

**Integrated Solid Waste Management with a Waste to Energy  
(WTE) Project on DBFOT basis at Kanjikode, Palakkad District  
under Public Private Partnership**

**SCHEDULES TO CONCESSION AGREEMENT**

January 29, 2019

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**SCHEDULE 1:  
SCOPE OF SERVICES**

**1. Obligation to set-up Processing Facility**

- 1.1. The Concessionaire shall be obligated to set up at its cost and expense, a Processing Facility of minimum capacity of 200 TPD at the earmarked Site and discharge obligations set out in Schedule 1 for processing of Solid waste prior to its final disposal at Engineered Sanitary Landfill Site, as per the Implementation Schedule submitted by the Concessionaire. The Implementation Schedule shall be submitted in MS Word format.
- 1.2. The Processing Facility also includes a setting up a waste to Energy Plant having capacity as provided in Concession Agreement. The Concessionaire shall have the Processing Facility fully set up and obtain an Operational Acceptance Certificate from the KSIDC/ PMU for the newly installed Facility within a period no later than 24 (twenty four) months from the Compliance Date (“Scheduled Completion Date”). The Concessionaire shall also be obligated to promptly rectify and remedy any defects or deficiencies that are pointed by the PMU and furnish a report in respect thereof to the PMU.
- 1.3. In the event the Concessionaire is unable to achieve COD within the said time period, the Concessionaire shall be granted an additional period of 30 days without levy of any damages. In case of any further delay to achieve COD, Liquidated Damages at the rate of 0.1% (zero point one percent) of the Performance Security per day of delay beyond 30 days from Scheduled Completion Date shall be levied by the Authority 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 due to delay on part of KSIDC/ PMU in issuing Operational Acceptance Certificate, no such Liquidated Damages shall be levied.

**2. Secondary collection of waste from the designated bins**

- 2.1. The Concessionaire shall undertake daily collection of Solid Waste from the Designated Bins within the Project Area.
- 2.2. Transportation of street sweeping waste from the designated points established by PLBs in Consultation with Concessionaire.

- 2.3. The Concessionaire shall collect Solid Waste at pre-informed timings. The timings are to be planned after consultation with the respective PLBs.
- 2.4. The Concessionaire shall provide the PLBs with a route plan and timings of visit/time table as decided between the PLBs and the Concessionaire by 31<sup>st</sup> March and 30<sup>th</sup> September, every year, for the duration of Concession Period.
- 2.5. The Concessionaire shall arrange for all vehicles, devices, bins at its own cost to collect all Solid Waste generated in the Project Area.
- 2.6. The Solid Waste shall be collected using containerized motorized vehicles (such as auto tippers/ compactors) or any other device which is suitable for collection of waste without necessitating deposition of waste on the ground and multiple handling of waste.
- 2.7. The containers shall be colour coded as per the SWM Rules.
- 2.8. All such vehicles, devices, bins shall display a logo of KSIDC/ PMU of at least 12 inches by 12 inches size (font size of 6-9 inches) size.
- 2.9. The Concessionaire shall ensure that the vehicles and devices are cleaned on a daily basis using disinfectants.
- 2.10. The Concessionaire must put a system in place which indicates that the bins are picked up on being full to their capacity.
- 2.11. The PLB/ PMU/ KSIDC reserves right to conduct random checks

### **3. Secondary Storage of waste**

- 3.1. The Concessionaire shall endeavor to create no secondary storage facility and its vehicle planning & scheduling shall be developed in such a manner that primary waste collected is transferred directly in vehicles with no storage facility. However, PLBs may provide existing land(s) or structure(s) for Secondary Collection Points (including land for Transfer Station/Transfer Point, if any) free of cost within 30 days of signing of

Concession Agreement. The land or structure provided shall only be used for the purposes of the Project.

- 3.2. Dedicated mobile transfer stations/ dumper placers/ container bins of at least 2 cubic meters capacity or any such equipment which is suitable for storage of waste (“Equipment for secondary storage”) may be positioned by the Concessionaire at such Secondary Collection Points to receive Solid Waste from the vehicles and devices engaged in the primary collection of waste.
- 3.3. Equipment for secondary storage shall be designed for at least twice the designed capacity (as per the CPHEEO manual specifications). Waste density to be assumed as 500 kg/ cum. The bins should be designed in line with the transportation system so as to avoid any manual handling of waste.
- 3.4. The Concessionaire shall provide equipment for secondary storage at its own cost.
- 3.5. All equipment for secondary storage shall be covered and colour coded as per SWM Rules. All equipment for secondary storage shall be marked with KSIDC/PMU of at least 12 inches by 12 inches (font size of 6-9 inches) size. The Concessionaire shall display any other form of advertisement on the equipment for secondary storage only after prior approval of the PMU. For any other advisories that would be under taken, the Concessionaire shall abide by the Applicable Laws.
- 3.6. The land for setup of Transfer Station, upon request of the Concessionaire, may be provided, if available, by the PMU/ KSIDC in accordance with Land Lease Agreement within 30 days of signing of the Concession Agreement. The Transfer Station shall be constructed by the Concessionaire at its own cost. The Concessionaire shall construct the Transfer Station within a period of six months from the date of handing over the vacant land by the PLBs/ PMU to the Concessionaire.
- 3.7. The Transfer Stations shall be designed for all weather operations. The Transfer Station shall be operated under cover, so that dust, litter and noise could be effectively controlled. The Transfer Station shall be cleaned daily and the floors washed.

- 3.8. The walls of the Transfer Station shall be whitewashed every six months for the duration of Concession Period. And all the vehicles/ equipment shall be re-painted every six months.
- 3.9. The Transfer Station shall be equipped with internal roads, ramp and platforms at different levels. These shall be concrete built with a capacity to withstand the load of moving machineries/vehicles.
- 3.10. The Concessionaire shall erect at least one (1) signboard with details (capacity, contact details and warnings) about the transfer station in Malayalam and English of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance to in a manner that it is ordinarily visible to any person using such entrance.
- 3.11. The workers involved in Solid Waste handling shall be provided with gloves, masks, uniforms, aprons and other safety gear.
- 3.12. The Concessionaire shall make provisions to restrict entry of stray animals into the transfer stations, e.g. animal catchers, etc.
- 3.13. The Transfer Station shall display a logo of the KSIDC/ PMU of at least 12 inches X 12 inches each (font size of 6-9 inches) size on the outside of all of its walls. Additionally, all the outer walls of the transfer station shall also be painted with this advisory about solid waste management. The Concessionaire shall display any other form of advertisement on the Transfer Stations only after prior approval of the PMU. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 3.14. The Concessionaire shall have right to advertise on processing facility, transfer station, transportation vehicles and sanitary landfill. This will be an additional source of revenue for the Concessionaire.

#### **4. Transportation of Waste to the Processing Facility**

- 4.1. The Concessionaire shall transport Solid Waste from Secondary Collection Points to the Processing Facility on a daily basis.

- 4.2. The Concessionaire shall deploy closed vehicles such as tipper trucks, compactors etc. to transport the Solid Waste generated in the Project Area to the Processing Facility at its own cost.
- 4.3. The vehicles deployed shall be roadworthy conforming to approval from the State Transport Authority.
- 4.4. The Concessionaire shall comply with all Applicable Laws, including all rules and regulation prescribed in the regard, from time to time by any other statutory and Competent Authorities concerned, regarding fuel used or pollution control standards or any other norm.
- 4.5. The Concessionaire shall at periodic intervals check their adequateness and their conformity with the manufacturer's specification for their maintenance and replacement.
- 4.6. KSIDC/ PMU/ PLB reserves right to conduct random checks.
- 4.7. The Concessionaire shall provide automatic position identification systems using Global Positioning System (GPS) technology, which shall ensure automatic tracking and recording of vehicle identification and movement in all vehicles and provide a live GPS feed to the PMU/Authority.
- 4.8. The Concessionaire shall display KSIDC/ PMU (and social message given by PMU) of at least 12 inches X 12 inches size (font size of 6-9 inches) on the transportation vehicles and shall display any other form of advertisement on the transportation vehicles. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 4.9. The drivers appointed/engaged by the Concessionaire shall have a valid driving license as desired for the specific vehicle.
- 4.10. All vehicles shall have High Security Registration Plate and be equipped with electronic toll collection tag.

4.11. All penalties, levies and fines levied in relation to the activities/operations of the Concessionaire under the Project, shall be borne by the Concessionaire only without any liability of the KSIDC/ PLB/ Department.

## **5. Processing & Disposal of Solid Waste**

5.1. The Concessionaire shall setup Processing Facility & Sanitary Landfill on the designated lands provided by LB/ Government Department. The land provided shall only be used for the purposes of the Project.

5.2. The Concessionaire shall take all Applicable Approvals in sequence and comply with the provisions therein from time to time.

5.3. The Concessionaire shall design, construct, operate and maintain all the Project Assets and Project Facilities including Processing Facility & Sanitary Landfill in compliance with all applicable laws at its own cost.

5.4. For the Processing Facility, use \_\_\_\_\_technology for RDF/ thermal/ biological processing (as mentioned in Technical Proposal) for the in line with the Applicable Laws including but not limited to KSPCB and CPCB. The Sanitary Landfill shall be setup in accordance with the requirement of SWM Rules.

5.5. For the water requirement of the processing facility, the Concessionaire shall make its own arrangement and arrange for laying of pipeline from the entry gate of the site. PLB/ Authority shall make necessary arrangement to provide water supply from KWA, at the entry gate of the site. The concessionaire shall pay necessary charges, at applicable rate to KWA for the water consumed by them for the project.

5.6. The Concessionaire shall at its cost and expense procure all machinery and equipment for Processing Facility and Sanitary Landfill. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project.

5.7. The Processing Facility shall achieve COD within a period of 24 (twenty four) months from the date of achieving Condition Precedent. The Sanitary Land Fill shall be mandatorily completed within the said period. The Concessionaire shall submit monthly



progress reports during the above period to PMU. The Authority shall have the right to not provide COD if Sanitary Landfill is not completed.

- 5.8. The Concessionaire shall operate and maintain the Processing Facility & Sanitary Landfill in accordance with the Applicable Laws.
- 5.9. The Concessionaire shall ensure that the inert/processing rejects generated from the Processing Facility should achieve total elimination of landfill but in any circumstances not in excess of 10% (ten percent) of input waste quantity. The Concessionaire will all time ensure the daily capping of SLF as per Solid Waste Management Rules, 2016. The Concessionaire will also ensure treatment and discharge of leachate generated from Processing Facility & SLF in accordance with the CPCB standards.
- 5.10. All non-biodegradable waste viz. Plastic, Metal, Glass, Electronics & Other items are to be segregated and sold to re-processors/ recyclers/ Govt. authorized agencies or recycled/ reprocessed through recycling/ reprocessing facilities directly or indirectly within the allotted site and appropriate/retain the whole of the sale proceeds. Other wastes such as Rubber, Tyres, Upholstry, Bags etc. may be sold to cement or other factories as energy source. The resources recovery shall be carried out at the cost and risk of the Concessionaire. It shall also be ensured that no part of Construction & Demolition waste is dumped in the landfill of the plant.
- 5.11. All penalties, levies due to any non-compliance will be borne by the Concessionaire.
- 5.12. The Concessionaire shall retain revenue generated through products produced out of such processing. The Concessionaire shall also retain revenue generated through carbon credits.
- 5.13. The Concessionaire shall maintain daily records of quantum of incoming, processed waste, rejects, products and product quality in the formats approved by the PMU. The monthly report shall be submitted by the Concessionaire to the PMU. The monthly report may be subject to verification by PMU.
- 5.14. The Concessionaire shall arrange for all facilities and equipment for weighment - minimum 2 (two) electronic weighbridges with CCTV cameras, platforms etc. The Concessionaire shall also store at least past 2 months of such video feed and make it available for inspection at the request of the Authority.

- 5.15. The flue gas vented to atmosphere shall required to be treated adequately by scrubbing, neutralization and filtering so that the pollutants are dust levels are well within the acceptance level as statutory requirements.
- 5.16. The Concessionaire shall develop the surrounding of the plant with greenhouse concept having trees, plants, lawns, gardens etc. as model spot for educating students/ public on environmental protection and best environment practices.
- 5.17. The Concessionaire shall erect at least (1) signboard with details (capacity, contact details and signage) about the Processing Facility and Sanitary Landfill in Malayalam and English of a size not less than 2ft. by 4ft. each, adjacent to the main entrance in a manner that is ordinarily visible to any person using such entrance.
- 5.18. The Concessionaire shall at all times comply with the statutory norms of CPCB/ KSPCB for pollution control.
- 5.19. The Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of Air & Water.
- 5.20. The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility and Sanitary Landfill.
- 5.21. The workers involved in Solid Waste handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE).

**SCHEDULE 2:  
Service Level Benchmarks**

The Concessionaire shall achieve following benchmarks in the proposed timeline:

S.No.	Indicator	Unit	Definition	Benchmark Value	Proposed Timeline
1.	Coverage of SWM services through bin-based secondary collection of waste	%	Percentage of designated bins that are covered by a daily collection system.	100%	Within 12 months from the date of COD
2.	Collection efficiency	%	The total waste collected by the Concessionaire within 2 days of it being available in Designated Bin of the Project Area	100% upto a maximum of [600] tpd	9 months from the COD
3.	Extent of recovery of waste collected	%	This is an indication of the quantum of waste collected, which is either recycled or processed. This is expressed in terms of percentage of waste collected	95%	70% - Year 1 80% - Year 2 95% - Year 3
4.	Extent of scientific disposal of waste at landfill sites	%	The amount of waste that is disposed in landfills that have been designed, Build, operated and maintained as per standards laid down by Central government. This extent of compliance should be expressed as a percentage of the total quantum of waste disposed at landfill sites, including open dump sites	100%	Six months from the date of setup of the Sanitary Landfills

**Penalties & Damages:**

S.No.	Default	Monitoring Mechanism	Cure Period	Penalty
<b>Secondary Storage &amp; transportation</b>				
1.	Non-clearance of Designated Bins for consecutive 2 days	Spot inspection conducted by the PMU/ user complaint	One day	Rs. 2000 per bin per instance
2.	Transportation of Solid Waste in non- covered vehicles	Spot inspection conducted by PMU/ user complaint	One day	Rs. 2500 per instance
3.	Non-operation of transfer station,	Spot inspection	One day	Rs. 5000 per

<b>S.No.</b>	<b>Default</b>	<b>Monitoring Mechanism</b>	<b>Cure Period</b>	<b>Penalty</b>
	if any for one day	conducted by PMU/ user complaint		instance
<b>Waste processing</b>				
<b>4.</b>	Weighbridge is non-operational at Processing facilities/ landfills due to breakdown for a consecutive period of 2 days	Daily check by PMU	From a list of three weighbridges, located near the project / processing site from where the concessionaire can weigh the Solid Waste at its own cost	Rs. 1500 per day after 2 days
<b>5.</b>	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	Inspection by PMU/ Progress Report	30 days from Scheduled Construction Completion Date	0.1% of the Performance Security per day of delay beyond 30 days
<b>Sanitary Landfills</b>				
<b>6.</b>	Inert/ Residual waste greater than 5% sent to landfill	Weighment slips/ Daily reports/ Inspection by PMU		for every ton of increase, penalty shall be imposed at the rate of Rs 1000/ ton.

Notwithstanding anything to the contrary contained herein, in the event in any quarter the aggregate liquidated damages levied by the PMU on account of non-performance exceeds INR 10,00,000/- (INR ten lakhs) per month, then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination. No collection of waste for 7 consecutive days shall also be construed as Concessionaire Event of Default.

**SCHEDULE 3:  
Financial Proposal**

**As submitted by the Selected Bidder**

**SCHEDULE 4:**  
**Format for Daily Weight Sheet**

<b>Weighbridge details</b>	
<b>Location</b>	
<b>Capacity</b>	
<b>Date</b>	
<b>Time in</b>	
<b>Time out</b>	
<b>Truck no.</b>	
<b>Tier weight (tons)</b>	
<b>Full weight (tons)</b>	
<b>Waste quantity (Full weight – tier weight)</b>	

**SCHEDULE 5:  
OPERATIONAL ACCEPTANCE CERTIFICATE**

**Format as decided by PMU/ KSIDC**

**SCHEDULE 6:**  
**FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE**  
[ON APPROPRIATE STAMP PAPER]  
(Refer Article 5.1)

The Managing Director,  
Kerala State Industrial Development Corporation Limited  
T.C. XI/266, Keston Road, Kowdiar  
Thiruvananthapuram, Kerala - 695003, India

**WHEREAS:**

- (A) ..... (the “Concessionaire”) and the Kerala State Industrial Development Corporation (the “Authority”) have entered into a Concession Agreement dated ..... (the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking the “Integrated Solid Waste Management on Design, Build, Finance, Operate and Transfer (DBFOT) basis at \_\_\_\_\_, in the State of Kerala” (“Project”) subject to and in accordance with the provisions of the Concession Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority {of a sum of Rs. 10,00,00,000/- (Rupees Ten crores)} /{of a sum of Rs. 5,00,00,000/- (Rupees Five crores) during O&M period} (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction 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, unequivocal, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unequivocal, unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Managing Director in the Kerala State Industrial Development Corporation, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in



default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
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 Authority in respect of or relating to the Agreement or for the fulfillment, 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 construction period or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect { when the Concessionaire shall have expended on Project construction an aggregate sum not less than 100% (one hundred per cent) of the Total Project Cost which is deemed to be Rs. .... cr. (Rupees ....

only))/ {till the end of tenure of the Concession Agreement} for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the construction period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED  
For and on behalf of the BANK by:

(Signature)  
(Name)  
(Designation)  
(Code Number)  
(Address)

NOTES:

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

**SCHEDULE 7:  
SCOPE OF WORK OF PMU**

**1. Role of the PMU**

The PMU is expected to play a key role in discharging its functions as an extension to the Authority, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the PMU is to:

- (a) review, monitor and where required by the Agreement, to approve activities associated with the design, construction, operation and maintenance of the Project;
- (b) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, PMU site visits and Tests;
- (c) assist the Parties in arriving at an amicable settlement of disputes, should the need arise; and
- (d) review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

**2. Structure & Scope of Services**

- (a) Authority shall appoint project level Project Management Unit comprising of a Project Manager and experts from relevant fields. There shall also be a representative of Concessionaire in the Project Management Unit as an invitee. There shall be an Apex Project Management Unit at State Level constituted by the Authority

The services to be provided by the PMU are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement. The allocation of this scope of services between PMU of the cluster and the Apex State level PMU will be done by the Authority.

**2.1 Design and Planning**

- a) Ensure that all activities of the Project fully comply with all Applicable Laws and, governing the requirements of Municipal Solid Waste disposal in India in particular, KPCB and CPCB standards for air, water and land.

- b) Review of the Implementation Plan submitted by the Concessionaire.

## **2.2 Construction Inspection and General Services**

2.2.1 The PMU would monitor, in accordance with Good Industry Practice, the progress in implementation of the Project. For this purpose the PMU shall undertake, interalia, the following activities and where appropriate make suitable suggestions:

- a) Ensure compliance by the Concessionaire with the provisions of this Agreement and applicable laws;
- b) Act on the KSIDCs' behalf as the KSIDCs' representative regarding all contact with the Concessionaire unless expressly indicated otherwise;
- c) Review of all Tests;
- d) Interpret the requirements of the contract and make decisions regarding performance of the Concessionaire. The PMU shall inform and advise KSIDC, in a timely manner all matters relating to the execution, progress, and completeness of the Project;
- e) Reject work which fails to comply with the specifications and requirements of the Agreement. Whenever considered necessary or advisable to ensure correction of defective work, the PMU may require inspection or testing of such work, whether or not such work be then fabricated, installed, or completed;

2.2.2 The PMU shall attend regular meetings (“**Project Review Meetings**” or “**PRMs**”) with KSIDC and the Concessionaire, to be held from time to time. The PMU shall take notes at the meetings and provide a copy of the PRM minutes to each person who attended the meeting.

2.2.3 The PMU shall approve Fortnightly Progress Reports and bills and invoices raised by the Concessionaire.

**SCHEDULE 8:**  
**SUBSTITUTION AGREEMENT**  
*(Refer Article 6.3)*

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

**AMONGST**

- 1 The Kerala State Industrial Development Corporation Limited, incorporated under the Companies Act, 1956, a nodal agency acting on behalf of \_\_\_\_\_ Department, Government of Kerala as appointed by Government of Kerala, represented by its Managing Director and having its principal offices at T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram, Kerala - 695003, India (hereinafter referred to as the “Authority” 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, 1956 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 .....(name) as their duly authorised agent with regard to matters arising out of or in 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 Authority has entered into a Concession Agreement dated ..... with the Concessionaire (the “**Concession Agreement**”) for Development of Integrated Solid Waste Management on Design, Build, Finance, Operate and Transfer (DBFOT) basis at \_\_\_\_\_, in the State of Kerala, 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 Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to

a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree 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, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 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 Clauses are, unless stated otherwise, references to Clauses 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 ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby agrees to assign 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 Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company 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 facility at \_\_\_\_\_ 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 Authority for its information and record. A Notice of Financial Default under this Clause 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 Nominated Company 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 Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the facility in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority 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 Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority 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 Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Concessionaire Default**

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority 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 Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company 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 Authority 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 Authority 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 Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 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 facilities including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority 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 Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project facilities in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company 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 Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; Provided that in the event of such objection by the Authority, the Lenders' Representative may propose another

Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company 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 Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. 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 Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority 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 Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its consent, in place and substitution of the Concessionaire in the event of such Nominated Company'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 Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority 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 Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### **5.3 Realisation of Debt Due**

The Authority 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. For realisation of the Debt Due, 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.

## **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 Authority 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 Authority 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 Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 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 Clause 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**

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, 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.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Lucknow 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 Thiruvananthapuram shall have jurisdiction over all matters arising out of or relating to this Agreement.

## **9.2 Waiver of immunity**

The Authority 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 from such proceedings shall be claimed by or on behalf of the Authority 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 Clause 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 or e-mail. The address for service of each Party, its facsimile number and e-mail address 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 5.30 (five thirty) 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. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. 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 when 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.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>§</sup>:

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
KERALA STATE INDUSTRIAL  
DEVELOPMENT CORPORATION  
LIMITEDby:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)  
(E-mail address)

In the presence of:

- 1.
- 2.

---

<sup>§</sup> To be affixed in accordance with the articles of association of the Concessionaire.



**SCHEDULE 9:**  
**ESCROW AGREEMENT**  
*(Refer Article 10)*

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

**AMONGST**

- 1 ..... LIMITED, a company incorporated under the provisions of the Companies Act, 1956 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, permitted assigns and substitutes);
- 2 .....name and particulars of Lenders’ Representative and having its registered office at .....acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in 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);
- 3 .....name and particulars of the Escrow Bank and having its registered office at .....(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Kerala State Industrial Development Corporation Limited, incorporated under the Companies Act, 1956, a nodal agency appointed by Government of Kerala, represented by its Managing Director and having its principal offices at T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram, Kerala - 695003, INDIA (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

**WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated .....with the Concessionaire (the “**Concession Agreement**”) for Development of Integrated Waste Management on Design, Build, Finance, Operate and Transfer (DBFOT) basis at \_\_\_\_\_, in the State of Kerala, 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) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## 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:

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out there from on the Payment Date(s).

## 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 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 ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## 2 ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

### 2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

## 2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

## 2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

## 2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## 2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

## 3 DEPOSITS INTO ESCROW ACCOUNT

### 3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;

all funds received by the Concessionaire from its share-holders, in any manner or form;

all the User Charges from or in respect of the Project, including the proceeds of insurance claims and advances and deposits made to the Concessionaire with respect to the Project Infrastructure and Project Facilities;

- a) all monies received in relation to the Project from insurance or any other person towards repair, maintenance or damages for the Project Infrastructure;
- b) all money forming part of User Charges including licence fee, sub-lease rent / revenue, deposits or capital receipt and User Charges accruing, arising or received by the Concessionaire or any other person acting through or on behalf of the Concessionaire;
- c) all benefits accruing under the applicable Acts, Laws and Policies; and
- d) all payments by the Authority to the Concessionaire, if any

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### **3.2 Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Student Fee Support and any other monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; Provided that notwithstanding anything to the

contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; Provided that the Escrow Bank shall be entitled to appropriate there from the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## **4 WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals during Concession Period**

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):
- (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 Agreements;
  - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
  - (e) Lease Rent due and payable to the Authority;
  - (f) monthly proportionate provision of Debt Service due in an Accounting Year;
  - (g) Land Premium due and payable to the Authority;
  - (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
  - (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
  - (j) any reserve requirements set forth in the Financing Agreements; and
  - (k) balance, if any, in accordance with the instructions of the Concessionaire.
- 4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### 4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding, Power Payment and Lease Rent;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### 4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### 4.4 Application of insurance proceeds

Notwithstanding anything contained in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.



#### 4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 12 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### 5 OBLIGATIONS OF THE ESCROW BANK

#### 5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

#### 5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### 5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### 5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

## 5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

## 6 ESCROW DEFAULT

### 6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire ("Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## 7 TERMINATION OF ESCROW AGREEMENT

### 7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the

Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

## 7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

## 7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## 8 SUPPLEMENTARY ESCROW AGREEMENT

### 8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a Supplementary Escrow Agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto; Provided that such Supplementary Escrow Agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such Supplementary Escrow Agreement, the provisions of this Agreement shall prevail.

## 9 INDEMNITY

### 9.1 General indemnity

#### 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense 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.

9.1.2 The Authority 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 Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank 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 Escrow Bank 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 Escrow Bank, its officers, servants and agents.

## 9.2 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 Clause 9.1 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, which approval shall not 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.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute resolution

10.1.1 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 of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. 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 the provisions of the Arbitration and Conciliation Act, 1996.

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

## 11 MISCELLANEOUS PROVISIONS

### 11.1 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 Thiruvanthapuram shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 11.2 Waiver of immunity

The Authority 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 from such proceedings shall be claimed by or on behalf of the Authority 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).

### 11.3 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.

### 11.4 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.

## 11.5 Waiver

11.5.1 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.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by any 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.

## 11.6 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.

## 11.7 Survival

11.7.1 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.

11.7.2 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.

## 11.8 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 Clause 10.1 of this Agreement or otherwise.

#### 11.9 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.

#### 11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail 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 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. 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.

#### 11.11 Language

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

#### 11.12 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.

#### 11.13 Original Document

This Agreement may be executed in four counterparts, each of which when 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.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>§</sup>:

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail address)

In the presence of:

1.

SIGNED, SEALED AND DELIVERED For and on behalf of KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(E-mail address)

2.

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<sup>§</sup> To be affixed in accordance with the articles of association of the Concessionaire.



**SCHEDULE 10:  
LAND LEASE AGREEMENT**

**SCHEDULE 11:**  
**CRITERIA FOR PREPARING THE LIST OF CHARTERED ACCOUNTANT FIRMS**

(Article 21 Clause 2 of Concession Agreement)

The firm of Chartered Accountants:

1. Should be in operation for the past 10 (Ten) years
2. Should not have been barred or blacklisted by any entity like Central, State Government Body or PSU (Central/State) or any other Statutory Body.
3. Should have a minimum of 2 (Two) Branches in Kerala
4. Should have at least 3 (three) qualified Chartered Accountants out of whom atleast 1 (one) should be FCA.