

CONCESSION AGREEMENT

BETWEEN

**THE MUNICIPAL CORPORATION AMBIKAPUR
Acting through its authorised Officer on this behalf**

AND

THE CONCESSIONAIRE

For

**Setting up 25 TPD Bio-methanation Plant
(Establishment, Comprehensive Operation and Maintenance (O&M)) for
Municipal Corporation Ambikapur Using Wet/ Organic Waste**

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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter referred to as the “**Agreement**”) made this__ day of_____ 2017__ at [●]

BETWEEN

Municipal Corporation Ambikapur, established under the provisions of the _____, acting through its _____ hereinafter referred to as “**AMC**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

_____, hereinafter referred to as “**Concessionaire**” which expression shall unless repugnant to the context include its successors and permitted assigns.

Collectively referred to as “Parties”

WHEREAS

- A. The Municipal Corporation Ambikapur (AMC) is desirous of setting up a Bio – methanation plant by seeking private sector participation on Public Private Partnership (“PPP”) mode by inviting Proposals for setting up of an 25 TPD Bio-methanation plant (Establishment and Comprehensive Operation and Maintenance (O&M)) for Municipal Corporation Ambikapur using Wet/ Organic Waste within the jurisdiction of the AMC
- E. AMC had invited competitive Request for Proposals from eligible Bidders for implementing the Project and in response thereto received proposals from Bidders including the selected bidder for implementing the Project.
- F. The Department, after evaluating the aforesaid Proposals, accepted the Proposal submitted by the Selected Bidder and issued Letter of Award (**LoA**) No. _____ dated _____ to it for developing the Project. The LoA has been duly accepted by the Selected Bidder vide its letter no. _____ dated _____.
- G. The AMC have entered into this Concession Agreement with the Concessionaire for execution of the Project on on Design, Build, Finance, Operate and Transfer (DBFOT) basis, subject to and on the terms and conditions set forth hereinafter.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. **“Abandonment”** means an action on the part of the Concessionaire with the intent to not discharge its balance obligations related to the Project under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the Concession Period, or
 - (ii) cumulative period of more than 45 (forty-five) days during the Concession Period other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Municipal Corporation Ambikapur (AMC) ;
- 1.1.2. **“Access Road”** means the motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
- 1.1.3. **“Acceptance of Concession”** shall have the meaning assigned thereto in **Article 2.1.5**;
- 1.1.4. **“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.5. **“Additional Cost”** means the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire is required to incur, post the Appointed Date, on account of Change in Law;
- 1.1.6. **“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:
- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

- 1.1.7. “**Affected Party**” means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 11.1**;
- 1.1.8. “**Agreement**” or “**Concession Agreement**” means this agreement executed between the Department, the Concessionaire, AMC, and the Selected Bidder(as Confirming Party) including its schedules and Annexures and includes any amendments made thereto in accordance with the provisions hereof;
- 1.1.9. AMC means Municipal Corporation Ambikapur
- 1.1.10. “**Annexures**” means any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.11. “**Applicable Law**” means all laws, acts, ordinances, rules, regulations, notification, policies, circulars and guidelines in force and effect, including inter-alia the Solid Waste Management Rules, 2016, and shall also include judgments, decrees, injunctions, writs or orders of any court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the

Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith ;

- 1.1.12. **“Applicable Approvals”** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;
- 1.1.13. **“Appointed Date”** means the date of signing of this Concession Agreement;
- 1.1.14. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.15. **“Associate” or “Affiliate”** means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- 1.1.16. **“Bio-methanation”** means an anaerobic decomposition process that entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;
- 1.1.17. **“C&T” or “Collection and Transportation”** refers to primary and secondary collection and transportation of MSW from the Project Area to the Processing Facility/ Sanitary Landfill;
- 1.1.18. **“Construction & Demolition (C&D) Debris” or “Debris”** means solid waste resulting from construction, re-modeling, repair, renovation or demolition of Structures or from land clearing activities. **“Structures”** for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. **Debris** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures;

- 1.1.19. **“Change in Law”** shall have the meaning assigned thereto in **Article 11.B.1;**
- 1.1.20. **“Commencement Date”** shall have the meaning as assigned to it in **Article 2.3**
- 1.1.21. **“Compliance Date(s)”** means the later of the date by which the Condition Precedent of the Concessionaire and AMC under Article 2.2 are achieved or waived;
- 1.1.22. **“Concession”** shall have the meaning as assigned thereto in **Article 2;**
- 1.1.23. **“Conditions Precedent(s)”** means Conditions Precedent as specified in Article 2.2;
- 1.1.24. **“Compliance Period”** shall have the meaning assigned thereto in Article 2.2.2;
- 1.1.25. **“Commercial Operations Date” or “COD”** means the date when the Concessionaire begins commercial operations of the Bio methanation plant pursuant to issuance of Operational Acceptance Certificate by the Project Management Unit;
- 1.1.26. **“Contractor” or “Sub-Contractor”** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project;
- 1.1.27. **“CPCB”** means the Central Pollution Control Board of Government of India
- 1.1.28. **“Dead Remains”** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.29. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and
 - (c) any Subordinated Debt disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity; it shall to the extent not converted until date of termination, be deemed to be Debt Due for the purposes of this Agreement. For the Purposes of this Agreement, the term "Subordinated Debt" shall mean the debt provided by lenders or the Concessionaire's shareholders for meeting the Total project Cost and shall be subordinate to the financial assistance provided by senior lenders.
- 1.1.30. **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements;
- 1.1.31. **"Dispute"** shall have the meaning assigned thereto in **Article 15.1(a)** hereof;
- 1.1.32. **"Dispute Resolution Procedure"** means the procedure for resolution of disputes as set forth in Article 15;
- 1.1.33. **"EIA"** means the Environment Impact Assessment for the Project;
- 1.1.34. **"Emergency"** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to any of the Project;
- 1.1.35. **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;
- 1.1.36. **"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company, but does not include any grant from a Government Agency including AMC;

- 1.1.37. **“Event of Default”** shall have the meaning assigned thereto in **Article 12**;
- 1.1.38. **“Event of Default - Concessionaire”** shall have the meaning assigned thereto in **Article 12.2**;
- 1.1.39. **“Event of Default – AMC”** shall have the meaning assigned thereto in **Article 12.3**;
- 1.1.40. **“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
- 1.1.41. **“Escrow Bank”** shall have the meaning as set forth in **Annexure 8**;
- 1.1.42. **“Escrow Agreement”** shall have the meaning as set forth in **Article 10.1.2**;
- 1.1.43. **“Escrow Default”** shall have the meaning as set forth in **Article 6.1.1**;
- 1.1.44. **“Estimated Project Cost”** shall be as given in the RFP Document;
- 1.1.45. **“Excluded Waste”** means waste material of the nature that the Project are not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste and (iii) Dead Remains;
- 1.1.46. **“Financing Agreements” or “Financing Documents”** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Total Project Cost;
- 1.1.47. **“Financial Default** means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of (three) months;
- 1.1.48. **“Financial Proposal”** means the final quotation of the Successful Bidder in response to the RFP document, which has been accepted by SUDA and the AMC, annexed hereto as **Annexure 3**;

- 1.1.49. **“Financial Year”** shall be same as Accounting Year;
- 1.1.50. **“Force Majeure”** or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in **Article 11**;
- 1.1.51. **“Gol”** means the Government of India;
- 1.1.52. **“GoCG”** means the Government of Chhattisgarh
- 1.1.53. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the Project Facilities;
- 1.1.54. **“Government Agency”** means Gol, GoCG, , AMC or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.55. **“Hand Over of Project”** shall have the meaning assigned thereto in **Article 14**;
- 1.1.56. **“Hazardous Waste”** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto;
- 1.1.57. **“Independent Expert”** refers to a person/ firm/ entity appointed by the AMC to monitor the activities of the Concessionaire.
- 1.1.58. **“Land Lease Agreement(s)”** means the Agreement(s) pursuant to which, the Site(s) shall be leased to the Concessionaire in its capacity as the lessee, for setting up the Project for the Term in the format attached as Annexure 9;
- 1.1.59. **“Lenders”** or **“Senior Lenders”** means any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing the Total Project Cost as evidenced in Financing Documents;

- 1.1.60. **“Letter of Award”** or **“LOA”** means the letter no..... dated,issued by AMC to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.61. **“MNRE”** means Ministry of New & Renewable Energy, Gol;
- 1.1.62. **“MSW”** or **“Municipal Solid Waste”** means solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the jurisdiction of AMC , and shall include solid waste, and Organic Waste;
- 1.1.63. **“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.64. **“Material Breach”** means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.65. **“Nominated Company”** means the entity that is selected either by the Lenders or by AMC for substituting the Concessionaire, upon occurrence of Concessionaire’s Event of Default or Financial Default, in terms of the provisions of the Agreement and the Substitution Agreement;
- 1.1.66. **“Operational Acceptance Certificate(s)”** shall refer to the Certificate to be issued by the AMC as set out in **Annexure 4**, upon successful commissioning and functioning of the Processing Facility;
- 1.1.67. **“Output Based Incentive”** **“OBI”** means the amount quoted by bidder as INR Per cum of Biogas generated.
- 1.1.68. **“O&M Expenses”** means the expense incurred in the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement for the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the O&M Expenses.
- 1.1.69. **“Organic Waste”** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;

- 1.1.70. **“P&D”** or **“Processing & Disposal”** refers to Processing & Disposal of MSW collected from Project Area, as is more clearly defined in Annexure 1....;
- 1.1.71. **“Performance Security”** means the guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Successful Bidder (or the Concessionaire), in accordance with **Article 5.1** in the format given at **Annexure 5**;
- 1.1.72. **“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity;
- 1.1.73. **“Post-COD Period”** means the period starting on and from the COD and ending on the Transfer Date;
- 1.1.74. **“Pre-COD Period”** means the period commencing from the Appointed Date and extending upto the COD;
- 1.1.75. **“Preliminary Notice”** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.76. **“Processing Plant/Processing Facility”** means the facility created by the Concessionaire for treatment of organic fraction by biological processing (bio-methanation);
- 1.1.77. **“Project”** shall mean the processing of MSW in the Project Area and discharging the Scope of Services more specifically set out in Annexure 1;
- 1.1.78. **“Project Agreements”** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project, including without limitation the Land Lease Agreement(s).
- 1.1.79. **“Project Area”** means the area presently under municipal boundaries of the AMC or any extension thereof during the Term;
- 1.1.80. **“Project Assets”** means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites in the form of lease and/ or license rights (as applicable), Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, Processing Facility, electrical systems, communication systems, and administrative office; (c) Project Facilities situated on the Sites; (d) all rights of the

Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Approvals and authorisations relating to or in respect of the Project;

- 1.1.81. **"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.82. **"Proprietary Material"** shall be as defined in Article 17.1;
- 1.1.83. **"Residual solid waste"** means and includes the waste and rejects from the MSW which are not suitable for recycling or further processing;
- 1.1.84. **"Rupees" or "Rs"** refers to the lawful currency of the Republic of India;
- 1.1.85. **"SBM Guidelines"** means the guidelines issued by the Ministry of Urban Development, Government of India in December 2014 titled "Guidelines for Swachh Bharat Mission"
- 1.1.86. **"SBM Grant"** means the capital grant to be paid to the Concessionaire according to the SBM Guidelines for discharging obligations under this Agreement and as more specifically set out in Clause 9.2;
- 1.1.87. **"Share Transfer Agreement"** means the agreement to be entered into between the shareholders of the Concessionaire (in case the Successful Bidder is a consortium) for transfer of equity shareholding of the Concessionaire to the members of the consortium formed by the Successful Bidder;
- 1.1.88. **"Site(s)"** means the piece(s) of land made available to the Concessionaire under Land Lease Agreement(s), for implementing the Project, and includes land for Processing Facility;
- 1.1.89. **"SPCB"** means State Pollution Control Board particularly Chhattisgarh Environment Conservation Board (CECB) ;
- 1.1.90. **"Substitution Agreement"** is an agreement that may be executed between the Concessionaire, AMC and the Lenders in the form set out in **Annexure 7**, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its

nominee) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement,

- 1.1.91. **“Selected Bidder”** or **“Successful Bidder”** means the Person selected by the Participating Bidders through a competitive bidding process for implementing the Project;
- 1.1.92. **“SWM Rules”** means the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time;
- 1.1.93. **“Tax”** means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.94. **“Term”** means the time period of fifteen (15) years commencing from the Appointed Date to the extent extended by any permitted time extensions as expressly provided under the terms of this Agreement;
- 1.1.95. **“Termination”** means early termination of this Agreement 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;
- 1.1.96. **“Termination Date”** means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.97. **“Termination Notice”** means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.98. **“Termination Payments”** means the payments payable pursuant to Article 11.4 and 12.4 of this Agreement;
- 1.1.99. **“Support payment”** shall be as defined in Article 9.1
- 1.1.100. **“Third Party”** means any Person other than the Parties to this Agreement;
- 1.1.101. **“Transfer Date”** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;

- 1.1.102. **“Tests”** means the tests to be carried out by the Concessionaire at its cost, in the presence of personal from AMC as may be required for getting Statuary clearances / Approval or asked by AMC in respect of the Processing Facility to ensure that the same conforms to the requirements as per Good Industry Practice and Applicable Law or Applicable Approvals;
- 1.1.103. **“Vacant Possession”** means delivery of possession of the Site(s) free from all Encumbrances to the Concessionaire and the grant of all rights and all other rights appurtenant thereto;
- 1.1.104. **“Waste Generators”** means all residential, commercial and industrial establishments generating MSW and located within the AMC Area;
- 1.1.105. **“Weighbridge”** means the electronic weighbridge capable of performing the operations to meet the Concessionaire obligations as specified in Article 5.

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- (i) the words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (ii) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (iii) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (iv) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;

- (v) the words “include” and “including” are to be construed without limitation;
- (vi) the headings of the Articles in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- (vii) the Annexures and Recitals to this Agreement form an integral part of this Agreement and will be in force and effect as though they were expressly set out in the body of the Agreement;
- (viii) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates;
- (ix) references to Recitals, Articles, Clauses or Annexures in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses and Annexures of to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Annexure in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (xi) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, Articles and annexures

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

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

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

- (a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles of this Agreement and the Annexures, the Articles shall prevail;
- (c) Between any two Annexures, the Annexure relevant to the issue shall prevail;
- (d) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2:

2. THE CONCESSION AND CONDITIONS PRECEDENT

2.1. Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the AMC hereby grant and authorise the Concessionaire to design, setup, finance, operate maintain and transfer (DBFOT) the Project and to exercise and/ or enjoy such rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (“the **Concession**”).

2.2. Rights Associated with the Grant of Concession

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

- (a) to design, engineer, finance, procure, construct, install, commission, operate and maintain the Project either itself or through such Person/Contractor as may be selected by it;
- (b) upon achieving COD of Processing Facilities, forming part of the Project, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- (c) to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project; and

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

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

- (d) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), and to further retain

and appropriate any revenues generated from the sale of such products/ by-products;

- (e) to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;
- (f) to appropriate, possess and control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing at Sites with reference to MSW management in Project Area;
- (g) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facility, Good Industry Practices and the requirements of the Project;

2.3. Concession Period

The Concession Period shall be for a period of 15 years from the Appointed Date ("**the Concession Period**") during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for integrated management of Municipal Solid Waste in accordance with the provisions hereof:

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date. For avoidance of doubt, it is hereby clarified that the Concession Period shall also include the time period required by Parties for fulfilment of the Condition Precedent obligations, and in case of any extensions therefor or by other reason as envisaged in terms hereof, Concession Period shall be proportionately extended.

2.4. Renewal of Concession

AMC shall have the option to agree to renew or extend the Concession after the expiry of the Term on same terms and conditions. Provided that any such extension shall also lead to an extension of Land Lease Agreement(s) for an equal period so as to make the Land Lease Agreement co-terminus with extended Concession Period.

2.5. Acceptance of Concession

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

2.6. CONDITIONS PRECEDENT

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement except under this Article 2.2 shall be subject to the satisfaction in full of the conditions precedent relating to the other Party (the “**Conditions Precedent**”). The obligations of a Party under this Article 2.2 shall be effective from the date of execution of this Agreement.

2.6.1. Conditions Precedent for AMC

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

- (a) Allocated / demarcated site for processing facility/ Bio-methanation Plant as a part of the Project on an ‘as is where is basis’;
- (b) executed and procured execution of Substitution Agreement;
- (c) Facilitated and ensured that Land Lease Agreement(s) are executed for Site and vacant and unencumbered possession of the Site are handed over to the Concessionaire. It is clarified that AMC shall be responsible for execution of Land Lease Agreements for Site(s) under their jurisdiction
- (d) Facilitated the Concessionaire in terms of support and participation by its representatives or sending follow-up letters to the Departments concerned/ Competent Authority for obtaining of all Applicable Approvals, if requested by the Concessionaire;
- (e) Obtain Environmental Clearance for the project
- (f) Provide Access Roads to the Site(s) as per Good Industry Practices; and
- (g) Provide support and assistance to Concessionaire (if required) for obtaining required approvals under Applicable Laws;

2.6.2. Conditions Precedent for Concessionaire

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

- (a) provided a certified true copy of its constituent documents;
- (b) achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;
- (c) provided the AMC notarised true copies of its board resolution authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- (d) executed and procured execution of Escrow Agreement in terms of Article 10
- (e) executed and procured execution of Substitution Agreement;

- (f) Confirmed that all the representations and warranties of the Concessionaire/Successful Bidder set forth in the Proposal of the Successful Bidder and in this Agreement are true and correct.
- (g) executed the Land Lease Agreement(s) and taken over vacant and unencumbered possession of the Site from the AMC
- (h) procured at its own cost, water connection, power connection and other service connections to the Site, help shall be provided by AMC in procurement of the same.

Provided that upon request in writing by the Concessionaire, the AMC may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 2.2.

2.6.3. **Satisfaction of Conditions Precedent**

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 120 (One Hundred & twenty) days from the Appointed Date (the “**Compliance Period**”) unless specified otherwise.
- (b) The later of the date within such time when the AMCs or the Concessionaire fulfils its Conditions Precedent (unless the AMCs waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (“**Compliance Date**” –respectively).

2.6.4. **Non-Compliance with Conditions Precedent**

- (a) In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and AMC has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and AMC shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it.
- (b) In the event this Agreement fails to come into effect on account of non-fulfilment of the Concessionaire’s Conditions Precedent, AMC shall be entitled to forfeit and encash the Performance Security.
- (c) In the event the Conditions Precedent for AMC have not been satisfied within the stipulated time, then the Concessionaire shall have the option of either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for AMC or (ii) terminate this Agreement,

in which event, AMC shall pay to the Concessionaire, reasonable development costs, as determined through the mechanism enumerated below. In case of extension of time period for fulfilment of Conditions Precedent for AMC beyond a period of 120 (One Hundred and twenty) days from the Appointed Date, the Concession Period shall be proportionately extended for the same period. Parties hereby agree that for determination of the said development cost, AMC may appoint a financial consultant for determining such development cost, whose determination shall be final, conclusive and binding. The Parties shall share the cost of such financial consultant.

- (d) In the event this Agreement fails to come into effect on account of the non-fulfilment of AMC Conditions Precedent, AMC shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the AMC on the Concessionaire.
 - (e) Instead of terminating this Agreement as provided in this Article 2.2, the Parties shall have the option to extend the time for fulfilling the Conditions Precedent by mutual agreement.
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ARTICLE 3

3. SITE(S)

3.1. Handover of sites

- (a) AMC to ensure that they shall, within 30 days from the Appointed Date ("**Commencement Date**"), handover the Site under their respective jurisdiction for Processing Facility, to the Concessionaire on as-is-where-is basis, free from Encumbrance, for the purpose of implementing the Project.
- (b) Upon the Sites being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 3, have the right to enter upon, occupy and use the same or to make it as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- (c) Annual advance lease rental of one rupee per square metre per annum to be paid by the Concessionaire to the AMC for each year of the Concession Period as consideration for the Land Lease Agreement for the Site(s) handed over on leasehold basis to the Concessionaire in its capacity as the lessee for setting up the Processing Facility.
- (d) The term of the such Land Lease Agreements shall be co-terminus with this Concession Agreement and upon expiry of this Agreement due to efflux of time or due to early termination on account of default, the term of the Land Lease Agreement shall also expire simultaneously and the Concessionaire shall hand over possession of the Site in accordance with the terms of this Agreement and Land Lease Agreement

3.2. Rights, Title and Use of the Sites

- (a) The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- (b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project, including the Site as set forth and permitted under this Agreement.
- (c) The Concessionaire shall not, without the prior written approval of the AMC, use the Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (d) The Concessionaire shall allow free access to the Site to the members of the Project Management Unit, any authorized officer of the AMC and/ or SUDA for inspection of the Site and the works being undertaken by the Concessionaire.
- (e) The Concessionaire shall allow access to and use of the Site for laying /

installing / maintaining telegraph lines, electric lines or for such other public purposes as the AMC may specify.

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

3.3. Peaceful Possession

The AMC shall provide following warranties:

- (a) The Site together with the necessary right of way/way-leaves :
 - (i) have been acquired through the due process of law;
 - (ii) belong to, or has been leased to the AMC and is vested in the AMC;
 - (iii) and that the AMC have full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any Persons affected thereby.

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

3.4. Applicable Approvals

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

ARTICLE 4

4. THE CONCESSIONAIRE'S OBLIGATIONS

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:

4.1. Performance Security

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

appropriation of the relevant amounts from the Performance Security under this Agreement.

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

4.2. General Obligations

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in Schedule 1 and under this Agreement and the Selected Bidder's obligations under the LOA;
- (b) obtain all Applicable Approvals as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law (including without limitation all public and labor related laws and health, safety, and sanitation laws, as then in force) governing the operations of Project at all times during the Concession Period;
- (d) endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers,
- (e) 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;
- (f) right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- (g) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations

under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the AMC indemnified against any claims, damages, expenses or losses in this regard and in no case and shall for no purpose shall AMC be treated as the employers of the Concessionaire, in this regard;

- (h) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (i) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (j) upon receipt of a request thereof, afford access to the Project to the authorised representatives of AMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (k) ensure that the Project is operational on all calendar days of the year;
- (l) be responsible for the conduct of its staff employed for this Project while on duty;
- (m) shall obtain the RTO passing and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this (if required);
- (n) to operate, maintain, repair and renovate the Project Assets, in accordance with, *inter alia*, the Applicable Laws, Applicable Approvals and the requirements;
- (o) procure, acquire and put into place at its own cost and expenses all the Project Assets required by the Concessionaire to implement the Project during the Pre-COD Period so as to achieve COD within the time stipulated in this Agreement;
- (p) promptly rectify and remedy any defects or deficiencies, if any pointed out by the AMC in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the AMC;
- (q) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Annexure 2;
- (r) to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- (s) pay all Taxes, duties and outgoings, including utility charges relating to the

Project; and

- (t) transfer the Project to the AMC upon expiry or early Termination of this Agreement, in accordance with the provisions thereof.

4.3. No Breach of Obligations

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

- (i) Force Majeure Event, subject to Article 11.1;
- (ii) AMC's Event of Default;
- (iii) Compliance with the instructions of the AMC or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

4.4. Penalties & Damages

In case the Concessionaire fails to fulfil the obligations as set under this Agreement, penalties for non-fulfilment/ damages shall be imposed according to provisions of Annexure 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the aggregate Liquidated damages levied in terms hereof on the Concessionaire by AMC exceeds INR 1,00,000/- (INR One Lakh) in any quarter, the same shall be deemed as Concessionaire Event of Default and shall make the Agreement liable for termination.

4.5. Obligations of the Selected Bidder

The Selected Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, *inter alia*, the following areas of the Concessionaire's activities such that the experience and expertise becomes available to the Concessionaire on an on-going basis:

- (a) Arranging the financing for the Project, including mobilization of debt and Equity;
- (b) facilitate procurement of Applicable Approvals for commencing and implementing the Project;
- (c) facilitate award of Project Agreements in respect of engineering, procurement, construction and operation and maintenance of the Project;
- (d) Ensure timely implementation of the Project in accordance with the provisions of this Agreement, as per the standard specifications, the Applicable Laws, the terms of the Applicable Approvals and Good Industry Practice

- (e) Compliance with and implementation of the environment management plan;
- (f) Compliance with the provisions of this Agreement relating to liability and indemnification; and
- (g) Facilitate implementation of measures for safety, security and protection of the works, property, life and materials at the Project Site and the environment.

4.6. Concessionaire's Representative

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

4.7. Sole purpose of the Concessionaire

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

4.8. Employment of trained personal

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

4.9. Obligations relating to Project Agreements

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

- (b) The Concessionaire shall submit to AMC the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and AMC shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to AMC a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of AMC to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by AMC. No review and / or observation of AMC and / or its failure to review and / or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall AMC be liable for the same in any manner whatsoever.
- (c) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the AMC to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination. For the avoidance of doubt, it is expressly agreed that in the event the AMC does not exercise such rights of substitution within a period not exceeding 30 (thirty) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the AMC and the covenant shall expressly provide for such eventuality.
- (d) The Concessionaire expressly agrees to include the covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the AMC an acknowledgment and undertaking, in a form acceptable to the AMC, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the AMC in the event of Termination.

4.10. Equity Lock-in requirements

The Concessionaire acknowledges that:

- 4.10.1. The Selected Bidder shall hold at least 51% shareholding in the paid up equity capital of the Concessionaire until expire of 3 years from COD and thereafter 26% shareholding in the paid up equity capital during the remaining Concession period.
- 4.10.2. Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the "Lead Member") of such Consortium, shall have an equity share holding of at least 51% (fifty one percent) of the paid up Equity capital of the concessionaire until expiry of concession period.
- 4.10.3. Any violation/ modification in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire's Event of Default

ARTICLE 5

5. FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT

5.1. General Obligations

- 5.1.1. The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders for the same.
- 5.1.2. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 180 (one hundred and eighty days) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the AMC in a sum calculated at the rate of 0.1 % (zero point one per cent) of the Performance Security for each day of delay.
- 5.1.3. Damages specified herein shall be payable every week in advance and the period beyond the said 180 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Closure has occurred solely as a result of any default or delay by the AMC in procuring satisfaction of the Conditions Precedent specified in Article 2.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of penalties.
- 5.1.4. The Concessionaire shall, upon occurrence of Financial Closure, notify the AMC forthwith, and shall have provided to the AMC, at least 2 (two) days prior to 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 or any substitute thereof, which is acceptable to the Senior Lenders.

5.2. Termination due to failure to achieve Financial closure

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial closure does not occur, for any reason whatsoever, within the period set forth in Article 6.1.2 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the financial closure, the provisions of this Article 6.2 shall not apply.

5.3. Substitution Agreement

5.3.1. This Agreement shall not be assigned by the Concessionaire. Provided however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Annexure 7.

5.3.2. The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement.

Provided that in the event the Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement, AMC shall proceed to terminate the Agreement.

ARTICLE 6

6. AMC's OBLIGATIONS

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

6.1. Specific Obligations

The AMC shall:

- (a) identify and earmark / allocate parcel of land (~ 3 Acre) within jurisdiction for the purpose of setting up of 25 TPD Bio-methanation Plant (Establishment, comprehensive operation and maintenance (O&M)) for Municipal Corporation Ambikapur Using Wet/ Organic Waste
- (b) facilitate in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from AMC under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- (c) provide a minimum of 20 TPD of segregated waste to the plant site
- (d) make timely payments to concessionaire as prescribed in Article 9.
- (e) coordinate with the competent authority in securing the SBM Grant for the Project.
- (f) coordinate with the Concessionaire in securing Applicable Approvals.
- (g) assist in case of dispute resolution according to Article 15.

ARTICLE 7

7. MONITORING AND INSPECTION

7.1. During Pre-COD Period

7.1.1. Monthly Progress Reports

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

7.1.2. Inspection

During the Pre-COD Period, the AMC shall inspect or cause to be inspected the Processing Facility and Project Assets at least once a month or at such shorter intervals as may be considered essential by the AMC and make report of such inspection (the "**Pre-COD Inspection Report**") stating in reasonable detail the delay or deficiencies, if any, with particular reference to the scope of the Project, specifications, Good Industry Practices, Applicable Law & Approvals.

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

7.1.3. Tests

For determining that the Processing Facility and Project Assets conform to the specifications and requirements of this Agreement, the AMC shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the AMC from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the AMC and furnish the results thereof to the AMC. For the avoidance of doubt, the costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire.

In the event that results of any tests conducted under this Article 8.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the AMC in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 8.1.3 shall be undertaken in

addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the AMC forthwith.

7.2. Post COD period

7.2.1. Monthly Status Reports

During Post COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the AMC a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the maintenance requirements, the power bio gas generated, the quantity of MSW processed and shall promptly give such other relevant information as may be required by the AMC. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

7.2.2. Inspection

The AMC shall inspect or cause to be inspected the execution of the Project at least once a month. It shall make a report of such inspection (the “**Post COD Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with reference to the maintenance requirements, maintenance manual¹, performance parameters or requirements as set forth in this Agreement including Schedules/ Annexures, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the AMC shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

7.2.3. Remedial measures

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

¹Maintenance manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

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

7.2.4. AMC's right to take Remedial measures

7.2.4.1. In the event the Concessionaire does not maintain and/ or repair the Processing Facility/ Project Assets or any part thereof in conformity with the maintenance requirements, maintenance manual or performance parameters requirements or requirements as set forth in this Agreement including Schedules/ Annexures, and fails to commence remedial works within 15 (fifteen) days of receipt of Post COD Inspection Report or notice in this behalf from the AMC, as the case may be, the AMC shall, without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to 10% (ten percent) of such cost shall be paid by the Concessionaire to the AMC as Damages.

7.2.4.2. The AMC shall have the right, and the Concessionaire hereby expressly grants to the AMC the right, to recover the costs and Damages specified in Article 8.2.4.1 directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the AMC under this Article 8.2.4.2. Any demand from AMC stating that a specified amount is payable shall be final, binding and conclusive qua the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a t demand for such costs and Damages.

ARTICLE 8

8. PAYMENTS

8.1. Support Payment

8.1.1. Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, AMC/Concessionaire agrees and undertake to pay to the AMC/Concessionaire fixed charges of Indian Rupees _____per cu.m of raw biogas generated by way of anerobic digestion/ bio- methanation in the processing facility during the project term.

8.1.2. The amount will be paid on the basis of the invoice and it shall be verified by the AMC. The Concessionaire shall raise monthly invoice and attach daily weights sheets of the electronic weigh bridge installed at the entrance of the Processing Facility site, and daily gas generation sheets duly verified and approved by the AMC.

8.2. SBM Grant

8.2.1. AMC shall pay to the Concessionaire cash support for an amount equal to INR _____(the "SBM Grant") as per SBM Guidelines.

8.2.2. The SBM Grant shall be disbursed to the Concessionaire as mentioned in the RFP document. In the event of occurrence of a Concessionaire Event of Default, disbursement of the SBM Grant or any part thereof shall be suspended till such Default has been cured by the Concessionaire. The AMC shall disburse the SBM Grant amount by disbursing and depositing the same in the Escrow Account.

8.3. Payment mechanism

8.3.1. The Concessionaire shall raise by 5th day of a Month, the bill/ invoice for Support Payment and the Differential Amount (payable as per Article 9.3.3 above) for the preceding month. The invoice thus raised shall, subject to due performance by Concessionaire and other terms and conditions of this Agreement, and submitted to AMC for release of payment.

8.3.2. AMC shall pay 90% of the bill amount, to the Concessionaire by the end of the month in which the bill has been raised. The remaining 10% of the bill amount shall be paid by AMC by the end of the third month, subject to deductions as applicable.

8.3.3. AMC shall pay the amount against bills of the Concessionaire through the Escrow Account mechanism by deposit of the relevant amount in the Escrow. Further, subject to due performance of obligations by the Concessionaire , the AMC shall, by way of additional security for payment, deposit and maintain at all

times, an amount equivalent to fee for corresponding to next two months payment in the Escrow Account.

By way of illustration, the aforesaid payment mechanism of fee is shown as following:

Month	Activity
T1	Month of processing of waste
5 th of T2	Bills raised by the Concessionaire,
15 th of T2	Bill submission to AMC
End of T2	90% payment by AMC
End of T3	10% payment by AMC

ARTICLE 9

9. ESCROW ACCOUNT

9.1. Escrow Account

9.1.1. The Concessionaire shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with the terms and conditions of this Agreement and the Escrow Agreement.

9.1.2. The nature and scope of the Escrow Account a to be entered into amongst the Concessionaire, the AMC, the Escrow Bank and the Senior Lenders (if any) through the Lenders’ Representative, shall be substantially in the form set forth in Annexure-9 (the “Escrow Agreement”)

9.2. Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- a) all funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;
- b) all revenues from or in respect of the Project including Additional Amount received from AMC as per Article 9.3.2, and insurance claims;
- c) all payments made by the AMC on account of the SBM Grant and Support payment; and

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

The AMC shall at all times and in any month of the Concession , ensure that in the Reserve Sub- Account (“**Reserve Fund**”) under the Escrow Account, an amount equivalent to immediately next two months fee payable to Concessionaire in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and AMC does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow bank to stop any appropriation from Reserve Fund; in case of any delay by AMC in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the AMC shall forthwith top up and maintain the required reserve in the Reserve Fund.

9.3. Withdrawals during Concession Period

9.3.1. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the AMC in accordance with the provisions of this Agreement, and certified by the AMC as due and payable to it;
- (e) All payments and Damages certified by the AMC as due and payable to it by the Concessionaire;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

9.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Article 9.3.1, except with the prior written approval of the AMC.

9.4 Withdrawals upon Termination

9.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due;
- (c) all payments and Damages certified by the AMC as due and payable to it by the Concessionaire;

(d) retention and payments relating to the liability for defects and deficiencies;

(e) O&M Expenses

(f) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Article (j) of this Article 9.4.1 until a vesting certificate has been issued by the AMC.

9.4.2 The provisions of this Article 9 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 9.4.1 have been discharged.

ARTICLE 10

10. FORCE MAJEURE AND CHANGE IN LAW

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

10.1.1. Force Majeure

10.1.2. As used in this Agreement, the expression "**Force Majeure**" or "Force Majeure Event" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 11.2, 11.3 and 11.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

10.2. Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting Project development/implementation for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year not being an Indirect Political Event set forth in Article 11.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the AMC;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) *any event or circumstances of a nature analogous to any of the foregoing.*

10.3. Indirect Political Event

10.3.1. An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;*
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;*
- (h) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;*
- (i) any civil commotion, boycott or political agitation which prevents collection of fee or consideration under Power Purchase Agreement by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;*
- (j) failure of the AMC to permit the Concessionaire to continue the discharge of its obligations hereunder, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;*

(k) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(l) any Indirect Political Event that causes a Non-Political Event; or

(m) any event or circumstances of a nature analogous to any of the foregoing.

10.4. Political Event

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

(c) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 11B and its effect, in financial terms, exceeds the sum specified in Article 11B.1;

(d) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(e) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(f) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

(g) any event or circumstance of a nature analogous to any of the foregoing.

10.5. Duty to report Force Majeure Event

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

- (a) *the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 11 with evidence in support thereof;*
- (b) *the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;*
- (c) *the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and*
- (d) *any other information relevant to the Affected Party's claim.*

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

10.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 11.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

10.6. Effect of Force Majeure Event on the Concession

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

10.6.2. At any time after the Compliance Date, if any Force Majeure Event occurs:

- (e) *before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or*
- (f) *after COD, whereupon the Concessionaire is unable to process waste, despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from processing of waste;.*

10.7. Allocation of costs arising out of Force Majeure

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

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

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

10.7.3. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of discharging obligations hereunder on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of fee revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Document may be relied upon to the extent that such information is relevant.

10.7.4. Save and except as expressly provided in this Article 11, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

10.8. Termination Notice for Force Majeure Event

10.8.1. If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 11, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days

to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

10.9. Termination Payment for Force Majeure Event

10.9.1. If Termination is on account of a Non-Political Event, the AMC shall make a Termination Payment to the Concessionaire of an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

10.9.2. If Termination is on account of an Indirect Political Event, the AMC shall make a Termination Payment to the Concessionaire of an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and

10.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 12.4(f) as if it were an AMC Default.

10.10. Dispute resolution

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

10.11. Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 11A

11A. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

11A.1 Suspension upon Concessionaire Default

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

11A.2 Authority to act on behalf of Concessionaire

11A.2.1 During the period of Suspension, the AMC shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations.

11A.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the AMC for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the AMC for all costs incurred during such period.

11A.3 Revocation of Suspension

11A.3.1 In the event that the AMC shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the AMC may, in its discretion, revoke the

Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

11A.3.2 Upon the Concessionaire having cured the Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the AMC shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

11A.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, the AMC shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 11A.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

11A.5 Termination

11A.5.1 At any time during the period of Suspension under this Article 11A, the Concessionaire may by notice require the AMC to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 11A.4, the AMC shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 11A.

11A.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 11A.1, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the AMC upon occurrence of a Concessionaire Default.

ARTICLE 11B

11. CHANGE IN LAW

11B.1 *Increase in costs*

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- (i) The enactment of any new Indian law including laws related to environment/emission/ discharge standards;
 - (ii) The repeal, modification or re-enactment of any Applicable Law;
 - (iii) A change in the interpretation or application of any Indian law by a court of record;

Provided that Change in Law shall not include:

- (i) Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - (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 Appointed Date which is a matter of public knowledge (including interalia, bye laws, directions, orders, regulations to be issued under the SWM Rules),
 - (iii) Any change in the rates of the Taxes which have a direct effect on the Project.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden ("**Additional Cost**"), the aggregate financial effect of which exceeds Rs. twenty five lacs in any Accounting Year, the Concessionaire may so notify the AMC and provide the information's as provided in Article (c) below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising therefrom shall be dealt with as per terms of Article (d) below.
- (c) Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify AMC of the following:
- (i) The nature and the impact of Change in Law on the Project;

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

Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the AMC to pay an amount equivalent to 50% of Additional Cost based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 11B.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement

ARTICLE 12

12. EVENTS OF DEFAULT AND TERMINATION

12.1. Events of Default

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

12.2. Concessionaire Event of Default

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

- (i) The Concessionaire has failed to process the MSW at the proposed site for a continuous period of three days or an aggregate period of seven days in any Month; This period shall be exclusive of the maintenance schedule of the Processing Facility
- (iv) The Concessionaire is in Material Breach of any of its obligations under this Agreement in respect of which a specified time period has not been specified in this Agreement and the same has not been remedied for more than 30 (thirty) days;
- (v) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (vi) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (vii) 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 AMC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (viii) Abandonment of the Project by the Concessionaire;
- (ix) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

- (x) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days.
- (xi) The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement.

12.3. AMC Event of Default

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

- (i) The Sites have not been handed over to the Concessionaire within 30 days of Appointed Date;
- (ii) AMC has failed to supply at least 20 TPD segregated organic waste at project site
- (iii) AMC has failed to make any payments including payment of SBM Grant and Payments (under article 9) due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;
- (iv) AMC is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- (v) AMC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (vi) AMC has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect.
- (vii) Any representation made or warranties given by AMC under this Agreement have been found to be false or misleading.

12.4. Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which AMC may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, AMC shall, be entitled to terminate

this Agreement in the manner as set out under Article 12.4(a)(ii) and Article 12.4(a)(iii).

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 12.2, AMC may terminate this Agreement by issue of Termination Notice in the manner set out under Article 12.4(c) after giving the Concessionaire an opportunity of hearing.

- (ii) If AMC decides to terminate this Agreement pursuant to preceding Article (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to AMC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, AMC shall be entitled to terminate this Agreement by issuing Termination Notice, and appropriate amount of the Performance Security.

(iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, AMC shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security.

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

days to remedy/ cure the underlying Event of Default. If, however AMC 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 has become entitled to do so decide 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;
- (ii) the Termination Payment, if any, payable by AMC in accordance with the following sub - article (f) is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and
- (iii) the Project are handed back to AMC as instructed by AMC, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to AMC.

(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.

(f) Termination Payment for ULB Event of Default

Upon Termination of this Agreement on account of AMC Event of Default, the Concessionaire shall be entitled to receive back the Performance Security from the AMC and also receive from the AMC, Termination Payment as specified below:

An amount equal to Debt Due and 150% of the Adjusted Equity;

(g) Termination Payment for Concessionaire Event of Default

- (i) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire and the AMC shall be entitled to forfeit the Performance Security of the Concessionaire.
- (ii) Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the AMC shall be entitled to forfeit the Performance Security of the Concessionaire.

12.5. Rights of AMCs on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, AMC shall upon making the Termination Payment, if any, to the Concessionaire, have the power and authority to:
 - (i) enter upon and take possession and control of the Project Facility and Project Assets forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facility and Project Assets;
- (b) Notwithstanding anything contained in this Agreement, AMC shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or 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 AMC shall be free from any such obligation/ fee/ penalties/ taxes.

- (c) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the AMC with the necessary particulars, and in the event of any delay, the AMC shall pay interest at a rate equal to 3% (three per cent) above the Bank Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the AMC upon actual or constructive transfer of the Project Assets by the Concessionaire to the AMC and/ or AMCs clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.
- (d) The Concessionaire expressly agrees that Termination Payment under this Article 12.5 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- (e) The AMC and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, the AMC shall be entitled to pay the Termination Payment [to the extent required] to the Lenders' Representative for procuring discharge/release of the any charge/Hypothecation created by Concessionaire on the moveable project assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from the AMC, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due as aforesaid, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby irrevocably agree that such payment by AMC shall be full and final settlement of Proportionate claim of Termination Payment to the Concessionaire under this Agreement.

12.6. Accrued Rights of Parties

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

ARTICLE 13

13. SUBSTITUTION OF THE CONCESSIONAIRE

13.1. Substitution by Lenders' Representative

In the event of Concessionaire's default, AMC shall, if there be any Lenders, send copy of the Termination Notice to the Lenders' Representative to inform and grant 15 (Fifteen) days to the Lenders' Representative, for making representation on behalf of the Lenders stating the intention to substitute the Concessionaire. In case AMC receives representation on behalf of the Lenders, within the aforesaid period, AMC shall withhold the termination for period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement, and substitute the Concessionaire with Nominated Company.

13.2. Substitution by AMC

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company or the company nominated by the Lenders' Representative in terms of Article 13.1 is not acceptable to AMC, AMC may either substitute the Concessionaire with Nominated Company, in accordance with the Substitution Agreement, or terminate the Agreement.

13.3. Substitution Process

While carrying out substitution, the Lender's Representative or AMC, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire. Such Nominated Company shall have to agree to bear all the liabilities of the Concessionaire in terms of this Agreement and Financing Agreement.

13.4. Consequences of Substitution

AMC shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, subject to fulfilment of the Concessionaire's entire obligation under this Agreement by such Nominated Company, for the remainder of the term of this Agreement. Such rights shall be granted by AMC through the Novation of the Agreement, if applicable, in favour of the Nominated Company.

AMC shall also execute new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the

Nominated Company. All approvals/clearances of AMC received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.

ARTICLE 14

14 HANDOVER OF PROJECT

14.1 Ownership during the Term of Agreement

Without prejudice and subject to the Agreement, the ownership of the Project except Site(s), including all improvements made therein by the Concessionaire, during the term of the Agreement, shall at all times remain with the Concessionaire

14.2 Condition Survey

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

14.3 Concessionaire’s Obligations upon Termination

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

- (a) The Concessionaire shall subject to the provisions of this Agreement:
 - (i) hand over to the AMC or its nominated agency free of cost the vacant and peaceful possession of the Project.

- (ii) hand over/transfer to the AMC all its rights, titles and interest in or over the assets comprised in the Project and the Project Assets (including movable assets which the AMC agrees to take over) which are required to be transferred to the AMC in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (iii) hand over to the AMC all documents, Proprietary Material, including as built designs, drawings, data, engineering, manuals and records relating to the Project Assets and Project.

It is clarified that only the assets of the Concessionaire shall be taken over, free of cost and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the AMC. The Concessionaire's employees shall be the Concessionaire's/Successful Bidder's responsibility even after the expiry of the Term.

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

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

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

14.4 Divestment Certificate

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

ARTICLE 15

15 DISPUTE RESOLUTION

15.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the AMC (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **Article (b)** below.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- (c) Either Party may require such Dispute to be referred to the Commissioner, AMC (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within fifteen (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 **Article 15.2** below.

15.2 Arbitration

(i) Procedure

Subject to the provisions of **Article 15.1**, any Dispute which is not resolved amicably shall be finally settled by reference to the 1st level of arbitration to the panel of 5 bench arbitrator which will include 2 members of Project developer 2 member from AMC and Dy. Collector, Ambikaour. If the dispute is unresolved then the dispute will be escalated to the 2nd level of arbitration will include the Collector of Ambikapur and the decision in this respect will be final and binding by all parties. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The expenses of arbitration shall be borne equally by both the Parties.

(ii) Place of Arbitration

The place of arbitration shall ordinarily be Ambikapur but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

(iii) Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using Hindi/other than English as language shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

(iv) Enforcement of Award

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

15.3 Performance during Dispute

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

ARTICLE 16

16 INSURANCE

16.1 Insurance Cover

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

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

16.2 Insurance Companies and Costs

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

have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible Articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

16.3 Evidence of Insurance Cover

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

16.4 Application of Insurance Proceeds

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

16.5 Validity of the Insurance Cover

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

ARTICLE 17

17 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

17.1 Proprietary Material

- (a) The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project/ Project, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire.
- (b) The Concessionaire, as beneficial owner, hereby grants to the AMC a perpetual non-exclusive license to use such Proprietary Material in connection with the Project. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the AMC for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- (c) Nothing in this Article 17.1 shall be construed to grant the AMC or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

17.2 Confidentiality

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

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

17.3 Survival

The Concessionaire and the AMC accepts and confirms that the provisions of this Article 17 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 18

18 REPRESENTATIONS AND WARRANTIES

18.1 Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

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

18.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the AMC that:

- (a) the Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;
- (b) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree

or order to which it is a party or by which it or any of its properties or assets are bound or affected;

- (c) there are no actions, suits, proceedings or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effects;
- (d) 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;
- (e) 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;
- (f) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the AMC or to any Government Authority in relation to Applicable Approvals contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (g) its shareholding pattern is in compliance with the requirements of this Agreement;
- (h) it has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (i) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (j) all its rights and interests in the Project shall pass to and vest in the AMCs on the Transfer Date free and clear of all liens, claims and Encumbrances.

18.3 Representations and Warranties of AMC

The AMC represents and warrants to the Concessionaire that:

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

18.4 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

18.5 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, the Technical Specifications, all the information and documents provided by the AMC or any Government Authority, the market and demand conditions, information relating to AMCs and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 18.5(a) above and hereby confirms that the AMC, any Government Authority and their consultants and advisors shall not be

liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.

- (c) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the AMC, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
- (d) The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

18.6 Obligation to Notify Change

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

ARTICLE 19

19 MISCELLANEOUS

19.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of AMC.
- (b) Restraint set forth in Articles (a) 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) mortgage/ pledge/hypothecation of moveable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) s in favour of the Lenders for the Project.
Provided, no charge/mortgage/lien/hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Site, assets and equipment's provided by the AMCs for the Project..
Provided further that irrespective of security hereinabove permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to the AMCs, upon expiry or earlier termination of this Agreement, their respective Project Assets free of all encumbrances whatsoever..
- (c) The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Site(s).

19.2 Interest and Right of Set Off

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

Provided the stipulation regarding interest for delayed payments contained in this Article 19.2 shall neither be deemed nor construed to authorise any delay

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

19.3 Governing Law and Jurisdiction

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

19.4 Waiver

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

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

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

19.5 Survival

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

19.6 Amendments

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

19.7 Notices

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

To the Concessionaire
Ambikapur

To the Municipal Corporation

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19.8 Severability

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

19.9 No Partnership

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

19.10 Language

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

19.11 Exclusion of Implied Warranties etc.

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

19.12 Counterparts

This Agreement may be executed in six (6) counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

19.13 Liability for Review

Except to the extent expressly provided in this Agreement:

- (a) no review, comment, certification, verification or approval by the AMC and/ or AMCs or an Independent Expert or any Government Authority of any Project Agreement, design, detailed engineering, or document, accounts, invoice etc. submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and
- (b) the AMC and/ or AMCs, its advisors or the Government Authorities shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in sub-article (a) above.

19.14 Unforeseen Event

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

19.15 Liability and Indemnification

- (a) The Concessionaire shall indemnify, defend and hold harmless (the “**Indemnifying Party**”) the AMC and/ or AMCs (the “**Indemnified Parties**”) during the Term from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgements, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys’ fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party’s representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Approvals or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ; or (iv) as provided elsewhere herein.
- (b) The Concessionaire shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the AMC and/ or AMCs and its advisors in this behalf.
- (c) The AMC and/ or AMCs shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project for any reason whatsoever.
- (d) The Concessionaire shall keep the AMC and/ or AMCs indemnified during the Term against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- (e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and

the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.

- (f) The provisions of this Article 19 shall survive the expiration or prior termination of this Agreement.

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

<p>SIGNED, STAMPED AND DELIVERED BY: For AMC/ _____ of AMC, duly authorized by the _____</p> <p>(Signature & Stamp)</p>	<p>SIGNED, SEALED AND DELIVERED BY: For CONCESSIONAIRE Director of Concessionaire, duly authorized by the resolution of the Board of Directors passed at its meeting held on _____</p> <p>(Signature & Seal)</p>
<p>IN PRESENCE OF</p>	
<p>Sign: Name: Address</p>	<p>Sign: Name: Address</p>

ANNEXURE 1: SCOPE OF SERVICES

1. Obligation to set-up Processing Facility

- 1.1. The Concessionaire shall be obligated to set up at its cost and expense, a Processing Facility at the earmarked Site, for processing of MSW prior to its final disposal, as per the Implementation Schedule submitted by the Concessionaire. The Implementation Schedule shall be submitted in MS Word format.
- 1.2. The Concessionaire shall have the Processing Facility fully set up and obtain an Operational Acceptance Certificate from competent authority for the newly installed Facility within a period no later than 270 (Two Hundred and Seventy) days from the date of signing of agreement. The Concessionaire shall also be obligated to promptly rectify and remedy defects or deficiencies that are pointed by the ULB and furnish a report in respect thereof to the ULB.
- 1.3. In the event, the Concessionaire is unable to achieve COD of the Bio-methanation Plant within the period of 270 (Two Hundred and Seventy) days from the date of signing of agreement, the Concessionaire shall be granted an additional mutually agreed period without levy of any damages. In case of any further delay to achieve COD from the mutually agreed additional period, Liquidated Damages at the rate of 0.1% (zero point one percent) of the Performance Security per day of delay shall be levied by the ULB on the Concessionaire, subject to a maximum of 90 (ninety) days beyond which it shall tantamount to Concessionaire Event of Default. Provided however, if the delay to achieve COD is due to any Force Majeure event or delay on the part of the any Government authority to grant the requisite approvals within time or due to delay on the part of competent authority in issuing Operational Acceptance Certificate, no such Liquidated Damages shall be levied.

2. Processing & Disposal of MSW

- 2.1. The Concessionaire shall setup Processing Facility on the designated land provided by AMC. The land provided shall only be used for the purposes of the Project.
- 2.2. The Concessionaire shall take all Applicable Approvals in sequence and comply with the provisions therein from time to time.
- 2.3. The Concessionaire shall design, construct, operate and maintain all the Project Assets including Processing Facility in compliance with all applicable laws at its own cost
- 2.4. For the Processing Facility, use technology for project as specified in technical proposal in line with the Applicable Laws including but not limited to SWM Rules.

- 2.5. The Concessionaire shall at its cost and expense procure all machinery and equipment for Processing Facility. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project
- 2.6. The Processing Facility shall achieve COD within a period of 270 (Two Hundred and Seventy) days from the date of approval of DPR. The Concessionaire shall submit monthly progress reports during the above period to AMC.
- 2.7. The Concessionaire shall operate and maintain the Processing in accordance with the Applicable Laws
- 2.8. The Concessionaire shall ensure that the inert/processing rejects generated from the Processing Facility should not be in excess of 20% (twenty percent) of input waste quantity. Concessionaire will also ensure treatment and discharge of Leachate generated from Processing Facility as per SWM Rule 2016.
- 2.9. All penalties, levies due to any non-compliance will be borne by the Concessionaire
The Concessionaire shall receive revenue generated through products produced out of such processing like compost, biogas, etc. The revenue generated through carbon credits shall be shared in the ratio of 75:25 between the Concessionaire and the AMCs, concessionaire shall bear the cost.
- 2.10. The Concessionaire shall maintain daily records of quantum of incoming, processed waste, rejects, products and product quality in the formats approved by AMC. The monthly report shall be submitted by the Concessionaire to the AMC. The monthly report may be subject to verification by AMC.
- 2.11. The Concessionaire shall arrange for all facilities and equipment for weighment - minimum 2 (two) electronic weighbridges with CCTV cameras, platforms etc.
- 2.12. Concessionaire shall all time comply with the statutory norms of CPCB/SPCB for pollution control
- 2.13. Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of Air & Water
- 2.14. The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility.
- 2.15. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE)

ANNEXURE 2: Penalties & Damages

S. No.	Default	Monitoring Mechanism	Cure Period	Penalty
Waste processing				
1.	Weighbridge is	Daily check by	From a list of	Rs. 2000 per

	non-operational at transfer Station/ Processing facility due to breakdown for a consecutive period of 4 days	AMC	three weighbridges, located near the project / processing site provided by ULB from where the concessionaire can weigh the MSW at its own cost	day after 4 days
2.	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	Inspection by AMC Progress Report	30 days from Scheduled Construction Completion Date	0.1% of the Performance Security per day of delay beyond 30 days

Notwithstanding anything to the contrary contained herein, in the event in any quarter the aggregate liquidated damages levied by the ULB on account of non-performance exceeds INR 1,00,000/- (INR One lakhs), then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination

ANNEXURE 3 : FINANCIAL PROPOSAL

(as submitted by Selected Bidder in the format prescribed in RFP)

ANNEXURE 4: OPERATIONAL ACCEPTANCE CERTIFICATE

Format as decided by ULB

ANNEXURE 5: FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE [ON APPROPRIATE STAMP PAPER]

Bank Guarantee No. []

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

IN FAVOUR OF:

-----with its principal office at [insert address], (hereinafter referred to as "AMC" or "Beneficiary", which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

WHEREAS:

(A) _____ (the "Concessionaire"), and _____ (the "AMC") have entered into a Concession Agreement dated (the "Agreement") whereby the AMC has agreed to the Concessionaire undertaking the _____ (hereinafter the "Project"), subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the AMC in a sum of Rs. 25 Lakhs (Rupees Twenty Five Lakhs only) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during its term i.e. the Concession Period (as defined in the Agreement).

(C) We,through our Branch at (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the term of the Agreement under and in accordance with the provisions of the Agreement, and agrees and undertakes to pay to the AMC, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the AMC shall claim, without the

AMC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

- 2. A letter from the AMC, under the hand of an Officer not below the rank of Chief Executive Officer in the ULB that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the AMC shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations any time during the term of the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the AMC and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.*
- 3. In order to give effect to this Guarantee, the AMC shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.*
- 4. It shall not be necessary, and the Bank hereby waives any necessity, for the AMC to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.*
- 5. The AMC shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the AMC against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the AMC, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the AMC of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the AMC or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.*
- 6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the AMC in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.*

7. *Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the term of the Agreement in accordance with the provisions thereof or unless a demand or claim in writing is made by the AMC on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the AMC under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.*
8. *The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the AMC in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.*
9. *Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the AMC that the envelope was so posted shall be conclusive.*
10. *This Guarantee shall come into force with immediate effect and shall remain in force and effect during the term of the Agreement or until it is released earlier by the AMC pursuant to the provisions of the Agreement.*

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

ANNEXURE 6: SUBSTITUTION AGREEMENT

*****require vetting*****

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

AMONGST

1. _____ (hereinafter referred to as the “AMC” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [*****Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ****, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ****[NAME AND PARTICULARS OF Lenders’ Representative] and having its registered office at ****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The ULB, Department have entered into a Concession Agreement dated ***with the Concessionaire (the “Concession Agreement”) on _____ (hereinafter referred to as the “Project”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the AMC to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Substitute Entity in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering, financing, construction, operation and maintenance, the AMC has agreed and undertaken to transfer and assign the Concession to a Substitute Entity in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

“Notice of Financial Default” shall have the meaning assigned thereto in Article 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning assigned thereto in the Concession Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession

Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Substitute Entity under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The AMC hereby agree to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Substitute Entity selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the ULB for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the AMC to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the AMC shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Substitute Entity, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the AMC may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the AMC may extend the

aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the AMC shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Substitute Entity.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the AMC within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Substitute Entity, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the AMC shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the AMC shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The AMC and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the AMC under Article 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Substitute Entity upon such Substitute Entity's assumption of the liabilities and obligations of the Concessionaire towards the AMC under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Substitute Entity shall be required to fulfill the eligibility criteria that were laid down by the AMC for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the AMC that all or any of such criteria may be waived in the interest of the Project, and if the AMC determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

- 3.4.3 Upon selection of a Substitute Entity, the Lenders' Representative shall request the AMC to:
- (a) accede to transfer to the Substitute Entity the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Substitute Entity, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Substitute Entity on the same terms as are contained in this Agreement.
- 3.4.4 If the AMC has any objection to the transfer of Concession in favour of the Substitute Entity in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the AMC, the Substitute Entity shall be deemed to have been accepted. The AMC thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Substitute Entity; provided that in the event of such objection by the AMC, the Lenders' Representative may propose another Substitute Entity whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Substitute Entity in place of the Concessionaire.

3.5 Selection to be binding

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

4 PROJECT AGREEMENTS

4.1 Substitution of Substitute Entity in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Substitute Entity to step into such Project

Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Substitute Entity's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the AMC to terminate the Concession Agreement forthwith, and upon receipt of such notice, the AMC shall undertake Termination under and in accordance with the provisions of Article 12 of the Concession Agreement.

5.2 Termination when no Substitute Entity is selected

In the event that no Substitute Entity acceptable to the ULB is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Article 3.3.2, the ULB may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The AMC and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

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

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

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee each of the AMC, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Ambikapur and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Ambikapur shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The AMC unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.00 (five) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of
CONCESSIONAIRE by:

For and on behalf of
AMC OF [***] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND
DELIVERED

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

For and on behalf of
DEPARTMENT

(Signature)
(Name)
(Designation)
(Address)
(Fax)

(Signature)
(Name)
(Designation)
(Address)
(Fax)

In the presence of:

- 1
- 2.

ANNEXURE 9: LAND LEASE AGREEMENT