4 No Liability for Other Losses**

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 28.

### **28.5 Resumption of Performance**

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

### **28.6 Allocation of costs during a Force Majeure Event**

- i. Upon occurrence of a Force Majeure Event prior to the Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay any costs to the other Parties.
- ii. Upon occurrence of a Force Majeure Event post the Effective Date, the costs incurred and attributable to such Force Majeure Event and directly relating to the Project (Force Majeure Costs) shall be allocated as follows:
  - a. upon the occurrence of a Non-Political Force Majeure Event, the Parties shall bear their respective Force Majeure Costs and no Party shall be required to pay any costs to any other Party;
  - b. upon the occurrence of an Indirect Political Event, all Force Majeure Costs up to the Insurance Cover will be borne by the Concessionaire and to the extent Force Majeure Costs exceed the Insurance Cover, one half of such excess amount shall be reimbursed by the Authority;

- c. upon occurrence of a Direct Political Force Majeure Event, all Force Majeure Costs attributable to such Direct Political Force Majeure Event shall be reimbursed by the Authority to the Concessionaire. For the purposes of this Clause 28.6, 'Force Majeure Costs' mean interest payments on debt, O&M Expenses, and any increase in the cost of construction works and O&M directly attributable to the Force Majeure Event and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant. Force Majeure Costs shall not include any debt repayment obligations or loss of profits or income. Provided however, Force Majeure Costs attributable to a Direct Political Force Majeure Event shall, in addition to the above, also include interest on the Equity Contribution which shall be equal to the interest payable on debt, as specified in the Financial Package/Financing Documents.

#### **28.7 Termination due to Force Majeure Event**

a. Termination due to a Non-Political Force Majeure Event

If a Non-Political Force Majeure Event continues for a period of [120 (one hundred and twenty)] days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 28.3, any Party shall, after the expiry of the period of [120 (one hundred and twenty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties. Notwithstanding anything contained in this Clause 28.7:

- i. if the SWM processing Facility is affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the [120 (one hundred and twenty)] days' period stipulated for a Non-Political Force Majeure Event;
- ii. if the SWM processing Facility is affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the SWM processing Facility to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

#### **28.8 Termination due to an Indirect Political Force Majeure Event**

If an Indirect Political Force Majeure Event continues for a period of [90 (ninety)] days after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause any Party shall, after the expiry of the period of [90 (ninety)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

#### **28.9 Termination due to a Direct Political Force Majeure Event**

If a Direct Political Force Majeure Event continues for a period of [60 (sixty)] days after the notification of a Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause 28.1.(iii), any Party shall, after the expiry of the period of [60 (sixty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

#### **28.10 All the other consequences of termination that are set out at Article 28 shall apply in case of termination of this Agreement due to a Force Majeure Event.**

#### **28.11 Effect of Force Majeure Event on the Concession Period**

Upon the occurrence of any Force Majeure Event prior to the Effective Date, the period set forth in Clause 4 for fulfilment of Conditions Precedent and for achieving the Effective Date shall be extended by a period equal in length to the duration of the Force Majeure Event. At any time after the Effective Date and up until COD, if any Force Majeure Event occurs, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from performing its obligations.

## **ARTICLE 29 CHANGE IN LAW**

#### **29.1 Change in Law**

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 29.

#### **29.2 Increase in Costs**

- i. If as a result of a Change in Law, the Concessionaire suffers an increase in costs, a reduction in the net after-tax return or any other financial burden, the aggregate financial effect of which exceeds INR [•] in any Accounting Year, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to place the in the same financial position that it would have enjoyed had there been no such Change in Law.
- ii. As soon as practicable and in any event, within [30 (thirty)] days from the receipt of any notice from the Concessionaire under Clause 32.2(a) above, the Parties shall agree on any amendments to this Agreement or on any other mutually agreed arrangement by which the Authority will compensate the Concessionaire.
- iii. If no agreement is reached between the Parties within [90 (ninety)] days of receipt of any notice under Clause 32.2(a) above, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position as the Concessionaire would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified in the notice, provided that if the Authority disputes such claim from the Concessionaire then the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 34.
- iv. For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to any Change in Law that directly affects the Concessionaire's costs of performing its obligations under the Agreement.



## ARTICLE 30

# INDEMNITY

### 30.1 Indemnity

A. Subject to Clause 33.1(b) below, the Concessionaire shall be responsible for, release, hold harmless and indemnify the Authority and the Authority Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:

1. death or personal injury of any person;
2. loss of or damage to property;
3. non-compliance by the Concessionaire or its Subcontractor(s) with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents and labour welfare legislations);
4. non-compliance by the Concessionaire or its Subcontractor(s) with the EMP or OHS Plan;
5. any damage caused to the environment by the Concessionaire;
6. Concessionaire's failure to pay all applicable Taxes, in connection with the Project;
7. any third party losses or claims; and
8. any claims and/or fines or penalties imposed by any Government Authority in relation to the Site or the Project Facilities, which may arise out of, or in consequence of the performance or non-performance of the Concessionaire's obligations under this Agreement.

B. The Concessionaire shall not be required to indemnify the Authority for any injury, loss, damage, cost and expense caused by the negligence or Willful Misconduct of the Authority or the Authority Related Parties or by a breach by the Authority of its obligations under this Agreement.

C. The Authority shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against them in respect of, resulting from, related to or arising out of any matter for which they are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof, shall be subject to the indemnification obligations of the Concessionaire.

D. If, however, the Concessionaire acknowledges in writing its obligations to indemnify the Authority in respect of loss to the full extent provided by this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Authority and reimburses the Authority for the costs and expenses incurred by the Authority prior to the assumption by the Concessionaire of such defense. A Party shall not

settle or enter into a compromise with respect to any such claim, action, suit or proceeding without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel, as and when incurred, shall be at the expense of the Authority.

E. The Authority shall be responsible for, release, hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) any other liability incurred or suffered by the Concessionaire under Applicable Laws, or pursuant to the law of torts, principles of absolute liability or strict liability or polluter pays principle, as a result of any environmental pollution, contamination or health hazard caused by the deposit and handling of solid waste at the Site prior to handover of the Site to the Concessionaire or caused by the delivery of any Prohibited Waste to the Site after the handover of the Site to the Concessionaire.

F. The provisions of this Article 30 shall survive the termination of this Agreement.

## ARTICLE 31

### EOHS Obligations

#### 31. 1 Environment and Occupational Health and Safety Related Obligations

(a) Within [60 (Sixty)] days from the Execution Date, the Concessionaire shall commence the ESIA, to identify potential environmental and social risks and impacts arising from the Project, in accordance with the terms of reference prepared by the Concessionaire, and approved by the Authority, Applicable Laws, Applicable Permits and Good Industry Practices. As part of the ESIA, the Concessionaire shall establish a baseline measurement for all environmental and social aspects considered relevant to the Project, which will serve as a reference for comparison with any existing environmental or social impact of the Project. The Concessionaire shall submit a draft ESIA Report to the Authority within [12 (twelve)] months from the Execution Date. The Authority shall review and provide comments, if any, on the draft ESIA Report to the Concessionaire or notify the Concessionaire of their approval of the draft ESIA Report within [30 (thirty)] days from the date of receipt of the draft ESIA Report from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft ESIA Report if the Authority identifies any deficiencies or shortcomings in the draft ESIA Report. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESIA Report from the Authority, then the Concessionaire shall incorporate the suggestions made by the Authority and modify the draft ESIA Report to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised ESIA Report to the Authority for their approval. The process set out in this Clause 31.1 shall continue until the ESIA Report is approved by the Authority in accordance with this Clause 31.1. Within [7 (seven)] days from the approval of the ESIA Report, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the ESIA Report to the Authority.



(b) Based on the approved ESIA Report, the Concessionaire shall prepare and submit a detailed EMP to the Authority within [30 (thirty)] days after the approval of the ESIA Report in accordance with Clause 14.4(a) above.

(c) The EMP shall set out the environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project in accordance with the approved ESIA Report, Applicable Laws, Applicable Permits, the Technical Specifications and Good Industry Practices. The details set out in the EMP will include

(i) measures to mitigate the environmental impact of construction and operations of the Project Facilities as identified through the ESIA; and (ii) details of the stakeholder communications plan to be developed, implemented and maintained by the Concessionaire, as set out in Schedule [•].

(d) The Concessionaire shall also, within [•] months from the Effective Date, develop an OHS Plan, which sets out the health and safety policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project and shall include a comprehensive Site safety assurance plan developed in accordance with the approved ESIA Report, Applicable Laws, Applicable Permits, the Technical Specifications and Good Industry Practices.

(e) The Authority shall provide comments, if any, on the draft EMP and OHS Plan to the Concessionaire or notify the Concessionaire of their approval of the draft EMP and OHS Plan within [60 (sixty)] days from the date of receipt of the draft EMP and OHS Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the draft EMP and/or OHS Plan if the Authority identifies any deficiencies or shortcomings in the draft EMP and/or OHS Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft EMP and/or OHS Plan from the Authority, then the Concessionaire shall modify the EMP and/or OHS Plan to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised EMP and/or OHS Plan to the Authority for their approval. The process set out in this 31.1 shall continue until the EMP and OHS Plan are approved by the Authority in accordance with this Clause 31.1. Within [7 (seven)] days from the approval of the EMP and OHS Plan, the Concessionaire shall submit [4 (four)] hard copies and [1 (one)] soft copy on a USB drive of the EMP and OHS Plan to Authority.

(f) The Concessionaire shall, and shall ensure that its Subcontractors also, comply and conform with all aspects of the EMP and OHS Plan, approved in accordance with this Clause 31.1, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan shall constitute a Concessionaire

Event of Default. The Concessionaire shall indemnify the Authority against all costs, expenses, penalties and liabilities incurred/suffered by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with the EMP or OHS Plan in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved EMP or OHS Plan without the prior written approval of the Authority.

(g) Neither any approval of the EMP and OHS Plan by the Authority, nor any failure to review and provide comments on the EMP or OHS Plan shall excuse any failure by the Concessionaire or any Subcontractor to adopt proper and recognized safety and environment friendly practices

during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final EMP or OHS Plan in ensuring compliance with all Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. Subject to Clause 13.6 the Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the EMP or OHS Plan and complying with the requirements of this Clause 31.1.

(h) The Authority shall, within 6 months of the Execution Date, undertake and complete a biodiversity assessment plan near the Site in order to identify potential risks and mitigation measures to be adopted by the Concessionaire to reduce the impact of the construction and O&M of the Project Facilities on plants, vegetation and animal life in the vicinity of the Site.