



GREATER CHENNAI CORPORATION

TENDER NOTICE NO.: S.W.M.C. No A7/3025/2017-Package-II

DRAFT CONCESSION AGREEMENT (Volume II A)

Request for Proposal (RFP)

‘Collection & Transportation of Solid Waste, Street Sweeping Waste (including Street Sweeping activities), Horticulture Waste and Collection & Storage of Domestic Hazardous Waste in the Zones No 11, 12, 14 & 15 (Package-II) to the Designated Processing Facility/ Dump Site/ Depositing Centers of Greater Chennai Corporation (the Authority)

Under PPP

on

Design, Build, Finance, Operate & Transfer (DBFOT)

2019

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this ----- day of -----
(Month) ----- (Year) at Chennai

THE GREATER CHENNAI CORPORATION, established under the Chennai City Municipal Corporation Act 1919, represented by its Commissioner and having its principal office at Greater Chennai Corporation, Ripon Building, Chennai 600003 (hereinafter referred to as the “**Authority**” (which expression shall, unless excluded by or repugnant to the context, be deemed to include its administrators, successors and assigns) OF THE ONE PART;

AND

[*Please insert name of the company*], a company incorporated under the provisions of the Companies Act, 1956/2013 with CIN [•] and having its registered office at Chennai, (hereinafter referred to as the “**Concessionaire**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) OF THE OTHER PART;

The Authority and the Concessionaire are herein after referred to individually as the “Party” and collectively as the “Parties”

WHEREAS

- (A) The Authority is desirous to implement ‘Collection & Transportation of Solid Waste, Street Sweeping Waste (including Street Sweeping Activities), Horticulture Waste and Collection & Storage of Domestic Hazardous Waste in the Zones No 11, 12, 14 & 15 (herein called Package-II) to the Designated Processing Facility/ Dump Site/ Depositing Centres of Greater Chennai Corporation on Design Built Finance Operator Transfer (DBFOT) basis, in accordance with the terms and conditions set forth in this concession agreement to be entered into.
- (B) The Authority had accordingly invited proposals by its Request for Proposal dated [•] (the “RFP”) through a single stage bidding for selection of

“Successful Bidder” for implementation of the Project

- (C) The Authority had received proposal in response to the tender floated dated..... having closure date
- (D) After evaluation of the bids received, the Authority had accepted the bid of the *{Successful Bidder/ Consortium}* and issued its Letter of Award bearing number [•] dated [•] (hereinafter called the “LOA”) to the *{Successful Bidder/ Consortium}* requiring, inter alia, the execution of this Concession Agreement within [30 (thirty)] days of the date of issue thereof.
- (E) The Successful Bidder has since promoted and incorporated Special Purpose Vehicle (SPV) under the Companies Act, 2013, and has requested the Authority to accept the SPV as the Concessionaire which shall undertake and perform the obligations and exercise the rights of the *{Successful Bidder/ Consortium under the LOA,}* including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- (F) *{By its letter dated [•] the Concessionaire has joined in the said request of the Successful Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Successful Bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authorization of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof. }*
- (G) The Authority has *{agreed to the said request of the Successful Bidder/ Consortium and the Concessionaire and has}* accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and

sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. Article 1: Definitions and Interpretations

1.1 Definitions

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

“**Area Based Pro Rata Rate (ABPRR)**” shall mean Monthly Quote (MQ) divided by the Project Area which is the rate per square kilometer;

“**Additional Cost**” shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law;

“**Affected Party**” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with the provisos of this Concession Agreement;

“**Affiliate/ Associate**” shall mean a company that either directly or indirectly

- i. controls or
- ii. is controlled by or
- iii. is under common control with

a Bidding Company (in the case of a single company) or a Member (in the case of a Consortium) and “control” means ownership by one company of at least twenty six percent (26%) of the voting rights of the other company;

“**Agreement**” shall mean this Concession Agreement, and includes any amendments hereto made in accordance with the provisions hereof;

“**Applicable Law**” shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire as applicable in India;

“**Applicable Permits**” shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement;

“**Arbitration and Conciliation Act**” shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time;

“**A-T-P**” shall mean Assigned target (A) minus Tolerance level (T) minus actual Performance (P) as detailed out in sub Article 8.7 (b);

“**Authority**” shall mean the Greater Chennai Corporation;

“**Authority’s Assets**” shall mean the list of assets as specified in Schedule 27;

“**Authority’s Movable Assets**” shall mean the list of assets as specified in Schedule 27;

“**Authorized Representative**” shall mean, in respect of a Party, any person designated (whether by name or as the holder of a specified position or office), as such by such Party by notice in writing given to the other Party including, in the case of a person designated by name, a specimen signature of that person certified by the Party issuing the notice;

“**Bank**” shall mean an entity established under the Banking Regulation Act, 1949 and amended in 2013, and the entity shall be in the list of Scheduled Banks of the Reserve Bank of India;

“**Banking Company**” shall mean a banking company as defined in sub Article (c) of section 5 of the Banking Regulation Act, 1949;

“**Bank Rate**” shall mean the rate of interest as notified by Reserve bank of India (RBI) from time to time in pursuance to section 49 of the RBI act, 1934 or any replacement of such bank rate for the time being in effect;

“**Bid**” shall mean the documents in their entirety comprised in the Bid submitted by the {Successful Bidder/Consortium} in response to the Request for Proposals (RFP) in accordance with the provisions thereof;

“Beach Stretches” shall mean areas adjacent to the beaches in Project Area inclusive of service roads and sandy areas;

“Bid Security” shall mean security offered at the time of submission of Bid as defined in sub Article 2.20 of ITB as part of the bid documents which shall be 2% (two percent) of the Project value;

“Biodegradable Waste” shall mean “Any organic material that can be degraded by microorganisms into simpler stable compounds”;

“Biomethanation” shall mean the process which entails enzymatic decomposition of organic matter by microbial action to produce methane rich biogas;

“Book Value” shall mean the value of Asset under consideration at which the asset is carried on a Balance Sheet and calculated by taking the cost of an asset minus the accumulated depreciation. Book Value is also the net asset value of a company, calculated as total assets minus intangible assets (patents, goodwill) and liabilities;

“Bulk Waste Generator” shall mean as provided in SWM Rules 2016;

“Collection & Transportation Plan (C&T Plan)” shall mean, the plan detailed in MIOP depicting collection of SW from all sources and places within the Project Area and Transporting the same to Disposal or Processing Site;

“Change in Law” shall have the meaning specified thereto in Article 11;

“Change of Scope” shall mean addition or deletion of Project Area as specified in Article 7;

“Commencement date” shall mean the date of signing of this Agreement;

“COD” or **“Commercial Operations Date”** shall mean the date on which the Concessionaire completes taking over of the full Project Area;

“Completion Certificate” shall mean the certificate issued by the Authority certifying the achievement of Financial Closure, approval of MIOP as per Schedule 21, completion of deployment of infrastructure and manpower as per the Schedules 14 and 16 respectively on recommendation of the Independent Engineer (IE);

“Concession” shall mean as specified thereto in Article 2 of this Agreement;

“**Concession Period**” or “**Contract Period**” shall mean a period of Eight (8) years from the COD;

“**Concessionaire**” shall have the meaning attributed to the Special Purpose Vehicle (SPV) formed by the Successful Bidder hereinabove;

“**Consortium**” shall mean the consortium consisting of M/s....., M/s.....and M/s formed/acting pursuant to the Joint Bidding Agreement dated entered into by them, for the purpose of submitting their proposal for undertaking the Project and the event of their being accepted by the Authority to implement the Project through Special Purpose Vehicle formed and registered by them at Chennai in India;

“**Consortium Member**” shall mean a company specified in Recital (D) as a member of the Consortium;

“**Construction and Demolition Waste**” shall mean the waste as defined in Section 3(c) of the Construction & Demolition Waste Management Rules, 2016;

“**Conditions Precedent**” shall mean have the meaning set forth in sub Article 2.4;

“**DBFOT**” shall mean Design Build Finance Operate Transfer as per the Tamil Nadu Infrastructure Development Act, 2012;

“**Decentralized Processing Units**” shall mean the small-scale processing facilities undertaking composting, Bio-methanation, vermi-composting and plastic shredding units) established by the Authority in the Project Area and as specified in the Schedule 6;

“**Domestic Hazardous Waste (DHW)**” shall mean discarded paint drums, pesticide cans, CFL bulbs, tube-lights, expired medicines, broken mercury thermometers, used batteries, used needles and syringes and contaminated gauges. at the household level as well as at the Secondary Collection point level;

“**Domestic Hazardous Waste Depositing Centre (DHW Depositing Centre)**” shall mean depositing center established by the Authority where DHW collected by the Concessionaire or deposited by the people shall be safely kept and the same deposited waste to be handed over to the DHW Agency;

“Domestic Hazardous Waste Agency (DHW Agency)” shall mean the agency contracted by Tamil Nadu Pollution Control Board (TNPCB) to collect, transport & dispose Domestic Hazardous Waste from Domestic Hazardous Waste Depositing Centers in Project Area;

“Door to Door Collection (DTDC)” shall mean collection of solid waste from the door step of households, shops, commercial establishments, offices, institutions or any other non-residential premises and includes collection of such waste from entry gate or a designated location on the ground floor in a housing society, multi storied building or apartments, large residential, commercial or institutional complex or premises or gated community area;

“Dump Site/ Disposal Site” shall mean the designated land at Perungudi (12°58’10.17” N, 80°14’39.03” E) used by the Authority for disposal of collected solid waste by the Concessionaire;

“Disaster” shall mean catastrophe, mishap, calamity or grave occurrence in any Project Area, arising out of natural or manmade causes or by accident or negligence which causes substantial loss of life or human suffering or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;

“Disposal” shall mean depositing the Solid Waste in the assigned place in the Dump Site and/or delivering the Solid Waste at the Processing Facility to be established at the Dump Site or Decentralized Processing Facilities or the designated site to be proposed by the Authority and intimated in consultation with IE to the Concessionaire;

“Dispute Resolution Procedure” shall mean the procedure for resolution of Disputes set forth in Article 17;

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project;

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any

designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the asset transferred by Authority to Concessionaire;

“Environmental Laws” shall mean all Laws pertaining to the protection of natural resources, the environment, the health and safety of the public, according to Environment (Protection) Act, 1986, Solid Waste Management Rules 2016, The Hazardous Waste Management Rules, 2016, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, and other related laws, Guidelines and any other central, state or local law, regulation, rule, ordinance or order from government for waste handling and management;

“Escrow Account” shall mean an account which the Parties shall open and maintain with a Bank in which all inflows and outflows of cash on account of Fixed Payment and Performance based Payment, and any other expenditures as the case may be, for operations of the Project shall be credited and debited, in accordance with the provisions of this Concession Agreement;

“Escrow Agent” shall mean a scheduled Bank acting as an agent which shall maintain an Escrow Account where cash credit and debit shall be monitored by the agent and shall act as per the Escrow Agreement, as set forth in the Schedule 31.

“Escrow Agreement” shall mean the tri-party agreement as set forth in Schedule 31.

“Equity” shall mean the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the actual Project Cost and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Event of Default” shall have the meaning specified thereto in Article 13;

“Expiration Date” shall mean 96 (ninety-six) months from the COD;

“Financial Closure” shall mean a legally binding commitment of equity holders (of consortium) and debt financiers (Banks/Financial Institutions) to provide or mobilize

funding for the project where such funding must account for the whole of the estimated project capital expenditure;

“Financial Institution (FI)” shall mean a scheduled bank and any other Financial Institution defined or notified under the Reserve Bank of India Act 1934;

Financial Statement shall mean in relation to a company, includes

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in (i) to (iv);

“Financial Year” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year or any change that may subsequently be promulgated under Indian Law;

“Fixed Payment (FP)” shall mean fifty (50) percent of the Monthly Quote (MQ) or the rebased Monthly Quote as the case may be;

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 12;

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project;

“Government Agency” shall mean Government of India and State Government of Tamil Nadu, Greater Chennai Corporation or Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or other Judicial or Administrative Body, Central, State, or Local, having jurisdiction over the Concessionaire, the Secondary Collection Points and Workshops or any portion thereof,

or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**GoTN**” shall mean Government of Tamil Nadu;

“**GoI**” shall mean Government of India;

“**Hand back of Project Facilities**” shall mean as specified thereto in Article 15;

“**Handing Over Report**” shall mean a report where the IE and Authority jointly handover the Project Area, after the Financial Closure and record the date and time, place, asset, land and other facilities as per the Micro Implementation and Operation Plan (MIOP);

“**Hazardous Waste**” shall mean as defined under the Hazardous and Other Waste (Management and Transboundary) Rules, 2016 and as amended thereto;

“**Horticultural Waste**” shall mean the leaves, tree branches, garden waste generated from households, public places and commercial establishments in the project area;

“**Hot Spots**” shall mean those locations/ commercial places/ public places within the Project Area experiencing high foot fall, which maybe market places, bus stands, banks of water bodies/ canals, areas under the bridges & flyovers, railway stations, malls, recreation centers and those places where littering is high and frequent as listed in the approved MIOP and subsequent amendments thereof;

“**IE Service Agreement**” shall mean the agreement which it has signed with the Authority or Authority Representative for rendering its service as per the Schedule 11 and Article 4 of this Concession Agreement;

“**IEC Activities**” shall mean the activities to be performed by the Concessionaire during the Concession Period as specified in the Schedule 12;

“**Implementation Period**” shall mean the period starting from the Commencement Date and ending with Scheduled COD;

“**Indemnified Party**” shall mean the Party entitled to the benefit of an indemnity pursuant to sub Article 19.3;

“Independent Engineer (IE)” shall mean a third party, which is either a company, corporation, partnership, joint venture, or any other legal entity as may be procured through transparent competitive bidding process by the Authority or any agency authorized by the Authority and who shall be the nodal entity for supervision and monitoring of compliance by Concessionaire with respect to the terms and conditions as defined in the Concession Agreement for the Concessionaire, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Article 4 and Schedule 11;

“Initial Annual Quote (IAQ)” shall mean the lumpsum quote provided by the Concessionaire (as specified in Schedule 28) and accepted by the Authority;

“Initial Operation Period (IOP)” shall mean the period of 90 days post COD;

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 5, and includes all insurances required to be taken out by the Concessionaire under sub Article 5.6 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Invoice” shall mean as specified in Article 8.

“Information Technology (IT)” shall mean IT enabled system for tracking Infrastructure deployment, management of human resource including biometric system, georeferencing, geofencing, infrared video camera and GPS tracking and generation of MIS (Management Information System) notes thereof and any other IT infrastructure which might be required during operation phase;

“ITB” shall mean Instruction to Bidders as specified in Volume I of this RFP document;

“Intellectual Property” shall mean all patents, trade-marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography, rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and

including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Integrated Processing Facility” shall mean the facility to be created at the designated dump site/ location;

“Landfill Facility” shall mean the existing dump sites or Engineered Sanitary Landfill and/or all other related facilities located thereon, and any other facilities identified /created for the disposal of processed or unprocessed waste;

“Lead Consortium Member/ Lead Member (LCM)” shall mean those Technical Member possessing Technical Qualification and is Consortium Member vested with the prime responsibility of developing and operating the project. The Lead Member shall necessarily make the minimum equity contribution of 51% in the project. The LCM along with other Consortium Members is jointly and severally responsible for performance of the contractual obligation of this agreement;

“Lender” shall mean banks, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting all or any part of the project cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire and who shall submit the following quarterly reports:

- a) Financial Progress;
- b) Statement of Debt and Equity Contribution;
- c) Any other relevant financial information as required by the Authority and IE;

“Letter of Award (LOA)” shall mean the Letter of Award issued by the Authority to the Successful Bidder in accordance with sub Article 3.12.1 of Instruction to Bidder Volume I of this RFP;

“Litter Free Corridor” shall mean specific locations across bus route roads, highways and important roads to be specified by the Authority during the preparation of MIOP and subsequent amendments thereof, where the Concessionaire shall pay special attention and deploy adequate resources to create Litter Free Corridors;

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

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

“Minimum Infrastructure & Manpower Requirements” shall mean infrastructure requirements as set forth in Schedules 14, 15, 16 and to be verified jointly by the Authority and IE;

“Minimum Maintenance Requirements” shall mean maintenance requirements as set forth in Schedule 19;

“Minimum Wages” shall be the applicable minimum wages as notified by the competent authority that must be paid to the skilled and unskilled workers;

“Mobilization Period” shall mean the period between date of issuance of LOA and issuance of Completion Certificate. It indicates the time given for putting all manpower, vehicle, equipment and machinery in place to commence the operation as agreed by the Concessionaire in MIOP;

“Monthly Collection and Transportation Charges (MCTC)” shall mean the final payment payable to the Concessionaire on monthly basis after all deductions/settlements/ conciliations from the Invoices;

“Monthly Quote” shall mean as specified in sub Article 8.3 (b);

“Micro Implementation and Operation Plan (MIOP)” shall mean the detailed Project Implementation and Operation Plan to be submitted by the Concessionaire to the Authority and IE, covering the micro level details of the Project operation like street wise, ward wise and zone wise infrastructure provisioning and service delivery thereon for achieving the performance standards as per the Schedule 17;

“Night Conservancy” shall mean conservancy activities like street sweeping (manual and mechanical) and clearing of secondary collection points in the Project Area (as

identified and finalized in the approved MIOP) from 9 pm to 5 am daily with the proportionate manpower and equipments including deployment of vehicles during these timings;

“Non-Conforming Waste” shall mean waste material of the nature that the Project Facilities/ Project Assets are not designed or authorized to receive, manage, process and dispose, including hazardous waste, bio-medical Waste, e-waste and/or any other waste not defined as Solid Waste;

“Operations Period” shall mean the period commencing from COD and ending at the expiry of the Concession /Termination;

“O&M requirements” shall mean the requirements as to the operation and maintenance of the Project set forth in Article 5.5;

“Paid-up Share Capital” or “ Share Capital Paid-Up” shall mean such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but doesn't include any other amount received in respect of such shares;

“Parties” shall mean the Parties to this Agreement and “Party” shall mean either of them, as the context may admit or require;

“PDS” shall mean Project Design Specification and includes MIOP as approved by the IE in consultation with the Authority for the performance of project work in the Project Area and specification for all vehicles, machineries, equipment's, tricycles, bins including proto types;

“Performance Based Payment (PP)” shall mean the payment made to the Concessionaire based on the achievement of KPI targets, which shall be applicable on 50 (fifty) percent of the Monthly Quote;

“Performance Security” shall mean the guarantee for performance of its obligations under this contract as specified in sub Article 5.1 whereas the Performance Security shall be 5% of the "Project Value";

“**Person**” shall mean any company or association of individuals whether incorporated or not (Tamil Nadu General Clauses Act 1891);

“**Political Event**” shall mean as set forth in sub Article 12.2;

“**Pre-Construction Period**” shall mean the period between MIOP Approval Date and Date of Financial Closure;

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

“**Primary Collection**” shall mean the set of activities as specified in sub Article 1.1 to 1.4 of Schedule 1;

“**Priority Services**” shall mean the services on the basis of instructions from the Authority directly given to the Concessionaire to carry out conservancy services to the satisfaction of the Authority as specified in proviso 1.9 (k) of Schedule 1 of Volume II B of this RFP document, which shall be delivered within the specified time frame;

“**Priority Service Assets**” shall mean the manpower and infrastructure exclusively deployed/ maintained to deliver the Priority Services as specified in proviso 1.9 (k) of Schedule 1;

“**Project**” shall mean ‘Collection & Transportation of Solid Waste, Street Sweeping (including Street Sweeping activities), Horticulture Waste and Collection & Storage of Domestic Hazardous Waste in the Zones No 11, 12, 14 & 15 (herein called Package-II) to the Designated Processing Facilities/ Dump Site/ Depositing Centers, including design, procurement, build, retrofit, financing and operation and maintenance as per the terms and conditions set forth in this concession agreement;

“**Project Area**” shall mean the areas falling under the Zones No. 11, 12, 14 and 15 under Greater Chennai Corporation jurisdiction and boundary map as specified in Schedule 2;

“**Project Agreements**” shall mean collectively this Agreement and the project financing agreement (as the case maybe) in connection with the Project;

“Project Asset/ Facilities” shall mean the combination of Project Fixed Assets, Project Movable Asset, Authority’s Asset and Authority’s Movable Asset;

“Project Fixed Assets” shall mean all the fixed assets like vehicle parking site, shed, and workshop, call center infrastructure, developed and financed by the concessionaire on Authority specified locations and used during the Concession Period for the Project. The value of the Project Fixed Assets shall be considered as all the investments made by the Concessionaire during the Concession Period for the development of these assets as per the Concessionaire’s requirements to execute the Project;

“Project Operation” shall mean operationalizing of MIOP.

“Project Operation and Maintenance Services/ Project Operation Requirement (POR)” shall mean compliance to the Article 5.

“Project Review Meeting” shall mean the periodical meetings held by the Authority to review or monitor the progress or issues related to the Project along with the Concessionaire and/or IE whenever desired by the Authority;

“Project Movable Asset” shall mean all the movable assets including project equipment, waste collection assets, waste storage assets, waste transportation assets, project vehicles procured by the Concessionaire as well as the vehicles, equipment, receptacles handed over by the Authority and used during the Concession Period for the Project as specified in Schedules 14 and 15;

“Project Site” shall mean land parcel or vehicle shed, DHW depositing centre(s), secondary collection points (where bins shall be placed by the Concessionaire as per the MIOP) and division offices (as the case may be) within the Project Area;

“Recyclable Waste” shall mean that part of SW that can be transformed into raw materials for producing new products, which may or may not be similar to the original products.

“Reduced MQ” shall mean Area based Pro Rata Rate (ABPRR) multiplied by the revised Project Area in case of occurrence of Change of Scope as specified in Article 7.

“Reports” shall mean the following reports but not limited to:

- a) MIOP Completion Report

- b) Financial Closure Report
- c) Asset Procurement Report
- d) Employee Report
- e) Asset Registry Report
- f) Monthly Progress Report (MPR)
- g) Tariff Rebasing Report
- h) Accident Report
- i) DHW Disposal Report
- j) Weekly Complaint Redressal Report
- k) Service Addition or Deletion Report
- l) Waste Quantity Report to Decentralized Units and Disposal Facility/ Integrated Processing Facility
- m) Insurance Report
- n) Legal Encumbrance Report
- o) EHS Compliance Report
- p) Daily Project Asset Availability Report
- q) IEC Report
- r) Contract Administration/ Deviation Report
- s) Daily, Weekly, Monthly and Quarterly Performance Report
- t) Any other Report as and when required by the IE/ Authority

“**RFP**” shall mean this Request for Proposals (RFP) comprising of three volumes wherein Volume-I: ITB-Instruction to Bidders; Volume-II A: Draft Concession Agreement; Volume- II B: Schedules; Volume-III: Project Information Memorandum.

“**Route**” shall mean each street/road that the Concessionaire has mentioned in the MIOP submitted by him for carrying out collection, segregation, transportation and disposal of Solid Waste as well as street sweeping.

“**SBI MCLR**” shall mean the Marginal Cost of Funds based Lending Rate issued by the State Bank of India on a monthly basis. In case of any change in the applicable lending rate, the revised or new lending rate shall apply.

“**SBM**” refers to Swachh Bharat Mission (Urban)

“**Scheduled Bank**” shall mean the scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934;

“**Secondary Collection Points**” shall mean and include earmarked location of 1.1 cum/ 0.66 cum bins as per the MIOP for depositing waste and whereas locations shall be identified and/ or approved from time to time by the Authority and IE during the Concession Period;

“**Secondary Collection Vehicles**” shall mean Refuse Compactor vehicles (RC vehicles), street sweeping machines, tippers, beach cleaning machine, horticultural waste and carcass removal vehicles;

“**Seasonal Action Plan (SAP)**” shall mean the Collection and Transportation Plan for monsoon seasons and non-monsoon seasons;

“**Special Purpose Vehicle (SPV)**” shall mean Special Purpose Vehicle incorporated under the Companies Act 1956/2013 as a Private Limited Company to be registered at Chennai by the Successful Bidder on issue of the Letter of Award, under Indian Law to implement the project, and is not permitted to take up any other work or any undertake any contract with anybody for the performance of any work or doing any transaction except the work or transaction connected with this Project.

“**Street Sweeping and Collection**” shall mean the set of activities as specified in sub Article 1.5 of Schedule 1;

“**Street Sweeping**” means and include collection, removal, transportation and disposal of road dust, water table silt, drain silt both manually and mechanically and

transportation of same, but shall not include collection, removal, transportation and disposal of construction and demolition debris and mud earth;

“**SWM Rules**” shall mean the Solid Waste Management Rules, 2016 and includes any amendments thereto and/or any rule(s) formulated by the Authorities in substitution or suppression of these rules;

“**Solid waste**” means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in rule 2 of SWM Rules 2016;

“**Successful Bidder**” shall mean M/s_____ the party selected by the Authority, through a competitive bidding process for implementing the Project;

“**Termination**” shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;

“**Termination Date**” shall mean the date specified in the Termination Notice as the date on which Termination occurs;

“**Termination Notice**” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement;

“**Termination Payment**” shall mean the payments payable pursuant to sub Article 13.3 of this Agreement

“**TNPCB**” shall mean Tamil Nadu Pollution Control Board;

“**Project Value**” shall mean the sum of capital cost of the project from the Commencement Date to the expiry of the Concession Period submitted by the Bidder along with the Financial Bid.;

“**TPD**” means Tons per Day;

“Transportation” shall mean conveyance of solid waste from point of collection and to the Dumping Ground or such designated site, hygienically through specially designed covered transport system so as to prevent foul odour, littering, unsightly conditions and accessibility to vector;

"Trespasser" shall mean any person present on the Sites and not entitled to be on the Sites;

“Workshop” shall mean the place where all the repair & maintenance including servicing shall be undertaken for all the Project Assets- Movable;

“Wholesale Price Index (WPI)” shall mean the wholesale price index published monthly by Reserve Bank of India.

1.2 Interpretation

In this Agreement, unless the context otherwise requires

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

- e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) Reference to a “working day” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business however this reference shall not be applicable for the project operations;
- i) any reference to month/ year shall mean a reference to a calendar month/ year as per the Gregorian calendar;
- j) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
- l) References to any gender shall include the other and the neutral gender;
- m) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- n) “Indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- o) references to the “winding-up”, “dissolution”, “insolvency”, or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or

relief of debtors;

- p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- Article (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- q) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- r) the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) forms 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;
- s) references to Recitals, Articles, Sub-Articles, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub- Articles, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- t) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- u) Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority

and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

- v) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.
- w) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- x) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, councils, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- y) Any reference to any period of time shall mean a reference according to Indian Standard Time (IST).
- z) references to "services/ service" shall include collection, transportation and safe disposal (to designated locations) of SW/ DHW as well as fabrication, testing, retrofitting, upkeeping, modification, improvement, maintenance of Project Assets by way of design – engineering –financing- procurement.

1.3 Measurements and arithmetic conventions

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

1.4 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two Articles of this Agreement, the provisions of specific Articles

relevant to the issue under consideration shall prevail over those in other Articles;

- b) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- c) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- d) between any value written in numerals and that in words, the latter shall prevail

1.5 Priority of Agreements, Articles and Schedules

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

- a) this Agreement;
- b) Any Subsequent amendments issued during bidding process, prior to signing of Concession agreement.
- c) Technical Schedules
- d) the Project Information Memorandum
- e) In addition to provisions of sub Article 1.4 (a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (ii) between any two Schedules, the Schedule relevant to the issue shall prevail;

2. Article 2: The Concession

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement (collectively “the Concession”)

2.2 Concession Period

- i. The Concession is hereby granted for a period of eight years commencing from the Commercial Operation Date, during which the Concessionaire is authorized to operate the Project and Project Assets in accordance with the provisions hereof.
- ii. Provided that;
 - a) in the event of the Concession being extended by the Authority beyond the said period of eight years in accordance with the provisions of this Agreement, the Concession Period shall include the period/aggregate period by which the Concession is so extended as per the applicable rules in force, and
 - b) in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the COD and ending with the Termination Date

2.3 Acceptance of Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project/provide and operate Project Assets, and to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement. In consideration of this, the Authority agreeing to permit the Concessionaire to receive Monthly Collection and Transportation Charges (MCTC), from the Authority on monthly basis as per the provisions of this Agreement.

2.4 Conditions Precedent

A. Condition Precedent of the Authority

The Authority shall within 30 (thirty) days from the Commencement Date satisfy the following conditions precedent:

1. Provide list of Landfill Sites, Dump Yards, and Processing Plants where Solid Waste is to be transported or finally disposed of;
2. Termination or transfer, as the case maybe, of all the existing contracts entered into by the Authority in relation to the collection, transportation and disposal of Solid Waste as specified in Schedule 1 within the Project Area;
3. Calibration of the weighbridge at the Site(s) and accordingly certified to that effect and ensure that such weighbridge is operational;
4. Appointment of Independent Engineer (IE) or Authorizing a team of officials of the Authority to act as IE till the appointment of IE; (in case of team of officials acting as IE till the appointment of IE, 100 % payment will be borne by the Authority).

B. Conditions Precedent of the Concessionaire

a) The Concessionaire shall within 30 (thirty) days from the Commencement Date satisfy the following conditions precedent:

- (i) the Concessionaire has delivered a certificate of incorporation from the competent Authority, confirming, inter alia, that the Concessionaire is duly incorporated and existing under the Laws of India and that the Concessionaire is duly authorized to execute this Agreement and enforceability of the provisions thereof;
- (ii) the Concessionaire has placed order of 50% (fifty percent) of the Minimum Infrastructure Requirement as per Schedule 14 and submitted proof of financial transaction along with purchase orders issued to manufacturer and fabricators; and

(iii) MIOP to be submitted as per the sub Article 5.3. A of this Draft Concession Agreement.

b) Financial Closure as per the sub Article 2.5 of this Draft Concession Agreement.

C. Fulfilment of the Conditions Precedent by the Concessionaire

(a) If the Condition Precedent has been fulfilled by the Concessionaire as specified in sub Article 2.4 (B), the Authority shall issue notice to the Concessionaire to proceed for taking over the Project Area.

D. Non-fulfilment of the Conditions Precedent by the Concessionaire

If the Conditions Precedent specified in Article 2.4 (B), are not fulfilled by the Concessionaire or have not been waived by the Authority within 90 (ninety) days after the Commencement Date, this shall be construed as Concessionaire's Event of Default.

E. Non-fulfilment of the Conditions Precedent by Authority

If any of the conditions as specified in the sub Article 2.4 (A) is not fulfilled by the Authority within 30 (thirty) days from the Commencement Date, this shall be construed as the Authority's Event of Default.

F. Termination Prior to Commercial Operation Date

(a) In the event that the Commercial Operation Date cannot be achieved due to the Concessionaire's lack of efforts, negligence or default, the Authority shall be entitled to forfeit the Performance Security;

(b) Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfil each parties' Conditions Precedent is an independent obligation of the respective Party;

(c) The Parties shall notify each other in writing at least once a week on the

progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied;

- (d) Damages for delay by the Authority: In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in sub Article 2.4 (A) within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire damages in an amount limited to Rupees 50 (fifty) lakhs. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority; or (iii) it is further clarified that instead of paying penalty to the Concessionaire, the Authority may at its own discretion increase the Concession period equal to the days beyond 45 (forty-five) days of delay;
- (e) Damages for delay by the Concessionaire: In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in sub Article 2.4 (B) within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under sub Article 2.4 (B) or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.67% (zero point six seven) of the Performance Security for each day's delay, beyond the period of 45 (forty five) days from Commencement Date, until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to 10% of the aggregate amount of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of sub Article 2.4 (D), terminate the Agreement and the Concessionaire shall forfeit the Performance Security to the Authority.

2.5 Financial Closure

- (A) The Concessionaire may at its discretion avail project financing for the Project. In the event the Concessionaire decides to avail financing for the initial capital

expenditure of the Project, it hereby agrees and undertakes that it shall achieve Financial Closure within 75 (seventy-five) days from the Commencement Date. In the event of delay in achieving the Financial Closure, the Concessionaire may be offered a further period not exceeding 15 (fifteen) days, subject to payment of Damages to the Authority at a lumpsum rate of Rs. 5,00,000 (five lakhs) per day of delay, provided that the Damages specified herein shall be payable every week in advance. In the event of delay in achieving the Financial Closure beyond 90 (Ninety) days no Damages shall be payable as it shall be termed as Concessionaire event of default and the entire performance security shall be encashed by the Authority.

- (B) The Concessionaire shall, upon occurrence of Financial Closure, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version, which is acceptable to the Lender and the same shall be shared with the Authority.
- (C) Termination due to failure to achieve Financial Closure: Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 2.5 (A), in the event that Financial Closure does not occur, for any reason other than Force Majeure, within the period set forth in Article 2.5 (A) or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated and the Authority shall encash the Performance Security.
- (D) On achievement of Financial Closure, the Concessionaire shall submit documentary evidence like Lender's sanction letter, agreement with the banker, term sheet, financial model and repayment schedule to the Authority. The Authority may ask for additional documents as it deems fit to satisfy itself about the Financial Closure.
- (E) As the case may be, the Concessionaire may at its discretion not avail project financing from Banks or Financial Institution and fund the initial Capital Cost of the

project from its own sources of fund. The Concessionaire shall submit those documentary evidence, to the satisfaction of the Authority.

2.6 Performance Security

- (A) Appropriation of Performance Security: Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. It is further stated that the Authority in consultation with the IE shall adjust for any computational errors in MCTC billing and/ or excess payment made, if any, from the Performance Security on a periodic basis;
- (B) Upon such encashment and appropriation of Performance Security, as the case may be, the Concessionaire shall, within 7 (seven) working days thereof, replenish, in case of partial appropriation, to the original level of the relevant performance security. In case of appropriation of the entire amount of Performance Security, as the case may be, the Concessionaire shall provide a fresh performance security within 5 (five) working days thereof, failing which the Authority shall be entitled to terminate this Agreement in accordance with ~~sb~~Article 2.5 (C);and
- (C) Release of Performance Security: The Performance Security shall remain in force and effect till expiry or termination of the Concession Agreement and shall be released within 45 (forty-five) working days from the expiration or termination date of the Concession Period.

3. Article 3: Project Area and Project Site

3.1 Handover of Project Area and Project Site

- a) The Authority hereby undertakes to handover to the Concessionaire, whenever the Concessionaire is ready to take over the Project Area for project implementation as per the terms and conditions of this RFP subject to minimum of achievement of Financial Closure, approval of MIOP, procurement of minimum required infrastructure and manpower. The Concessionaire shall take over whole of the Project Area for operations within a maximum period of 105 (one hundred and five) days from the Commencement Date;
- b) The Authority hereby undertakes and authorise the Concessionaire the right to enter and operate the Project wherein the Concessionaire may as per the approved MIOP take over the (i) Project Area in single phase or (ii) in two phases not exceeding a period of 30 (thirty) days;
- c) In case of handing over in two phases, The choice of Zones for the two phases as shall be mutually agreed between the Parties at the time of approval/ acceptance of MIOP by the Authority;
- d) In case of handing over in a single phase, the Authority shall handover the four zones simultaneously within a period as approved in MIOP;
- e) The handover of the Project Area and Project Site shall be as per the approved MIOP and the Parties shall deliberate and decide on taking over of Zones based on the ground reality during MIOP preparation;

3.2 Rights, Title and Use of the Project Site and Project Area

- a) The information about the Project Site (Schedule 4 and Schedule 27 except DHW Depositing centres) and Project Area set out in Schedule 2 is provided by the Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Project Area, which the Authority may possess.

Subject to this the Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site and Project Area;

- b) The Authority confirms that upon the Project Site and Project Area being handed over pursuant to the preceding sub-article (a) the Concessionaire shall have the exclusive right to enter upon, occupy and use the Project Site and Project Area and to make at its costs and expenses such development and improvements in the Project Area and Project Site as may be necessary or appropriate to implement the Project and to provide service subject to and in accordance with the provisions of this Agreement;
- c) The Concessionaire shall not without prior written consent or approval of the Authority use the Project Site and Project Area for any purpose other than for the purposes of the Project and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Authority;
- d) The Concessionaire shall allow access to, and use of the Project Site for telegraph lines, electric lines or such other public purposes (in case of emergency) as the Authority may specify, provided that such access or use does not result in a Material Adverse Effect or closure of Project Site for a period exceeding 120 (one hundred and twenty) days and that the Authority undertakes to ensure that the Project Site is restored at the cost and expenses of the Authority as per the Specifications and Standards. Where such access or use causes any loss the Concessionaire, the Authority shall compensate the Concessionaire for such loss in consultation with IE or restore it as per the specification and standard as specified in MIOP; and
- e) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement. The rights granted herein shall be effective only during the Concession Period and shall cease with the termination or expiration of this Concession Agreement.

3.3 Peaceful Possession

The Authority warrants that:

- a) the Project Area being under the Authority's administration wherein the Authority providing various citizen services within the Project Area, the Concessionaire shall not levy any charges, fees, fines, penalties or create any physical or legal Encumbrances to the residents within the Project Area.
- b) the Project Site having been acquired through the due process of law belongs to and vested in the Authority, and that the Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement;
- c) the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site and Project Area during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, the Authority shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any direct or consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Statutory Clearances

The Authority confirms that the Project Site has been granted clearances and free from all Encumbrances. The Concessionaire shall, however, apply for and obtain any other Applicable Permits related to Project Site/Project Facilities for creating Project from the Competent Authorities and notify the same clearances for the Project Facilities to the Authority and the IE.

4. Article 4: Independent Engineer

4.1 Procedure for Appointment

- a) The Authority shall appoint a consulting engineering firm in accordance with the selection criteria set forth in the Tamil Nadu Transparency in Tenders Act, 1998 and read with the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 and any amendments thereof to be the independent consultant under this Agreement (the “Independent Engineer”).
- b) The appointment shall be made no later than 30 (Thirty) days from the Commencement Date and shall initially be for a period of 4 (four) years which may be extended for a period not exceeding 6 (six) months from the IE service expiration date subject to replacement as specified in sub Article 4.3 (a)
- c) Before 3 (three) months of expected expiration date IE Service Agreement, the Authority shall appoint an Independent Engineer for further terms in accordance with the provisions of the above stated sub Articles 4.1 (a) and (b).
- d) The detailed Scope of Work of the Independent Engineer is provided in Schedule 11 of this Concession Agreement.

4.2 Payment to the Independent Engineer

- a) The cost of service of IE shall be discovered through a transparent bidding process to be conducted either by the Authority/ any Agency Authorized by the Authority/ PSU/ Board or the body corporate as the Authority deems fit.
- b) The payment made to the Independent Engineer shall be shared equally between the Authority and the Concessionaire.
- c) The Authority shall make the monthly payment to the IE within 30 (thirty) days from the submission of the monthly invoice by the IE.
- d) Thereafter the Authority shall deduct 50 (fifty) percent of the monthly payment made to the IE from the fixed monthly payment of the Concessionaire.

4.3 Replacement of the Independent Engineer

The Parties may replace the Independent Engineer for the time being in any of the following circumstances

- a. If the Authority or the Concessionaire have reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Authority may terminate on its own or on request of Concessionaire can investigate non-performance of IE and satisfy itself of non-performance of the IE and terminate IE service agreement and appoint another Independent Engineer in accordance with the sub Article 4.1 (a). It is further clarified that new IE shall take over from the incumbent IE within the period of 30 (thirty) days form the date of signing of IE service agreement and the incumbent IE shall be discharged there on.
- b. It is further clarified that during the subsistence of “notice period to IE”, Parties shall form core committee of five officials, where two officials each shall be nominated by Parties and one official shall be selected from the list of Arbitrators of Authority, and this core committee shall oversee the performance and deliverables of the IE, till the new IE assumes charge of the Project.

4.4 Eligibility for Re-appointment

The existing IE shall be eligible for participation in the subsequent bidding process subject to the production of certificate of satisfactory performance from the Authority.

5. Article 5: Concessionaire's Obligations

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

5.1 Performance Security

- i) The Concessionaire shall, for due and punctual performance of its obligations, deliver to the Authority, prior to the execution of this Agreement, a bank guarantee from a scheduled commercial bank acceptable to the Authority, in the form as set forth in Schedule 18, (the "Performance Security") for a sum equal to 20% (twenty percent) of the Initial Annual Quote which is.....
(Rupees Only).
- ii) The Performance Security shall be valid up to 60 (sixty) days beyond the Concession expiration date.
- iii) The Concessionaire shall ensure that the Performance Security is renewed 30 (thirty) days prior to its expiration date failing which the Performance Security shall be forfeited.
 - a) Provided, further that if the Concessionaire submits the fresh Performance Security within the period of forfeiture date and expiration date of the Performance Security then the forfeited amount shall be returned to the Concessionaire post deduction of 5 % of the forfeited amount.
 - b) In case the Concessionaire has failed to submit the fresh Performance Security within the specified period, then the Concession Agreement shall be deemed terminated.
- iv) Provided that If the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Authority's right to receive amounts, if any due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire

5.2 Financing Arrangement

- (i) The Concessionaire shall at its cost; expenses and risk make such financing arrangement as would be necessary to finance the capital expenditure of the Project and to meet Project Requirements and other obligations under this Agreement, in a timely manner.
- (ii) The Concessionaire shall achieve Financial Closure as specified in Article 2.5 of this Concession Agreement. and thereof submit to the Authority documents evidencing the same as per sub Article 2.5 (D).

5.3 Micro Implementation and Operation Plan

A. Preparation of MIOP:

- (b) The Concessionaire shall prepare the MIOP as per the Schedule 21 and the various provision of this Concession Agreement and submit the draft MIOP within 30 (thirty) days from the Commencement date to the IE and the Authority.

B. Review of draft MIOP:

- a) The Concessionaire shall submit three copies each of the MIOP to the Independent Engineer and the Authority.
- b) By forwarding the MIOP to the Independent Engineer and the Authority pursuant to the preceding sub Article (a), the Concessionaire shall be deemed to have represented that it has verified and determined that the MIOP forwarded is in conformity with the Schedules.
- c) (1) Within 15(fifteen) days of receipt of the MIOP, the Independent Engineer shall review the same taking into account, inter alia, comments of the Authority, if any, thereon, and convey its comments/observations to the Concessionaire on the conformity of the MIOP with the Schedules. (2) If the comments/observations of the Independent Engineer indicate that the MIOP is not in conformity with the Schedules, such MIOP shall be revised by the Concessionaire to the extent necessary and resubmitted to

Independent Engineer within 7 (seven) days of receipt of comments. (3) The Concessionaire shall resubmit the revised MIOP (three copies to each IE and the Authority). (4) The Independent Engineer in consultation with the Authority shall review and communicate observations on the revised MIOP with 7 (seven) days. (5) On receipt of the communication from the Authority and IE, the Concessionaire shall submit the final MIOP incorporating all changes and thereafter the Authority may approve it.

S.no	Milestone	Time from Commencement Date (Days)
1	Submission of draft MIOP	30
2	Review & Comments given by IE & Authority	45
3	Submission of Revised MIOP by the Concessionaire	52
4	Review & Comments given by IE & Authority	59
5	Submission of Final MIOP by the Concessionaire and Approval by Authority	66

- d) If, within the period stipulated in the preceding sub Article (c), the Independent Engineer does not respond to the draft MIOP submitted by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project with the approval of the Authority or the Authority may take appropriate measures.
- e) Notwithstanding any review or failure to review by or the comments/observations of the Independent Engineer or the Authority, the Concessionaire shall be solely responsible for the adequacy of the MIOP and their conformity with the Schedules and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- f) The Concessionaire shall be responsible for delays in meeting the Project requirements caused by reason of MIOP not being in conformity with the Schedules and shall not be entitled to seek any relief in that regard from the Authority.
- g) Within 66 (sixty six) days from the Commencement Date, the

Concessionaire shall furnish to the IE and the Authority three copies each of the final approved MIOP duly verified by the Independent Engineer.

- h) The approved MIOP shall be amended (i) as per the requirements of the Authority up to two times in a year whereas the Authority shall put the request of revision of MIOP through the IE and/ or (ii) the MIOP shall be amended by the Concessionaire on an annual basis to expand the infrastructure and service requirements of the Project Area.

5.4 Project Operations

- a) Construction of Project Facilities

- (i) The Concessionaire is required to commence Construction Works for the Project Facilities. The Project Facilities shall include

- a) Data Control Room (to be intimated during MIOP)
 - b) Call Centre (IVRS) (to be intimated during MIOP)
 - c) Workshops (as per Schedule 4)
 - d) Parking Sheds (as per Schedule 4)

- (ii) Nothing contained in the preceding sub Article (i) shall be deemed to preclude the Concessionaire from commencing Construction Works prior to the Handing Over Phase, provided the Concessionaire shall do so entirely at its own cost and risk, and shall not be entitled to seek any compensation therefor or in respect thereof in the event the Agreement is terminated prior to Financial Closure for reasons whatsoever. Provided that unless otherwise permitted by the Authority, no Construction Works shall begin until the Independent Engineer is in place and has assumed charge. The Concessionaire shall immediately upon commencement of Construction Works notify the Authority of the same.

- (iii) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain

solely responsible to meet the Construction Requirements.

- (iv) The Concessionaire shall, before commencement of construction works;
 - a) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Construction Works, to deal with the Independent Engineer/the Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - b) provide a furnished office accommodation the Independent Engineer, whereas the space shall be provided by the Authority;
 - c) For the purposes of determining that Construction Works are being undertaken in accordance with the approved MIOP.
 - d) The Independent Engineer shall issue Completion Certificate as per the Completion Schedule as agreed in the approved MIOP.
 - e) The Independent Engineer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the specifications detailed in the approved MIOP

5.5 Operation & Maintenance

As per the proviso of this sub Article the Concessionaire shall carryout the Operation and Maintenance of the Solid Waste management activities in the Project Area as detailed hereunder

A. Project Operation Requirements (POR)

- (c) The Concessionaire shall, from the start of the Handing Over Phase till the expiration of termination of the Concession Agreement, shall:
 - (i) operate and maintain the Project and the Project Assets by itself, and if required, modify, repair, retrofit or otherwise make improvements to the Project and the Project Facility to comply with Specifications and Standards, and other requirements set forth in this Agreement, Good

Industry Practice, Applicable Laws, Applicable Permits and manufacturer's guidelines and instructions.

- (ii) ensure smooth and uninterrupted flow of traffic during normal operating conditions and rely more in Night Conservancy operation;
- (iii) ensure more than 50 (fifty) percent of the project operations as Night Conservancy (refer definition of Night Conservancy) work as per MIOP;
- (iv) minimize disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Assets by providing a rapid and effective response and for this purpose maintaining liaison with emergency services;
- (v) undertake routine maintenance including prompt repairs of all the machinery and other infrastructure procured for project implementation. The Concessionaire shall maintain a log book (physical as well as digital) for preventive maintenance as well as breakdown maintenance and shall be submitted for review of the Independent Engineer/Authority at regular intervals as may be decided by the Independent Engineer/Authority.
- (vi) undertake maintenance works in accordance with MIOP schedule maintenance process;
- (vii) prevent with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from the DHW Centre and
- (viii) prevent with the assistance of the concerned law enforcement agencies where necessary, any encroachments on the Project/Project Site;
- (ix) adhere to the Safety and Environment Standards set out in Schedule 9 of this RFP document
- (x) operate and maintain the Project Area and Project Facilities in accordance with the O&M Requirements as set out in the MIOP.
- (xi) have requisite organisation and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project and to

deal with the Independent Engineer/the Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;

(xii) undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the project schedule and to achieve Project COD under and in accordance with this Agreement;

(xiii) at all times, afford access to the Project Site to the authorised representatives of the Authority, the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, public health, road transportation, sanitation, security and environmental protection to inspect the Project Area and to investigate any matter within their Authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

(xiv) be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable arrangement.

(xv) maintain adequate precaution in moving large vehicles and safe guard public assets like signages, board, CCTV camera and wire, telecommunication cables, electricity wire/cables, beat offices, bin area, pedestrian foot path, public toilet area, etc. In case of occurrence of damages during project operations caused by the Concessionaire except Force Majeure Events, the cost shall be borne by the Concessionaire including private properties.

(xvi) obtain at their cost such facilities (godowns, warehouses, employee quarters etc.) on or outside the Project Area as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement

B. Operation and Maintenance during Handing Over Phase

During this phase, the Concessionaire shall take over the Project Areas from Authority either fully or in a phased manner as per the scheduled mobilization

detailed in MIOP and operate and maintain the Project Area and Project Site ensuring uninterrupted services as per the POR.

C. Operation and Maintenance post COD

- (a) After COD, the Concessionaire shall perform and deliver its services as per the Key Performance Indicators thresholds or above the threshold limits, and also ensure that the quality of service and safety are maintained as per Good Industry Practice. Further, the Concessionaire shall not mix the C&D waste, Domestic Hazardous Waste, Biomedical waste, silt etc with solid waste. The Concessionaire shall deliver the waste with quantity and characteristics as prescribed in Schedule 6 of Volume II (B) of this RFP.
- (b) The Concessionaire shall ensure that the deployment of resources and infrastructure for smooth services shall be ensured all the time. Any short-fall on account of shortage or downtime due to maintenance issue shall not impact the quality, extent and frequency of services. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Assets and meeting the Key Performance Indicators. Notwithstanding anything contained herein this Agreement, the service levels within the Project Area shall be as per the approved MIOP Plan submitted by the Concessionaire.
- (c) On the date of commencement of the COD, or as soon thereafter as possible:
 - (i) The Concessionaire shall obtain/renew and retain all the Applicable Permits required during the Initial Operation Period and the Operation Period;
 - (ii) The Concessionaire shall continue operation and maintenance of the Existing Project Facilities in compliance with Applicable Law;
 - (iii) The Concessionaire shall provide the Authority and the Independent Engineer with access at all times to the Existing Project Assets and to view all data and reports held by the various electronic information systems managed by the Concessionaire.

- (iv) The key activities to be undertaken by the Concessionaire during the Initial Operation Period i.e. of three months from the COD comprise the following:
- (a) Implementation of the agreed MIOP including all necessary activities identified therein;
 - (b) Operation and maintenance of the Existing Project Assets from the Initial COD Date by taking over the Existing Project Facilities, commencing all operations and maintenance activities, and systematically moving from present service standards to new KPI based service standards;
 - (c) Also, the Concessionaire, shall inform to the IE/ Authority locations of illegal dumping so as for levying of fine by the Authority;
 - (d) Annually updating of the MIOP based on the ground level condition and performance information and other information with the objective of optimizing the MIOP to achieve efficiency in capital requirement and operations;
 - (e) Providing daily/ weekly/ monthly reports or as per the periodicity required by the IE/ Authority of the service performance and progress in the implementation of the MIOP;
 - (f) IEC and outreach activities in the Project Area, in line with the existing IEC guidelines, as agreed with and in collaboration with the Authority.
 - (g) The Concessionaire shall fulfil the following operational requirements, obligations and commitments post Initial Operation Period:
 - i) The Concessionaire shall undertake periodic (at least once in a month) inspection of the Project in accordance with the Maintenance Manual , the maintenance program as per the

MIOP, Specifications and Standards as set out in MIOP and this Concession Agreement and shall submit reports of such inspection ("Maintenance Reports") to the Authority and Independent Engineer;

- ii) The Independent Engineer shall undertake periodic (at least once in a fort night month but once every week during monsoon) inspection of the Project jointly with the Authority representative to determine the condition of the Project including its compliance or otherwise with the Maintenance Manual, the Maintenance Program, Specifications and Standards and this Agreement and make out a report of such inspection (the "O&M Inspection Report') and forward it to the Concessionaire and Authority with a copy.
- iii) The O&M Inspection Report shall set forth defects and deficiencies, if any, and may also require the Concessionaire to undertake such corrective action for the purpose of determining that the Project is at all times in conformity with the Specifications and Standards to achieve Performance Standard as set out in this Agreement.
- iv) The Concessionaire shall within 05 (five) days of the receipt of the O&M Inspection Report from the Independent Engineer remedy the defects and deficiencies by maintaining the prescribed KPIs and undertake such services/ modifications/ retrofitting/ rehabilitation/ test, if any, set forth thereon, without any delay and furnish compliance thereto and/or results thereof to the Independent Engineer along with a report (O&M Inspection Compliance Report) in reasonable detail the measures, if any, that have been undertaken for curing the defects or deficiencies indicated in such results.
- v) Such inspection or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the

Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

- vi) Where the remedying of such defects or deficiencies in the service standards as per the KPIs/ operational requirements and undertaking such corrective actions is likely to take more than 05 (five) days as assessed by the IE, the Concessionaire shall submit the progress reports of such service improvement/ modifications/ retrofitting/ test every week till the remedy of such defects, within the period stipulated by the Authority in consultation with the IE.

D. Maintenance Manual

- (d) The Concessionaire shall in consultation with the Independent engineer and the Authority evolve after approval of MIOP not later than 15 (fifteen) days before the Commercial Operation Date (COD), a manual for the regular and preventive maintenance (the "Maintenance Manual") and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complied with the Specifications and Standards of Project. Maintenance Manual shall include but not be limited to the following:
 - (i) intervals and procedures for the carrying out of various Project operation of all elements of the Project;
 - (ii) criteria to be adopted for deciding maintenance needs;
 - (iii) preventive maintenance schedule;
 - (iv) intervals at which the Concessionaire shall carry out periodic maintenance; and Intervals for major maintenance/ replacement and the scope thereof.
 - (v) Maintenance shall include replacement of equipment, consumables, horticultural equipment maintenance and repairs to equipment, structures and other civil works which are part of the Project Assets; and

- (vi) The Concessionaire shall keep the Project Assets in a clean, tidy manner with regular washing and painting

E. Vehicle Breakdown and Accident

- (i) In the case of unsafe conditions, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include lights as well as the removal of obstruction and SW expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable Permits and the provisions of this Agreement.
- (ii) The Concessionaire shall ensure that any diversion or interruption of traffic is remedied without delay. The Concessionaire's responsibility for rescue operations on the Project shall be limited to the removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth traffic flow on the Project

F. Failure to meet Project Operation Requirements

The performance of the Concessionaire with respect to Project Operation Requirements (POR) shall be monitored and evaluated as per sub Article 5.5 (A). In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with the relevant KPI targets, the Concessionaire shall be levied penalty as per Schedule 17 of this Agreement.

G. Material Breach of Project Operation Requirements

- (e) The Concessionaire shall be deemed to be in material breach of Project Operation Requirements if the Independent Engineer receives intimation from the Authority and/ or acts on its own in accordance with the provisions of this Agreement, has determined Material Breach of Project Operation requirements by the Concessionaire.

H. Authority's rights

Upon occurrence of a material breach of POR, the Authority shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, be entitled to terminate this Agreement

5.6 Insurance

A. Implementation Period and Concession Period

The Concessionaire shall at its cost and expense, purchase and maintain by due reinstatement or otherwise insurance as necessary, but not limited to the following:

- i) Concessionaire's all risk insurance;
- ii) Motor Vehicle Insurance
- iii) comprehensive third-party liability insurance including injury or death to personnel representatives of Persons who may enter the Project Site and Project Asset;
- iv) workmen's compensation insurance;
- v) loss, damage or destruction of the Project Assets, at replacement value,
- vi) the Concessionaire's general liability arising out of the Concession
- vii) any other insurance that may be necessary to protect the Concessionaire, its employees and its Assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable

B. Evidence of Insurance

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

C. Validity of Insurance

- (f) The Concessionaire shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period and furnish copies thereof to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 Days' clear notice of cancellation is provided to the

Authority in writing. If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, the Concessionaire shall be deemed to be in Material Breach of the Concession Agreement, and the Authority shall obtain and maintain such insurance and the sum incurred for the payment of the premium by the Authority therefore shall be deducted from the MCTC by the Authority along with a penalty of 50 (fifty) percent of the value of the insurance premium paid.

D. Application of Insurance Proceeds

(g) Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Assets or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lender as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Assets after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction and except normal wear and tear.

E. Un-insurable Risks

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

5.7 Shareholding

The Concessionaire shall ensure that

- (a) if the Concessionaire is a single entity, it shall hold not less than 100% (hundred percent) of its Issued and Paid-Up Share Capital throughout the Concession Period;
- (b) in case the Concessionaire is a Consortium then:
 - (i) M/sthe Lead Member of the consortium shall hold an equity shareholding of not less than 26% (twenty six percent) {.....insert actual shareholding percentage} of Paid -Up Equity of the SPV throughout the Concession Period; and
 - (ii) M/sthe Other Member of the consortium shall hold an equity shareholding of not less than 26% (twenty six percent) {..... insert actual shareholding percentage} of the Paid-Up Share Capital throughout the Concession Period.
 - (iii) M/sthe Other Member of the consortium shall hold an equity shareholding of not less than 26% (twenty six percent) {..... insert actual shareholding percentage} of the Paid-Up Share Capital throughout the Concession Period.
- (c) in the event of a change in the shareholding gets effected, after the signing of the Concession Agreement but prior to the COD, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire.

5.8 General Obligations

The Concessionaire shall at their own cost and expense:

- (a) investigate, study, design, construct, operate, retrofit, rehabilitate and maintain the Project Assets in accordance with the provisions hereof;
- (b) obtain all Applicable Permits as required by or under the Applicable Law and ensure compliance thereof at all times during the Concession Period;
- (c) Submit MIOP as per Schedule 21 and get it approved in accordance with sub Article 5.3 of this Draft Concession Agreement.
- (d) Shall achieve Financial Closure as per the sub Article 2.5 of this Draft Concession Agreement.
- (e) comply with Applicable Law governing the operations of the Project Assets, as the case may be, at all times during the Concession Period;

- (f) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (g) deleted;
- (h) deleted;
- (i) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labor laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Authority be treated as employer in this regard;
- (j) be responsible for all the health, security, environment and safety aspects of the Project Assets, as the case may be, at all times during the Concession Period;
- (k) be responsible for the operation and maintenance of Authority's Movable Assets and shall indemnify the Authority from any legal obligations arising during the Concession Period.
- (l) ensure that the Secondary Collection Points, Workshops & Parking Sites remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- (m) upon receipt of a request thereof, afford access to the Project Assets to the authorized representatives of the Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Assets and to investigate any matter within their Authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.

- (n) Pay all taxes, fees, fine, penalty, duties and outgoings, including utility charges relating to the Project Assets, as applicable throughout the Concession Period except Property Tax on Secondary Collection points, DHW Centres, Workshops and Parking Sites which shall be borne by the Authority.
- (o) Make its own arrangements for the engagement of the employees and labor engaged for execution of the Project Operation following applicable laws on minimum wages and other employee benefit schemes.
- (p) Keep in the registered office of the SPV, two complete sets of this Agreement, approvals given by the Authority/ Independent Engineer and any other communication given or issued under provisions hereof for inspection, verification and use by the Authority or any Authority authorized by law to inspect the same or any of them.
- (q) Provide and maintain all necessary welfare facilities, as per the applicable labor laws, for its staff and labor. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structures forming a part of the Secondary Collection points, Workshops and Parking sites.
- (r) Employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works.
- (s) Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labor and to preserve peace and protection of persons and property in the neighbourhood.
- (t) During the occurrence of Disasters, the Concessionaire shall follow the Disaster Management Plan as per the approved MIOP.
- (u) The Concessionaire shall deploy one light motor vehicle in each zone, having capacity to carry 2 (two) metric tons, for lifting and transportation of carcasses to the designated facility/ site.
- (v) The Concessionaire shall within 105 (one hundred and five) days from the Commencement Date ensure commencement of Commercial Operations:

- (i) Make necessary procurements and mobilize requisite collection and transportation infrastructure and produce documents evidencing the same.
 - (ii) Employ manpower required as per the Schedule 16 of this Agreement
 - (iii) Takeover project sites and facilities from the Authority
 - (iv) Roll out full scale operations in areas taken over from the Authority as per MIOP.
- (w) Environmental Health and Safety Plan
- (i) The Concessionaire shall comply with the provisions of this Agreement, applicable laws and applicable permits and conform to Good Industry Practice for securing the safe operation of the Project.
 - (ii) The Concessionaire shall comply with the safety requirements set forth in Schedule 9 of this Agreement.
 - (iii) The Independent Engineer shall carry out health and safety audit of the Project Assets and Project Manpower once in a month in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the safety requirements at all times
- (x) Submission of Financial Statement:
- (1) the Concessionaire on quarterly basis, shall submit Balance Sheet statement, Profit & Loss Account statement, Cash Flow Statement and any other statement as desired by the Authority;
 - (2) on monthly basis, the Concessionaire shall submit to the Authority – Provident Fund and ESI deposited, Employee Health Insurance etc.

5.9 No Breach of Obligations

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

- a) Force Majeure Event, subject to sub Article 12.5(b)
- b) Authority Event of Default,
- c) Compliance with the instructions of the Authority or the directions of any Government Agency other than instructions issued as a consequence of a breach of any of its obligations by the Concessionaire hereunder;
- d) Closure of the Project Facilities or part thereof with the approval of the Authority
- e) Concessionaire's inability to remove any accident debris due to non- completion of any police / insurance related inquiry/survey despite prompt steps having been taken by the Concessionaire in that regard

6. Article 6: Authority's Obligations

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

6.1 Specific obligations

The Authority shall endeavor to grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from the Authority in connection with implementation of the Project and the performance of its obligations, under this Agreement.

6.2 General obligations

The Authority shall:

- (a) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Authority or any Governmental Agency or persons claiming through or under it/them;
- (b) provide space within 75 (seventy-five) days from the Commencement Date for the following:
 - i) Space for Centralized Call Centre
 - ii) DHW depositing centres as specified in the approved MIOP
 - iii) One Data Control Room at GCC HQ
 - iv) Office space for IE
 - v) Convenient locations for installation of biometric attendance systems in beat offices or any other location at the ward level.
- (c) make arrangements with TNPCB to ensure that DHW is collected from the DHW Depositing Centres and transported to the TNPCB designated disposal facility/ site.
- (d) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial

customers receiving substantially equivalent facilities/utilities;

- (e) If required assist in obtaining police assistance against payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facilities and implementing this Agreement in accordance with the provisions hereof;
- (f) observe and comply with all its obligations set forth in this Agreement
- (g) hand over the physical possession of Project Site together with existing infrastructure/ structure connected to this Project to the Concessionaire whenever required during the Handing Over phase free from any Encumbrances;
- (h) grant or where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (i) employ Independent Engineer for monitoring the Project Operation as per terms of the Concession Agreement during the Concession Period. The costs and expenses of the IE shall be borne equally (50:50) by the Authority and the Concessionaire in accordance with sub Article 4.2.
- (j) Shall provide all assistance to the Concessionaire, if required, for placement of Bins at required locations in the Project Area in accordance with approved MIOP.
- (k) Shall provide space for the parking of e-Rickshaws as per approved MIOP at locations subject to the availability.
- (l) ensure that no barriers are erected or placed by the Authority or any Governmental Agency on the Project Site except by mutual agreement or on account of any law and order situation or upon national security considerations.
- (m) The Authority shall enter into an Escrow Agreement within 15 (fifteen) days from the date of achieving Financial Closure by the Concessionaire, as per the Schedule 31;
- (n) The Authority shall deposit an amount equal to two months of Monthly Quote

(Initial Escrow Amount) in the Escrow Account and shall replenish the Escrow Account, once the Initial Escrow Amount depletes to 50% (Fifty Percent) of the Initial Escrow Amount or the Authority receives intimation for replenishment of fund from the Escrow Agent subject to the condition that the replenished Escrow Amount shall not exceed the value of two months of applicable MQ.

7. Article 7: Change of Scope

In case the Concessionaire consistently fails to achieve the KPI targets as per the evaluation of the IE, the Authority reserves the right to change/ modify the service of the Concessionaire in the Project Area by way of amending the Project Area boundary. The excluded Project Area shall be serviced by the Authority or the agency nominated/designated by the Authority. The provision under this Article is in addition to levying of penalties and termination.

7.1 Change of Scope

If the Concessionaire, as evaluated by the IE, has not complied to the Operational Requirement of core KPI targets resulting in material breach of contract continuously for more than 90 (ninety days) within a particular area of the project area, then the Authority may reduce the Project Area of the Concessionaire;

7.2 Procedure for Change of Scope

- I. The Authority shall whenever it desires to invoke provision for reduction of Project Area referred to in sub Article 7.1 above, issue to the Concessionaire a notice of Change of Scope (the "Change of Scope Notice") through the Independent Engineer.
- II. Upon receipt of Change of Scope Notice, the Concessionaire shall, within a period of 07 (seven) days, provide to the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:
 - a) the impact which the Change of Project Area is likely to have on the services as per MIOP; and
 - b) Independent Engineer shall review the information provided by the Concessionaire, determine the reduction in cost to the Concessionaire as a result of such Change of Scope. The Independent Engineer shall communicate its recommendation to the Authority within a period of 07(Seven) days from the receipt of information from the Concessionaire, but not later than 15 (fifteen) days from the date of receipt of Change of Scope notice from the Authority.

- c) the Authority shall issue the Change of Scope Order within a reasonable period from the date of receipt of the recommendation made by the Independent Engineer in accordance with preceding sub-article (b) above or it may reject the Independent Engineer recommendation.
- d) The reduction of scope in terms of Project Area shall not exceed 25 (twenty-five) percent of the total Project Area;
- e) Payment mechanism in case of change of scope:
 - (i) The Reduced MQ shall be equal to ABPRR multiplied by the revised Project Area;
 - (ii) The ABPRR shall be applicable as per the Schedule 29 and there shall not be partial reduction of Project Area below the ward level.
- f) The Concessionaire shall be levied penalty equal to twice the amount of the difference between the MQ and Reduced MQ;
- g) The Change of Scope Order shall be effective and binding upon receipt thereof by the Concessionaire. The Concessionaire shall proceed with the performance of such order promptly following receipt thereof.

7.3 Power of the Authority to undertake works

In the event the Parties are unable to agree to the proposed Change of Scope in accordance with sub Article 7.2 the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award the works or services, contemplated under the sub Article 7.2, to any person on the basis of open competitive bidding; provided that the Concessionaire shall be barred from taking part in this bidding process or takeover the Project Area by itself to provide services. It is also agreed that the Concessionaire shall provide assistance and cooperation to the Selected Entity/ Authority who undertakes the works or services thereunder but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by the Selected Entity/ Authority.

8. Article 8: Monitoring, Performance Evaluation and Payment

8.1 Monitoring of Activities

A. Before COD

- a) Progress Reports: After the Commencement Date, the Concessionaire shall, no later than 7 (seven) days furnish Progress Reports till COD having such relevant information as may be required by the Authority/ Independent Engineer and applicable as per the Concession Agreement. The Concessionaire shall also submit detailed mobilization and resource deployment schedule for Solid Waste Collection and Transportation infrastructure, which was proposed to be used during implementation of project. The schedule shall have clear resource delivery and deployment milestones, against which the monitoring of project phase shall be undertaken by the Independent Engineer appointed by the Authority, and the same should be in conformity with MIOP.
- b) Review and Inspection: From the Commencement Date to COD the Independent Engineer shall review and inspect at least once in a Week and make a report of such review and inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the MIOP and Technical Specifications. All mobilized and deployed assets and infrastructure shall be inspected by the Independent Engineer and progress related to same shall be reported on weekly basis. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 24 (twenty-four) hours of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the report. Such inspection or submission of the Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. The Authority may inspect and review the progress of the all the Project activities during this period.
- c) Quality of Assets and Workers: The Concessionaire shall ensure that the Movable/ Immovable Asset and Workmen are in accordance with the requirements specified in this Agreement, Technical Specifications and Good Industry Practice.

d) The Concessionaire shall, within 30 (thirty) days of the Commencement Date, submit to the Independent Engineer as well as Authority its draft MIOP including Quality Assurance Plan which shall include the following:

(i) organization, duties and responsibilities, procedures, inspections and documentation;

(ii) quality control mechanism including sampling, frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation for Project Site and Project; and

(iii) Internal quality audit system.

(iv) The cost of testing of waste sample (biodegradable) to be given to decentralized unit as per the Schedule 20 shall be borne by the Concessionaire.

e) Methodology

The Concessionaire shall, at least 15 (fifteen) days prior to the commencement of initiation of COD of the Project, submit to the Authority and Independent Engineer, the methodology of deployment of infrastructure along with their technical specifications as per the approved MIOP.

f) Inspection and technical audit by the Authority

The Authority shall have the right to inspect and review the progress and quality of the Equipment/ Assets and issue appropriate directions to the Concessionaire and the IE for taking remedial action in the event the Assets are not in accordance with the provisions of this Agreement.

g) Inspection of Concessionaire Records

The Authority shall have the right to inspect the records of the Concessionaire relating to the Assets and Project Facility.

h) Samples

The Concessionaire shall submit the following samples of Movable Assets and relevant information to the Independent Engineer for approval/review:

- (i) manufacturer's test reports and standard samples of Asset materials; and
 - (ii) Samples/Prototype of such other materials as the Independent Engineer may require;
 - (iii) Test certificates of material used by the Concessionaire, which are used in fabrication of assets and infrastructure related to Solid Waste Collection and Transportation like EHS equipment, disinfectants etc.
- i) Tests: The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests once in a quarter, and in such manner as specified by the IE with the approval of the Authority, and in accordance with Good Industry Practice for quality assurance of waste to be given to decentralized unit. The results of such test shall be shared with the Authority and IE.
- j) In the event that results of any tests conducted under this Article 8 establish any defects or deficiencies, the Concessionaire shall be responsible to carry out remedial measures and furnish a report to the Authority (and IE). For the avoidance of doubt, the cost of such tests and remedial measures including replacement of defective equipment/ components/ parts thereof shall be solely borne by the Concessionaire.
- k) Rejection: If, as a result of an examination, inspection, measurement or testing, any deficiency with respect to provisions of this Agreement is found, Independent Engineer with the approval of the Authority shall reject the equipments, apparatus, materials, design or workmanship by giving notice to the Concessionaire. The Concessionaire shall then promptly rectify those defects and ensure that the rectified item (if necessary, rectification may include replacement also) complies with the requirements of this Agreement and get approval of the Authority.

B. Post COD

- a) The progress reports shall be submitted as and when required by the Authority in the prescribed format as specified in MIS module.

- b) Quality of Assets and Workers: The Concessionaire shall ensure that the Movable/ Immovable Asset and Workmen are in accordance with the requirements specified in this Agreement, Technical Specifications and Good Industry Practice.
- c) Inspection and technical audit by the Authority
- The Authority shall have the right to inspect and review the progress and quality of the Equipment/ Assets and issue appropriate directions to the Concessionaire and the IE for taking remedial action in the event the Assets are not in accordance with the provisions of this Agreement.
- d) Inspection of Concessionaire Records
- The Authority shall have the right to inspect the records of the Concessionaire relating to the Assets and Project Facility.
- e) Test of equipment: The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests once in a quarter, and in such manner as specified by the IE with the approval of the Authority, and in accordance with Good Industry Practice for quality assurance of waste to be given to decentralized unit. The results of such test shall be shared with the Authority and IE.
- f) In the event that results of any tests conducted under this Article 8 establish any defects or deficiencies, the Concessionaire shall be responsible to carry out remedial measures and furnish a report to the Authority (and IE) Independent Engineer. For the avoidance of doubt, the cost of such tests and remedial measures including replacement of defective equipment/ components/ parts thereof shall be solely borne by the Concessionaire.
- g) Rejection: If, as a result of an examination, inspection, measurement or testing, any deficiency with respect to provisions of this Agreement is found, Independent Engineer with the approval of the Authority shall reject the equipments, apparatus, materials, design or workmanship by giving notice to the Concessionaire. The Concessionaire shall then promptly rectify those defects and ensure that the rejected item complies with the requirements of this Agreement.
- h) Examination of Waste before Disposing: In respect of the SW which the

Independent Engineer is entitled to examine, inspect, measure and/or test before it is disposed of or put out of view or any part of the work is placed thereon, the Authority and the Independent Engineer shall then either carry out the examination, inspection or testing without informing the Concessionaire. It is further clarified that IE and Authority shall do examination without any notice.

8.2 Performance Evaluation

The IE shall undertake performance evaluation as per the Key Performance Indicators (KPIs) described in Schedule 17, as following:

- (a) The monitoring frequency shall be continuous, and the hot-spot identified in MIOP shall be monitored and physically verified on the daily basis as per the frequency mentioned in MIOP;
- (b) The IE shall prepare and submit a daily consolidated report of KPI targets achievement related to services;
- (c) Authority reserve the right to evaluate compliance to the Performance Indicators on its own and shall report any deviation to IE for the corrective action and enforcement of penalty thereon.

8.3 Initial Annual Quote (IAQ)

(i) Parties agree that:

- (a) IAQ as per the Schedule 28 is the cost of the services to be delivered by the Concessionaire in a year as per the various provisions of this Concession Agreement. Whereas the Concessionaire as quoted Rupees (.....) as IAQ.
- (b) the quoted IAQ of the Concessionaire shall be divided by 12 (twelve) to arrive at the Monthly Quote (MQ);
- (c) MQ which shall be rebased as per the sub Article 8.5;
- (d) The period from the date of COD till the last day of that calendar month shall not be considered for rebasing. Thereafter, on completion of operations in a full calendar month the rebasing of MQ shall be effected from the first date of subsequent month.

(e) 50% (fifty percent) of MQ shall be Fixed Payment (FP) and remaining 50% (Fifty percent) of MQ shall be Performance based Payment (PP).

8.4 Quote Applicability

The IAQ shall remain applicable for the entire Concession Period subject to rebasing as per sub Article 8.5.

8.5 Monthly Quote Rebasing

A. The MQ shall be rebased as per the following formula:

$$T_n = T_{n-1} + 0.80 \times T_{n-1} [W_1 \times ((D_1 - D_0) / D_0) + W_2 \times ((L_1 - L_0) / L_0) + W_3 \times ((WP_1 - WP_0) / WP_0)]$$

Where:

T_n = Monthly Quote for the n^{th} rebasing

T_{n-1} = MQ for the $(n-1)^{\text{th}}$ rebasing

D_0 = Moving Average of the price of High-Speed Diesel (HSD) for Chennai for the previous month as notified by Indian Oil Corporation Limited
(https://www.iocl.com/Product_PreviousPrice/DieselPreviousPriceDynamic.aspx)

D_1 = Moving Average of the price of High-Speed Diesel (HSD) for Chennai for the current month as notified by Indian Oil Corporation Limited
(https://www.iocl.com/Product_PreviousPrice/DieselPreviousPriceDynamic.aspx)

L_0 = Minimum Wages of the previous revision – In line with Minimum Wage Act, notified by the competent authority;

L_1 = Revised Minimum Wages of the current revision – In line with Minimum Wage Act, notified by the competent authority;

WP_0 = The RBI Wholesale Price Index for Manufactured Products as on the Bid Submission Date (<https://dbie.rbi.org.in/DBIE/dbie.rbi?site=home>)

WP_1 = The RBI Wholesale Price Index for Manufactured Products of the 1st day of the current financial quarter (<https://dbie.rbi.org.in/DBIE/dbie.rbi?site=home>)

W_1 = Weightage of Fuel which is 10 (Ten) percent;

W_2 = Weightage of Labor which is 80 (Eighty) percent; and

W₃ = Weightage of WPI for Manufactured Products shall be 10 (Ten) percent

The above weightages have been fixed in terms of the ratio of expected O&M costs of the Concessionaire.

B. Rebasing Frequency:

The rebasing frequency for different components shall be as follows:

- i) the frequency of HSD price rebasing shall be on a monthly basis during the Concession Period as per the sub Article 8.5 (A). The rebasing shall be computed by the IE and the revised MQ shall be only effective after the approval by the Authority;
- ii) the Minimum Wages shall be rebased as and when the notification of change in Minimum Wages by competent authority becomes effective and the Minimum Wage component shall be rebased as per the sub Article 8.5(A) within 90 days from the date of effectiveness of the notification. The rebasing shall be computed by the IE and approved by the Authority. The Concessionaire shall pass on the wage revision benefits to the workers with immediate effect along with arrears and the Concessionaire shall submit documentary evidence of payment of minimum wages by attaching it to the Monthly Invoice of Fixed Payment.
- iii) The rebasing of WPI of Manufactured Products shall be done quarterly by IE on 1st day of every financial quarter (1st April, 1st July, 1st October and 1st January) as per the sub Article 8.5 (A). The rebasing incidental to change in WPI of Manufactured Products shall be effective along with HSD price rebasing.
- iv) It is further clarified that any change in one or more of the components which leads to a rebased MQ lower than the Initial Monthly Quote shall not be applicable.
- v) The authority warrants that all the rebasing shall be effective from the midnight of the effective day, as per the following table:

Table 1

Sl. No.	Rebasing Component	Frequency	Rebasing Trigger Date
1.	HSD Rebasing	Monthly (Moving	00:00 hours of the first day of every month with respect to the

Sl. No.	Rebasing Component	Frequency	Rebasing Trigger Date
		average of the month)	preceding month's moving average.
2.	Minimum Wages Rebasing	As the case may be (Annual)	Midnight of the date of effect of notification and computation to be carried out within 90 (ninety day) from the date of notification. The arrear shall be paid.
3.	WPI of Manufactured Products	Quarterly	Midnight of the second day of start of every quarter and to be done along with the HSD rebasing.

- C. All the MQ rebasing computation done by the IE shall be shared with the Concessionaire after the approval from the Authority.
- D. In case of delay, on the part of the IE and Authority, in approval of Revised MQ, the Concessionaire shall be liable to receive arrears which shall be calculated from the date of rebasing trigger date of that rebasing component under consideration.

8.6 Penalties

- (a) The performance of the Concessionaire will be evaluated on a daily basis as per the Key Performance Indicators (KPIs) described in Schedule 17.
- (b) The Penalty, if applicable, shall be imposed on 50 % of the IMQ or rebased MQ, whichever applicable, as per the Penalty Slabs described in Schedule 17.
- (c) The Penalty shall be calculated on a daily basis and the total amount at the end of each month shall be deducted from 50 % of the IMQ or rebased MQ, whichever is applicable, for that particular month.
- (d) The amount of Penalty for each KPI shall be derived by the mechanism as specified in Schedule 17.

8.7 Surcharge on Penalty

- (a) In case of the Concessionaire being in the same penalty slab, as per Schedule 17, for two consecutive months, a surcharge of 25 (twenty-five) percent shall be levied on the penalty rate for that specific KPI.
- (b) In case of the Concessionaire being in the same penalty slab, as per Schedule 17, for three/ four/ .../ n consecutive months, a surcharge of 25 (twenty-five) percent shall be levied on the cumulative penalty rate of the second/ third/ fourth/.../(n-1)th month for that specific KPI and so on.
- (c) It is further clarified that if the increase in deficiency level results in application of the higher penalty slab, then such higher deficiency shall be considered as first month in the next (higher) penalty slab.
- (d) Sub Article 8.7 (a) shall not be applicable during the first 6 months post COD and for the KPIs associated with segregation, it shall come into effect after a period of 12 months post COD.

8.8 Payment Mechanism

- (a) The payment to the Concessionaire shall comprise of two components. Fixed Payment (FP) and Performance based Payment (PP).
- (b) Formula for Fixed Payment on a monthly basis: $FP = 50\%$ (Fifty percent) of IMQ or applicable MQ.
- (c) Formula for Performance Based Payment (PP) on a monthly basis: $PP = 50\%$ of IMQ/MQ – Monthly Penalty or MP, whichever applicable as per Schedule 17 section (B).
- (d) Formula for Monthly Penalty = $R * W_{Co} * PP$

Where:

R = Penalty Rate as per Penalty Slabs specified in Table 3 of Schedule 17

W_{Co} (Weightage as per criticality of operation) = $W_{KPI} * W_{Comp}$

W_{KPI} = Sub-weightage of KPI

W_{Comp} = Weightage of Component

PP = Performance based Payment (Monthly)

- (e) The payment shall be released by the Authority in two stages.
- a. Stage I: The Concessionaire shall submit the monthly invoice for the Fixed Payment (FP) (Invoice I) in the prescribed format to the IE, complete in all respects, by the 5th of the subsequent month and the IE shall verify and certify the correctness and genuineness of the FP invoice within 2 (two) days and forward the FP invoice for the Authority's approval and payment. The Authority shall release the payment within 30 (thirty) working days from the date of receipt of FP Invoice from the IE.
 - b. Stage II:
 - i) The Concessionaire shall raise the monthly invoice for PP (Invoice II) in the prescribed format (to be provided by the IE) along with the necessary particulars as agreed between the parties. The invoice along with the particulars shall be submitted by the 10th of the subsequent month to both the Authority and IE (one copy each).
 - ii) Thereafter the IE shall evaluate the submitted invoices as per the KPIs described in Table 3 of Schedule 17.
 - iii) The IE's Evaluation Mechanism shall be based on MIS Reports generated from real time monitoring, visual inspections and a combination of both as specified in Schedule 17. In addition the IE shall consider the periodic inspection/ evaluation reports of the Authority while evaluating the performance of the Concessionaire;
 - iv) Post evaluation, the Penalty/ Incentive shall be calculated as per Schedule 17 Section (B) and the final amount of PP will be finalised as per Schedule 17 (B).
 - v) The evaluation and calculation of the final amount of PP shall be completed by the IE within 10 (ten) working days from the date of receipt of Invoice II.
 - vi) thereafter based on the recommendation of the IE, the Authority

shall release the final amount of PP to the Concessionaire within 30 (thirty) working days from date of receipt of PP invoice from the IE;.

c. deleted

(f) Delay in Payments by Authority:

(i) In case the Authority has failed to make MCTC or any payments due to the Concessionaire till 30 (thirty) working days from the date of receipt of the relevant invoice and recommendation from the IE, no interest shall be paid on the amount due.

(ii) In case the Authority has failed to make MCTC or any payments due to the Concessionaire for a period of 31 (thirty-one) to 180 (one hundred eighty) working days from the receipt of the relevant invoice and recommendation of the IE, such sum shall until payment thereof shall carry interest rate of SBI MCLR plus 2 (two) percent from the due date of payment thereof until the same is paid to or otherwise realized by the Concessionaire entitled to the same.

(iii) In case the Authority has failed to make MCTC or any payments due to the Concessionaire beyond a period of 180 (one hundred eighty) working days from the receipt of the relevant invoice and recommendation of the IE, it shall be construed as Authority's Event of Default as set forth in sub Article 13.1 (b) of Vol II A of the RFP document

(g) All payment to the Concessionaire by the Escrow Agent shall be made on the recommendation of the Authority within a period of 30 (thirty) days.

8.9 Payment during Handing Over Phase

Parties agree that during the Handing Over Phase the payment shall be provisioned on the Area Based Pro Rata Rate (ABPRR) as given below

Payment = (ABPRR * Actual area service * number of days serviced in that particular month/ total number of days in that particular month)

It is further clarified that the ABPRR of different zones shall be payable as per the following table:

Zones	Area (sq km)	ABPRR/no of days in month (A)	Zone Taking Over Date	COD	No. of Days (B)	Payment = (A*B)
11	20.49					
12	20.52					
14	35.78					
15	42.24					

8.10 Resolution of Disputes related to Payment

(j) For any payment related dispute the parties will move for amicable resolution as provided in sub Article 17.1. On failure of amicable resolution, Arbitration shall be followed as provided in sub Article 17.2.

8.11 Payment of Incentive to the Concessionaire

Incentive shall be paid to the Concessionaire as per the following conditions:

- (a) Incentive trigger: The payment of incentive shall be applicable, only if the Concessionaire is not levied any penalty for three months on a consecutive basis for any of the core KPIs , as specified in Schedule 17 of Volume-II B of RFP.
- (b) The incentive shall be paid as per the following formula:

$$\text{Incentive Payment} = 1\% * \{(a + b + c)\}$$

Where a, b & c are the MQs for those three consecutive months for which the Concessionaire has not been levied any penalty for any of the core KPIs.
- (c) The above computation shall be done by the IE and notified to the Concessionaire, and on receipt of this notification the Concessionaire shall raise the Incentive Invoice (Invoice IV) along with the particulars shall be submitted by the 10th of the subsequent month to both the Authority and IE (one copy each).
- (d) Incentive payment shall not be applicable during the Handing Over Phase. The Incentive shall be paid for those blocks of three consecutive months for which the Concessionaire is not levied any penalty for any of the core KPIs and the process of computation and payment shall be as per sub Article 8.11 (b). However, it is further

clarified that if the Concessionaire is not levied any penalty for four months or more on a consecutive basis for any of the core KPIs, then the Concessionaire shall be paid only for the first three consecutive months and the fourth month shall be considered as commencement of the next cycle of incentive if applicable.

9. Article 9: Not Used

10. Article10:

Not Used

11. Article 11: Change in Law

11.1 Change in Law

Change in Law means the occurrence or coming into force of any of the following, after the Bid submission Date:

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) a change in the interpretation or application of any Indian law by a court of record;
- d) any change in the rates of any of the applicable Taxes.
- e) Any change in the GoI/ GoTN SWM Policy and/ or Authority's SWM Policy
- f) provided that Change in Law shall not include:
 - (i) coming into effect, after the Bid Submission Due Date, of any provision of a statute which is already in place as of the Bid Submission Date or
 - (ii) any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Bid Submission Due Date, which is a matter of public knowledge

11.2 Relief to the Concessionaire

The Parties acknowledge and agree that the demand for cash compensation under this sub Article 11.1 shall be restricted to the effect of Change in Law during the respective Concession Year and shall be made within 180 (one hundred and eighty) days.

11.3 Obligations of the Concessionaire

- a) Upon occurrence of a Change in Law, the Concessionaire may, if it is entitled to claim relief under the provisions of sub Article 11.2, notify the Authority and the Independent Engineer, of the following:
 - (i) the nature and the impact of Change in Law on the Project;

- (ii) in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law;
 - (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost;
 - (iv) the relief sought by the Concessionaire.
- b) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article (a), the Authority and Concessionaire shall along with the Independent Engineer hold discussions and take all such steps as may be necessary including determination/certification by the Independent Engineer and where necessary by the Independent Auditor of the additional cost and to determine the quantum of the Additional Cost to be borne and paid by the Authority.

12. Article 12: Force Majeure

12.1 Force Majeure Events

As used in this Agreement, a Force Majeure Event shall mean occurrence in the Project Area any of the Political Event, Non-Political Event as defined in sub Articles 12.2 and 12. 3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the Affected party) of its obligations under this Agreement and which act or event

- (a) is beyond the control of the Party claiming to be affected thereby (the “Affected Party”)
- (b) prevents the Affected Party from performing or discharging its obligations under this Agreement and
- (c) The Affected Party has been unable to overcome or prevent despite exercise of due care and diligence and
- (d) has Material Adverse Effect on the Affected Party

12.2 Political Events

(k) For purposes of sub Article 12.1 hereinabove, Political Event shall mean one or more of the following acts or events by or on account of GOI/ GoTN, the Authority or any other Government Agency:

- (i) Change in Law, only when provisions of sub Article 11.1 cannot be applied;
- (ii) Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire; or
- (iii) Any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for reasons other than
 - (a) Failure of the Concessionaire to comply with applicable law or applicable permit, or
 - (b) On account of breach of any applicable law or applicable permit or of any contract, or

- (c) Enforcement of this agreement, or
- (d) Exercise of any of its rights under this agreement by the Authority;
- (iv) Any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any applicable permits, in each case, for reasons other than Concessionaire's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits any judgement or order of a Government Agency or of any contract by which the Concessionaire as the case may be is bound
- (v) early termination of this Agreement by the Authority for reasons of national emergency, national security or the public interest.

12.3 Non-Political Events

Any of the following events which prevents the Affected Party from performing any of its obligations for a continuous period of 3 (three) days from the date of its occurrence, shall constitute a Non-Political Event. For purposes of sub Article 12.3 hereinabove, Non-Political Event shall mean one or more of the following acts or events which is beyond the reasonable control and not arising out of the fault of the Affected Party, like

- a) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
- b) radioactive contamination or ionizing radiation;
- c) fire caused by reason not attributable to the Concessionaire or any of the employees or agents of the Concessionaire
- d) war, hostilities (whether war be declared or not);
- e) invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war;

- f) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives or attributable to any act or omission of any of them) interrupting the Project operation and services to the Project for a period exceeding 7 (seven) days and not being a Political Event set forth in sub Article 12.2;
- g) any event or circumstances of nature analogous to any of the foregoing

12.4 Obligations of the Parties

a) Obligation to Notify

- (i) As soon as practicable and in any case within 07 (seven) day of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Authority setting out, inter alia, the following in reasonable detail:
 - a) the nature and extent of the Force Majeure Event;
 - b) the estimated duration of the Force Majeure Event;
 - c) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - d) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - e) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (ii) As soon as practicable and in any case within 01 (one) day of notification by the Affected Party in accordance with the preceding sub Article 12.1, the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Area and Project Facilities in order to:
 - A. Assess the impact of the underlying Force Majeure Event,

- B. To determine the likely duration of Force Majeure Event and,
- C. To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

(iii) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than weekly or daily) reports concerning the matters set out in the preceding sub Article 12.1 as also any information, details or document, which the Parties may reasonably require.

b) Performance of Obligations

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

(i) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event

(ii) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility and Project Operation as a result of the Force Majeure Event and to restore the Project Facility and Project Operation, in accordance with the Good Industry Practice and its relative obligations under this Agreement

(iii) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance

- (iv) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement
- (v) the Affected party shall take all remedial measures including duly prosecuting and exhausting all such remedies available to the Affected Party under the Applicable Laws;
- (vi) Any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event.

12.5 Termination due to Force MajeureEvent

a) Termination

- i) If a Force Majeure Event which is Non-Political Event continues or is in the reasonable judgement of the Parties is likely to continue beyond a period of 30 (thirty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 30 (thirty) days, be entitled to terminate this Agreement by issuing Termination Notice.
- ii) Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is a Political Event and the same subsists for a period exceeding 60 (sixty) days either Party shall be entitled to terminate this Agreement, provided further that the Authority may at its sole discretion have the option to terminate this Agreement any time after the occurrence of the Political Event.

b) Termination Notice

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

- (i) in sufficient detail the underlying Force Majeure Event;

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

c) **Obligation of Parties**

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

- (i) the Termination Payment, if any, payable by the Authority in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date and
- (ii) the Project Site/Project Facilities are handed back to the Authority by the Concessionaire on the Termination Date free from all Encumbrance.

12.6 Termination Payment

Termination Payment for Force Majeure Events: Upon Termination of this Agreement pursuant to sub Article 12.5 (a) hereinabove, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (a) If the Termination is on account of Political or Non-Political Event, the Concessionaire shall be entitled to receive from the Authority by way of Termination Payment an amount equal to the Book Value of the Project Fixed Assets at the time of termination. Further the Performance Security shall be released within a period of 180 (one hundred eighty) days post the date of Termination.

12.7 Liability for other losses, damages etc.

Save and except as expressly provided in this Article 12, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

13. Article 13: Events of Termination and Default

13.1 Events of Default and Termination

Event of Default means either Concessionaire Event of Default or The Authority Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Article 12.

- i. The Concessionaire has failed to achieve Financial Closure within stipulated 90 (ninety) days from Commencement Date for any reason whatsoever
- ii. The Concessionaire has failed to achieve the Conditions Precedent as per the sub Article 2.4 (B)
- iii. The Concessionaire has failed to achieve COD within stipulated time period of 105 (One hundred and five) days from Commencement Date for any reason whatsoever.
- iv. At any time during the Concession Period, the Concessionaire fails to adhere to the MIOP and has failed to remedy the same within 30 (Thirty) days beyond the time of first notice;
- v. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 (sixty) days or time period prescribed for individual items;
- vi. The Concessionaire has created any Encumbrance on the Project Site/ Project Facilities in favour of any Person save as otherwise expressly permitted under this Agreement.
- vii. The Concessionaire has failed to ensure minimum shareholding requirements specified in sub Article 5.7.
- viii. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- ix. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire

has been ordered to be wound up by Court of competent jurisdiction except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided further that:

- (A) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (B) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Commencement Date and
- (C) each of the Project Agreements remains in full force and effect.

- x. Not used
- xi. The Concessionaire has abandoned the Project.
- xii. The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- xiii. The Concessionaire has suffered an attachment levied through any legal entity on any of the assets located or comprised in the Project Site/Project Facilities, causing a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 30 (Thirty) days.
- xiv. The Concessionaire has delayed any payment due to the Authority under this Agreement for 90 (ninety) days or more.
- xv. The Concessionaire has otherwise been in Material Breach of any of its other obligations under this Agreement.
- xvi. The Consortium formed for the purpose of the Project is changed by the Concessionaire without the consent of Authority.
- xvii. The Concessionaire lifts waste from place other than the place under its jurisdiction unless specified by Authority.

xviii. In case of the Concessionaire being in the same deficiency level for 25 (twenty- five) percent or higher for any of the Core KPIs beyond a period of three months consecutively, the Authority may opt for Change of Scope as specified in Article 7 or Termination as set forth in Article 13.

(b) Authority Event of Default

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

- (i) Authority has failed to provide the Sites to the Concessionaire as per the provisions of Schedule 4 and Schedule 21/ MIOP.
- (ii) Authority has failed to make MCTC or any payments due to the Concessionaire and more than 180 (one hundred eighty) working days have elapsed since such default from the submission of Invoice.
- (iii) Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire.
- (iv) Authority has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement without giving reasons
- (v) Authority has unreasonably withheld or delayed of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect
- (vi) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- (vii) Any representation made, or warranties given by the Authority under this Agreement has been found to be false or misleading.

13.2 Termination due to Events of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority shall be entitled to terminate this Agreement in the manner as set out under this Article.
- (ii) Not used
- (iii) If the Authority decides to terminate this Agreement pursuant to this Article, it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 15 (Fifteen) days of receipt of the Preliminary Notice, the Concessionaire shall submit to Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “Concessionaire's Proposal to Rectify”). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 15 (fifteen) days, Authority shall be entitled to terminate this Agreement by issuing Termination Notice as per sub Article 13.2 (c), and to appropriate the Performance Security, if subsisting.
- (iv) Consequent to the submission of the Proposal to rectify by the Concessionaire to the Authority as per the sub Article 13.2 (a) (iii), the Concessionaire shall have a maximum period of 30 days (“Cure Period”) to remedy/cure the underlying Event of Default as per the proposal submitted by the Concessionaire. However, if the Concessionaire fails to remedy/ cure the underlying Event of Default within the time period stipulated above , the Authority shall be entitled to terminate this Agreement, by issuance of Termination Notice as per sub Article 13.2 (c) and to appropriate Performance Security, if subsisting.

(b) Termination for the Authority’s Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of

Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement in the manner as set out in this Article.

(ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding sub Article 13.2 (b) (i) it shall in the first instance issue Preliminary Notice to the Authority. Within 30 (thirty) days of receipt of Preliminary Notice, Authority shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the " Authority Proposal to Rectify"). In case of non-submission of Authority Proposal to rectify within the period stipulated therefore, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

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

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

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

(d) Obligation of Parties

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

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility(ies),
 - (ii) the termination payment, if any, payable by the Authority in accordance with the sub Article 13.3 shall be paid to the Concessionaire within 90 (ninety) from the Termination Date and
 - (iii) All the Project Facilities are handed back to the Authority by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the Authority.
- (e) **Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

13.3 Termination Payments

- A. Upon Termination of this Agreement on account of Authority Event of Default, the Concessionaire shall be entitled to withdraw the Performance Security, if subsisting, and termination payment shall be made as per following:
- (i) the Termination Payment from the Authority shall be equal to the value of the Project Fixed Assets and Project Movable Assets as determined by the IE.
 - (ii) It is further stated that either of the Parties can opt for Arbitration as set forth in sub Article 17.1 of Vol II A of the RFP document if they do not agree to the quantum of Termination Payment arrived at by the IE.
- B. Upon termination of this Agreement on account of the Concessionaire's Event of Default, the following shall apply:

- i. Forfeiture of Performance Security
- ii. The Bidding entity shall be barred from participating in any tender for a period not less than 10 (ten) years

13.4 Rights of the Authority on Termination

Upon Termination of this Agreement for any reason whatsoever, the Authority shall:

- (i) enter upon and take possession and control of Project Fixed Assets and Project Area forthwith;
- (ii) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Fixed Assets and Project Area;
- (iii) Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the hand back of the Project Facilities and Project Assets by the Concessionaire to Authority shall be free from any such obligation.

14. Article 14: Mode of Payment by the Authority

14.1 Mode of Payment

The Concessionaire hereby expressly authorizes the Authority to pay MCTC, Termination Payment, and any other payment which becomes payable by the Authority to the Concessionaire under this Agreement directly to the credit of the account designated by the Concessionaire.

14.2 Valid Discharge

The Concessionaire hereby agrees, undertakes and confirms that;

- a) the payment to the credit of the Designated Account or to the Designated Bank shall be made by the Authority notwithstanding any instructions to the contrary issued or disputes raised by the Concessionaire.
- b) any payment made in accordance with the preceding sub-article (a) above shall be valid and the Authority shall to the extent of the payment so made be relieved and discharged of all its obligations in respect of such payments under this Agreement. Provided no such discharge shall prejudice any claim which the Concessionaire may have against the Lenders.
- c) In the absence of the Designated Account or upon the Concessionaire procuring and furnishing to the Authority a certificate from the Lenders to the effect that the Concessionaire has discharged its obligations under the Financing Documents, all payments accruing to the Concessionaire under this Agreement shall be made by the Authority to the Concessionaire directly

15. Article 15: Handback of Project Facilities

15.1 Hand back and Defect Liability Period

- a) The Concessionaire shall on the date of expiry of the Concession Period, hand back Workshops, Parking Sites, DHW Centres and all other Project Fixed Assets along with fixed/ static compactor transfer stations (if any) to the Authority free of all costs and encumbrances and in good operable condition.
- b) The process of handing back shall be initiated at least 6 (six) months before the actual date of expiry of the Concession Period by a joint inspection by the Authority, the Independent Engineer and the Concessionaire. The Independent Engineer shall, within 15 days of such inspection prepare and furnish to the Concessionaire a list of works/jobs, if any, to be carried out to conform to the Handback Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least two months prior to the date of expiry of the Concession Period and also ensure that the Project Facilities continue to meet the Handback Requirements until the same are handed back to the Authority.
- c) The Authority and the Independent Engineer shall, within 15 days of the joint inspection undertaken under preceding sub Article (b) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to the Authority along with the Project Facilities.
- d) The Concessionaire hereby acknowledges the Authority's rights specified in the Concession agreement enforceable against it upon Termination and its corresponding obligations arising there from. The Concessionaire undertakes to comply with and discharge of promptly all such obligations.
- e) At least 1 (one) month prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to hand back of the Project Facilities, submit to Authority a bank guarantee, from a Nationalized bank acceptable to Authority for an amount equal to 10 (ten) percent of the Performance Security submitted at the time of commencement of

the Concession Agreement. The validity period of the bank guarantee shall be 180 (one hundred and eighty) days post expiry of the Concession Period.

15.2 Retention Amount

- (a) In case the Concessionaire fails to carry out the above works/jobs, within the stipulated period. The Authority shall be at liberty to have the same executed by any other Person at the risk and cost of the Concessionaire and any cost incurred by the Authority in this regard shall be reimbursed by the Concessionaire. For this purpose, the Authority may withhold a sum equal to 10 (ten) percent of the Rebased Annual Quote on the Expiration Year; this amount shall be recovered by way of partial encashing of the Performance Security.
- (b) The Retention Amount or as the case may be the bank guarantee shall be released/returned by the Authority upon the Independent Engineer certifying compliance by the Concessionaire with the requirement of the preceding sub Article 15.1 or appropriated to the extent required towards the costs reimbursable by the Concessionaire in terms of preceding sub Article(a).

16. Article 16: Independent Auditor

16.1 Appointment

- a) Upon occurrence of any event necessitating or warranting appointment of the Independent Auditor under the provisions of this Agreement, and upon a proposal being made by either Party to the other, the Parties shall promptly (and in any case within 15 days of such proposal) confer and agree upon a reputed firm of Chartered Accountants practising in Chennai to be appointed as the Independent Auditor. Thereupon the Authority shall appoint the Independent Auditor on terms and conditions agreed to by the Parties and the Person to be appointed as the Independent Auditor.
- b) If, upon a proposal being made by a Party for appointment of Independent Auditor, the other Party fails to confer and agree upon the Independent Auditor within the said period of 15 days, the Party proposing the appointment shall be entitled to appoint the Independent Auditor. Such appointment and the terms thereof shall be binding on the other Party.

16.2 Payment of Fees

All fees and costs of the Independent Auditor shall be shared equally and borne by the Parties. The mode of payment to the Independent Auditor shall be same as that of the Independent Engineer as specified in sub Articles 4.2 (b), 4.2 (c) and 4.2 (d).

17. Article 17: Dispute Resolution

17.1 Amicable Resolution

- a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement including disputes, if any, with regard to any acts, decision or opinion of the Independent Engineer or the Independent Auditor and so notified in writing by either Party to the other (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-Article (b) below.
- b) Either Party may require such Dispute to be referred to the Commissioner, Authority and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of sub Article 17.2 below.

17.2 Arbitration

- a) Procedure: Subject to the provisions of sub Article 17.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration and Conciliation Act 1996 and its amendments thereof.
- b) Place of Arbitration: The place of arbitration shall be Chennai.

- c) English Language: The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.
- d) Enforcement of Award: The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the Provision of the Arbitration and Conciliation Act 1996 and its amendments thereof.
- e) Performance during Arbitration: Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award
- f) Payment to the Arbitrator: Parties shall bear the respective cost of Arbitration, however the payment to the third independent arbitrator shall be borne equally by the Parties.

18. Article 18: Representations and Warranties, Disclaimer

18.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) it is a Special Purpose Vehicle set up solely for the purpose of implementing and operating the Project/Project Facilities in accordance with the terms of this Agreement and that it will not during the subsistence of this Agreement undertake any other Project or business activity unrelated to the Project;
- c) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- d) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- e) it has the financial standing and capacity to undertake the Project;
- f) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- g) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, agreement
- i) understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

- j) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- k) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- l) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- m) subject to receipt by the Concessionaire from the Authority of the Termination Payment and any other amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project / Project Facilities shall pass to and vest in the Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or the Authority;
- n) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- o) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any Person to procure the Concession.
- p) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, Project Requirements and the information provided by the Authority, and has determined to its satisfaction

the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

- q) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire
- r) all information provided by the {Successful Bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- s) All undertakings and obligations of the Concessionaire arising from the Concession Agreement.

18.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that

- a) the Authority has full power and authority to grant the Concession;
- b) the Authority has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- d) Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it.

18.3 Obligation to notify change

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

19. Article 19: Miscellaneous

19.1 Assignment and Charges

- a) Subject to sub Articles (b) and (c) hereinbelow, neither Party shall assign this Agreement, or the rights, benefits and obligations hereunder save and except with prior consent of the other Party.
- b) Except as provided in sub Article (c) hereinbelow, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- c) Restraint set forth in sub Articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Mortgages/pledges/hypothecation of goods/assets other than the Project Fixed Assets and their related documents of title, arising or created in the ordinary course of business and as security only for indebtedness to the Lender under the Financing Agreements and/or for working capital arrangements availed in relation to this Agreement.
 - (iii) Deleted

19.2 Interest and Right of Set Off

- a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

- b) Provided the stipulation regarding interest for delayed payments contained in this sub Article 19.2 shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

19.3 Liability and Indemnity

- a) General Indemnity

- (i) The Concessionaire shall indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims arising out of a breach by the Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by the Authority of any of its obligations under this Agreement or a Force Majeure Event which is a Political Event.
 - (ii) the Authority will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Authority, its officers, servants and agents of any obligations of the Authority under this Agreement except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.
- b) Without limiting the generality of this sub Article 19.3 the Concessionaire shall fully indemnify, save harmless and defend the Authority including its officers, and subsidiaries from and against any and all loss and damages arising out of or with respect to failure of the Concessionaire (a) to comply with Applicable Laws and Applicable Permits, (b) to make payments of Taxes relating to the Concessionaire's Contractors, suppliers and representatives income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) to pay amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- c) Without limiting the generality of the provisions of this sub Article 19.3, the

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

d) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this sub Article 19.3 (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party. Provided that, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

e) Defence of Claims

(i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third

party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 19.3, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or other proceedings, liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.

- (ii) If the Indemnifying Party has exercised its rights under this sub Article 19.3 (d) above, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- (iii) If the Indemnifying Party exercises its rights under this sub Article 19.3 (d) above, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:
 1. the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 2. the Indemnified Party shall have reasonably concluded that there may be

a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

3. the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or
4. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either
 - a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - b) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement,
- (c) Provided that if sub Articles (2), (3) or (4) of sub Article 19.3(e) (iii) above shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder

19.4 Governing Law and Jurisdiction

- (d) This Agreement shall be governed by the laws of India. The Courts at Chennai, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

19.5 Waiver

- a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement.

(ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and

(iii) shall not affect the validity or enforceability of this Agreement in any manner.

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

19.6 Survival

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

19.7 Assignments and charges

(i) Subject to sub Articles 19.7 (iii) and 19.7 (iv), this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.

(ii) Subject to sub Article 19.7 (iii), the Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements to which Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.

(iii) Restraint set forth in sub Articles 19.7 (i) and 19.7 (ii) shall not apply to:

- a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project
- b) Not used
- c) Not used
- d) liens or encumbrances required by any Applicable Law.

(iv) Notwithstanding anything to the contrary contained in this Agreement the Authority may assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of GOI or by operation of law or in the course of its own business.

19.8 Deleted

19.9 Amendments

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

19.10 Liability for review of Documents

Except to the extent expressly provided in this Agreement

- a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Designs and Drawings submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub Article (a) above

19.11 Third parties

- (e) This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Concessionaire's Contractor.

19.12 Ownership

- (f) Without prejudice and subject to the Concession, the ownership of the Secondary Collection Points, Workshops, Parking Sites and the Project Fixed Assets, including all improvements made therein by the Concessionaire, shall at all times remain that of the Authority

19.13 Successors and assigns

- (g) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.

19.14 Limitation of Liability

Deleted

19.15 Divestment Requirements

- (A) Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:
 - (i) notify to the Authority forthwith the location and particulars of all Project Fixed Assets;
 - (ii) Deleted
 - (iii) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its operation and maintenance, including all programmers and manuals pertaining thereto.
 - (iv) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

- (v) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- (B) Subject to the exercise by the Authority of its rights under this Agreement to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms

19.16 Divestment costs

- (i) The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Fixed Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- (ii) In the event of any dispute relating to matters covered by and under this Article 17, the Dispute Resolution Procedure shall apply

19.17 Vesting Certificate

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

19.18 Entire Agreement

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

19.19 Notices

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

(h)

Fax No. -----

If to the Concessionaire The Managing Director,

----- Limited,

-----.

Fax No. -----

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

19.20 Severability

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

19.21 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.22 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

19.23 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement

between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

19.24 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of the Authority by (Signature)

(Name) (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by: In the presence of.

1)

2)