

DEVELOPMENT OF INTEGRATED SOLID WASTE MANAGEMENT IN
ERNAKULAM CLUSTER

**CONCESSION AGREEMENT
BETWEEN**

**Government of Kerala
Represented by the,
Local Self Government Department, Govt. of Kerala
AND
Kerala State Industries Development Corporation
acting through its Managing Director
AND
Municipal Council of Kochi Municipal Corporation
acting through its Authorised Officer
AND
Municipal Council of Thrikkakara Municipality
acting through its Authorised Officer
AND
Municipal Council of Thirppunithura Municipality
acting through its Authorised Officer
AND
Municipal Council of Kalamassery Municipality
acting through its Authorised Officer
AND
Municipal Council of Eloor Municipality
acting through its Authorised Officer
AND
Municipal Council of Maradu Municipality
acting through its Authorised Officer
AND
Municipal Council of Aluva Municipality
acting through its Authorised Officer
AND
Municipal Council of Perumbavoor Municipality
acting through its Authorised Officer
AND
Municipal Council of Angamali Municipality
acting through its Authorised Officer
AND
Municipal Council of North Paravur Municipality
acting through its Authorised Officer
AND
Municipal Council of Muvattupuzha Municipality
acting through its Authorised Officer
AND**

**Municipal Council of Kothamangalam Municipality
acting through its Authorised Officer
AND
Municipal Council of Piravom Municipality
acting through its Authorised Officer
AND
Municipal Council of Koothattukulam Municipality
acting through its Authorised Officer
AND
XYX Private Limited (Concessionaire)
acting through its Authorised Officer**

08th January 2021.

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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (hereinafter referred to as the “**Agreement**”) made on this [●] day of [●] 2021 at [●]

BETWEEN

The Governor of Kerala, represented by, Local Self Government Department, Government of Kerala hereinafter referred to as the “Department” or “**Authority**” which expression shall unless it be repugnant to the context or meaning thereof, be deemed to include its successors and assigns.

AND

Kerala State Industries Development Corporation, is a company wholly owned by Govt. of Kerala, set up in 1961 under the Companies Act 1956, acting through its Managing Director, having its principal offices at T.C. XI/266, Keston Road, Kowdiar, Thiruvananthapuram, Kerala 695003, hereinafter referred to as “**KSIDC**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

Kochi Municipal Corporation, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “**PLB 1**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

Thrikkakara Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “**PLB 2**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

Thrippunithura Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “**PLB 3**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

Kalamassery Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “**PLB 4**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

AND

Eloor Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Maradu Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Aluva Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Perumbavoor Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Angamaly Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

North Paravur Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Muvattupuzha Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Kothamangalam Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Piravaom Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

Koothattukulam Municipality, established under the provisions of the Kerala Municipality Act, 1994, acting through its [●] having its principal offices at [●], Kerala [●] hereinafter referred to as “PLB 4”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns

AND

XYZ Private Limited, is a Special Purpose Company¹ set up under the Companies Act, 2013, acting through its Chief Executive Officer, having its principal offices at [●], hereinafter referred to as “**Concessionaire**”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns;

Collectively referred to as “Parties”, and individually as “Party”.

WHEREAS

- A. The Local Self Government Department, Govt. of Kerala (“**Department**”) is engaged in the development of cluster based integrated solid waste management projects in the State of Kerala. The Department is desirous of implementing such cluster based integrated solid waste management project by seeking private sector participation on Public Private Partnership (“**PPP**”) mode by inviting Proposals for setting up of an integrated solid waste management facility;
- B. **KSIDC** is the premier Government agency working for industrial and investment promotion in Kerala, with a mandate to promote, facilitate and finance large and medium scale industries and catalyzes the development of physical and social infrastructure required for industrial growth in the state. KSIDC has been appointed as nodal agency for managing all project development, administration and monitoring aspects of waste-to-energy projects in PPP mode in collaboration with Local Self Government Institutions (LSGIs) across the state vide G. O. (MS) No. 82/ 2018/ LSGD dated June 11, 2018 by the Government of Kerala;
- C. The Ernakulam Cluster comprises of Local Self Government Institutions of Kochi Municipal Corporation, Thrikkakara Municipality, Thrippunithura Municipality, Kalamassery Municipality, Eloor Municipality, Maradu Municipality, Aluva Municipality, Perumbavoor Municipality, Angamaly Municipality, North Paravur Municipality, , Muvattupuzha Municipality, Kothamangalam Municipality, Piravom Municipality, Koothattukulam Municipality (collectively referred to as Participating Local Bodies “**PLBs**”) approached the Department to develop an Integrated Solid Waste Management Project on PPP mode in their respective LSGIs (the “**Project**”);
- D. The Department, PLBs and KSIDC have entered into an Inter-LSGI Agreement dated [●] for implementation of the Project whereby the Department shall discharge the obligations set out herein on behalf of the PLBs.;
- E. The Department on behalf of PLBs desires to develop integrated solid waste management facility with Waste to Energy plant, through public private participation on Design, Build, Finance, Operate and Transfer (DBFOT) basis for the development, operation, maintenance and management of the Project Assets, Facilities and resources required for the integrated solid waste management projects within the jurisdiction of all the PLBs;

- F. The Department, through KSIDC, has invited competitive Request for Proposals from eligible Bidders for implementing the Project and in response thereto received proposals from Bidders including the Selected Bidder for implementing the Project;
- G. The Department, after evaluating the aforesaid Proposals, accepted the Proposal submitted by the Selected Bidder and issued Letter of Award (**LoA**) No. [●] dated [●] to it for developing and managing the Project. The LoA has been duly accepted by the Selected Bidder vide its letter no [●] dated [●]
- H. The Selected Bidder has since promoted and incorporated the Concessionaire ("**Special Purpose Vehicle**" or "**SPV**") as a company under the Companies Act, 2013, and has requested the Department to accept the Concessionaire as the entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project;
- I. The Department, KSIDC and all the PLBs have accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- 1.1.1 **“Abandonment”** means an action on the part of the Concessionaire with the intent not to discharge its reciprocal obligations partly or wholly related to the Project under the Agreement for a
- (i) continuous period of more than 15 (fifteen) days during the Concession Period, or
 - (ii) cumulative period of more than 45 (forty-five) days during the Concession Period other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Authority or any PLB;
- 1.1.2 **“Access Road”** means a motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
- 1.1.3 **“Acceptance of Concession”** means the grant and authorization to the concessionaire mentioned in **Article 2.1**;
- 1.1.4 **“Accounting Year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.5 **“Additional Cost”** means the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire is required to incur, post the Appointed Date, on account of Change in Law;
- 1.1.6 **“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI) applicable to ‘All Commodities’ announced by Government of India, and for any Reference Date occurring:
- (a.) on or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Compliance Date and the Reference Date;

(b.) from Commercial Operation Date (COD) and until the 5th (fifth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c.) after the 5th (fifth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 5th (fifth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

1.1.7 “**Affected Party**” means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 11.1**;

1.1.8 “**Agreement**” or “**Concession Agreement**” means this agreement executed between the Department, the Concessionaire, the PLBs and the Selected Bidder (as Confirming Party) including its Schedules and annexures and includes any amendments made thereto in accordance with the provisions hereof;

1.1.9 “**Applicable Law**” means all laws, acts, ordinances, rules, regulations notifications and guidelines in force and effect, including interalia the Solid Waste Management Rules, 2016, and shall also include judgements, decrees, injunctions, writs or orders of any court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith;

1.1.10 “**Applicable Approvals**” means all the authorizations, licenses, clearances,

permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;

- 1.1.11 **“Appointed Date”** means the date of signing of this Concession Agreement;
- 1.1.12 **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.13 **“Associate”** or **“Affiliate”** means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 26% (twenty six per cent) of the total share capital of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- 1.1.14 **“Bio-methanation”** means a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;
- 1.1.15 **“C&T”** or **“Collection and Transportation”** refers to primary and secondary collection and transportation of Solid Waste from the Project Area to the Processing Facility/ Sanitary Landfill;
- 1.1.16 **“Construction & Demolition (C&D) Debris”** or **“Debris”** means solid waste resulting from construction, re-modelling, repair, renovation or demolition of Structures or from land clearing activities. **“Structures”** for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. **“Debris”** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures;
- 1.1.17 **“Change in Law”** shall have the meaning assigned thereto in **Article 13.1**;

- 1.1.18 **“Commencement Date”** shall have the meaning as assigned to it in **Article 5.2(s)**
- 1.1.19 **“Compliance Date”** means the later of the date by which the Condition Precedent of the Concessionaire, Authority and PLBs under **Article 2.6** are achieved or waived;
- 1.1.20 **“Compliance Period”** shall have the meaning assigned thereto in **Article 2.6.4**;
- 1.1.21 **“Concession”** shall have the meaning as assigned thereto in **Article 2**;
- 1.1.22 **“Concessionaire Event of Default”** shall have the meaning assigned thereto in **Article 14.2**;
- 1.1.23 **“Conditions Precedent(s)”** means Conditions Precedent as specified in **Article 2.6**;
- 1.1.24 **“Commercial Operations Date”** or **“COD”** means the date when the Concessionaire begins commercial operations of the Processing Facility pursuant to issuance of Operational Acceptance Certificate by the Authority;
- 1.1.25 **“Contractor”** or **“Sub-Contractor”** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project;
- 1.1.26 **“CPCB”** means the Central Pollution Control Board of the Government of India;
- 1.1.27 **“Daily Weight Sheet”** shall have the meaning assigned thereto in **Schedule 4**;
- 1.1.28 **“Dead Remains”** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.29 **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a.) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;

- (b.) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c.) any Subordinated Debt disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity; its shall to the extent not converted until date of termination, be deemed to be Debt Due for the purposes of this Agreement. For the Purposes of this Agreement, the term “Subordinated Debt” shall mean the debt provided by lenders or the Concessionaire’s shareholders for meeting the Total project Cost and shall be subordinate to the financial assistance provided by senior lenders.
- 1.1.30 **“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements;
- 1.1.31 **“Designated Bins”** means the collection bins placed by the Concessionaire at locations recommended by the Concessionaire and approved by respective PLB for receiving the Primary Collection & Transportation of Solid Waste undertaken by the PLB’s within the Project Area;
- 1.1.32 **“Dispute”** shall have the meaning assigned thereto in **Article 17.1(a)** hereof;
- 1.1.33 **“Dispute Resolution Procedure”** means the procedure for resolution of disputes as set forth in **Article 17**;
- 1.1.34 **“EIA”** means the Environment Impact Assessment for the Project;
- 1.1.35 **“Emergency”** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to the Project;
- 1.1.36 **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also

include physical encumbrances, including encroachments on the Site;

- 1.1.37 **“Engineered Sanitary Landfill Site” or “Sanitary Landfill Site” or “Sanitary Landfill” or “SLF”** means the Sanitary Landfill Site to be developed, constructed and operated by the Concessionaire at the allocated site in conformance with the terms of this Agreement for disposal of Residual Inert Matter and Rejected Waste; and the site where the Concessionaire conducts a final and safe disposal of Residual Inert Matter, Residual Solid Waste and inert waste, which is designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement;
- 1.1.38 **“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company;
- 1.1.39 **“Event of Default”** shall have the meaning assigned thereto in **Article 12**;
- 1.1.40 **“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub- Accounts of such Escrow Account;
- 1.1.41 **“Escrow Bank”** shall have the meaning as set forth in **Schedule 9**;
- 1.1.42 **“Escrow Agreement”** shall have the meaning as set forth in **Article 10.1.2**;
- 1.1.43 **“Excluded Waste”** means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste (iii) Dead Remains, (iv) E-Waste and (v) construction and demolition waste;
- 1.1.44 **“Financing Agreements” or “Financing Documents”** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents

creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Total Project Cost;

- 1.1.45 “**Financial Default**” means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of 3 (three) months;
- 1.1.46 “**Financial Proposal**” means the final quotation of the Successful Bidder in response to the RFP document, which has been accepted by the Authority, annexed hereto as **Schedule 3**;
- 1.1.47 “**Financial Year**” shall be same as Accounting Year;
- 1.1.48 “**Force Majeure**” or “**Force Majeure Event**” means an act, event, condition or occurrence as specified in **Article 11**;
- 1.1.49 “**GoI**” means the Government of India;
- 1.1.50 “**GoK**” means the Government of Kerala;
- 1.1.51 “**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them or facilities similar to the Project Facilities;
- 1.1.52 “**Government Agency**” means GoI, GoK, PLBs, KSIDC or any State Government or Governmental Department, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or Other Judicial or Administrative body, Central, State, or local, having Jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.53 “**Hand over of Project**” shall have the meaning assigned thereto in **Article 16**;
- 1.1.54 “**Hazardous Waste**” shall have the meaning as defined under the Hazardous

Wastes (Management and Handling) Rules, 1989 and as amended thereto;

- 1.1.55 “**ICT Infrastructure**” shall mean all Information & Communication Technology Infrastructure, equipment and systems (including software, hardware, firmware, networks and websites) including but not limited to sensors, geographical positioning systems, cameras, electronic weigh bridges and associated software, to facilitate the functioning of the project on day to day basis;
- 1.1.56 “**KSEB**” means Kerala State Electricity Board;
- 1.1.57 “**KSERC**” means Kerala State Electricity Regulatory Commission;
- 1.1.58 “**Land Lease Agreement(s)**” means the Agreement(s) pursuant to which, the Site(s) shall be leased to the Concessionaire in its capacity as the lessee, for setting up the Project for the duration of the Term in the format attached as **Schedule 10**;
- 1.1.59 “**Lenders**” or “**Senior Lenders**” means any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing the Total Project Cost as evidenced in Financing Documents;
- 1.1.60 “**Letter of Award**” or “**LOA**” means the letter no. [●] Dated [●], issued by the Authority to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.61 “**MNRE**” means Ministry of New & Renewable Energy, GoI;
- 1.1.62 “**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.63 “**Material Breach**” means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.64 “**Nominated Company**” means the entity that is selected either by the Lenders or by the Authority for substituting the Concessionaire, upon occurrence of Concessionaire’s Event of Default, in terms of the provisions of the Agreement and the Substitution Agreement;

- 1.1.65 **“Operational Acceptance Certificate(s)”** shall refer to the Certificate to be issued by the Authority/Project Monitoring Unit (PMU) as set out in **Schedule 5**, upon successful commissioning and functioning of the Processing Facility;
- 1.1.66 **“Operational Plan”** means a comprehensive plan with location of Designated Bins, their pickup schedule, vehicle planning & scheduling for Secondary Collection and Transportation of Solid Waste in the Project Area, as prepared by the Concessionaire and approved by respective PLB;
- 1.1.67 **“O&M Expenses”** means the expenses incurred in the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement. For the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the O&M Expenses.
- 1.1.68 **“Organic Waste”** means such type of Solid Waste that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.69 **“Participating Local Bodies”** or **“PLBs”** means the under mentioned local bodies (PLBs):
- (a) Municipal Council of Kochi Municipal Corporation (“PLB 1”)
 - (b) Municipal Council of Thrikkakara Municipality (“PLB 2”)
 - (c) Municipal Council of Thrissur Municipality (“PLB 3”)
 - (d) Municipal Council of Kalamassery Municipality (“PLB 4”)
 - (e) Municipal Council of Eloor Municipality (“PLB 5”)
 - (f) Municipal Council of Maradu Municipality (“PLB 6”)
 - (g) Municipal Council of Aluva Municipality (“PLB 7”)
 - (h) Municipal Council of Perumbavoor Municipality (PLB 8)
 - (i) Municipal Council of Angamaly Municipality (PLB 9)
 - (j) Municipal Council of North Paravur Municipality (PLB 10)
 - (k) Municipal Council of Muvattupuzha Municipality (PLB 11)
 - (l) Municipal Council of Kothamangalam Municipality (PLB 12)
 - (m) Municipal Council of Piravom Municipality (PLB 13)
 - (n) Municipal Council of Koothattukulam Municipality (PLB 14)
- 1.1.70 **“P&D”** or **“Processing & Disposal”** refers to Processing & Disposal of Solid Waste collected from the Project Area, as is more clearly defined in **Schedule 1**;
- 1.1.71 **“Performance Security”** means the guarantee for performance of its obligations as

per terms of this Agreement, to be furnished by the Successful Bidder (or the Concessionaire), in accordance with **Article 5.1** in the format given at **Schedule 6**;

- 1.1.72 **“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, society, unincorporated organization, government or government body or any other legal entity;
- 1.1.73 **“Post Closure Activities”** means the activities to be undertaken by the Parties after closure of SLF;
- 1.1.74 **“Post Closure Period”** means a period of twenty five (25) years starting from the date of Closure of the specific cell of the Engineered SLF during which Post Closure Activities are to be undertaken;
- 1.1.75 **“Post-COD Period”** means the period starting on and from the COD and ending on the Transfer Date;
- 1.1.76 **“Power Tariff”** shall have the meaning given in Article 9.3;
- 1.1.77 **“Pre-COD Period”** means the period commencing from the Commencement Date and extending up to the COD;
- 1.1.78 **“Preliminary Notice”** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.79 **“Primary Collection and Transportation”** means the door to door collection, collection from public spaces, street cleaning and delivering to the to the Designated Bins provided by the Concessionaire at the designated collection points, undertaken by the PLBs;
- 1.1.75 **“Processing Plant/ Processing Facility”** means the facility created by the Concessionaire for processing of the Solid Waste, prior to its final disposal at Engineered Sanitary Landfill Site, and also includes a Refuse-Derived Fuel (RDF), Bio-methanation, Incineration or any other approved technology for waste processing or any combination thereof for a waste-to-energy plant of a processing capacity of 300 TPD of solid waste and a production capability of 5 MW of power ;
- 1.1.76 **“Project”** shall mean the collection, transportation, processing and disposal of

Solid Waste from Waste Generators in the Project Area and discharging the Scope of Services more specifically set out in **Schedule 1**;

- 1.1.77 **“Project Agreements”** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project, including without limitation the Land Lease Agreement(s).
- 1.1.78 **“Project Area”** means the area presently under boundaries of the PLBs or any extension thereof during the Term;
- 1.1.79 **“Project Assets”** means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites and Secondary Collection Points in the form of lease and/ or license rights (as applicable), Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, grievance redressal centre, Processing Facility, electrical systems, communication systems, transport vehicles, Designated Bins, ICT infrastructure and administrative office; (c) Project Facilities situated on the Sites and Secondary Collection Points; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Approvals and authorizations relating to or in respect of the Project;
- 1.1.80 **"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, ICT infrastructure, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.81 **Project Monitoring Unit” or “PMU”** means the unit set up by the Authority as specified in **Article 4.1** to monitor and supervise the activities of the Concessionaire;
- 1.1.82 **“Proprietary Material”** shall be as defined in **Article 19.1**;
- 1.1.83 **“Rate of Inflation”** for any Year, shall mean the average inflation rate as measured by the All India Consumer Price Index – Industrial Workers (“AICPI-IW”) for the immediately preceding Year as published by the Ministry of Statistics and Programme Implementation, and shall include any index which substitutes the AICPI-IW

- 1.1.84 **“Residual Inert Matter”** means the inert matter left for final disposal in Engineered Sanitary Landfill Site after processing of the Solid Waste by one or more of the relevant Project;
- 1.1.85 **“Residual Solid Waste”** means and includes the waste and rejects from the Solid Waste which are not suitable for recycling or further processing;
- 1.1.86 **“Rupees” or “Rs”** refers to the lawful currency of the Republic of India;
- 1.1.87 **“Schedules”** means any of the annexures, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.88 **“Sanitary Land Fill” or “SLF”** means the site/s where the Concessionaire conducts a final and safe disposal of Residual Inert Matter, Residual Solid Waste and inert waste, which is designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement;
- 1.1.89 **“Secondary Collection Points”** means Designated Bins and other collection points, areas of any land, constructed space allocated by PLBs, if any, in consultation with the Concessionaire to temporarily store the Solid Waste collected;
- 1.1.90 **“Share Transfer Agreement”** means the agreement to be entered into between the shareholders of the Concessionaire (in case the Successful Bidder is a consortium) for transfer of equity shareholding of the Concessionaire to the members of the consortium formed by the Successful Bidder;
- 1.1.91 **“Site”** means the identified land parcel, in respect of which the Concessionaire shall be granted Lease Hold Right in accordance with terms hereof and provisions of the Land Lease Agreement(s), for undertaking development/construction of Processing Facilities, Sanitary Landfill sites; provided that initially the lease and possession of land area shall be limited to the land parcels as would be required for development of Processing Facilities and first SLF, and thereafter periodically during the concession period, as and when the possession of relevant land area (that would be required for new SLFs, and as approved by PMU) is made available to Concessionaire in tranches, such land shall be deemed to form part of Site for all purposes specified hereunder and under the Land Lease Agreement. [In this

regard, it is further clarified that the maximum aggregate land areas comprising the Site, shall not exceed those as mentioned in the Land Lease Agreement];

- 1.1.90 **“Solid Waste”** means solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the jurisdiction of PLBs, and shall include solid waste and Organic Waste;
- 1.1.91 **“SPCB”** means State Pollution Control Board particularly Kerala State Pollution Control Board (KSPCB);
- 1.1.92 **“Substitution Agreement”** is an agreement that may be executed between the Concessionaire, the Authority and the Lenders in the form set out in **Schedule 8**, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire’s roles and responsibilities under this Agreement;
- 1.1.93 **“Secondary Collection and Transportation”** means the transportation of Solid Waste from the collection points and Designated Bins in the Project Area to the Processing Facility/ Sanitary Landfill, by the Concessionaire, following from Primary Collection and Transportation by the PLBs;
- 1.1.94 **“Selected Bidder” or “Successful Bidder”** means the Entity selected by the Authority through a competitive bidding process for implementing and managing the Project;
- 1.1.95 **“Supplementary Fuel”** means any fuel that can be used as a supplement to the Sold Waste to enrich RDF / fuel during commissioning / start of activities. Use of supplementary fuel would be permissible as per MNRE guidelines;
- 1.1.96 **Swacch Bharat Mission (SBM) Grant** as defined **Article 2.6.1(e)**;
- 1.1.97 **“SWM Rules”** means the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time;
- 1.1.98 **“Tax”** means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);

- 1.1.99 “**Term**” means the time period of Twenty Seven (27) years commencing from the Compliance Date and to the extent extended by any permitted time extensions as expressly provided under the terms of this Agreement;
- 1.1.100 “**Termination**” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- 1.1.101 “**Termination Date**” means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.102 “**Termination Notice**” means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.103 “**Termination Payments**” means the payments payable pursuant to **Article 11.9** and **12.5** of this Agreement;
- 1.1.104 “**Third Party**” means any Person other than the Parties to this Agreement;
- 1.1.105 “**Tipping Fee**” shall have the meaning given in Article 9.1;
- 1.1.106 “**Total Project Cost**” means the lowest of the following:
- i. Project Cost as set forth in the Financing Documents as executed with Lenders; or
 - ii. Actual capital cost of the Project, upon completion of construction of the Project as certified by the Statutory Auditors.
- 1.1.107 “**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated early by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.108 “**Tests**” means the tests to be carried out by the Concessionaire at its cost, in the presence of PMU as may be required for getting Statutory clearances / Approval or asked by PMU in respect of the Processing Facility and SLF to ensure that the same confirms to the requirements as per Good Industry Practice and Applicable Law or Applicable Approvals;

- 1.1.109 “**Authority Event of Default** ” shall have the meaning assigned thereto in **Article 14.3**;
- 1.1.110 “**Vacant Possession**” means delivery of possession of the Site free from all Encumbrances to the Authority and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;
- 1.1.111 “**Waste Generators**” means all residential, commercial, institutional and industrial establishments generating Solid Waste and located within the Project Area;
- 1.1.112 “**Waste to Energy**” means all activities, processes and technologies of converting Solid Waste into Electricity for commercial use;
- 1.1.113 “**Weighbridge**” means the electronic weighbridge capable of performing the operations to meet the Concessionaire obligations as specified in **Article 5**.

Interpretation

- 1.2.1 In this Agreement, unless the context otherwise requires:
- (i) the words, phrases and expressions defined hereinabove in **Article 1.1** or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said **Article 1.1** or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
 - (ii) references to any legislation or any provision thereof shall include amendment or re- enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (iii) references to laws of India or Indian law or regulation having the force of law shall include the Laws, Acts, Ordinances, Rules, Regulations, Bye laws or Notifications which have the force of law in the territory of India

and as from time to time may be amended, modified, supplemented, extended or re-enacted;

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

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the PLBs and/or the PMU shall be provided free of cost and in three copies, and if the Authority and/ or the PLBs and/or the PMU is required to return any

such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

Measurements and arithmetic conventions

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

Priority of agreements, Articles and Schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.2.7 Subject to the provisions of **Article 1.2.6**, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) Between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- (c) Between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) Between the written description on the Drawings and the Specifications

and Standards, the latter shall prevail; and

- (e) Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: THE CONCESSION AND CONDITIONS PRECEDENT

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Authority and PLBs hereby grant and authorize the Concessionaire to design, build, finance, operate and transfer (DBFOT) the Project and to exercise and/ or enjoy such rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (“the **Concession**”) for a period of 27 (Twenty Seven) years commencing from the Compliance Date and the concessionaire hereby accepts the concession and agrees to implement the project subject to and in accordance with the terms and conditions set forth herein.

2.2 Rights Associated with the Grant of Concession

Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall entitle the Concessionaire to enjoy, the following rights, privileges and benefits in accordance with the provisions of this Agreement and Applicable Laws:

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

Provided that the Authority shall be informed by the Concessionaire as to the creation of any security interest in favour of the Lenders within a period of 14 (fourteen) days from the date such security interest comes into existence and

provide to the Authority within such time, notarized true copies of any and all documents/ agreements relating thereto.

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

- (d.) To collect, segregate and process entire Solid Waste from the Project Area and dispose-off the Residual Inert Matter and Rejected Waste/ processing rejects in SLF and / air pollution control residue in secured landfill;
- (e.) To store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the Solid Waste, including but not limited to recyclables, electricity, methane (biogas), RDF, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- (f.) To retain the fiscal incentives and benefits accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative;
- (g.) To obtain the utilities required for enabling the construction of the Project, by fulfilling eligibility conditions (if any) and paying the applicable charges for the utilities;
- (h.) To exclusively hold, possess, control the Site, in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;
- (i.) To appropriate, possess, control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing on Secondary Collection Points and Sites with reference to Solid Waste management in Project Area;

- (j.) To develop the Project using such technology to establish a Waste to Energy plant having a processing capacity of 300 TPD and a production capability of 5MW gross power and to retain and appropriate any revenues generated from the sale of energy; such technology should be suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, SWM Rules and Good Industry Practice;
- (k.) To modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facility, Good Industry Practices and the requirements of the Project except in respect of the building byelaws, subject to no disruption in services and obligations;
- (l.) The Concessionaire may, subject to fulfilling the eligibility conditions and procuring all required approvals from related regulatory/ statutory authorities, develop, operate and maintain additional recycling or processing facilities on the Project site, provided that the same does not cause any adverse effect on its Project related obligations or increases in any manner the financial liability (including in relation to land requirement) of the Authority and/or PLBs under the Agreement. In the event and so long as the Concessionaire meets the foregoing conditions, the Authority shall render such reasonable assistance that Concessionaire requests in this connection.

2.3 Concession Period

The Concession Period shall be for a period of 27 years from the Compliance Date ("**the Concession Period**") during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for integrated management of Solid Waste in accordance with the provisions hereof:

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination Date.

2.4 Renewal of Concession

The Authority, may in its sole discretion, in the event the Concessionaire does not commit any Event of default during the last 5 years of the term, agree to extend the

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

2.5 Acceptance of Concession

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

2.6 CONDITIONS PRECEDENT

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

2.6.1 Conditions Precedent for the Authority

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

- (a) Executed and procured execution of Substitution Agreement;
- (b) Facilitated and ensured that Land Lease Agreement(s) are executed for the Project Site and vacant and unencumbered possession of all the Site(s) is handed over to the Concessionaire.
- (c) Facilitated the Concessionaire in terms of obtaining all Applicable Approvals from the Departments concerned/ Competent Authority, if requested by the Concessionaire;
- (d) Provided assistance and facilitated in execution of PPA between the Concessionaire and KSEB;
- (e) Provided assistance and facilitated in seeking approval for capital grant assistance for the Concessionaire from GoI under Swacch Bharat Mission and provided corresponding grant approval as required from GoK;
- (f) Provided Access Roads to the Site as per Good Industry Practices; and
- (g) Executed of Inter-LSGI Agreement between the Authority and PLBs.

2.6.2 Conditions Precedent for PLBs

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

- (a) Finalized and allocated Secondary Collection Points, if any, in the Project Area in consultation with the Concessionaire;
- (b) Facilitated and ensured that Land Lease Agreement are executed for Site (under their jurisdiction);
- (c) The proposed locations of the Designated Bins are finalised and provided to the Concessionaire in consultation with him;
- (d) Executed Inter-LSGI Agreement between the Authority and PLBs;

2.6.3 Conditions Precedent for Concessionaire

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

- (a) Provided a certified true copy of its constituent documents;
- (b) Prepared and submitted a Detailed Project Report, covering technology proposed, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, project financing details, revenue projections, environment & social impact assessment and detailed financial analysis, to the Authority, consistent with the technical plan submitted during the bidding stage within 3 months from Appointed Date;
- (c) Achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds thereunder;
- (d) Finalized and taken over Secondary Collection Points in the Project Area in consultation with the PLBs;
- (e) Provided notarised true copies of its board resolution authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- (f) Executed and procured execution of Escrow Agreement in terms of **Article 10**;
- (g) Executed and procured execution of Substitution Agreement;
- (h) Confirmed that all the representations and warranties of the Concessionaire/ Successful Bidder set forth in the Proposal of the Successful Bidder and in this Agreement are true and correct;
- (i) Executed the Land Lease Agreement(s) and taken over vacant and unencumbered possession of all the Site(s) from the Authority and PLBs;

- (j) Made an application to Kerala State Electricity Regulatory Commission (the “Power regulator”) for fixing power tariff for the Waste Processing Plant to be paid by KSEB, as provided Power Purchase Agreement (PPA) signed between Concessionaire and KSEB separately; and
- (k) Procured at its own cost, water connection, power connection and other service connections to the Site.

Provided that upon request in writing by the Concessionaire, the Authority / PLBs may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article 2.6.

2.6.4 **Satisfaction of Conditions Precedent**

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 180 (One Hundred & Eighty) days from the Appointed Date (the “**Compliance Period**”) unless specified otherwise;
- (b) The later of the date within such time when the Authority, PLBs or the Concessionaire fulfils its Conditions Precedent (unless the Authority waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (“**Compliance Date**”) respectively.

2.6.5 **Non-Compliance with Conditions Precedent**

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

option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for the Authority / PLBs or (ii) terminate this Agreement. In the event of termination, the Authority shall pay to the Concessionaire, reasonable development costs, as determined through the mechanism enumerated below. In case of extension of time period for fulfilment of Conditions Precedent for PLBs beyond a period of 180 (One Hundred and Eighty) days from the Appointed Date, the Concession Period shall be proportionately extended for the same period. Parties hereby agree that for determination of the said development cost, the Authority may appoint a financial consultant for determining such development cost, whose determination shall be final, conclusive and binding. The Parties shall share the cost of such financial consultant. For the purpose of this clause the term “Development Cost” shall mean the reasonable cost (if any) incurred by the Concessionaire and as determined in terms above in relation to and limited to any physical development of the project site;

- (d) In the event this Agreement fails to come into effect on account of the non-fulfilment of the Authority / PLBs’ Conditions Precedent, the Authority shall in addition to payment of development cost in terms of sub-clause (c) above, shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Authority on the Concessionaire.
- (e) Instead of terminating this Agreement as provided in this **Article 2.6**, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent. In the event of such extension in time for fulfilling Conditions Precedent, the Concession Period shall also be extended proportionately.

ARTICLE 3: SITE(S)

3.1 Handover of sites

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

3.2 Rights, Title and Use of the Sites

- (a) The Concessionaire shall have the right to the use of the Sites in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- (b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project and Project Facilities, including the Sites save and except as set forth and permitted under this Agreement.

- (c) The Concessionaire shall not, without the prior written approval of the Authority, use the Sites for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (d) The Concessionaire shall allow free access to the Sites to any authorized officer of the Authority / PMU and PLBs for inspection of the Sites and the works being undertaken by the Concessionaire.
- (e) The Concessionaire shall allow access to and use of the Sites for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as the PMU may specify.

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

3.3 Peaceful Possession

The Authority and PLBs hereby warrant that:

- (a) The Sites together with the necessary right of way/way-leaves have been acquired through the due process of law; belong to, or has been leased to the Authority / PLBs and is vested in the Authority / PLBs and that the Authority / PLBs have full powers to hold, dispose of and deal with the same consistent with the provisions of this Agreement. For the avoidance of doubt the Concessionaire shall, in respect of the Sites, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/ resettlement of any Persons affected thereby.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession of land provided by the Authority / PLBs. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Sites or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Sites or any part thereof, the Authority / PLBs shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on

account of any such right, title, interest or charge.

3.4 Applicable Approvals

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

ARTICLE 4: PROJECT MANAGEMENT UNIT

4.1 Composition

The 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. There shall be an Apex Project Management Unit at State Level constituted by the Authority.

4.2 Duties and functions

The PMU shall have the overall responsibility of monitoring and supervision of the Project. The detailed terms and conditions for appointment of Project Management Unit and its rights, responsibilities and scope of services are specified in Schedule 7. The PMU shall coordinate with the Authority and keep them updated on all activities and approvals accorded to the Concessionaire on a regular basis.

Further, any event of default by PMU as part of its obligations shall be treated as Authority Event of Default and its consequence thereof.

4.3 Remuneration

The remuneration, cost and expenses of the PMU shall be borne by the Authority only.

4.4 Replacement

The Authority may, in its discretion, terminate the appointment of any member in the PMU, other than the Concessionaire's representative, at any time and appoint another member in his place.

4.5 Tenure

The tenure of the PMU shall commence from the date of its constitution during the Compliance Period and extend up to the Transfer Date, unless the Agreement is terminated earlier in terms hereof.

ARTICLE 5: THE CONCESSIONAIRE'S OBLIGATIONS

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

5.1 Performance Security

- (a.) The Concessionaire shall for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee from a scheduled bank in India, in favour of the "Managing Director, Kerala State Industrial Corporation Limited", in the form as set out in Schedule 6, ("**Performance Security**") for a sum of Rs. 10,00,00,000 (Ten Crore only) till the Commercial Operations Date ("**COD**"). Post COD, the Performance Security shall be reduced to Rs. 5,00,00,000 (Five Crore only) till the end of Concession Period or till the Termination Date, as the case may be.
- (b.) The Performance Security shall be kept valid and in force for the entire duration of the Concession Period, through periodical renewals, at least one month prior to the expiry of the subsisting Performance Security. In the event the Concessionaire fails to provide the renewed/ extended/ enhanced performance security at least 1 (one) month prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Authority shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Concessionaire Event of default in terms hereof.
- (c.) In the event, the Concessionaire is in default or breach of the due, faithful and punctual performance of its obligations under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Authority for or against the Concessionaire under this Agreement or against the Authority in respect of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of services within the time period specified herein, or in respect of any dues, demands, damages or claims against the Concessionaire.

- (d.) The decision of the Authority as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the PLBs under this Concession Agreement is required to be provided in connection with any demand made by the PLBs to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.
- (e.) In the event of encashment of the Performance Security by the Authority, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from the Authority provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle the Authority to terminate this Concession Agreement in accordance with the provisions hereof.
- (f.) Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall subject to the Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

5.2 General Obligations

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in Schedule 1 and under this Agreement and the Selected Bidder's obligations under the LOA;
- (b) to comply with the time lines for setting up the plant, collection of waste etc. as set forth in Schedule 1;
- (c) obtain all Applicable Approvals as required by or under the Applicable Law

and be in compliance thereof at all times during the Concession Period;

- (d) comply with Applicable Law (including without limitation all public and labour related laws and health, safety, and sanitation laws, as then in force) governing the operations of Project at all times during the Concession Period;
- (e) endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers, procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- (g) develop, construct and operate the Sanitary Landfill Site at the allocated site in conformance with the terms of this Agreement for disposal of Residual Inert Matter and Rejected Waste and dispose not more than 10% (Ten percentage) of waste processed;
- (h) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the PLBs indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall the PMU/ Authority and/ or any of the PLBs be treated as the employers of the Concessionaire, in this regard;
- (i) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period;
- (j) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (k) upon receipt of a request thereof, afford access to the Project to the authorised representatives of the PMU/ Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (l) bear all expenses towards uniforms, safety gear and waste handling

equipment to all the waste lifters and drivers;

- (m) ensure that the project is operational on all calendar days of the year;
- (n) be responsible for the conduct of its staff employed for this project while on duty;
- (o) shall obtain approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;
- (p) to operate, maintain, repair and renovate the project assets and project facilities, in accordance with, *inter alia*, the Applicable Laws, Applicable Approvals and the requirements;
- (q) submit the Operational Plan to the PLBs at least 1 month before proposed Commencement Date and get the same approved;
- (r) commence Secondary collection and transportation of the Solid Waste from the Designated Bins and collection points within the project area at least 30 days prior to COD;
- (s) intimate to the PMU and the PLBs the date of commencement of the Secondary Collection and Transportation (“Commencement Date”) at least 2 weeks in advance, and place the Designated Bins at the locations at least 2 (two) days before actual date of commencement of Secondary Collection and Transportation Services;
- (t) procure, acquire and put into place at its own cost and expenses all the project assets and project facilities required by the Concessionaire to implement the project during the Pre- COD Period so as to achieve COD within the time stipulated in this Agreement;
- (u) promptly rectify and remedy any defects or deficiencies, if any pointed out by the PMU in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the PMU;
- (v) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Schedule 2;
- (w) to carry out all necessary test(s) and get the approvals as per Applicable

Law and in conformity with Good Industry Practices, prior to achieving COD;

- (x) pay all taxes, duties and outgoings, including utility charges relating to the project;
- (y) transfer the project to the Authority upon expiry or early termination of this Agreement, in accordance with the provisions thereof;
- (z) provide live GPS feed of movement of transportation vehicles, camera feeds at weighbridge of Project Site to the PMU, as and when sought by the PMU;
- (aa) be responsible and indemnify the Authority/ PMU/ PLBs for any accident due to negligence or otherwise in the performance of the project;
- (bb) submit compliance as required to environmental agency and shall provide all information related to project as would be required by the PMU/ Authority/ PLBs pursuant to any RTI query or any issue raised in State Assembly/ Parliament; and

5.3 No Breach of Obligations

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

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

5.4 Penalties & Damages

In case the Concessionaire fails to fulfil the obligations as set out under this Agreement, penalties for non-fulfilment/ damages shall be imposed according to provisions contained in at Schedule 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the aggregate Liquidated damages levied in terms hereof on the Concessionaire by the Authority exceeds at

Rs.10,00,000/- (at Rupees. Ten Lakhs) in any quarter, the same shall be deemed as Concessionaire Event of Default and shall make the Agreement liable for termination.

5.5 Obligations of the Selected Bidder

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

- (a) arranging the financing for the project, including mobilisation of debt and Equity;
- (b) facilitate procurement of Applicable Approvals for commencing and implementing the Project;
- (c) facilitate award of project Agreements in respect of engineering, procurement, construction and operation and maintenance of the Project;
- (d) ensure timely implementation of the project in accordance with the provisions of this Agreement, as per the standard specifications, the Applicable Laws, the terms of the Applicable Approvals and Good Industry Practice;
- (e) compliance with and implementation of the environment management plan;
- (f) compliance with the provisions of this Agreement relating to liability and indemnification; and
- (g) facilitate implementation of measures for safety, security and protection of the works, property, life and materials at the project site and the environment.

5.6 Concessionaire's Representative

The Concessionaire shall deploy a representative on its behalf to be designated as the Team Leader who shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in charge to ensure implementation of the project in accordance with the provisions hereof. The team leader shall closely co-ordinate with the PMU/ Authority/ PLBs and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out by the Project Management Unit during routine inspections and project review meetings and submit action take report to the Project Management Unit/ PLBs within a

period not later than 7 (seven) days from the date of conveying of such defect/shortcoming. The team leader or its nominee shall make themselves available for meetings as and when called upon by the Project Management Unit/PLBs.

5.7 Sole purpose of the Concessionaire

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

5.8 Employment of trained personal

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

5.9 Obligations relating to Project Agreements

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

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

- (c) The Concessionaire shall ensure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of termination. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 30 (thirty) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the covenant shall expressly provide for such eventuality.
- (d) The Concessionaire expressly agrees to include a covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where undersuch counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination.

5.10 Equity Lock-in requirements

The Concessionaire acknowledges that:

- (a) The Selected Bidder shall hold 100% shareholding in the paid-up equity capital of the Concessionaire until expiration of 1 year from COD, 51% shareholding in the paid up equity capital until expiration of 10 years from COD and thereafter 26% shareholding in the paid up equity capital during the remaining Concession period.

Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the “Lead Member”) of such Consortium and, a member of the Consortium meeting either technical capacity or financial

capacity shall have an equity share holding of at least 51% (fifty one percent) of the paid up Equity capital of the concessionaire and that all the members of the consortium together shall hold 100% equity capital of the Concessionaire, until expiry of 1 year from COD, 51% shareholding in the paid up equity capital until expiration of 10 years from COD and thereafter 26% shareholding in the paid up equity capital during the remaining Concession period.

Provided further that a member of the Consortium meeting either technical capacity or financial capacity shall subscribe at least 26% (Twenty Six Percent) or more of the paid up and subscribed equity of the SPV, until 02nd (second) anniversary of the COD for member meeting technical criteria of until 01st (first) Anniversary for member meeting financial criteria. .

- (b) Any violation in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire's Event of Default.

ARTICLE 6: FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT

6.1 General Obligations

- 6.1.1 The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders for the same.
- 6.1.2 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 180 (one hundred and eighty days) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1 (zero point one per cent) of the Performance Security for each day of delay.
- 6.1.3 Damages specified herein shall be payable every week in advance and the period beyond the said 180 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Closure has occurred solely as a result of any default or delay by the Authority or any of the PLBs in procuring satisfaction of the Conditions Precedent specified in Article 2.6 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of penalties.
- 6.1.4 The Concessionaire shall, upon occurrence of Financial Closure, notify the PMU/ Authority forthwith, and shall have provided to the PMU / Authority, at least 2 (two) days prior to Financial closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

6.2 Termination due to failure to achieve financial closure

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial closure does not occur, for any reason whatsoever, within the period set forth in Article 6.1.2 or the extended period provided

thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the financial closure, the provisions of this Article 6.2 shall not apply.

6.3 Substitution Agreement

6.3.1 This Agreement shall not be assigned by the Concessionaire Provided however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Schedule 8.

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

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

ARTICLE 7: AUTHORITY AND PLB'S OBLIGATIONS

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

7.1 Specific Obligations

The Authority shall:

- (a.) identify and earmark / allocate parcel(s) of land, by itself or by PLBs, within or outside the Project Area for the purpose of setting up of secondary collection points (optional), Processing Facility and Sanitary Landfill for scientific management of Solid Waste;
- (b.) facilitate in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from the PMU / Authority and/ or the PLB under this Agreement, in connection with implementation of the Project and the performance of its obligations;
- (c.) constitute and make it operational, a Project Management Unit ("PMU") through the Department who shall monitor, supervise, and review Concessionaire's progress details/ activities on behalf of Authority. The Concessionaire shall submit monthly reports to the PMU regarding progress of the Project. The PMU shall validate the data provided by the Concessionaire in monthly progress reports;
- (d.) The Authority shall undertake on its own or through a Third Party Monitoring Entity (Independent Engineer) the Development and Management of Information Communication and Technology (ICT) and IOT (with sensors and video analytics) infrastructure for monitoring the project, including but not limited to, GPS tracking of vehicles, Sensor based weight measurement in transportation vehicles, electronic weigh bridges at Project Site, surveillance cameras at project site etc. and a central command centre for all Waste Management Projects in Kerala;
- (e.) make timely payments as prescribed in Article 9;
- (f.) shall provide minimum tonnage of 300 Tonnes Per Day (TPD) of total Solid

waste other than excluded waste from project areas of PLBs to the Concessionaire on all days of the year during concession period. In case LSGI fails to ensure the minimum assured quantity as set under this Agreement, as evidenced by measurement at the weighbridge checked daily by PMU and/or Concessionaire, the Concessionaire shall be liable to claim penalties for non-fulfilment/ damages, calculated at 25% of the corresponding year Tipping fee per ton for each ton of shortfall. The penalty shall be payable only if the monthly average of quantity received at the site is below 90% of assured quantity.

In case the failure is for more than 3 months in a year, the same shall be considered as Authority Event of Default.

7.2 The PLBs shall

- (a.) observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;
- (b.) handover to the Concessionaire within 20 (Twenty) months of the date of signing of Concession Agreement, the existing infrastructure of secondary collection points on an 'as is where is' basis, if any;
- (c.) identify and earmark / allocate parcel(s) of land within the project area for the purpose of setting up of Processing Facility and Sanitary Landfill for Solid Waste management;.
- (d.) facilitate in a timely manner all such approvals, permissions and authorisations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorisation for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by the PLBs within 30 (thirty) days from receipt of such request from the Concessionaire, subject to the conditions of the applications / details submitted being complete and correct.
- (e.) approve the Operational Plan within a week of its submission by the Concessionaire;
- (f.) make available at the Designated Bins, on a daily basis, Municipal Solid Waste of the corresponding area, through primary collection by door-to-door, street

sweeping waste, drain de-silting or otherwise, segregated at source as agreed with the concessionaire;

- (g.) agree with the Concessionaire that any of its officers, employees or workmen shall not, at any time, during the Concession Period interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.

ARTICLE 8: MONITORING AND INSPECTION

8.1 During Pre-COD Period

8.1.1 Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the PMU, a monthly report bringing out in detail the progress made by the Concessionaire and also organise monthly review meetings with respect to its scope of work, including inter-alia the processing facility (including the Power Plant), project facilities and any such information as may be considered essential by the PMU.

8.1.2 Inspection

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

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

8.1.3 Tests

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

In the event that results of any tests conducted under this Article 8.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the PMU in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 8.1.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the PMU forthwith.

8.2 Post COD period

8.2.1 Monthly Status Reports

During Post COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to the PMU a monthly report stating in reasonable detail the condition of the project including its compliance or otherwise with the maintenance requirements, the quantity of Solid Waste collected, processed & disposed and shall promptly give such other relevant information as may be required by the PMU. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

8.2.2 Inspection

The PMU shall inspect or cause to be inspected the execution of the Project at least once a month. It shall make a report of such inspection (the “**Post COD Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with reference to the maintenance requirements, maintenance manual², performance parameters or requirements as set forth in this Agreement including Schedules/ Schedules, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the PMU shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

The Authority shall undertake on its own or through a Third Party Monitoring Entity (Independent Engineer) the Development and Management of Information

² Maintenance manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

Communication and Technology (ICT) and IOT (with sensors and video analytics) infrastructure for monitoring the project, including but not limited to, GPS tracking of vehicles, Sensor based weight measurement in transportation vehicles, additional electronic weigh bridges at project site, surveillance cameras at project site etc. and a central command centre for all Waste Management Projects in Kerala.

8.2.3 Remedial measures

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

In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the PMU/ Authority shall be entitled to recover Damages from the Concessionaire at the rate of 0.1% (Zero point One percentage) of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the PMU/ Authority.

8.2.4 Authority's right to take Remedial measures

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

8.2.4.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Article 8.2.4.1 directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment

from the Escrow Account in accordance with the instructions of the Designated LSGI under this Article 8.2.4.2. Any demand from the Authority stating that a specified amount is payable shall be final, binding and conclusive on the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

ARTICLE 9: PAYMENTS

9.1 Tipping Fee

- 9.1.1 Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Authority agrees and undertakes to pay to the Concessionaire fixed charges of Indian Rupees (Tipping fee) per ton of MSW collected in the Project Area and transported to the Processing / disposal site by the Concessionaire during the Post COD period.
- 9.1.2 Post COD Period, the Authority agrees and undertakes to pay to the Concessionaire charges of Indian Rupees [Tipping fee] per ton of MSW collected in the Project Area and transported to the Processing Facilities by the Concessionaire. This amount will be escalated at the Rate of Inflation as per 9.1.4, for each fiscal year during the Term of this Agreement.
- 9.1.3 The amount will be paid on the basis of actual transportation of MSW carried out by the Concessionaire and the invoice shall be verified by the PMU. The Concessionaire shall raise monthly invoice and attach daily weights sheets of the electronic weighbridge installed at the entrance of the Sanitary Landfills/ Processing Facilities site, duly verified and approved by the PMU.
- 9.1.4 The Tipping Fee shall be varied each year in the month of April (FY) in proportion to change in Consumer Price Index, issued by Ministry of Statistics and Program Implementation, Govt of India.

9.2 Financial Assistance as per the guidelines of Swacch Bharat Mission

- 9.2.1 Authority will facilitate in obtaining any eligible financial assistance as per the prevailing guidelines of Swacch Bharat Mission (SBM) – Urban 2017, or any prevailing schemes of Ministry of Housing & Urban Affairs, GOI. The concessionaire shall prepare and submit to the Authority for approval, a DPR, covering the collection mechanism, technology for processing, detailed project costing and the capital investment plan.
- 9.2.2 The financial assistance as approved and released by SBM, MoH&UA and the corresponding GoK share if any will be released as reimbursement to the concessionaire based on the progress of project development and on recommendation of

the PMU.

9.3 Power Tariff

9.3.1 Payment shall be made by Kerala State Electricity Board (KSEB) or any other power utility company of Government of Kerala on a tariff approved by Kerala State Electricity Regulatory Commission (KSERC) or revised tariff from time to time, for the number of units generated and made available at Bus Bar of the Waste Processing Plant as per the Power Purchase Agreement (“PPA”) signed between Concessionaire and KSEB.

9.4 Payment mechanism

9.4.1 KSIDC shall be the payment agency for all kind of payments, except Power tariff, that are required to be made to the Concessionaire, as envisaged in this Concession Agreement, based on instructions issued by the PMU/ Authority.

9.4.2 The Power Tariff shall be paid to the Concessionaire by KSEB as per signed PPA, at a power tariff provided in Article 9.3.1;

9.4.3 For the payments as provided in Article 9.1, The Concessionaire shall raise by 5th day of a Month, the bill/ invoice for the Tipping Fee for the preceding month. The invoice thus raised shall, subject to due performance by Concessionaire and other terms and conditions of this Agreement, shall be approved by the PMU / Authority by 15th of the month and directed to KSIDC for release of payment.

9.4.4 The Authority shall deduct/ withhold the following during the Concession Period:

- i. Statutory deductions as per applicable rules and laws.
- ii. Any penalties based on the Service Level Benchmarks, as specified in Schedule 2.

9.4.5 KSIDC shall, subject to the terms of this agreement, pay 90% of the bill amount, to the Concessionaire by the end of the month in which the bill has been raised. The remaining 10% of the bill amount shall be paid by KSIDC by the end of the third month, subject to deductions as applicable and approved by the PMU/ the Authority.

9.4.6 KSIDC shall, subject to terms of this Agreement, pay the amount against bills of the Concessionaire through the Escrow Account mechanism by deposit of the relevant amount in the Escrow. Further, subject to due performance of obligations by the Concessionaire, KSIDC shall, by way of additional security for payment, deposit and

maintain at all times, an amount equivalent to fee corresponding to next three months payment in the Escrow Account.

9.5 Revenue from sale of Fertilizer/ Recyclable/ Reusable etc.:

- 9.5.1 The Concessionaire, may produce products such as Refused Derived Fuel (RDF) from Solid Waste, Fertilizers from Bio-methanation or similar products, with or without any value addition in Solid Waste received, or aggregate Recyclable/ Reusable materials which have potential to be sold in market directly or indirectly, subject to meeting relevant laws and provisions stipulated by Government of India or Government of Kerala during Condition Precedent and Post-COD period. The Concessionaire is free to sell in corresponding markets and shall be entitled to appropriate/ retain in whole or any part of the revenue accrued from such sale;
- 9.5.2 The Concessionaire, may segregate the non-usable and non-biodegradable waste viz. Plastic, Metal, Glass, Electronics and Other items and sell them to re-processors/ recyclers/ Govt. authorized agencies or recycle/ reprocess through recycling/ reprocessing facilities directly or indirectly within the allotted site and other wastes such as Rubber, Tyre, Upholstery, Bags etc. may be sold to cement or other factories as energy source. The Concessionaire shall be entitled to appropriate/ retain whole or any part of the revenue accrued from such sale ore recycle or reprocess.

ARTICLE 10: ESCROW ACCOUNT

10.1 Escrow Account

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

10.1.2 The nature and scope of the Escrow Account as fully described in the Agreement to be entered into amongst the Concessionaire, KSIDC, the Escrow Bank and the Senior Lenders (if any) through the Lenders’ Representative, shall be substantially in the form set forth in Schedule-9 (the “**Escrow Agreement**”)

10.2 Deposits into Escrow Account

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

- (a.) all funds constituting the financial package disbursed by Lenders in terms of the Financing Agreements;
- (b.) all revenues from or in respect of the Project including amount received under power payments received from KSEB as per Article 9.2.1 and Tipping Fee payments received from the Authority as per Article 9.1 and additional revenue received as per Article 9.3 & 9.5, and insurance claims;

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

The Authority shall at all times and in any month of the Concession, ensure that in the Reserve Sub-Account (“**Reserve Fund**”) under the Escrow Account, an amount equivalent to immediately next three months Tipping Fee payable to Concessionaire, as per Article 9.1, in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and the Authority does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow bank to stop any appropriation from Reserve Fund; in case of any delay by the Authority in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the

Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the Authority shall forthwith top up and maintain the required reserve in the Reserve Fund.

10.3 Withdrawals during Concession Period

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

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

10.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 10.3.1 above, except with the prior written approval of the Authority.

10.4 Withdrawals upon Termination

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

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

- by the Concessionaire;
- (d.) retention and payments relating to the liability for defects and deficiencies;
 - (e.) operation and maintenance expenses;
 - (f.) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Article (f) of this Article 10.4.1 until a vesting certificate has been issued by the Authority.

10.4.2 The provisions of this Article 10 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 10.4.1 have been fully discharged.

ARTICLE 11:FORCE MAJEURE

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

11.1 Force Majeure

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

11.2 Non-Statutory / non-administrative Event

A Non- Statutory / non-administrative Event shall mean one or more of the following acts or events:

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

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

11.3 Other Event

An Other Event shall mean one or more of the following acts or events:

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

Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

- (g.) any Other Event that causes a Non- Statutory / non-administrative Event; or
- (h.) any event or circumstances of a nature analogous to any of the foregoing.

11.4 Statutory/Administrative Event

A Statutory / Administrative Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a.) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 13 and its effect, in financial terms, exceeds the sum specified in Article 13.1;
- (b.) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c.) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d.) any failure or delay of a Contractor but only to the extent caused by another Statutory/Administrative Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e.) any event or circumstance of a nature analogous to any of the foregoing.

11.5 Duty to report Force Majeure Event

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

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

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

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

11.6 Effect of Force Majeure Event on the Concession

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

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

- (a.) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

- (b.) after COD, whereupon the Concessionaire is unable to collect Power Payments, User Fee and/or other revenue, despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of said fees on account thereof;

11.7 Allocation of costs arising out of Force Majeure

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

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

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

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

11.7.3 Save and except as expressly provided in this Article 11, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense,

claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

11.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 11, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

11.9 Termination Payment for Force Majeure Event

11.9.1 If Termination is on account of a Non- Statutory / non-administrative Event, the Authority shall make a Termination Payment to the Concessionaire of an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover;

11.9.2 If Termination is on account of an Other Event, the Authority shall make a Termination Payment to the Concessionaire of an amount equal to:

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

11.9.3 If Termination is on account of a Statutory/Administrative Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 14.4(f) as if it were an Authority Default.

11.10 Dispute resolution

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

accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

11.11 Excuse from performance of obligations

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

- (a.) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b.) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same; and
- (c.) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder

ARTICLE 12: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

12.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive Payments (under Article 9), and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

12.2 Authority to act on behalf of Concessionaire

12.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations;

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

12.3 Revocation of Suspension

12.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of

Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

12.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 12.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

12.5 Termination

12.5.1 At any time during the period of Suspension under this Article 12, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 12.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 12.

12.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 12.1, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 13: CHANGE IN LAW

13.1 Increase in costs

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

Provided that Change in Law shall not include:

- (i.) Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - (ii.) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge (including interalia, bye laws, directions, orders, regulations to be issued under the SWM Rules);
 - (iii.) Any change in the rates of the Taxes which have a direct effect on the Project.
- (b.) Subject to change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden (“Additional Cost”), the aggregate financial effect of which exceeds Rs.1,00,00,000/- (Rupees. One Crore) in any Accounting Year, the Concessionaire may so notify the PMU/ Authority and provide the information’s as provided in Article (c) below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising therefrom shall be dealt with as per terms of Article (d) below.
- (c.) Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify the PMU / Authority of the following:

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

Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount equivalent to 50% of Additional Cost as determined/certified by the Authority based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 13.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement

ARTICLE 14: EVENTS OF DEFAULT AND TERMINATION

14.1 Events of Default

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

14.2 Concessionaire Event of Default

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

- (a.) The Concessionaire has failed to collect the Solid Waste from the Designated Bin and transport it to the WtE plant for continuous period of 7 (seven) days or an aggregate period of 10(ten) days in any Month from any particular area;
- (b.) The Concessionaire has failed to process the Solid Waste at the proposed site for a continuous period of 3 (three) days or an aggregate period of 7(seven) days in any Month; This period shall be exclusive of the maintenance schedule of the Processing Facility;
- (c.) The Concessionaire is in Material Breach of any of its obligations under this Agreement in respect of which a specified time period has not been specified in this Agreement and the same has not been remedied for more than 30 (thirty) days;
- (d.) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (e.) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (f.) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (g.) Abandonment of the Project by the Concessionaire;
- (h.) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (i.) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days.

- (j.) The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement.

14.3 Authority Event of Default

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

- (a.) Authority has failed to make any payments due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;
- (b.) Any of the PLBs or the Department or the PMU is in Material Breach of any of its obligations under this Agreement and have failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- (c.) Any of the PLBs have unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (d.) Any of the PLBs have unreasonably withheld or delayed grant of any approval or permission within its respective jurisdictions and such delay and withholding is not attributable to Concessionaire or Force Majeure which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (e.) Any representations made or warranties given by the PLBs under this Agreement have been found to be false or misleading.

14.4 Termination due to Event of Default

14.4.1 Termination for Concessionaire Event of Default

- (a.) Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority shall, be entitled to terminate this Agreement in the manner as set out under Article 14.4.1(b) and Article 14.4.1 (c).

Provided however that upon the occurrence of a Concessionaire Event of

Default as specified under Article 14.2, the Authority may terminate this Agreement by issue of Termination Notice in the manner set out under Article 14.4.3 after giving the Concessionaire an opportunity of hearing.

- (b.) If the Designated LSGI decides to terminate this Agreement pursuant to preceding Article (a), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “**Concessionaire's Proposal to Rectify**”).

In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice, and the Performance Security of the Concessionaire shall get forfeited.

- (c.) If the Concessionaire’s Proposal to rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying event of default within such further period allowed, the Authority shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

14.4.2 Termination for Authority Event of Default

- (a.) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;
- (b.) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article (a) it shall in the first instance issue Preliminary Notice to all the PLBs including the Authority. Within 30 days of receipt of Preliminary Notice, the Authority on behalf of defaulting PLB(s) shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "**Authority Proposal to Rectify**"). In case of non - submission of Proposal to rectify (by the Authority on behalf of the defaulting LSGI) within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice;

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

14.4.3 Termination Notice

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding sub article 14.4.1 or 14.4.2, it shall issue Termination Notice setting out:

- (a.) in sufficient detail the underlying Event of Default;
- (b.) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (c.) the estimated termination payment including the details of computation thereof; and,
- (d.) any other relevant information.

14.4.4 Obligation of Parties

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

- (a.) until Termination is final the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;
- (b.) the Termination Payment, if any, payable by the Authority in accordance with the following sub - article 14.4.6 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and
- (c.) the Project is handed back to the Authority and all the PLBs, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to Authority.

14.4.5 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if t h e Party

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

14.4.6 Termination Payment for Authority Event of Default

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

- (a) An amount equal to Debt Due and 110% of the Adjusted Equity;

14.4.7 Termination Payment for Concessionaire Event of Default

- (a.) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire and the Authority shall be entitled to forfeit the Performance Security of the Concessionaire;
- (b.) Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the Authority shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as specified below:

An amount equal to 90% of Debt Due less Insurance cover; provided that if any insurance claims forming part of the Insurance cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due.

14.5 Rights of Authority on Termination

14.5.1 Upon Termination of this Agreement for any reason whatsoever, Authority shall upon making the Termination Payment, if any, to the Concessionaire, have the power and authority to:

- (a.) enter upon and take possession and control of the Project Facilities and Project Assets forthwith;
- (b.) prohibit the Concessionaire and any person claiming through or under the

Concessionaire from entering upon/ dealing with the Project including Project Facilities and Project Assets;

- 14.5.2 Notwithstanding anything contained in this Agreement, Authority shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the hand back of the Project Facilities and Project Assets by the Concessionaire to the Authority shall be free from any such obligation/ fee/ penalties/ taxes.
- 14.5.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the State Bank of India Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the Authority upon actual or constructive transfer of the Project Assets by the Concessionaire to the Authority clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.
- 14.5.4 The Concessionaire expressly agrees that Termination Payment under this Article 14.5 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- 14.5.5 The Authority and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, the Authority shall be entitled to pay the Termination Payment [to the extent required] to the Lenders' Representative for procuring discharge/ release of the any charge/ Hypothecation created by Concessionaire on the moveable project assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from the Authority, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due as aforesaid, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby

irrevocably agree that such payment by the Authority shall be full and final settlement of Proportionate claim of Termination Payment to the Concessionaire under this Agreement.

14.6 Accrued Rights of Parties

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

ARTICLE 15: SUBSTITUTION OF THE CONCESSIONAIRE

15.1 Substitution by Lenders' Representative

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

15.2 Substitution by the Authority

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company or the company nominated by the Lenders' Representative in terms of Article 15.1 is not acceptable to the Authority, Authority may either substitute the Concessionaire with its own Nominated Company in accordance with the Substitution Agreement, or terminate the Agreement.

15.3 Substitution Process

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

15.4 Consequences of Substitution

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

The Authority shall also execute new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/ clearances of the Authority received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.

ARTICLE 16: HANDOVER OF PROJECT

16.1 Ownership during the Term of Agreement

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

16.2 Condition Survey

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

16.3 Concessionaire’s Obligations upon Termination

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

- (a.) The Concessionaire shall subject to the provisions of this Agreement:

- (i.) hand over to the Authority or its nominated agency free of cost the vacant and peaceful possession of the Project;
- (ii.) hand over/transfer to the Authority all its rights, titles and interest in or over the assets comprised in the Project and the Project Assets in their respective jurisdictions (including movable assets which the Authority agrees to take over) which are required to be transferred to the Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (iii.) hand over to the Authority on behalf of itself and all PLBs all documents, Proprietary Material, including as built designs, drawings, data, engineering, manuals and records relating to the Project Assets and Project.

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

- (iv.) transfer or cause to be transferred/ assigned to the Authority any Project Agreements which are (A) valid and subsisting, (B) capable of being transferred to the Authority and (C) those the Authority have chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Authority.
- (v.) at its cost, transfer to all the PLBs all such Applicable Approvals which they may require and which can be legally transferred.
- (vi.) at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Authority. In the event the Concessionaire fails to remove such objects within the stipulated time, the Authority may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and

storage.

- (b.) All proceeds of insurance claims shall be deposited in the Escrow Account and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto unless and until all dues of/ damages payable to the Authority or any Government Authority or in respect of the Project have been cleared and no amounts payable/refundable to either of them by the Concessionaire pursuant to this Agreement are outstanding.
- (c.) The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.
- (d.) The Authority shall be entitled to encash any subsisting Performance Security/ bank guarantee(s) provided by the Concessionaire or the Selected Bidder, if the Termination is on account of Concessionaire Event of Default.

16.4 Divestment Certificate

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

ARTICLE 17: DISPUTE RESOLUTION

17.1 Amicable Resolution

- (a.) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Authority (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Article (b) below.
- (b.) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- (c.) Either Party may require such Dispute to be referred to the Commissioner/Competent Authority, the Authority (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within fifteen (15) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of **Article 17.2** below.

17.2 Arbitration

- (a.) Procedure

Subject to the provisions of **Article 17.1**, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by a Sole Arbitrator to be appointed by the Authority. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The expenses of arbitration shall be borne equally by both the Parties.

- (b.) Place of Arbitration

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

(c.) Language

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

(d.) Enforcement of Award

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

17.3 Performance during Dispute

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

ARTICLE 18: INSURANCE

18.1 Insurance Cover

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

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

18.2 Insurance Companies and Costs

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

affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

18.3 Evidence of Insurance Cover

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

18.4 Application of Insurance Proceeds

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

18.5 Validity of the Insurance Cover

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

ARTICLE 19: INTELLECTUAL PROPERTY AND CONFIDENTIALITY

19.1 Proprietary Material

- (a.) The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project/ Project Assets, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire.
- (b.) The Concessionaire, as beneficial owner, hereby grants to the Authority / PLBs a perpetual non-exclusive license to use such Proprietary Material in connection with the Project. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the Authority and the PLBs for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- (c.) Nothing in this Article 19.1 shall be construed to grant the Authority and/ or the PLBs or Persons claiming through or under it any right or license with respect to such Proprietary Material, save and except as otherwise expressly herein.

19.2 Confidentiality

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

judicial process.

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

19.3 Survival

The Concessionaire, the Authority and/ or the PLBs accept and confirm that the provisions of this Article 19 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 20: REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Parties

Each Party represents and warrants to the others that:

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

20.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

which it or any of its properties or assets are bound or affected;

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

20.3 Representations and Warranties of the Authority / PLBs

The Authority and/or the PLBs represent and warrant to the Concessionaire that:

- (a.) it has full power and authority to execute, deliver and perform its obligations

under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of all PLBs.

- (b.) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement.
- (c.) it has the financial standing and capacity to perform its obligations under this Agreement.
- (d.) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e.) all information provided by the Authority in the bid documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects.

20.4 Disclosure

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

20.5 Disclaimer

- (a.) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, the Technical Specifications, all the information and documents provided by the Authority or any Government Authority, the market and demand conditions, information relating to PLBs; the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as

are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

- (b.) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 20.5(a) above and hereby confirms that the Authority, any Government Authority and their consultants and advisors shall not be liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.
- (c.) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Authority, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
- (d.) The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

20.6 Obligation to Notify Change

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

ARTICLE: 21: ACCOUNTS AND AUDIT

- 21.1 The Concessionaire shall maintain full accounts of all Fees including Realisable Fees and other revenues derived/collected by it from and on account of use of the Project and of O&M Expenses and other costs paid out of the Project Escrow Account and shall provide to the Authority copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors within 120 (one hundred twenty) days of the close of each Accounting Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payments by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, certified copies of the audited accounts and annual report published by the Company under the Applicable Laws.
- 21.2 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors (the "Statutory Auditors") a firm of Chartered Accountants duly licensed to practice in India out of the mutually agreed list of 10 (ten) independent and reputable firms of Chartered Accountants in India (the '**List of Chartered Accountants**'). The criteria for preparing the List of Chartered Accountants are set forth in **Schedule -11**. Subject to a 30 days notice to Authority and the replacement Statutory Auditors being appointed from the List of Chartered Accountants, the Concessionaire may terminate the appointment of any Statutory Auditor appointed in accordance with this Article. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 21.3 On or before the fifteenth day of April each year, the Concessionaire shall provide for the preceding Accounting Year a statement duly audited by its Statutory Auditors giving summarized information, the revenues derived from the Project and such other information as the Authority may reasonably require.
- 21.4 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation to appoint at its cost another firm of Chartered Accountants from the List of Chartered Accountants (the "Additional Auditor") to audit and verify all those matters, expense, costs, realisations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.
- 21.5 In the event of there being any difference between the finding of the Additional Auditor or the Concurrent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such

differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute resolution procedure.

ARTICLE 22: MISCELLANEOUS

22.1 Assignment and Charges

- (a.) The Concessionaire shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the Authority and the Department.
- (b.) Restraint set forth in Articles (a) shall not apply to:
- (i) liens/ encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) mortgage/ pledge/ hypothecation of moveable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) in favor of the Lenders for the Project. Provided, no charge/ mortgage/ lien/ hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Site, assets and equipment provided by the PLBs for the Project.

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

- (c.) The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Site(s).

22.2 Interest and Right of Set Off

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

Provided the stipulation regarding interest for delayed payments contained in this Article 22.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

22.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts in the State of Kerala shall have Jurisdiction over all matters arising out of or relating to this Agreement.

22.4 Waiver

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

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

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

22.5 Survival

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

22.6 Amendments

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

22.7 Notices

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

- (a.) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and
- (b.) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

To the Concessionaire	To KSIDC
To the Department	To PLB 1
To PLB 2	To PLB 3
To PLB 4	To PLB 5
To PLB 6	To PLB 7

22.8 Severability

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

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

22.9 No Partnership

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

22.10 Language

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

22.11 Exclusion of Implied Warranties etc.

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

22.12 Counterparts

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

22.13 Liability for Review

Except to the extent expressly provided in this Agreement:

- (a.) no review, comment, certification, verification or approval by the Authority and/ or PLBs or any Government Authority of any Project Agreement, design, detailed engineering, or document, accounts, invoice etc. submitted by the

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

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

22.14 Unforeseen Event

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

22.15 Liability and Indemnification

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

risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the the Authority and/ or PLBs and its advisors in this behalf.

- (c.) The Authority and/ or PLBs shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of Solid Waste into the Project for any reason whatsoever.
- (d.) The Concessionaire shall keep the Authority and/ or PLBs indemnified during the Term against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labor and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- (e.) Except as expressly provided in this Agreement, the concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.
- (f.) The provisions of this Article 22 shall survive the expiration or prior termination of this Agreement.

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

SIGNED, STAMPED AND DELIVERED BY:

For KSIDC

Managing Director, KSIDC, duly authorized by the Board of Directors of Kerala State Industrial Development Corporation passed at its meeting held on _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For CONCESSIONAIRE

Director of Concessionaire, duly authorized by the Board of Directors of the Concessionaire passed at its meeting held on _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For LOCAL SELF GOVERNMENT DEPARTMENT

Additional Chief Secretary, LSGD, duly authorized by the Government of Kerala

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 1

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 2

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 3

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 4

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 5

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 6

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 7

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 8

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 9

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 10

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 11

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 12

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 13

_____ duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For PLB 14

_____ duly authorized by the _____

(Signature & Stamp)

IN PRESENCE OF:

Sign: Name: Address	Sign: Name: Address
Sign: Name: Address	Sign: Name: Address
Sign: Name: Address	Sign: Name: Address

List of Schedules

Schedule 1: Scope of Services

Schedule 2: Service Level Benchmarks

Schedule 3: Financial Proposal

Schedule 4: Format for Daily Weight Sheet

Schedule 5: Operational Acceptance Certificate

Schedule 6: Format of the Performance Security or Bank Guarantee

Schedule 7: Scope of Work of PMU

Schedule 8: Substitution Agreement

Schedule 9: Escrow Agreement

Schedule 10: Land Lease Agreement

Schedule 11 : Criteria for preparing the list of Chartered Accountants