

REQUEST FOR PROPOSAL
Integrated Solid Waste Management Project

REQUEST FOR PROPOSAL

FOR

**SELECTION OF AGENCY FOR SETTING UP OF INTEGRATED
SOLID WASTE MANAGEMENT PROJECT FOR COLLECTION,
TRANSPORTATION, PROCESSING AND DISPOSAL IN BADDI
CLUSTER IN THE STATE OF HIMACHAL PRADESH ON
PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS**

VOLUME - I

ISSUED BY :

**The Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority (BBNDA),
EPIP Phase-I, Jharmajri, Baddi, District Solan (HP)**

2018

REQUEST FOR PROPOSAL
*Integrated Solid Waste Management Project
at Baddi (Kenduwal)*

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HPIDB Website-22.01.2018

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**CHIEF EXECUTIVE OFFICER, BADDI BAROTIWALA NALAGARH
DEVELOPMENT AUTHORITY**

Notice Inviting Request for Proposal

No. -----

Dated: -----

The Chief Executive Officer, Baddi Barotiwala Nalagarh Development Authority (the "**Authority**" or "**BBNDA**") invites interested parties with proven experience and credentials in undertaking similar work to participate in the tendering process for the **Selection of Operator for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis**. The summary of various activities with regard to this invitation of bids is listed in the activity table below :

S. No.	Items	Description
1.	Name of the Project	Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on PPP basis
2.	Mode of Tendering	Hard copy submission
3.	Cost of Bidding Document	Rs.10,000 (Rupees Ten Thousand Only)
4.	Bid Security Amount	Rs.10,00,000/- (Rupees Ten Lakhs Only)
5.	Bid Document Advertisement, i.e., Start Date & Time	Start Date: 22.01.2018 from 10.00 am IST from www.hptender.gov.in ; https://admis.hp.nic.in/himachal/hpidb or physically collected from the office of the CEO BBNDA.
6.	Last Date for sending Pre-Bid/ RFP Queries	19.02.2018 upto 3.00 pm IST on www.hptender.gov.in
7.	Date of Pre-Bid Conference	23.02.2018 at 11.30 am IST, at Himachal Bhawan, 27, Sikandra Road, Near Metro Station, Mandi House, New Delhi - 110001.
8.	Date for response to Pre-Bid queries	07.03.2018
9.	Last date for Bid submission (Bid Due Date)	27.03.2018 till 04.00 pm IST

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S. No.	Items	Description
10.	Date & Time for opening of Technical Bid	28.03.2018 at 11.30 am IST in the office of CEO, BBNDA.
11.	Date & Time for opening of Financial Bid	To be notified subsequently to technically shortlisted Bidders

1. Bidding Document can be seen on and downloaded from the portal: www.hptender.gov.in; <https://admis.hp.nic.in/himachal/hpidb> or purchased physically from the office of the Chief Executive Officer (CEO), Baddi Barotiwala Nalagarh Development Authority (BBNDA), EPIP Phase-I, Jharmajri, Baddi, District Solan (HP), by the interested parties.
2. Where the Bidding Document is downloaded from the aforesaid portal, then the Bidding Document Fee has to be submitted at the time of submission of Bid through Demand Draft of Rs.10,000/- (Rupees Ten Thousand Only) in favour of the "CEO, BBNDA".
3. The Bidding Process can be postponed or cancelled at any time due to administrative reasons and no claim shall be entertained on this account.
4. For further details and tendering schedule, visit the portal www.hptender.gov.in

Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority
Baddi, District - Solan (H.P.)

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Disclaimer

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation of offer by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in submitting their proposal pursuant to this RFP (the "Bid"). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, especially the Project Information Memorandum, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidders under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or the Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reason whatsoever.

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The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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DEFINITIONS

The words and expressions beginning with capital letters and defined in this RFP Document shall, unless repugnant to the context, have the meaning ascribed herein. The words and expressions beginning with capital letters but not defined herein, but defined in the Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed to them therein.

Applicable Law	Shall mean all laws, brought into force and effect by the Government of India or the State Government of Himachal Pradesh, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the Concession Period
Applicable Permits	Shall mean all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the Concession Period
Baddi Cluster	Shall include the following urban local bodies : (i) Municipal Council, Baddi; (ii) Municipal Council, Nalagarh; (iii) Municipal Council, Parwanoo; and (iv) Baddi Barotiwala Nalagarh Development Authority (BBNDA) designated as a Special Area Planning Authority under Section 67(i) of Himachal Pradesh Town & Country Planning Act, 1977.
Concession Agreement	Shall mean the agreement to be executed by the SPV with the ULBs and the Authority for discharging obligations related to the Project and includes any amendment or modification made to the said agreement in accordance with the provisions thereof
{Concession Fee	<i>Shall mean a fee (quoted by Selected Bidder and accepted by the Authority) to be paid by the Concessionaire to the Designated ULB for award of the Concession in the mode and manner specified in the Concession Agreement}</i> ¹
Concession Period	Shall mean the period of 25 (twenty five) years, commencing from the date of the execution of the Concession Agreement
Concessionaire	Shall mean the SPV incorporated by the Selected Bidder to implement the Project and sign the Concession Agreement with the BBNDA
“Commercial Operations Date” or “COD”	means the date when the Processing Plant/ Processing Facility achieves commercial operations, pursuant to the provisions of the Concession Agreement

¹ To be deleted if the Selected Bidder has quoted Tipping Fee.

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Designated ULB	Shall mean the Baddi Barotiwala Nalagarh Development Authority (BBNDA)
MSW or Municipal Solid Waste or Waste or Solid Waste	Shall mean the Municipal Solid Waste as described under the Solid Waste Management Rules, 2016
Participating ULBs	Shall mean Baddi Barotiwala Nalagarh Development Authority and Municipal Councils of Baddi, Nalagarh and Parwanoo along with the areas included/ excluded in these ULBs during the Concession Period
Project	Means the integrated solid waste management project for collection, transportation, processing and disposal of MSW for the Baddi Cluster, as per terms and conditions of the Concession Agreement
Project Area	Shall mean the municipal areas under the Participating ULBs including areas under licensed colonies, HIMUDA, etc.
Selected Bidder	Shall mean the Bidder that has been issued the Letter of Award by the BBNDA for the Project
SPV or Special Purpose Vehicle	Shall mean the company under the Companies Act, 2013, incorporated by the Selected Bidder for discharging its obligations with respect to the Projects in terms of the Concession Agreement
SWM Rules	Shall mean the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986)
{Tipping Fee	<i>Shall have the meaning ascribed to it in Clause 6.5}</i> ²
User Charges/ User Fee	Shall mean a fee notified by the State Government of Himachal Pradesh and Participating ULBs from time to time to be collected from the Waste Generators in the Project Area
Waste Generator	Shall mean persons or establishments generating MSW within the jurisdiction of the Participating ULBs

² To be deleted if the Selected Bidder has quoted Concession Fee

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1. Introduction

1.1 Project Background

1.1.1. The Urban Local Bodies (ULBs) of the towns of Baddi, Nalagarh & Parwanoo and Baddi Barotiwala Nalagarh Development Authority are responsible for providing municipal and civic services to the citizens in their respective jurisdictions, including collection, transportation and disposal of Municipal Solid Waste (MSW) generated within their jurisdiction and as part of this endeavour, the Chief Executive Officer, Baddi Barotiwala Nalagarh Development Authority (the “**Authority**”) on behalf of itself and Municipal Councils of Baddi, Nalagarh & Parwanoo has decided to undertake development, operation and maintenance of MSW treatment waste to compost/ bio-methanation processing facility and landfill facility project as per MSW Rules, 2016 for the Baddi Cluster in the State of Himachal Pradesh (the “**Project**”) through Public Private Partnership (the “**PPP**”) framework on a Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis. The Authority has decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded (the “**Selected Bidder**”).

1.1.2. The brief particulars of the Project are as follows:

Name of the Project	Estimated Project Cost (In Rs.Cr.) ³	Capacity in TPD
Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis	To be assessed by Bidders	At least 60 TPD

1.1.3 Estimated MSW generation in Baddi Cluster is about 57.33TPD. It is expected to reach 107.62 TPD by 2043/44. The Bidder is free to carry out its own assessment of MSW generation in Baddi Cluster. The Selected Bidder shall be responsible for door to door collection, transportation, processing and disposal of MSW in SLF and for that purpose to design, build, finance, operate and maintain

³ This cost is based on the Feasibility Report prepared by the TA. The Bidder is expected to carry out its assessment of actual costs before submitting its Proposal

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the facilities of designed capacity to manage/ process the entire MSW generated in the Cluster, setup at least 60 TPD waste to compost/ RDF/ Bio-Methanation plant at the existing dump-site at village Kenduwal, Baddi which is an open dump-site located on the banks of river Sirsa. The site has a sprawl of around 6.5 acres. The Project Facility to be set up by the Concessionaire should also cater to future increase in MSW generation during the Concession Period as per Solid Waste Management Rules, 2016.

Since the proposed MSW processing site is an existing dump site, the Concessionaire shall also employ suitable technology/ processes to manage the existing waste for reclaiming the land to the extent possible including but not limited to the land required for setting up the Processing Facility and Sanitary Landfill.

- 1.1.4 The Selected Bidder undertakes to incorporate a limited liability company under the Companies Act, 2013 prior to execution of the concession agreement (the "**Concessionaire**") and the Concessionaire so incorporated shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of a long term agreement to be entered into between the Concessionaire and all the Participating ULBs (the "**Concession Agreement**" or the "**Agreement**"), in the form as provided in **Vol. II & III** of the Bidding Documents.
- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions, rights/ obligations of the Concessionaire and modalities for implementation under the proposed arrangement (the "**Concession**") for a period of **25 (twenty five) years** (the "**Concession Period**").
- 1.1.6 The cost of the Project will have to be assessed by the Bidders only.
- 1.1.7 The scope of work will broadly include setting up of waste to compost/ bio-methanation plant along with biological treatment of organic waste and Sanitary Landfill (SLF) of designed capacity including operation & maintenance thereof and landfill the rejects after processing as per MSW Rules, 2016. The scope of work shall also include collection of User Charges from the Waste Generators within the Cluster and to develop and implement a public complaint system operational for at least 8 (eight) hours a day during the Concession Period, in consultation with the ULBs. The Concessionaire shall ensure that the Project meets stipulated pollution norms and guidelines and that the MSW is handled and managed in compliance with the MSW Rules 2016 or its subsequent amendments and the guidelines of the manual on solid waste management published by CPHEEO, MoUD, and BIS. All these activities shall be done in compliance with the Government of India's Municipal Solid Waste Rules 2016 and in accordance with performance standards and output specifications prescribed in the Concession Agreement. For detailed scope of services, the Bidders are advised to refer to the draft Concession Agreement (Vol. II & III).

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The list of existing infrastructure with all the Participating ULBs which shall be made available to the Concessionaire is tabulated in Schedule-1.

- 1.1.8 Based on waste quantity and characteristics of the Project, the Concessionaire shall have the option to choose from any of the technologies that have been approved by the Government of India for processing MSW either by setting up waste to Compost or Bio-Methanation Plant at the site to be provided by the Authority, and shall have the right to develop the Project Facilities using such technology that it considers suitable & commercially viable for the purposes of implementing the Project at its own cost, in accordance with terms of the Concession Agreement and Applicable Law including guidelines of NGT.
- 1.1.9 Bids are invited for the Project on the basis of the lowest Tipping Fee required by a Bidder for implementing the Project. A Bidder may, instead of seeking Tipping Fee, offer to pay a premium to the Authority for award of the Concession (the "**Concession Fee**"). The Tipping Fee/ Concession Fee amount shall constitute the sole criteria for evaluation of Bids. Subject to Clause 4.7, the Project will be awarded to the Bidder quoting the highest Concession Fee, and in the event that no Bidder offers a Concession Fee, then to the Bidder seeking the lowest Tipping Fee. Both the Concession Fee and Tipping Fee shall escalate at the rate of 5% (five percent) over the last prevalent rate after every 2 (two) years from the Commercial Operations Date, during the Concession Period.

In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Concession Fee, and where no Bidder is offering a Concession Fee, the Bidder seeking the lowest Tipping Fee.

- 1.1.10 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Clause 6 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.1.11 Sources of Revenue

Subject to the provisions of Clause 1.1.12, the Project shall be completely financed by the Concessionaire. In consideration the Concessionaire shall have access to the following types of revenue streams:

- (i) Revenue from the sale of energy/compost or other by products produced in the processing of MSW.

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- (ii) Revenue from the sale of recyclables.
- (iii) User Charges.
- (iv) Revenue from advertisement rights as per Applicable Law.
- (v) Any incentives/ subsidy/ assistance offered by the Government of India.
- (vi) {*Tipping Fee (if quoted by the Selected Bidder)*}⁴

1.1.12 One time Capital Grant

Additionally, a one-time capital grant of Rs.2,00,00,000/- (Rupees Two Crores Only) ("**Grant**"), as viability gap funding shall be provided by the State Government to the Concessionaire for setting up collection, transportation, treatment and disposal of the MSW in Baddi Cluster. The Grant shall be paid in 2(two) tranches of Rupees One Crore each – the first tranche shall be paid upon achieving of Commercial Operations Date (COD) and the second tranche shall be paid after 6 (six) months from COD.

2. Instructions to Bidders

2.1 Bidding Documents

- 2.1.1 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents and volumes provided by the Authority pursuant to this RFP (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms. The Bidding Documents shall comprise **Vol. I: Request for Proposal (RFP), Vol. II: Draft Concession Agreement and Vol. III: Schedules** and any corrigendum/ addenda issued subsequent to this RFP Document and its Volumes, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 2.1.2 The RFP comprises the Disclaimer set forth hereinabove and will additionally include any Addenda issued in accordance with Clause 3.9.
- 2.1.3 The Bidders are advised and expected to carry out their own surveys, investigations and due diligence of the Project in detail, and carry out, at their cost, such studies with respect to the estimates about the Project Cost, before submitting their respective Bids for award of the Project.
- 2.1.4 The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any

⁴ Applicable only if the Selected Bidder quotes lowest Tipping Fee. No Tipping Fee shall be payable where the Selected Bidder has quoted highest Concession Fee payable to Authority.

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omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by Authority.

- 2.1.5 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Concession Agreement shall have an overriding effect.
- 2.1.6 The Bidding Documents including this RFP and all attached documents are and shall remain the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for the preparation and submission of their Bid. The Authority will not return any Bid or any information provided therewith.
- 2.1.7 This RFP is non-transferable.
- 2.1.8 Any award of Concession pursuant to this RFP shall be subject to the terms of the Bidding Documents comprising all volumes thereto. Bidders are advised that the selection of the Successful Bidder shall be on the basis of the evaluation process by the Authority specified in this RFP. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the evaluation process will be given.

2.2 Brief Description of Bidding Process

- 2.2.1 The Authority has adopted single-stage 2(two) envelopes open competitive tendering process (collectively referred to as the "**Bidding Process**") for selection of an agency/ entity for award of the Project. The Bidding Process shall be carried out in accordance with the procedures set out herein. Interested parties can submit their Bid in accordance with the provisions of this RFP (the "**Bidder**", which expression shall, unless repugnant to the context, include the Members of the Joint Venture also).
- 2.2.2 The Bidding Documents can be purchased from the office of the Authority against payment of non-refundable Bidding Document Fee of an amount of Rs.10,000/- (Rupees Ten Thousand Only) by way of Demand Draft in favour of "CEO, BBNDA" or downloaded from the portal www.hptender.gov.in. Where the Bidding Document is downloaded from the aforesaid portal, the Bidding Document Fee has to be submitted at the time of submission of Bid through Demand Draft of Rs.10,000/- (Rupees Ten Thousand Only) in favour of the "CEO, BBNDA".
- 2.2.3 The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date as specified in Clause 2.3.1 for submission of Bids (the "**Bid Validity Period**").
- 2.2.4 The Bidder is required to deposit, along with its Bid, a security of Rs. 10,00,000 (Rupees Ten Lakhs Only) (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date except in the case of the Selected Bidder,

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whose Bid Security shall be retained till the Selected Bidder has provided a Performance Security under the Concession Agreement. The Bid Security shall be in form of a Demand Draft in favour of the "CEO, BBNDA". The Bid shall be summarily rejected if it is not accompanied by the Bid Security and the fees specified in Clause 2.2.2 above.

- 2.2.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable for rejection as a non-responsive Bid.
- 2.2.6 The Bid shall consist of a Tipping Fee or a Concession Fee, as the case may be, to be quoted by the Bidder. Tipping Fee shall be payable by the Authority to the Concessionaire and the Concession Fee shall be payable by the Concessionaire to the Authority, as the case may be, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.2.7 The Selected Bidder shall be the Bidder who quotes the highest amount of Concession Fee payable by it to the Authority for the Concession granted. In the event, no Bidder offers Concession Fee, then the Selected Bidder seeking the lowest amount of Tipping Fee (i.e. fee for per ton of MSW collected, transported and received at Processing Facility and expressed in INR/ ton) shall be the Selected Bidder.
- 2.2.8 Any queries concerning this RFP shall be submitted in writing by fax and e-mail to the officer designated in Clause 2.3.1 below. The envelopes/ communication shall clearly bear the following identification/ title: **"Queries: RFP for : Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis"**. All communications should be addressed to:

The Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority,
EPIP Phase-I,
Jharmajri, Baddi,
District Solan
Himachal Pradesh.
Phone: +91- 94180-69444; 01795-271121,23
e-mail: ceobbnda-hp@nic.in
Fax: 01795-271122

- 2.2.9 Bidders are advised to be specific and pose clause wise queries in an unambiguous manner. The Authority reserves the right not to respond to vague and frivolous queries. Queries shall be neatly typed/ written as per the following format :

S. No.	Particulars	Details
1.	Organization	
2.	Document Name	
3.	Page Number	

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S. No.	Particulars	Details
4.	Clause Number	
5.	Query	
6.	Suggestion, if any	
7.	Name & Designation of point of contact	
8.	Contact No. & Email ID	

2.3 Schedule of Bidding Process

2.3.1 The Authority shall endeavour to adhere to the following schedule:

	Bid Stage	Estimated Date
1.	Issue of RFP	22/01/2018 from 10.00 am onwards
2.	Last date and time for receiving queries	19/02/2018 upto 3.00 pm
3.	Pre-Bid conference	23/02/2018 at 11.30 am, at Himachal Bhawan, 27, Sikandra Road, Near Metro Station, Mandi House, New Delhi - 110001.
4.	Response to Pre-Bid queries	07/03/2018 to be uploaded on the portal at www.hptender.gov.in
5.	Last Date for Purchase of Bid Documents	12/03/2018 upto 4.00 pm
6.	Bid Due Date	27/03/2018 upto 4.00 pm
7.	Opening of Technical Bid	28/03/2018 at 11.30 am
8.	Announcement of technically qualified Bidders	Will be notified later on the portal
9.	Opening of Financial Bid	Will be notified later on the portal
10.	Letter of Award (LOA)	Within 15 days from the date of the Financial Bid Opening
11.	Validity of Bids	180 days from Bid Due Date
12.	Signing of Concession Agreement	Within 45 days of award of LOA

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3 Instructions to Bidders

3.1 General Terms of Bidding

- 3.1.1 The Bidder may be a sole entity or a group of entities coming together to implement the Project, whether as a combination of sole entities with a formal intent to enter into an agreement (the “**Joint Venture**”). However, a Bidder bidding individually or as a member of a Joint Venture shall not be entitled to submit another Bid for the Project either individually or as a member of any other Joint Venture. The term Bidder used herein would apply to both a sole entity and a Joint Venture.
- 3.1.2 Any Bidder, who has earlier been barred by Government of Himachal Pradesh from participating in any projects, would not be eligible to participate in the Bidding Process, where the bar subsists as on the Bid Due Date.
- 3.1.3 Each Bidder shall submit only one Bid for the Project, in response to this RFP. Any Bidder, who submits more than one Bid will be disqualified.
- 3.1.4 A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 3.2 and 3.3 below.
- 3.1.5 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit, invoke and appropriate the Bid Security or Performance Security, as the case may be, of such Bidder without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if :
- a. a Bidder/ Lead Member or constituent Member of such Bidder (in case of a Joint Venture) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; or
 - b. a Bidder/ Lead Member or constituent Member of such Bidder (in case of a Joint Venture) is also a constituent of another Bidder; or
 - c. such Bidder/ Lead Member or constituent Member of such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
 - d. such Bidder/ Lead Member has the same legal representative for purposes of this Bid as any other Bidder; or
 - e. such Bidder/ Lead Member or constituent Member of such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others’ information about, or to influence the Bid of either or each of the other Bidder; or
 - f. such Bidder/ Lead Member or constituent Member of such Bidder has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Goods, Works or Services that are the subject of the Bid and/ or the Project.

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3.2 Eligibility Criteria

3.2.1 The interested Bidders (*in case of Joint Venture, the Members may meet the Minimum Eligibility Criteria jointly*) are required to satisfy the following criteria as **Minimum Eligibility Criteria** to qualify for the opening of the Financial Bids:

- a. **Technical Capacity** : For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder’s competence and capability for projects undertaken in last five financial years preceding the Bid Due Date is proposed to be evaluated by examining the following parameters:

S. No.	Parameter	Criteria
1.	The Bidder shall possess minimum one year experience of successful operations in collection and transportation of MSW facility in India or abroad in the last five years preceding Bid Due Date.	One project of 75% of estimated capacity of the processing facility or two projects of 50% of the estimated capacity of the Processing Facility each; and
2.	The Bidder shall demonstrate experience of designing, construction and minimum one year of successful operations and maintenance of MSW processing facility in India or abroad in the last five years preceding Bid Due Date.	One project of 75% of estimated capacity of the processing facility or two projects of 50% of the estimated capacity of the Processing Facility each

- b. **Financial Capacity** : The Bidder shall have Network of Rs. 7.5 Crores (Rupees Seven Crores and Fifty Lakhs Only) as on 31.03.2017.

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

3.2.3 The Authority reserves the right to visit at its own cost, one or more project area(s) listed by the Bidder in its list of experience, to independently verify and satisfy itself about the quality of work performed and also verify the certificates filed by the

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Bidder, as part of Bidding Documents. Bidders shall be responsible to organize meetings with their respective clients and also take around Department's/ Designated ULB's team in such project area(s).

3.2.4 Towards proof of complying with the Minimum Eligibility Criteria, the Bidder shall enclose with its Technical Bid in accordance with Clauses 4.2 and 4.3, the following :

- i. Certificate(s) from its concerned client(s) in support of above work undertaken clearly stating quantities collected/ transported/ installed capacities of the processing plant designed, operated and maintained/ installed capacities of landfill designed, operated and maintained.
- ii. Certificate(s) from its statutory auditors/ Chartered Accountant specifying Net Worth of the Bidder, as at the close of the preceding financial year and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 3.2.4 (ii). For the purposes of this RFP, net worth (the "**Net Worth**") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation. In case of Joint Venture audited balance sheets for the last five years preceding Bid Due Date, shall be submitted for each member of the Joint Venture whose credentials are being relied upon to meet the Financial Capacity.

3.2.5 The Bidder should submit a Power of Attorney as per the format at Annexure A-2, authorizing the signatory of the Bid to commit the Bidder. In the case of a Joint Venture, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Annexure A-3.

3.2.6 The Selected Bidder whether a single entity or a Joint Venture, shall form an appropriate Special Purpose Vehicle (**SPV**) to be incorporated under the Companies Act, 2013 pursuant to issuance of Letter of Award, to execute the Project. In case the Bidder is a Joint Venture, the members of such Joint Venture in addition to forming a SPV (*if awarded the Project*) shall further comply with the following additional requirements:

- a) number of members in a Joint Venture shall not exceed 3 (three);
- b) the Bid shall contain the information for each member of the Joint Venture;
- c) members of the Joint Venture shall nominate one member as the lead member (the "**Lead Member**"). The nomination(s) shall be supported by a Power of Attorney executed on non-judicial stamp paper of appropriate value and duly notarized by a notary public, signed by all the other members of the Joint Venture;

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- d) members of the Joint Venture whose Technical Capacity and Financial Capacity was considered for the purpose of qualification and short-listing herein, shall hold equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV to be formed upto the 5th (fifth) anniversary of the Commercial Operations Date ("**COD**") (*as defined in Vol. III of the Bidding Documents : Draft Concession Agreement*). In addition, the members of the Joint Venture shall jointly hold equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV to be formed for the entire duration of the Project;
- e) the Bid should include a brief description of the roles and responsibilities of each member, particularly with reference to financial, technical and operation obligations;
- f) members of the Joint Venture shall enter into a binding Joint Bidding Agreement, (the "**Joint Bidding Agreement**"), for the purpose of submitting the Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia :
- i. convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of such Agreement, in case the Project is awarded to the Joint Venture;
 - ii. clearly outline the proposed roles and responsibilities, if any, of each member;
 - iii. commit the minimum equity stake to be held by each member;
 - iv. undertake that members of the Joint Venture whose Technical Capacity and Financial Capacity was considered for the purpose of qualification and shortlisting herein, shall hold equity share holding of at least 26% (twenty six percent) of the paid up and subscribed equity of the SPV to be formed upto the 5th (fifth) anniversary of the Commercial Operations Date (*as defined in Vol. III of the Bidding Documents : Draft Concession Agreement*);
 - v. undertake that the members of the Joint Venture shall jointly hold equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV to be formed for the entire duration of the Project;
 - vi. include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project during the validity of the Concession Agreement; and
 - vii. except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

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3.3 Change in Ownership

- 3.3.1 By submitting the Bid, the Bidder shall be deemed to have acknowledged the terms and conditions mentioned in this RFP. The Bidder further acknowledges and undertakes that members of the Joint Venture whose Technical Capacity and Financial Capacity was considered for the purpose of qualification and short-listing herein, shall hold equity share holding of at least 26% (twenty six percent) of the paid up and subscribed equity of the SPV to be formed upto the 5th (fifth) anniversary of the Commercial Operations Date. In addition, the members of the Joint Venture shall jointly hold equity share holding of at least 51% (fifty one percent) of the paid up and subscribed equity of the SPV to be formed for the entire duration of the Project. In case, where the Bidder is a single entity, it shall hold and retain 100% (one hundred percent) equity shareholding/ interest in the Project upto the 5th (fifth) anniversary of the Commercial Operations Date and thereafter hold at least 51% (fifty one percent) for the entire duration of the Project.
- 3.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a member of a Joint Venture whose Technical Capacity and Financial Capacity was taken into consideration in terms hereof, the Bidder shall inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the Letter of Award (LOA) from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement notwithstanding anything to the contrary contained in the Agreement, be deemed to be a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. Further, the Authority shall forfeit, invoke and appropriate the Bid Security or Performance Security, as the case maybe, without prejudice to any other right or remedy that may be available to the Authority hereunder or in law or otherwise.
- 3.3.3 A Bidder including any member of a Joint Venture should, in the last 3 (three) years preceding the Bid Due Date, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder/ member of Joint Venture, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder/ member of the Joint Venture.

3.4 Cost of Bidding

- 3.4.1 The Bidder shall be responsible for all of the costs associated with the preparation of its Bid and its participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

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3.5 Site visit and verification of information

3.5.1 Bidders are encouraged to respond to this RFP after undertaking a real time assessment of the Project and the conditions prevailing thereon, the surroundings, market assessment and all other parameters and issues related to implementation of the Project including Applicable Laws and regulations, and any other matter considered relevant by them.

3.5.2 For the purpose of site visit, the Bidders are required to contact the below mentioned person(s):

1. Name: Er. Bishan Dass
Address : Executive Engineer, BBND, Baddi, District- Solan (H.P.)
Phone No. : 9816615636; 01795- 271222
Email : bishandass068@gmail.com

2. Name: Er. Dinesh Sharma
Address : Assistant Engineer, BBND, Baddi, District- Solan (H.P.)
Phone No. : 9418475336
Email : sharmad095@gmail.com

3.6 Acknowledgment

3.6.1 It shall be deemed that by submitting a Bid, the Bidder has:

- a. made a complete and careful examination of the Bidding Documents;
- b. received all relevant information requested from the Authority;
- c. acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority, relating to any of the matters referred to in Clause 3.5.1 above;
- d. satisfied itself about all matters, things and information including matters referred to in Clause 3.5.1 hereinabove, necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- e. made a complete and careful examination of the various aspects of the Project including but not limited to :
 - (i) the Project Area in which the Property is to be implemented;
 - (ii) location of the existing collection points and landfill;
 - (iii) existing facilities and structures;
 - (iv) clearances required to be obtained for the Project; and
 - (v) all other matters that might affect the Bidder's performance under the terms of this Bidding Document;

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- f. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 3.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profit, etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire; and
- g. agreed to be bound by the undertakings provided by it under and in terms hereof.
- 3.6.2 For any assistance, the Bidders can contact the following officers as per their convenience on the addresses given below :
1. Name: Mr. K.C. Chaman, Chief Executive Officer
Address : Baddi Barotiwala Nalagarh Development Authority, EPIP Phase I, Jharmajri, Baddi, District Solan, Himachal Pradesh.
Phone No. : 9418069444; 01795-271121,23
Email : ceobbnda-hp@nic.in
 2. Name: Er. Bishan Dass
Address : Executive Engineer, BBNDA, Baddi, District- Solan (H.P.)
Phone No. : 9816615636; 01795- 271222
Email : bishandass068@gmail.com
 3. Name: Mr. Anil Kapil, Chief General Manager, HPIDB
Address : Circular Road, Near Hotel Himland, Shimla (H.P.)
Phone No. : 9418025725; 0177- 2626696, 2627312
Email : hpidb-hp@nic.in

3.7 Right to accept or to reject any or all Bids

- 3.7.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- 3.7.2 The Authority reserves the right to reject any Bid, forfeit and appropriate the Bid Security as damages for any of the events specified in Clause 5.1.8.
- 3.7.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the Letter of Award (LoA) or entering into the Concession Agreement, and if the Bidder has already been issued the LoA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the

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Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be. In such an event, the Authority shall forfeit and appropriate the Bid Security or Performance Security of such Bidder or Concessionaire without prejudice to any other right or remedy that may be available to the Authority.

- 3.7.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

3.8 Clarifications

- 3.8.1 Bidders requiring any clarification on the Bidding Documents may notify the Authority in writing or via e-mail in accordance with Clause 2.2.8. They should send in their queries before the date mentioned in the schedule of Bidding Process specified in Clause 2.3.1. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be uploaded on the Authority's portal only.
- 3.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 3.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations, addenda/ corrigendum issued by the Authority shall be deemed to be part of the Bidding Documents.

3.9 Amendment of Bidding Documents

- 3.9.1 At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the Bidding Documents by the issuance of addenda/ corrigendum.
- 3.9.2 The addenda/ modified Bidding Documents (if any) shall be uploaded on the Authority's portal. It will be the responsibility of the Bidders to visit the portal on a regular basis to check for updates on this Project and the Bidding Process. The Authority shall not entertain any complaint/ grievance from any Bidder regarding the non-receipt of the addenda/ modified Bidding Documents.

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3.9.3 In order to afford the Bidders a reasonable time for taking an addendum/ corrigendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

4 Preparation and Submission of Bids

4.1 Language

4.1.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, shall not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

4.1.2 In case of documents executed and issued overseas, such documents shall have to be legalized/ consularized from the Indian Embassy in the country of their origin, before submission in the Bid.

4.2 Format and Signing of Bid

4.2.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable for rejection.

4.2.2 The Bidder shall prepare 1 (one) original set of the Bid (together with originals/ copies of documents duly signed and stamped, required to be submitted along therewith pursuant to this RFP) and clearly marked "**ORIGINAL**". In addition, the Bidder shall submit one copy of the Bid, along with xerox copies of the duly signed and stamped documents required to be submitted along therewith pursuant to this RFP, marked "**COPY**". In the event of any discrepancy between the original and the copy, the original shall prevail.

4.2.3 The Bid and its copy shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid and its copy shall contain page numbers and shall be bound together in hard covers separately. Bids submitted by fax, telex, telegram or e-mail shall be rejected.

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4.3 Sealing and Marking of Bids

4.3.1 The Bidder shall submit the Bid in the following format :

ENVELOPE I: Technical Bid (Original plus Copy)

ENVELOPE II: Financial Bid (Original)

4.3.2 Envelope I: Technical Bid - Each Technical Bid envelope shall contain the following :

- a. **Bidding Document Fee** – if the Bidder has downloaded the Bidding Documents from the portal then the Bidder shall submit a Demand Draft of Rs. 10,000/- (Rupees Ten Thousand Only) in favour of the CEO, BBNDA payable at Baddi, District Solan and drawn on any Scheduled Bank in India. However, if the Bidder has purchased the Bid Documents from the office of the Authority, then the receipt of the same has to be attached.
- b. Covering letter clearly stating the **validity period of the Bid** in the prescribed format **Annexure A-1**
- c. **Power of Attorney** for signing the Bid, as per the prescribed format **Annexure A-2** and duly notarized.
- d. **Power of Attorney** for Lead Member of Joint Venture, as per the prescribed format in **Annexure A-3** and duly notarized.
- e. **Joint Bidding Agreement**, as per the prescribed format in **Annexure A-4** wherever required.
- f. **Bid Security**, in form of Demand Draft in favour of CEO, BBNDA.
- g. **Anti-Collusion Certificate**, to be submitted on the letter head of the Bidder. In case of Joint Venture, it shall be on the letter head of the Lead Member, substantially as per format given in **Annexure A-5**.
- h. **Details of the place of incorporation/ registration**, registered office (or its equivalent), current Directors/ Partners/ Proprietor, key management personnel and principal shareholders/ interest holders, In case of Bidder being a Joint Venture, the above information should be given for all the members of the Joint Venture; role of each member of the Joint Venture in implementation of the Project. Contact Details comprising name, address,

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telephone and facsimile numbers, e-mail address of the Bidder (Lead Member and each member in case of Joint Venture) and the names and titles of the persons who are the principal contact persons shall be provided. This information is to be provided as per the format in **Annexure A-6 along with the self attested copies the Constitution Documents of the entity such as Memorandum of Association (MoA) & Articles of Association (AoA), registered Partnership Deed, GST registration certificate, etc.** The main object of the Bidder entity shall be similar as to the activities which are envisaged under the scope of work as mentioned in this Bidding Document and other related documents.

- i. Certificate(s) from its Statutory Auditor/ Chartered Accountant, as the case may be, specifying Net Worth of the Bidder as on 31.03.2017. The Bidders shall be required to submit Audited Financial Statements/ Balance Sheets for the last three financial years preceding Bid Due Date (i.e. FY 2014-15, 2015-16 and 2016-17) - **Annexure A-7** for demonstrating the Financial Capacity.
- j. Relevant information about the similar projects undertaken as per the format **Annexure A-8** for demonstrating the Technical Capacity alongwith copies of the requisite documents/ certificates/ evidences in support of the claim as required to be submitted supporting eligibility criteria and Technical Bid as per the RFP.

4.3.3 Envelope II : “**Financial Bid**” shall be submitted in envelope II which shall contain the following:

The Financial Bid shall be furnished in the format as per **Annexure B-1** and shall consist of a Tipping Fee or Concession Fee, as the case may be, to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Tipping Fee or Concession Fee, as the case may be, required by him or offered by him, as the case may be, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

4.3.4 The Bidder shall seal the original set and the copy of the Technical Bid together with their respective enclosures, in separate envelopes, duly marking the respective envelopes as “ORIGINAL TECHNICAL BID” and “COPY OF TECHNICAL BID”. Both envelopes of Technical Bid shall be together put into another envelope, seal and mark the envelope as Envelope-I : “**Technical Bid**”. The Bidder shall submit the financial offer in the format specified at Annexure B-1 and seal it in another envelope and mark the envelope as Envelope II : “**Financial Bid**”. Both the envelopes of the Technical Bid and the Financial Bid shall then be sealed in an outer envelope and the envelope marked as “**Bid**” and shall clearly bear the following identification :

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“BID FOR : SELECTION OF AGENCY FOR SETTING UP OF INTEGRATED SOLID WASTE MANAGEMENT PROJECT FOR COLLECTION, TRANSPORTATION, PROCESSING AND DISPOSAL IN BADDI CLUSTER IN THE STATE OF HIMACHAL PRADESH ON PUBLIC PRIVATE PARTNERSHIP (PPP) BASIS”

And

NOT TO BE OPENED BEFORE THE DUE DATE/ TIME FOR BID SUBMISSION & OPENING”

4.3.5 Each of the envelopes shall be addressed to:

ATTN. OF: The Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority,
ADDRESS: EPIP Phase-I,
Jharmajri, Baddi,
District Solan
Himachal Pradesh.
PHONE: +91- 94180-69444; 01795-271121,23
E-mail: ceobbnda-hp@nic.in
Fax: 01795-271122

Further, both the inner and outer envelopes should also bear the name and complete address along with telephone/ mobile number of the authorized representative of the Bidder.

4.3.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

4.3.7 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

4.4 Bid Due Date

4.4.1 Bids should be submitted before 4.00 pm IST on the Bid Due Date at the address mentioned in Clause 2.3.1 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.3.1.

4.4.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 3.9 uniformly for all Bidders.

4.5 Late Bids

4.5.1 Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

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4.6 Modifications/ Substitution/ Withdrawal of Bids

- 4.6.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by him or his authorised representative (authorisation letter be enclosed). Corresponding substitution or modification of the **Bid** must accompany the written notice. The notice must be :
- (a) submitted in accordance with the Bidding Documents, and in addition, the envelope shall be clearly marked as “Withdrawal,” “Substitution,” or “Modification”; and
 - (b) received by the person authorised by the Authority to receive the Bids or directly dropped in the bid box prior to the last time and date fixed for receiving of Bids.
- 4.6.2 Bids requested to be withdrawn shall be returned unopened to the Bidders.
- 4.6.3 No Bid shall be modified, substituted or withdrawn by the Bidder after its submission.
- 4.6.4 Any alteration/ modification in the Bid or additional information supplied subsequent to submission of Bid to the Authority shall be disregarded.

4.7 Rejection of Bids

- 4.7.1 The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision.
- 4.7.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reason.

4.8 Validity of Bids

- 4.8.1 The Bids shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date. The validity of Bids may be extended with the mutual consent of the respective Bidders and the Authority.

4.9 Confidentiality

- 4.9.1 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional Advisor advising the Authority in relation to or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority.

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4.10 Correspondence with the Bidder

4.10.1 The Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

5 BID SECURITY AND PERFORMANCE SECURITY

5.1 Bid Security

5.1.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clause 2.2.4 above in form of a Demand Draft in favour of CEO, BBND, issued by a Scheduled Bank in India. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

5.1.2 The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

5.1.3 The value of the Bid Security shall be Rs.10,00,000/- (Rupees Ten Lakhs Only).

5.1.4 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.

5.1.5 Save as provided in Clause 2.2.4, the Bid Security of unsuccessful Bidders will be refundable, without any interest, not later than 60 days from the Bid Due Date except in the case of the Selected Bidder.

5.1.6 The Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Agreement and furnishing the Performance Security in accordance with the provisions thereof.

5.1.7 The Authority shall be entitled to forfeit, invoke and appropriate the Bid Security in any of the events specified in Clause 5.1.8 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.

5.1.8 The Bid Security shall be forfeited, invoked and appropriated by the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:

- a. If a Bidder submits a non-responsive Bid;
- b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 7.1 of this RFP;

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- c. If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
- d. In case the information furnished by the Bidder is found to be false or untrue;
- e. In the case of Selected Bidder, if it fails within the specified time limit to (i) to sign and return the duplicate copy of LoA, or, (ii) sign the Agreement, or (iii) furnish the Performance Security.

5.2 Performance Security

- 5.2.1 The Selected Bidder shall provide to the Authority, a Performance Security prior to signing of the Concession Agreement in the form of an irrevocable & unconditional Bank Guarantee issued by a Scheduled Bank in India having its' branch in Baddi, District Solan, issued in favour of the "**CEO, BBNDA**", as per the format provided in the Concession Agreement. The Performance Security shall be for an amount of Rs.1,00,00,000/- (Rupees One Crore Only). The Performance Security shall be valid for the entire Concession Period.
- 5.2.2 The Performance Security shall be encashed at the sole discretion of the Authority towards any liquidated damages that may be payable by the Selected Bidder to the Authority due to default or breach of its Conditions Precedent, obligations, and/or against termination eventualities attributed to the Selected Bidder, under the terms of the Concession Agreement.
- 5.2.3 In the event the Selected Bidder fails to provide the Performance Security by the stipulated period, the Authority would be entitled to forfeit the Bid Security of the Selected Bidder in part or whole, without prejudice to any other right or remedy that may be available to the Authority. The decision of the Authority in this regard is final and binding.

6. EVALUATION OF BIDS

6.1 Opening of Bids

- 6.1.1 The Bid Evaluation Committee constituted by the Authority shall open the Bids at 2.30 pm IST on the Bid Due Date, at the place specified in Clause 2.3.1 and in the presence of the Bidders who choose to attend.
- 6.1.2 All envelopes containing Bids shall be signed with date by the members of the Bid Evaluation Committee in token of verification of the fact that they are sealed. The envelopes shall be numbered as a/n, where 'a' denotes the serial number at which the Bid envelop has been taken for opening and 'n' denotes the total number of Bids received by specified time.
- 6.1.3 The Bid Evaluation Committee shall prepare a list of the Bidders or their representatives attending the opening of Bids and obtain their signatures on the same. The list shall also contain the representative's name and telephone number and corresponding Bidders' names and addresses. The authority letters brought by the representatives shall be attached to the list. The list shall be signed by all the members of Bid Evaluation Committee with date and time of opening of the Bids.

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- 6.1.4 First, envelopes marked as “WITHDRAWAL” shall be opened, read out, and recorded and the envelope containing the corresponding Bid shall not be opened, but returned to the Bidders. No Bid shall be permitted to be withdrawn unless the corresponding withdrawal notice contains a valid authorisation to request the withdrawal and readout and recorded in Bid opening. If the withdrawal notice is not accompanied by the valid authorisation, the withdrawal shall not be permitted and the corresponding Bid shall be opened. Next, envelope(s) marked as “SUBSTITUTION” shall be opened, read out, recorded and exchanged for the corresponding Bid being substituted and the substituted Bid shall not be opened, but returned to the Bidder. No Bid shall be substituted unless the corresponding substitution notice contains a valid authorisation to request the substitution and is read out and recorded at Bid opening. Envelopes marked as “MODIFICATION” shall be opened thereafter, read out and recorded with the corresponding Bid. No Bid shall be modified unless the corresponding modification notice contains a valid authorisation to request the modification and is read out and recorded at Bid opening. Only envelopes that are opened, read out and recorded at Bid opening shall be considered further.
- 6.1.5 The Bid Evaluation Committee on behalf of the Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in Clause 6.3.
- 6.1.6 To facilitate evaluation of Bids, on the recommendations of the Committee, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid. Any clarification submitted by a Bidder with regard to its Bid that is not in response to a request by the Committee shall not be considered.
- 6.1.7 The evaluation of Bids shall be done in 2 steps by the Bid Evaluation Committee constituted by the Authority for the purpose of evaluation of the Bids. In step-1, the Technical Bid of the Bidder shall be checked to determine that whether the technical aspects, i.e. Technical Capacity as well as the Financial Capacity of the Bidder, is in accordance with the requirements set forth in the RFP. In step-2 of the evaluation, the Financial Bid of only those Bidders who have passed Step-1 shall be opened by the Authority.

6.2 Tests of Responsiveness

- 6.2.1 Prior to evaluation of Bids, the Bid Evaluation Committee shall conduct a preliminary scrutiny of the opened Bids to assess its prima facie responsiveness to the requirements of the RFP. A Bid shall be considered responsive only if:
- a. it is accompanied by the Bidding Document Fee in form of demand draft if the Bid Document is physically purchased, or receipt in lieu thereof if the Bid Document is downloaded from the portal, pursuant to Clause 2.2.2;
 - b. it is received as per the format as specified in Clause 4.2;
 - c. it is received on the Bid Due Date including any extension thereof pursuant to Clause 4.4;
 - d. it is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 4.2 and 4.3;

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- e. it is valid for the period specified in Clause 4.8 of the RFP;
- f. it is accompanied by the Bid Security as specified in Clause 5.1;
- g. it is accompanied by the Power(s) of Attorney;
- h. it contains all the information (complete in all respects) as requested in this RFP and/ or Bidding Documents (in formats as specified in this RFP);
- i. it contains duly filled in format of Check List (Appendix-I) for response to RFP submission requirements;
- j. it does not contain any condition or qualification;
- k. the Financial Bid is not included as a part of the Technical Bid; and
- l. it is not non-responsive in terms hereof.

6.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

6.2.3 The procuring entity shall regard a Bid as responsive if it conforms to all requirements set out in the Bidding Documents, or it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in the Bidding Documents, or if it contains errors or oversights that can be corrected without touching on the substance of the Bid.

6.3 Evaluation Process

A. Technical Bid Evaluation

6.3.1 The Authority will carry out a detailed evaluation of such substantially responsive Bids in order to determine whether the submissions made, either in form of information supplied in the prescribed formats and/ or documents annexed by the Bidder in its Technical Bid, are in accordance with the requirements set forth in the Bidding Document, taking into account the following factors :

- (a) overall completeness and compliance of the Technical Bid submissions with the requirements of the Authority as mentioned in this RFP. The Bid that does not meet minimum prescribed standards of completeness, consistency, compliance and detail as required by the present RFP will be rejected for non-responsiveness; and
- (b) fulfilment of the Minimum Eligibility Criteria demonstrating that the Bidder possesses prior requisite experience, knowhow, operation & management skill and financial resources to implement the Project (*if awarded*) in accordance with the requirements specified in this RFP particularly the Concession Agreement.

6.3.2 Only those Bidders whose Technical Bids are evaluated to be compliant in terms hereof and assessed as being capable of meeting the requirements/ standards specified in the RFP shall be declared as technically qualified Bidders and only such qualified Bidders shall then progress to the opening and evaluation of their Financial Bids. All other Bids which are not found to be technically compliant shall be declared non-qualifying and hence would not be taken up for opening

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and evaluation of the Financial Bid.

- 6.3.3 After the technical evaluation, the Authority shall prepare a list of qualified Bidders in terms of Clause 6.3.2 for opening of their Financial Bids. A date, time and venue will be notified to the qualified Bidders through the portal. Before opening of the Financial Bids, the list of qualified Bidders shall be published on the portal. Any query or clarification from Bidders who fail to qualify at any stage of the Selection Process shall not be entertained.
- 6.3.4 The Financial Bid of qualified Bidders shall be opened in the presence of their representatives, who choose to attend.
- 6.3.5 The Financial Bid shall be furnished in the format Annexure B-1 and shall consist of a Concession Fee or Tipping Fee, as the case may be, to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Tipping Fee or Concession Fee, as the case may be, required by him or offered by him, as the case may be, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.
- 6.3.7 Subject to the provisions of Clause 3.7, the Bidder whose Bid is adjudged as responsive in terms of Clause 6.2.1 and who quotes the highest Concession Fee offered to the Authority, and in the event that no Bidder offers Concession Fee, then the Bidder quoting the lowest Tipping Fee to be paid by the Authority shall be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 6.3.8 In the event that two or more Bidders quote exactly the same amount of Tipping Fee or Concession Fee (**Tied Bidders**), then the Authority reserves the right either to :
- i. Invite fresh Bids from such Tied Bidders; or
 - ii. Take any such measure as may be deemed fit in its sole discretion, including annulment of the Bidding Process; or
 - iii. Identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tied Bidders, who choose to attend.
- 6.3.9 Information relating to the examination, clarification, evaluation, and recommendation for the Bidder shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process.

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6.3.10 After selection, a Letter of Award (the “**LOA**”) shall be issued, in duplicate, by the Authority (on behalf of all the Participating ULBs) to the Selected Bidder and the Selected Bidder shall, within 15 (fifteen) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, cancel the LOA and appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

6.3.11 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Concession Agreement within the period prescribed in Clause 2.3.1 above. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

6.4 Contacts during Bid Evaluation

6.4.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of issuance LOA/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

6.5 Tipping Fee

6.5.1 Tipping Fee means a fee for per ton of MSW collected, transported and received at processing facility and expressed in INR/ ton which shall be paid by the Participating ULBs collectively, in lieu of the expenses incurred by the Selected Bidder in rendering the services of **collection, transportation, processing and disposal of the MSW in the Baddi Cluster, subject to and in accordance with the terms of the Concession Agreement and Applicable Law**. GST, if applicable, shall be payable to the Selected Bidder/ Concessionaire in addition to the agreed amount of Tipping Fee.

It is hereby clarified, clearly recorded and understood by the Bidder that :-

- a. prior to the Commercial Operations Date of the Project Facility under the Concession Agreement, the Concessionaire shall be entitled to receive only 45% of the accepted* Tipping Fee amount based on the quantity of MSW collected and transported to the site, as measured/ recorded at the Weighbridge, subject always to verification by the PMU/ Designated ULB;

** the term “accepted” here means the quote accepted by the Authority pursuant to conclusion of the Bid evaluation process in terms of this RFP.*

- b. Once the commercial operation of the Project Facility is achieved the Concessionaire shall, subject to due verification of the processing of accumulated waste by PMU/ Designated ULB, be entitled to receive balance 55% of the accepted Tipping Fee amount for the MSW already

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collected and transported to site during the Pre-COD Period, as per clause (a) above.

- c. Further, subject to due discharge by the Concessionaire of its obligation to complete the processing and disposal of MSW collected and transported to site, with effect from COD and during the remaining term of the Concession, the Concessionaire shall, be entitled to payment of the accepted Tipping Fee (with applicable aforesaid escalation) for the amount of MSW processed at Processing Facility, subject to terms herein and the Concession Agreement.
- d. Post COD i.e. commissioning of Processing Facility, the amount of Tipping Fee shall escalate at the rate of 5% on the last relevant rate, after every two years after COD. GST, if applicable, shall be payable to the Selected Bidder/ Concessionaire in addition to the agreed amount of Tipping Fee.

**Year means Financial Year (FY) from 1 April to 31 March. If COD is achieved between 01 April and 31 December, increase would be applicable from ensuing FY. However in case COD is achieved between 01 January and 31 March, increase would be applicable in next to next FY.*

7 FRAUD AND CORRUPT PRACTICES

7.1 General

- 7.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall forfeit, invoke and appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 7.1.2 Without prejudice to the rights of the Authority under Clause 7.1.1 and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, if a Bidder or the Selected Bidder or the Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive

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practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or the Selected Bidder or the Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

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

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

- b. **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process ;
- c. **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- d. **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. **“Restrictive Practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

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8. Pre-Bid Conference

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

9. Miscellaneous

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

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

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

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

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ANNEXURE A-1

Letter comprising the Bid

(On the letterhead of the Bidder/ Lead Member)

(Refer Clause 4.3.2b)

Dated:.....

The Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority,
EPIP Phase-I,
Jharmajri, Baddi,
District Solan,
Himachal Pradesh.

Re: Request for Proposal for Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis

Dear Sir,

1. With reference to your Bidding Document dated _____, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the **Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis.**
2. The Bid is unconditional and unqualified.
3. All information and documents provided in the Bid and in the Annexures is true and correct.
4. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project.
5. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
6. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

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7. I/ We certify that in the last three years preceding Bid Due Date, we/ any of the Joint Venture Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
8. I/ We declare that:
 - I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;
 - I/ We do not have any conflict of interest in accordance with Clause 3.1.5 of the Bidding Document;
 - I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Section 7 of the Bidding Document, in respect of any tender or request for Bid issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 7.1 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
9. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 3.7 of the Bidding Document.
10. I/ We believe that we/ Joint Venture satisfy(ies) the Minimum Eligibility and Net Worth criteria and meet other requirements as specified in the Bidding Document and are/ is qualified to submit a Bid in accordance with the Bidding Document.
11. I/ We declare that we/ any Member of the Joint Venture are/is not a Member of a/ any other Joint Venture submitting a Bid for the Project.
12. I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
13. I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Members.

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14. I/ We further certify that no investigation by a regulatory authority is pending either against us or against me/ our CEO or any of our Directors/ Partners/ Managers/ employees.
15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
17. In the event of my/our being declared as the Selected Bidder, I/ we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/ us. We agree not to seek any changes in the aforesaid draft and agree to abide by the same. We further agree to execute the Project in accordance with the provisions of the Concession Agreement and the RFP.
18. I/We have studied all the Bidding Documents carefully and also surveyed the ULBs and the Project Area falling under their respective jurisdictions under Baddi Cluster. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Concession.
19. The [Tipping Fee/ Concession Fee]⁵ has been quoted by me/ us after taking into consideration all the terms and conditions stated in the RFP, the provisions of the Concession Agreement, our own estimates of costs and after a careful assessment of the Project and all the conditions that may affect the Bid.
20. I/We offer a Bid Security of Rs.10,00,000/- (Rupees Ten Lakhs Only), to the Authority in accordance with the Bidding Document.
21. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project is not awarded to me/ us or our Bid is not opened.

⁵ Strike out whichever is not applicable

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22. A Power of Attorney in favour of the authorised signatory to sign and submit this Bid and documents is attached herewith in Annexure A-2.
23. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Bid Due Date specified in the RFP.
24. I/We agree and undertake to abide by all the terms and conditions of the Bidding Document.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the Bidding Document.

Yours faithfully,

(Signature of the Authorised signatory)

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Date:

Place:

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ANNEXURE A-2

Power of Attorney for Signing of Bid
(To be executed on Stamp Paper of appropriate value)
(Refer Clause 4.3.2c)

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms.(name).....son/ daughter/ wife of..... and presently residing at, who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of, as our true and lawful attorney (here in after referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our Bid for the “**Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis**” proposed or being developed by the Government of Himachal Pradesh through the Authority including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Participating ULBs.

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

IN WITNESS WHEREOF WE,....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 201....

For

.....

(Signature, name, designation and address)

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Witnesses:

1.

2.

(Notarised)

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents such as a board or shareholder's resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

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

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*Integrated Solid Waste Management Project
at Baddi (Kenduwal)*

ANNEXURE A-3

Power of Attorney for Lead Member of Joint Venture
(To be executed on Stamp Paper of Rs. 100/-)
(Refer Clause 4.3.2d)

Whereas the Authority has invited Bids from interested parties for the “**Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis**” (the “**Project**”).

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

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

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, having our registered/ head office at, M/s, having its registered/ head office at, and M/s, having its registered/ head office at, (herein after collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. having our registered office at, being one of the Members of the Joint Venture, as the Lead Member and true lawful attorney (with power to sub delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the Bidding Process and in the event the Joint Venture is awarded the concession/ contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Joint Venture and submission of its Bid for the Project, including but not limited to signing and submission of all applications, bid and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating or arising out of the Joint Venture’s Bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority/ Participating ULBs.

REQUEST FOR PROPOSAL
Integrated Solid Waste Management Project

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

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED

THIS POWER OF ATTORNEY ON THIS..... DAY OF20

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

For

(Signature)

.....

(Name & Title)

HPIDB Website-22.01.2018

REQUEST FOR PROPOSAL
*Integrated Solid Waste Management Project
at Baddi (Kenduwal)*

Witnesses:

- 1.
- 2.

.....

(Executants)

(To be executed by all the Members of the Joint Venture)

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Also, wherever required, the Bidder should submit for verification the extract of the charter documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

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

Format for Joint Bidding Agreement

(To be executed on Stamp paper of appropriate value)

(Refer Clause 4.3.2e)

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

AMONGST

_____, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at _____ (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

_____, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at _____ (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

_____, a [company/ partnership firm/ proprietorship] incorporated/ registered under the [name of the applicable legislation] and having its registered/ head office at _____ (hereinafter referred to as the **"Third Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, SECOND and THIRD PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

- (A) **The Baddi Barotiwala Nalagarh Development Authority** represented by the Chief Executive Officer, and having its office at EPIP Phase-I, Jharmajri, Baddi, District Solan (HP) (hereinafter referred to as the **"Authority"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited offers (the **"Bids"**) by its Request for Proposal No. dated (the **"RFP"**) for **"Selection of Operator for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and**

Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis" (the "Project").

- (B) The Parties are interested in jointly bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the Bidding Document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the Bidding Document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions and Interpretations

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

2. Joint Venture

- 2.1 The Parties do hereby irrevocably constitute a Joint Venture (the "**Joint Venture**") for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

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

4. Role of the Parties

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

- (a) Party of the First Part shall be the Lead Member of the Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the Compliance Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be {the Technical/ Financial Member of the Joint Venture;}

{{(c) Party of the Third Part shall be the {Operation and Maintenance Member/ Other Member of the Joint Venture.}}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till the conclusion of the Project in accordance with the Concession Agreement.

6. Shareholding in the SPV

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

First Party:

Second Party:

{Third Party:}

6.2 The Parties undertake that atleast 26% (twenty six percent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the 5th (fifth) anniversary of the Commercial Operations Date of the Project, be held by those members of the Consortium whose experience and credential were considered for the purpose of qualification and short-listing of Bidders for the Project in terms of the RFP. The Parties further undertake to collectively hold atleast 51% (fifty one percent) of the subscribed and paid up equity share capital of the SPV at all times till the end of the Concession Period.

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

7. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

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

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:		SECOND PART	
(Signature)	(Signature)		
(Name)	(Name)		
(Designation)	(Designation)		
(Address)	(Address)		
For and on behalf of			
THIRD PART			
(Signature)			
(Name)			
(Designation)			
(Address)			

Notes:

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

ANTI-COLLUSION CERTIFICATE

(On the letter head of Bidder/ Lead Member)

(Refer Clause 4.3.2(g))

We {including all members of the Consortium} hereby certify and confirm that in the preparation and submission of this Bid in respect of “**Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis**” (the “**Project**”), we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed, or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid.

Date thisDay of201....

Name of the Bidder

Signature of the Authorised Representative

Name of the Authorised Representative

For

(Signature)

.....

(Name & Title) with stamp

For

(Signature)

.....

(Name & Title) with stamp

(Executants)

(To be executed by all the Members of the Joint Venture)

Witnesses:

Note: To be executed by the Lead Member, in case of a Joint Venture and signed by all members of the Joint Venture

BIDDER'S DETAILS

(Refer Clause 4.3.2h)

- (a) Name:
- (b) Country of incorporation/ registration:
- (c) Address of registered office/ head office and its branch office(s), if any, in India or abroad:
- (d) Date of incorporation/ registration and/ or commencement of business:
2. Brief description of the entity including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
- (a) Name:
- (b) Designation:
- (c) Company:
- (d) Address:
- (e) Telephone Number:
- (f) E-Mail Address:

4. Particulars of the Authorised Signatory of the Bidder:

(a) Name:

(b) Designation:

(c) Address:

(d) Phone Number:

5. In case of a Joint Venture:

(a) The information above (1-4) should be provided for all the Members of the Joint Venture.

(b) A copy of the Joint Bidding Agreement, as envisaged in Clause 3.2.6 (f) should be attached to the Bid (as per format provided in **Annexure A-4**)

(c) Information regarding the role of each Member should be provided as per table below:

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

(d) The following information shall also be provided for each Member of the Joint Venture:

Name of Bidder/Member of Joint Venture

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

	relation to execution of a contract, in the last three years?		
--	---	--	--

6. A statement by the Bidder and each of the Members of its Joint Venture (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):
7. Please attach a copy of Certificate of Incorporation, Memorandum of Association, Articles of Association, registered Partnership Deed, Capability Profile, Brochure, Copies of latest Income Tax return, GST Registration No. issued by the competent authorities with details of PAN/TIN/ECC/CST etc. of each individual Joint Venture Member.

Signature _____
 Name _____
 Designation _____
 Stamp/ Company seal _____
 Date _____

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Financial Capacity

(Refer Clause 4.3.2i)

Bidder Type	Net Worth
Single entity Bidder	
Joint Venture Member 1	
Joint Venture Member 2	
Joint Venture Member 3	
TOTAL	

Note:

- Audited Balance Sheets, Financial Statements and Annual Reports (where the Bidder is a Company) and Profit & Loss statements of the Bidder (of each member, in case of a Joint Venture) for the last 3 (three) years preceding the Bid Due Date shall be enclosed. The financial statements shall:
 - a. reflect the financial situation of the Bidder or Consortium Members;
 - b. be audited by a statutory auditor;
 - c. be complete, including all notes to the financial statements; and
 - d. correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- In the case of a Joint Venture, a copy of the Jt. Bidding Agreement shall be submitted (as per format provided in Annexure A-4)
- The Bidder shall provide an Auditor's certificate/Chartered Accountant certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such net worth
- For the purposes of this RFP the term net worth means following:

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

 - i. Net Worth for Partnership Firm would mean:- [Fixed Assets +Trade Receivables + Current Assets] – [Firms Loan +Current Liabilities]

- ii. Net worth for Trust or Society would mean: - Capital/Corpus +Free Reserves.
- iii. Net Worth for Individual Person shall mean:-Assets(including cash) LESS All Liabilities.
- iv. Net Worth for Sole Proprietorship would mean:- Total Assets- Total Liabilities

Signature _____
Name _____
Designation _____
Name of Bidder _____
Stamp/ Company seal _____
Date _____

Certificate from the Statutory Auditor/ Chartered Accountant

This is to certify that the information contained above is correct as per the Books of Accounts of the {*name of the Bidder/ member of the Joint Venture*} whose Net Worth as on : March 31, 2017 is Rs._____ (rupees in words).

(Signature for the Authorised Signatory of the Statutory Auditor/ Chartered Accountant)

Name of the Authorised Signatory:
Designation:
Name of the firm:
Seal of the Firm :

Technical Capacity*(Refer Clause 4.3.2j)***Name of Bidder/ Member of Joint Venture :**

Particulars	Particulars of the Project
Title of the Project	
Nature of the project	
Entity for which the project was constructed/ developed	
Location	
Project capacity & Project cost	
Date of commencement of project/ contract	
Date of completion/ commissioning	
Equity share holding(with period during which equity was held)	

Instructions:

1. Bidders are expected to provide information each project being claimed to meet Eligibility Criteria as per clause 3.2 of the RFP. Bidders should also refer to the Instructions below.
2. A separate sheet should be filled for each eligible Project.
3. Experience for any activity relating to an eligible Project shall not be claimed by two or more Members of the Joint Venture. In other words, no double counting by a Joint Venture in respect of the same experience shall be permitted in any manner whatsoever.

4. Certificate from respective clients must be furnished for each eligible Project in respect of which experience is being claimed to meet Eligibility Criteria as per Clause 3.2 of the RFP.

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Format for Financial Proposal

Date:.....

To

**The Chief Executive Officer,
Baddi Barotiwala Nalagarh Development Authority,
EPIP Phase-I,
Jharmajri, Baddi,
District Solan
Himachal Pradesh.**

Re: Request for Proposal for Selection of Agency for Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis

Dear Sir,

I/ We hereby submit our Financial Bid and [offer to pay to the Authority, a Concession Fee of an amount Rs..... (Rupees in words) per annum payable in four equal quarterly instalments, in advance, commencing from Commercial Operations Date / require a Tipping Fee of Rs..... (Rupees in words) per ton of MSW, collected, transported, processed and disposal of inert and processing rejects at the Processing Facility]⁶ for undertaking the Project pertaining to "Setting up of Integrated Solid Waste Management for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis" in accordance with the Bidding Documents including any Addendum thereof.

I/We agree that the rate of [Concession Fee/ Tipping Fee] shall escalate at the rate specified in the Concession Agreement.

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

⁶ Strike out whichever is not applicable

This Form is not to be included with Technical Bid. Information comprising Financial Bid, if submitted with Technical Bid, shall lead to disqualification of Bid.

Yours faithfully

Authorized Signatory
(Name & seal of the Bidder/ Lead Member)

Date:

Place:

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CHECK LIST

Description	Annexure	Submitted (Yes/ No)
TECHNICAL BID		
Covering letter clearly stating the validity period of the Bid	A-1	
Power of Attorney for signing the Bid	A-2	
Power of Attorney for Lead Member of Consortium	A-3	
Joint Bidding Agreement format	A-4	
Payment of Bidding Document Fee		
Bid Security Demand Draft		
Anti-Collusion Certificate	A-5	
Details of the place of incorporation, registered office etc.	A-6	
Certificate(s) from its statutory auditors/ chartered accountant specifying the Net Worth along with audited Financial Statements/ Balance Sheets	A-7	
Relevant information about similar projects undertaken along with supporting documents as specified	A-8	
Checklist	Appendix-I	
FINANCIAL BID		
Financial Bid	B-1	

SCHEDULE -1

LIST OF EXISTING INFRASTRUCTURE

A. MC Baddi

INFORMATION FOR MC BADDI AREA

DATA TO BE PROVIDED	REMARKS	STATUS
Population and Waste Generation		
Historical data from Census (2011, 2001, 1991.....so on)	Please provide ward/ zone wise data	Total population-29911
Locations/ Wards covered under each ULB		MC Baddi
Floating Population estimates (tourists, migrants, etc.)		Approximated = 70000
Collection and Transportation		
Information on Current Method of Waste Collection	If the ULB has awarded a contract for collection, transportation of waste, then copies of contract, tender documents giving performance parameters of private contractor etc. to be provided	engaged 107 Sabai Karamchasi for collection & disposal of waste
Total number No. of Wards under the jurisdiction of the ULB		9
No. of wards covered by the ULB for waste management at present		9
Wards where Door-to-Door collection is being done at present.	Please provide number of such wards and who is providing the service (ULB on its own or through contract)	Ward no 9 HIMUDH Colony.
Types of vehicles being used, number & capacity of such vehicle (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle	In case the vehicles are provided by contractor, estimates to be obtained from the contractors.	Dumper placed - 2 (one provided by contractor & other one MC Baddi) Tractor Trolley 5 (Provided by contractor) Handcart Rikshaw - 31 nos Wheel Barrow - 25 nos
Frequency of secondary collection (number of trips per vehicle per day or per week)		Dumper placed - 8-10 trip per day each Tractor Trolley - 2 trip per day
No. of bins/ dumpsters in each ULB currently provided zone wise/ ward wise, along with standard capacity of dumpster/ bin		bin 1x4 = 45 Nos Dumper type - 65 Nos
No. of wards catered by the existing dumpsters and vehicles (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle		Handcart Rikshaw - 31 Wheel Barrow - 25
Route plan collection of waste from households (door-to-door collection)	Indicate number of kilometers covered per trip under the current system. If the activity	Approximated - 15km per trip

M. A. P. —

					Cost of composting plant (500 Lacs/10 Femtes)	1000		
					Labour Cost (80k)			
					O&M Cost (802k)	30765.85628		
					Cost of Landfilling (1.25 crore/5000 ton) 3 crore			
					Building Cost	10 crore		
					Composting Plant Cost	18 crore		

Baddi MC details		Industrial unit, surrounding Panchayats & floating population		
Total Quantity of waste generation	25 to 30 ton /day	Total Quantity of waste generation	65 to 70 ton /day	
Land fill site	1 No. at Khandawal			
Population covered	29911 as per 2011 Census & floating population approximated 70000-99911			
Safai Karamchari	107 No. engaged on outsourced basis			
Total Bins 4w4	45 No.			
Dumper type bin	65 No.			
Dumper placer	2 no. one on rent basis and on MC basis			
Trolley	5no. on rent basis			
Modular Ricksha Rehr	31 No.			
Wheel Barrow	25 No.			

r. k. sharma
 Executive Officer
 Municipal Council Baddi
 District Solan (H.P.)

HPIDB W

B.BBND Area


INFORMATION FOR BBND AREA

DATA TO BE PROVIDED	REMARKS	STATUS
Population and Waste Generation		
Historical data from Census (2011, 2001, 1991.....so on)	Please provide ward/panchayat/ zone wise data	1,44,564 -
Locations/ Wards/ Panchayats covered under each ULB		BBN Area
Floating Population estimates (tourists, migrants, etc.)		1,00,000 -
Collection and Transportation		
Information on Current Method of Waste Collection	If the ULB has awarded a contract for collection, transportation of waste, then copies of contract, tender documents giving performance parameters of private contractor etc. to be provided	Attached.
Total number No. of Panchayats/ Wards under the jurisdiction of the ULB		41 Panchayats.
No. of panchayats/ wards covered by the ULB for waste management at present		08 No. of Panchayats
Wards/ Panchayats where Door-to-Door collection is being done at present.	Please provide number of such wards and who is providing the service (ULB on its own or through contract)	Through contract
Types of vehicles being used, number & capacity of such vehicle (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle	In case the vehicles are provided by contractor, estimates to be obtained from the contractors.	Tractor Trailer, Dumper Placers,
Frequency of secondary collection (number of trips per vehicle per day or per week)		05 Dumper Placers per Day.
No. of bins/ dumpsters in each ULB currently provided zone wise/ ward wise, along with standard capacity of dumpster/ bin		90 No. of dumpsters.
No. of panchayats catered by the existing dumpsters and vehicles (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle		08 No.


DATA TO BE PROVIDED	REMARKS	STATUS
Route plan collection of waste from households (door-to-door collection)	Indicate number of kilometers covered per trip under the current system. If the activity is done by contractor, then data be obtained from the contractor.	- nil -
Route plan for secondary collection (from dumpsters placed in the ULB area)	Indicate number of kilometers covered per trip under the current system. If the activity is done by contractor, then data be obtained from the contractor.	Ax. 14 km. per Trip
Road length under jurisdiction/ coverage of ULB for waste management		50.0 km.
Congested vs Non-congested areas under jurisdiction of ULB (high population density areas vs low-population density areas)	Please provide data in terms of road length under such areas	
Sanitary/ Scientific Landfill		
Area and location of Landfill		
In case of existing landfill/dumpsites, please provide the number of years the site has been operational and estimated quantity of waste at the site.		Waste is being dumped at site i.e. Kondhwal as directed by M.C. Baidi
Status of Environmental clearance	Please provide detailed report if available, and copy of the environment clearance received from Ministry of Environment.	
Any existing pre-processing, processing or sorting facility at the site?		
Waste Processing/ Treatment Facilities		
What is the current status of waste processing in the ULB?	Please provide information on current plants (including pilot projects if any) and their capacity. Also, state whether any of the plant is captive (setup for use in or for specific industry) in nature.	Waste is being dumped at site i.e. Kondhwal, as directed by M.C. Baidi
What technologies/ processes have been considered previously for waste processing in ULB?	Details including DPR or technical studies if any for such waste treatment plants	

DATA TO BE PROVIDED	REMARKS	STATUS
	as well as their current implementation status	
User Charges		
User charges from Households and various commercial establishment (shops, restaurants, dhabas, hotels, offices, etc.)	Please provide information of any existing charges being collected by ULB or proposed to be collected	- Nil -
No. and types of commercial establishments in the ULB	Please provide current numbers and projected growth if any. In absence of current/ projected growth, please provide historical data.	- Nil -


 JE (B.N.D.A.)


 ASSISTANT ENGINEER
 B.B.N.D.A. (BADDI ZONE)
 DISTT. SOLAN (H.P.)




 EXECUTIVE ENGINEER
 B.B.N.D.A. BADDI
 DISTT. SOLAN (H.P.)

C. MC Nalagarh

INFORMATION FOR MC NALAGARH AREA

DATA TO BE PROVIDED	REMARKS	STATUS
Population and Waste Generation		
Historical data from Census (2011, 2001, 1991.....so on)	Please provide ward/ zone wise data	10702
Locations/ Wards covered under each ULB		M.C. NALAGARH
Floating Population estimates (tourists, migrants, etc.)		Approximate 32000
Collection and Transportation		
Information on Current Method of Waste Collection	If the ULB has awarded a contract for collection, transportation of waste, then copies of contract, tender documents giving performance parameters of private contractor etc. to be provided	65 Karamdhaci (Safai) for collecting and disposal of waste
Total number No. of Wards under the jurisdiction of the ULB		9 NO
No. of wards covered by the ULB for waste management at present		9 NO
Wards where Door-to-Door collection is being done at present.	Please provide number of such wards and who is providing the service (ULB on its own or through contract)	ward No. 1 to 9
Types of vehicles being used, number & capacity of such vehicle (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle	In case the vehicles are provided by contractor, estimates to be obtained from the contractors.	Dumper/Tractor 1 No Tractor Trailer 1+1=2 Rickshaw 5 NO Hand cart 15 NO
Frequency of secondary collection (number of trips per vehicle per day or per week)		D.P = 6 No Trips T. Soley 2+2 = 4 Trip <i>Per day</i>
No. of bins/ dumpsters in each ULB currently provided zone wise/ ward wise, along with standard capacity of dumpster/ bin		31 No. container 22 NO Bin
No. of wards catered by the existing dumpsters and vehicles (For eg. Hand carts, wheel barrow, Compactor, tractor trailer, etc.) and distance covered by each vehicle		Hand cart = 15 # Rickshaw = 5 No Wheel Barrow = 18 No
Route plan collection of waste from households (door-to-door collection)	Indicate number of kilometers covered per trip under the current system. If the activity	10 30 km

TA TO BE PROVIDED	REMARKS	STATUS
	is done by contractor, then data be obtained from the contractor.	—
Route plan for secondary collection from dumpsters placed in the ULB area)	Indicate number of kilometers covered per trip under the current system. If the activity is done by contractor, then data be obtained from the contractor.	—
Road length under jurisdiction/ coverage of ULB for waste management		36 km
Congested vs Non-congested areas under jurisdiction of ULB (high population density areas vs low-population density areas)	Please provide data in terms of road length under such areas	1 to 9 ward 18 km app.
Sanitary/ Scientific Landfill (Please indicate for site other than Kenduwal)		
Area and location of Landfill		At village <i>sunjhalli</i>
In case of existing landfill/dumpsites, please provide the number of years the site has been operational and estimated quantity of waste at the site.		Since 2011 (6 year) Approximate 22000 ton
Status of Environmental clearance	Please provide detailed report if available, and copy of the environment clearance received from Ministry of Environment.	—
Any existing pre-processing, processing or sorting facility at the site?		—
Waste Processing/ Treatment Facilities		
What is the current status of waste processing in the ULB?	Please provide information on current plants (including pilot projects if any) and their capacity. Also, state whether any of the plant is captive (setup for use in or for specific industry) in nature.	Land fill
What technologies/ processes have been considered previously for waste processing in ULB?	Details including DPR or technical studies if any for such waste treatment plants as well as their current implementation status	Land fill
Hear Charges		—

DATA TO BE PROVIDED	REMARKS	STATUS
User charges from Households and various commercial establishment (shops, restaurants, dhabas, hotels, offices, etc.)	Please provide information of any existing charges being collected by ULB or proposed to be collected	NIL
No. and types of commercial establishments in the ULB	Please provide current numbers and projected growth if any. In absence of current/ projected growth, please provide historical data.	Industrial, Hotels, Restaurant, shop, stalls etc.

for info

*E-o.
M. K. Singh*

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D.MC Parvanoo

Detail information of Parvanoo area			
Data of ULB Parvanoo	Remarks		status
Population and waste generation			
Historical data from census(2011,2001--)	Ward no	Population	Total population
	1	744	
	2	824	
	3	718	
	4	1340	
	5	1163	
	6	1121	
	7	1087	
	8	1266	
	9	495	
Locations/wards covered each ULB	9		Wards
Total floating population estimates (tourists , migrants etc)	10,000		Laborers and other working man powers
Information on current method of waste collection	MC parvanoo		
Total number of wards in MC ULB	9		
Number of wards covered by ULB for waste management at present	All 9 wards		
Door to door waste collection is being done at present	All 9 wards		On contract to contractors they are providing services
Types of vehicle being used number and capacity	2 nos dumper placer one tractor trolley		4 cubic meters capacity
Frequency of secondary collection (no of trips per day)	4 trips each		
No of bins/dumpers	21 bins and 40 dumpers		Minimum 4 dumpers in each wards and bins at required wards
No of wards catered by the existing dumpers, and vehicles(for eg hand carts, wheel barrow ,compactors, tractor trailer etc) and distance covered by each vehicles	NA		NA
Rote plan of waste collation form house holds (door to door collection)	In the each ward Door to door waste collected by man power up secondary collection bins (dumpers/bins)		partially by man cart where man cart carting is possible (Plain area part of wards) one man covers 150H/h per day, this work is done by contractors their deputed man powers.
Rote plan of secondary waste collection (dumpers placed in the ULB area)	4 Km per trip per placer		This is done by MC self

Road length under jurisdiction/coverage of ULB waste collection	32 km total roads in ULB for collection of waste	This is done by MC self
Congested vs non-congested area under ULB (High Population vs low density population area)	Ward no 4, 5, 6, 7 and 8 total length of road is 20 km	
Sanitary/scientific landfill		
Area and location of landfill	Secto-5	Proposed are for landfill in BBNDA is suitable because that area is minimum disasters prone
In case of existing landfill/dumpsite		
Number of years the site has been operational and estimated quantity of waste at site	25 years for 5 tons per day	
Status of environmental clearance	This site before 2006 therefore there is not required environment clearance	
Any existing preprocessing, processing or sorting facility at site	Only manual segregation facility at site of recyclable waste	Proposal is proposed for mechanical segregation and compost production
Waste processing /treatment facilities		
Current status of waste processing	No any facility is available for treatment	No any waste processing plant at site Mc has been submitted the DPR of MSW processing and management to directorate of Urban Development
Technology/process have been considered previously for waste processing	Pits system of bio-degradable waste for compost production	As per guidance of HP PCB
User charges from house holders and various commercials establishments(shops, dhabas,Hotels offices etc)	Rs 50/ for house holds, 200 dhabas and shops and 500 for offices and maximum 2000 for other offices which have more than 5 rooms per month	Rates are As per ULB list
No and type of commercial establishments in ULB	500 shops 5 hotels and 50 Dhabas, Govt. offices and institutions	As per population growth considering 4% per anum

CONCESSION AGREEMENT

BETWEEN

Baddi Barotiwala Nalagarh Development Authority
Acting through its Chief Executive Officer

AND

Municipal Council Baddi,
Acting through its Authorized Officer

AND

Municipal Council Nalagarh,
Acting through its Authorized Officer

AND

Municipal Council Parwanoo,
Acting through its Authorized Officer

AND

[Name of CONCESSIONAIRE]

AND

The Director,
Directorate of Urban Development, Himachal Pradesh
(Confirming Party)

For

SETTING UP OF INTEGRATED SOLID WASTE MANAGEMENT PROJECT FOR COLLECTION,
TRANSPORTATION, PROCESSING AND DISPOSAL IN BADDI CLUSTER IN THE STATE OF
HIMACHAL PRADESH ON DBFOT BASIS

VOLUME- II

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HPIDB Website-22.01.2018

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter referred to as the "Agreement") made this__ day of_____ 2018 at _____ [●]

BETWEEN

Baddi B arotiwala N alagarh D evelopment Aut hority (BBNDA) established unde r t he provisions of The Himachal Pradesh Town & Country Planning Act, 1977 as a Special Area Planning Aut hority hav ing i ts o ffice at EPIP P hase-I, J harmajri, B addi, District So lan acting through its Chief Executive Officer hereinafter referred to as "Designated ULB" or "Participating ULB 1", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and permitted assigns;

AND

Municipal C ouncil, Baddi, e stablished unde r t he pr ovisions o f The H imachal P radesh Municipal Ac t, 1994, ac ting t hrough i ts Authorized O fficer, hereinafter referred to a s "Participating ULB 2"which e xpression shal l unless e xcluded by o r r epugnant t o the context, be deemed to include its successors and permitted assigns;

AND

Municipal Council, Nalagarh, established under the provisions of The Himachal Pradesh Municipal Act, 1994, acting through its Authorized Officer , hereinafter referred to as "Participating ULB 3"which e xpression shal l unless e xcluded by o r r epugnant t o the context, be deemed to include its successors and permitted assigns;

AND

Municipal Council, Parwanoo established under the provisions of The Himachal Pradesh Municipal Ac t, 1994, ac ting t hrough i ts Authorized O fficer, hereinafter referred to a s "Participating ULB 4" which e xpression shal l unless e xcluded by o r r epugnant t o the context, be deemed to include its successors and permitted assigns;

AND

M/s [name o f t he C oncessionaire], a Special Purpose Vehicle incorporated¹ under provisions o f t he C ompanies Ac t, 2 013, hav ing i ts r egistered o ffice at _____, acting t hrough i ts _____ hereinafter referred to a s "Concessionaire" w hich e xpression _____

¹ As per the RFP, the Successful Bidder is required to incorporate an SPV which shall undertake the execution of the Project.

shall unless repugnant to the context include its successors and permitted assigns, represented herein through _____, the [designation], authorized vide Board Resolution dated _____.

AND

M/s [name of the Selected Bidder] a [company/ partnership, LLP, sole proprietorship/ society, trust registered under the _____] and having its registered/ head office at _____, in its capacity as the Confirming Party to this Agreement (hereinafter referred to as the “ Selected Bidder” which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through _____, the Authorized Person, authorized vide [Board Resolution/ Partner's Resolution/ Society Resolution/ Power of Attorney] dated _____;

AND

The Department of Urban Development, Government of Himachal Pradesh, acting through Director, Directorate of Urban Development in its capacity as the Confirming Party to this Agreement, herein referred to as “Department”, which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and administrators;

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

WHEREAS

- A. The Department is desirous of development of cluster based integrated solid waste management projects in the State. 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 Bids for setting up of an integrated solid waste management facility for Baddi Cluster;
- B. The Baddi Cluster comprises of Municipal Councils of Baddi, Nalagarh & Parwanoo and areas falling under Baddi Barotiwala Nalagarh Development Authority (BBNDA) in Baddi town (collectively referred to as “Participating ULBs”);
- C. The Participating ULBs have entered into an Inter-ULB Agreement datedfor management of MSW generated within their municipal areas whereby the Designated ULB has been nominated as their lead member and empowered to discharge the obligations set out herein on behalf of all the Participating ULBs;
- D. The Designated ULB on behalf of itself and the other Participating ULBs desires to develop integrated solid waste management facility through 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 management of Municipal Solid Waste (“MSW”) within the jurisdiction of all the Participating ULBs;

- E. The Designated ULB on behalf of all Participating ULBs in Baddi Cluster had invited competitive Request for Proposal (RFP) vide reference bearing no. dated from eligible Bidders for implementing the Project and in response thereto received Bids from Bidders including the Selected Bidder for implementing the Project;
- F. The Designated ULB, after evaluating the aforesaid Bids, accepted the Bid submitted by the Selected Bidder and issued Letter of Award (LoA) No. _____ dated _____ to it for developing the Project. The LoA has been duly accepted by the Selected Bidder vide its letter no. _____ dated _____;
- G. The Selected Bidder has since promoted and incorporated the Concessionaire ("Special Purpose Vehicle" or "SPV") as a limited liability company under the Companies Act, 2013, and has requested the Participating ULBs to accept the Concessionaire as the entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project; and
- H. The Department (simply in its capacity as the Confirming Party to this Agreement) and all the Participating ULBs 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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. "Abandonment" means an action on the part of the Concessionaire with the intent to not discharge its balance obligations related to the Project under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the Concession Period, or
 - (ii) cumulative period of more than 45 (forty-five) days during the Concession Period other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Designated ULB or a ny Participating ULB;
- 1.1.2. "Access Road" means the motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
- 1.1.3. "Acceptance of Concession" shall have the meaning assigned thereto in Clause 2.5;
- 1.1.4. "Accounting Year" means the financial year commencing on 1st April in each year and ending on 31st March in the next year;
- 1.1.5. "Additional Cost" means the additional capital expenditure and/ or the additional operating costs or both as the case may be, which the Concessionaire is required to incur, post the Effective Date, on account of Change in Law;
- 1.1.6. "Affected Party" means the Party claiming to be affected by a Force Majeure Event in accordance with Clause 13.1;
- 1.1.7. "Agreement" or "Concession Agreement" means this agreement executed between the Department, the Concessionaire, the Participating ULBs and the Selected Bidder (as Confirming Party) including its schedules and Annexures and includes any amendments made thereto in accordance with the provisions hereof;
- 1.1.8. "Annexures" means any of the annexes, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.9. "Applicable Law" means all laws, acts, ordinances, rules, regulations notifications and guidelines in force and effect, including inter alia the Solid Waste Management Rules, 2016, and shall also include judgments, decrees,

injunctions, writs or orders of any court of record and/ or National Green Tribunal, 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. For avoidance of doubt, Applicable Laws shall include the guidelines for direct sale of city compost by compost manufacturers, as notified by Ministry of Chemical and Fertilizers, Government of India and guidelines for produce/ sale of biogas/ methane;

- 1.1.10. "Applicable Permits" 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. "Effective Date" means the date of signing of this Concession Agreement;
- 1.1.12. "Arbitration Act" means the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.13. "Bio-Methanation" means an anaerobic decomposition process that entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas;
- 1.1.14. "Capital Grant" means one time capital grant to be paid in two installments to the Concessionaire for discharging obligations under this Agreement and as more specifically set out in Clause 10.4;
- 1.1.15. "C&T" or "Collection and Transportation" refers to primary and secondary collection and transportation of MSW from the Project Area to the Processing Facility/ Sanitary Landfill;
- 1.1.16. "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. The term "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. "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;
- 1.1.17. "Change in Law" shall have the meaning assigned thereto in Clause 15;

- 1.1.18. "Commencement Date" shall have the meaning as assigned to it in Clause 2.6.5;
- 1.1.19. "Compliance Date(s)" means the later of the date by which the Conditions Precedent of the Concessionaire and the Participating ULBs under Clause 2.6.3 are achieved or waived;
- 1.1.20. "Composting" means a controlled process involving microbial decomposition of organic matter;
- 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 Clause 16.2;
- 1.1.23. "Conditions Precedent(s)" means Conditions Precedent as specified in Clause 2.6;
- 1.1.24. "Compliance Period" shall have the meaning assigned thereto in Clause 2.6.3;
- 1.1.25. "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 Project Management Unit;
- 1.1.26. "Contractor" or "Sub-Contractor" means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project;
- 1.1.27. "CPCB" means the Central Pollution Control Board of the Government of India;
- 1.1.28. "Daily Weight Sheet" shall have the meaning assigned thereto in Annexure 4;
- 1.1.29. "Dead Remains" means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.30. "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 the 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-clause (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 the Senior Lender, and (iii) any prepayment charges in relation to accelerated repayment of debt except where such charges have arisen due to ULB Event of Default; and

- (c) any Subordinated Debt disbursed by the Senior Lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity; it shall to the extent not converted until the 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 the Senior Lenders or the Concessionaire's shareholders for meeting the Total Project Cost and shall be subordinate to the financial assistance provided by the Senior Lenders.

- 1.1.31. "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;
- 1.1.32. "Dispute" shall have the meaning assigned thereto in Clause 19.1.1 hereof;
- 1.1.33. "Dispute Resolution Procedure" means the procedure for resolution of disputes as set forth in Article 19;
- 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 as well as encroachments on the Site;
- 1.1.37. "Engineered Sanitary Landfill or "Sanitary Landfill" means the sanitary landfill to be developed, constructed and operated by the Concessionaire at the Sanitary Landfill Site located at Village Kenduwal, Baddi, 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 & erosion and where the Concessionaire conducts a final and safe disposal of Residual Inert Matter, Residual Solid Waste and inert waste in accordance with the terms of this Agreement;

- 1.1.38. "Engineered Sanitary Landfill Site" or "Sanitary Landfill Site" means the site where the Sanitary Landfill is to be developed, constructed and operated;
- 1.1.39. "Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company, but does not include any grant from a Government Agency including Designated ULB;
- 1.1.40. "Event of Default" shall have the meaning assigned thereto in Article 16;
- 1.1.41. "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 & 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;
- 1.1.42. "Escrow Bank" shall have the meaning as set forth in Annexure 9;
- 1.1.43. "Escrow Agreement" shall have the meaning as set forth in Clause 11.1.2;
- 1.1.44. "Escrow Default" shall have the meaning as set forth in Clause 6.1.1 of Annexure 9;
- 1.1.45. "Excluded Waste" means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose off and which includes (i) Hazardous Waste, (ii) Bio-Medical Waste (iii) Dead Remains, (iv) E-Waste and (v) Construction and Demolition Waste;
- 1.1.46. "Financing Agreements" or "Financing Documents" means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Total Project Cost;
- 1.1.47. "Financial Default means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt Service by the Concessionaire for period of 3 (three) months consecutively;
- 1.1.48. "Financial Bid" means the final quotation of the Successful Bidder in response to the RFP document, which has been accepted by the Designated ULB, annexed hereto as Annexure 3;
- 1.1.49. "Financial Year" shall be same as Accounting Year;
- 1.1.50. "Force Majeure" or "Force Majeure Event" means an act, event, condition or occurrence as specified in Article 13;

- 1.1.51. "Gol" means the Government of India;
- 1.1.52. "GoHP" means the Government of the State of Himachal Pradesh;
- 1.1.53. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them or facilities similar to the Project Facilities;
- 1.1.54. "Government Agency" means Gol, GoHP, Participating ULBs 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 or the Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.55. "Hand Over of Project" shall have the meaning assigned thereto in Article 18;
- 1.1.56. "Hazardous Waste" shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto;
- 1.1.57. "HPPCB" means the Himachal Pradesh State Pollution Control Board;
- 1.1.58. "Independent Expert" refers to a person/ firm/ entity appointed by the Designated ULB to monitor the activities of the Concessionaire and shall be a member of the PMU;
- 1.1.59. "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 the purpose of the Project for the duration of the Term in the format attached as Annexure 10;
- 1.1.60. "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;
- 1.1.61. "Letter of Award" or "LOA" means the letter no dated, issued by the Designated ULB to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.62. "MNRE" means Ministry of New & Renewable Energy, Gol;
- 1.1.63. "MSW" or "Municipal Solid Waste" means solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the

jurisdiction of Participating ULBs, and shall include solid waste, and Organic Waste;

- 1.1.64. "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 such act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.65. "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;
- 1.1.66. "Nominated Company" means the company that is selected either by the Lenders or by the Participating ULBs for substituting the Concessionaire, upon occurrence of Concessionaire's Event of Default or Financial Default, in terms of the provisions of this Agreement and the Substitution Agreement;
- 1.1.67. "Operational Acceptance Certificate(s)" shall refer to the Certificate to be issued by the Independent Expert/ PMU as set out in Annexure 5, upon successful commissioning and functioning of the Processing Facility;
- 1.1.68. "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.
- 1.1.69. "Organic Waste" means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.70. "Participating ULBs" means the under mentioned Urban Local Bodies (ULBs) :
- (a) Baddi B arotiwala N alagrah De velopment A uthority ("Participating ULB1")
 - (b) Municipal Council Baddi ("Participating ULB2")
 - (c) Municipal Council Nalagarh ("Participating ULB3")
 - (d) Municipal Council Parwanoo ("Participating ULB4")
- 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 Clause 5.1 in the format given at Annexure 6;
- 1.1.72. "Person" means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity;

- 1.1.73. "Post Closure Activities" means the activities to be undertaken by the Parties after closure of Sanitary Landfill;
- 1.1.74. "Post Closure Period" means a period of 20 (twenty) years starting from the date of Closure of the specific cell of the Engineered Sanitary Landfill 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. "Pre-COD Period" means the period commencing from the Effective Date and extending upto the COD;
- 1.1.77. "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;
- 1.1.78. "Processing & Disposal" or "P&D" refers to Processing & Disposal of MSW collected from Project Area, as is more clearly explained in Annexure 1;
- 1.1.79. "Processing Facility" means the facility created by the Concessionaire for processing of the MSW, prior to its final disposal at Engineered Sanitary Landfill Site, and also includes a waste to compost plant /RDF/ Bio Methanation plant having capacity of at least 60 TPD;
- 1.1.80. "Project" shall mean the collection, transportation, processing and disposal of MSW collected from Waste Generators in the Project Area and discharging all the obligations as set forth in this Agreement particularly under the Scope of Services contained in Annexure 1;
- 1.1.81. "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).
- 1.1.82. "Project Area" means the area presently under municipal boundaries of the Participating ULBs or any extension thereof during the Term;
- 1.1.83. "Project Assets" means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites in the form of lease and/ or license rights (as applicable), Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, grievance redressal centre, Processing Facility, electrical systems, communication systems, transport vehicles and administrative office; (c) Project Facilities situated on the Sites; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project;

- 1.1.84. "Project Facilities" means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, Project Facility, plant, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.85. "Project Monitoring Unit" or "PMU" means the unit set up by the Participating ULBs as specified in Clause 4.1 to monitor and supervise the activities of the Concessionaire;
- 1.1.86. "Proprietary Material" shall be as defined in Clause 20.1;
- 1.1.87. "Refuse Derived Fuel" or "RDF" means the solid fuel in the form of fluff or pellets/ briquettes that is produced by separation and drying of combustible fractions of the MSW;
- 1.1.88. "Residual Inert Matter" means the inert matter left for final disposal in Engineered Sanitary Landfill after processing of the MSW in terms of this Agreement;
- 1.1.89. "Residual Solid Waste" means and includes the waste and rejects from the MSW which are not suitable for recycling or further processing;
- 1.1.90. "Rupees" or "Rs" refers to the lawful currency of the Republic of India;
- 1.1.91. "SBM Guidelines" means the guidelines issued by the Ministry of Urban Development, Government of India in December 2014 titled "Guidelines for Swachh Bharat Mission";
- 1.1.92. "Secondary Collection Points" means a reas of land allocated by the Participating ULBs in consultation with the Concessionaire to temporarily store the MSW collected by the Concessionaire from Project Area by way of door-to-door waste collection system, street sweeping waste and drain desilting from the Project Area;
- 1.1.93. "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;
- 1.1.94. "Site(s)" means the piece(s) of land made available to the Concessionaire under Land Lease Agreement(s), for implementing the Project i.e. land for setting up Transfer Stations, Processing Facility and Sanitary Landfill;
- 1.1.95. "Substitution Agreement" means an agreement executed between the Concessionaire, Participating ULBs and the Lenders in the form set out in Annexure 8, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee i.e.

Nominated Company) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement;

- 1.1.96. "Selected Bidder" means M/s [name of the Selected Bidder] selected pursuant to a competitive bidding process for implementing the Project;
- 1.1.97. "Supplementary Fuel" means any fuel that can be used as a supplement to the MSW to enrich RDF/ fuel during commissioning / start of activities, as per MNRE guidelines.
- 1.1.98. "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;
- 1.1.99. "Tax" means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.100. "Term" means the time period of twenty five (25) years commencing from the Effective Date and includes any permitted time extensions as expressly provided under the terms of this Agreement;
- 1.1.101. "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;
- 1.1.102. "Termination Date" means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.103. "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;
- 1.1.104. "Termination Payments" means the payments payable pursuant to Clause 16 of this Agreement;
- 1.1.105. {"*Tipping Fee*" shall be the fee payable as defined in Clause 10.1}²;
- 1.1.106. "Third Party" means any Person other than the Parties to this Agreement;
- 1.1.107. "Total Project Cost" means the lowest of the following :
- i. Project Cost as set forth in the Financing Documents as executed with Lenders; or

² Delete all references to the "Tipping Fee" in the event the Selected Bidder has quoted the "Concession Fee.

- ii. Actual capital cost of the Project, upon completion of construction of the Project as certified by the Statutory Auditors.

It shall exclude the Grant amount disbursed to the Concessionaire.

- 1.1.108. "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;
- 1.1.109. "Transfer Station" means the point(s) where MSW collected by the Concessionaire from the Project Area would be stored to achieve economies of scale before further transportation to the Processing Facility or Engineered Sanitary Landfill Site, as applicable;
- 1.1.110. "Tests" means the tests to be carried out by the Concessionaire at its cost, in the presence of PMU/ Independent Expert, as may be required for getting Statutory clearances/ Approval or directed by the PMU/ Independent Expert in respect of the Processing Facility and Sanitary Landfill to ensure that the same conforms to the requirements as per Good Industry Practice, Applicable Law and Applicable Permits;
- 1.1.111. "ULB Event of Default " shall have the meaning assigned thereto in Clause 16.3;
- 1.1.112. "User Charges" means the fees chargeable from Waste Generators for door to door collection of MSW as per the rates notified from time to time by the Participating ULBs under Applicable Law, to be collected and appropriated by the Concessionaire in accordance with the terms of this Agreement;
- 1.1.113. "Vacant Possession" means delivery of possession of the Site(s) free from all Encumbrances to the Concessionaire and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;
- 1.1.114. "Waste Generators" means all residential, commercial and industrial establishments generating MSW and located within the Project Area;
- 1.1.115. "Weighbridge" means the electronic weighbridge installed by the Concessionaire at the entrance of the Landfill/ Processing Facility site, calibrated and maintained as per applicable BIS/IS standards and capable of performing the operations to meet the Concessionaire obligations as specified in Article 5.

1.2. Interpretation

- 1.2.1 In this Agreement, unless the context otherwise requires:
 - a. the words, phrases and expressions defined hereinabove in Clause 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 Clause 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;

- b. 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;
- c. 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;
- d. all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- e. the words "include" and "including" are to be construed without limitation;
- f. 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;
- g. the Annexures and Recitals to this Agreement form an integral part of this Agreement and will be in force and effect as though they were expressly set out in the body of the Agreement;
- h. 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;
- i. references to Recitals, Articles, Clauses or Annexures in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses and Annexures of this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Annexure in which such reference appears;
- j. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on a 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

k. 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 Designated ULB and/ or the Participating ULBs and/ or the PMU shall be provided free of cost and in 3(three) copies, and if the Designated ULB and/ or the Participating ULBs and/ or the PMU is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2(two) copies thereof.

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

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of Agreements, Articles and Annexures

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

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

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

- (a) Between 2(two) or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) Between the Articles of this Agreement and the Annexures, the Articles shall prevail;

- (c) Between any 2(two) Annexures, the Annexure relevant to the issue shall prevail;
- (d) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the latter shall prevail.

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ARTICLE 2

2. THE CONCESSION AND CONDITIONS PRECEDENT

2.1. Grant of Concession

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

2.2. Rights Associated with the Grant of Concession

2.2.1 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 during the Concession Period;
- (b) to collect and process entire MSW from the Project Area and dispose-off the Residual Inert Matter and Rejected Waste/ processing rejects in Sanitary Landfill and/ air pollution control residue in secured landfill;
- (c) to collect and appropriate User Charges;
- (d) to store, use, appropriate, market and sell or dispose-off all the constituents/ products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- (e) to share the fiscal incentives and benefits in the ratio of 50:50 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;
- (f) to obtain utilities required for enabling the construction of the Project, without any additional cost or charges, other than the applicable charges for the utilities;
- (g) to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;

- (h) to appropriate, possess, control and to utilize, renovate, modify, replace or demolish, at its sole discretion, 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 MSW management in Project Area;
- (i) to develop the Project using such technology to establish a waste to compost plant having capacity of at least 60 TPD; 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 Practices;
- (j) subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Concessionaire shall have the right to enter into sub-contracts, agreements, sub-license with such Persons, as it may deem necessary and appropriate, for performing its obligations under this Agreement;
- (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 in accordance with Applicable Law;
- (l) to obtain financing for the Project in the form of equity or debt, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project;

Provided that the Designated ULB 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 Designated ULB 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 Designated ULB;

- (m) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;

- (n) to share the fiscal incentives and benefits in the ratio of 50:50 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; and
- (o) to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project.

2.3. Concession Period

The Concession Period shall be for a period of 25 (twenty five) years from the Effective Date ("the Concession Period") during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for integrated management of Municipal Solid Waste in accordance with the provisions hereof:

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

2.4. Renewal of Concession

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

2.5. Acceptance of Concession

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

2.6. CONDITIONS PRECEDENT

Save and except as may otherwise be expressly provided in this Agreement, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent ("Conditions Precedent") as set out in this Clause 2.6.1 and 2.6.2.

2.6.1. Conditions Precedent for Participating ULBs

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

- (a) finalised and allocated Secondary Collection Points in the Project Area in consultation with the Concessionaire;
- (b) allocated / demarcated site for dumping of MSW till the time processing and disposal facilities are established as a part of the Project on an 'as is where is basis';
- (c) appointed the PMU/ Independent Expert in terms of Article 4;
- (d) executed and procured execution of Substitution Agreement;
- (e) facilitated and ensured that Land Lease Agreement(s) are executed for all Site(s) and vacant and unencumbered possession of all the Site(s) is handed over to the Concessionaire. It is clarified that the respective Participating ULBs shall be responsible for execution of Land Lease Agreements for Site(s) under their jurisdiction;
- (f) facilitated the Concessionaire in terms of support and participation by its representatives or sending follow-up letters to the Departments concerned/ Competent Authority for obtaining of all Applicable Permits, if requested by the Concessionaire;
- (g) provided the Concessionaire with authority letter for collection of User Charges effective from such date as indicated in the relevant notification issued in this respect;
- (h) issue of the order/ notification for the area falling in their respective jurisdictions, regarding payment of User Charges by the Waste Generators to the Concessionaire at the rates notified by the Participating ULBs;
- (i) provided Access Roads to the Site(s) as per Good Industry Practices including for the Site(s) for Transfer Stations;
- (j) within 90 (ninety) days of Effective Date, ensure termination of the existing contracts with other contractors for collection and transportation of MSW within their respective jurisdictions as per the operational plan submitted by Concessionaire;
- (k) executed of Inter-ULB Agreement between the Participating ULBs; and
- (l) provided the Concessionaire with an inventory of the vehicles and other movable infrastructure deployed in Project Area which shall be purchased by the Concessionaire from the Designated ULB on a price mutually agreed to between the Concessionaire and the Designated ULB with the help of an individual valuer.

2.6.2. Conditions Precedent for Concessionaire

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

- (a) provided a certified true copy of its constituent documents;
- (b) achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;
- (c) finalised and taken over Secondary Collection Points in the Project Area in consultation with the Participating ULBs;
- (d) provided the Designated ULB notarised true copies of its board resolution authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- (e) executed and procured execution of Escrow Agreement in terms of Article 11;
- (f) executed and procured execution of Substitution Agreement;
- (g) executed the Land Lease Agreement(s) and taken over vacant and unencumbered possession of all the Site(s) from the Participating ULBs;
- (h) shall prepare the Detailed Project Report outlining the precise technology and methodology that it shall be adopting to implement the Project for submission to the Authority and to any other Government Agency, if required;
- (i) procured at its own cost, water connection, power connection and other service connections to the Site; and
- (j) submission of operational plan for collection and transportation of MSW within 45 (forty five) days from the Effective Date.

Provided that upon request in writing by the Concessionaire, the Participating ULBs/ Designated ULB may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Clause 2.6.

2.6.3. Satisfaction of Conditions Precedent

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 180 (one hundred and eighty) days from the Effective Date (the "Compliance Period") unless specified otherwise.
- (b) The later of the date within such time when the Participating ULBs or the Concessionaire fulfils its Conditions Precedent (unless the Participating ULBs 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").

2.6.4. Non-Compliance with Conditions Precedent

- (a) In the event the Conditions Precedent for Concessionaire have not been fulfilled within 180 (one hundred and eighty) days of the Effective Date and the delay has not occurred as a result of failure to fulfil the Conditions Precedent by the Participating ULBs under Clause 2.6.1 or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.
- (b) In the event when the maximum damages as above has become payable and the Concessionaire still fails to fulfill its Conditions Precedent, the Authority may, in its sole discretion, wholly or partially waive such unfulfilled Conditions Precedent. Further provided that in the event when the maximum damages as above has become payable and the Concessionaire still fails to fulfill its Conditions Precedent, and the Authority has not waived them fully or partially, 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 Participating ULBs shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it. In such a case, the Authority shall forfeit and encash the Performance Security of the Concessionaire.
- (c) In the event the Conditions Precedent for any of the Participating ULBs 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 Participating ULBs beyond a period of 180 (one hundred and eighty) days from the Effective Date, the Concession Period shall be proportionately extended for the same period or (ii) terminate this Agreement. In the event of termination, the Participating ULBs shall pay to the Concessionaire, reasonable development costs as mutually decided between the Parties.

- (d) In the event this Agreement fails to come into effect on account of the non-fulfilment of the Participating ULBs' Conditions Precedent, the Designated ULB/ Participating ULBs 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 Participating ULBs on the Concessionaire.
- (e) The Parties hereby confirm and agree that all Damages mentioned under this Article are genuine pre-estimates of the loss or damage likely to be suffered by the non-defaulting Party due to such default.
- (f) In the event that the Site(s) has been handed over to the Concessionaire prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

2.6.5. Collection and Transportation of MSW by the Concessionaire prior to COD

- (a) Notwithstanding the completion of Conditions Precedent, the Concessionaire shall commence its obligation related to collection and transportation of the MSW within the Project Area within 90 (ninety) days of the Effective Date (the "Commencement Date"). The Participating ULBs shall grant right of way and right of use to the Concessionaire in respect of the Secondary Collection Points within the aforesaid period. The collected MSW shall be disposed off by the Concessionaire at the designated dump/ Sanitary Landfill site, as per the Applicable Law. *{The Concessionaire shall be paid a Tipping Fee for MSW collected, transported to the Processing Facility and disposed at Landfill Site in accordance with the provisions of Article 10 of this Agreement.}*³
- (b) Within the aforesaid period of 90 (ninety) days, the Concessionaire shall also install an electronic Weighbridge at the Processing Facility/ Sanitary Landfill Site as per the specifications specified in this regard in this Agreement. The Weighbridge installed by the Concessionaire shall be calibrated on a yearly basis and maintained as per applicable BIS/IS standard. The calibration report will be submitted to Designated ULB/ PMU. The Weighbridge shall be operated and maintained by the Concessionaire but the same shall be subject to inspection by the authorized representatives of the Designated ULB and Project Management Unit. The Concessionaire shall also install CCTV cameras

³ To be deleted if the Selected Bidder has quoted Concession Fee

above the Weighbridge and provide access/ connectivity to the footage from cameras on real time basis to the Designated ULB.

- (c) *{Tipping Fee payment to the Concessionaire will be made as per the measurement done on the Weighbridge located at the entry of the Processing Facility/ Landfill Site.}*⁴
- (d) Each consignment of MSW to the Landfill Site/ Processing Facility Site shall be screened and weighed at the Weighbridge. The Concessionaire shall also keep a record of weight and volume of each empty delivery truck, in order to determine the net weight of the consignment. The Designated ULB shall have an option to depute a responsible person from the Designated ULB to monitor the operations of the Weighbridge who shall provide details of the same to the PMU and Designated ULB on a weekly basis.
- (e) The Weighbridges shall be monitored and inspected regularly by Project Management Unit and/ or Designated ULB to ensure due calibration and accuracy and any errors shall be rectified immediately.

⁴ To be deleted if the Selected Bidder has quoted Concession Fee

ARTICLE 3

3. SITE(S)

3.1. Handover of sites

- 3.1.1. Designated ULB shall coordinate with the Participating ULBs and ensure that they shall within 30 (thirty) days from the Effective Date, handover the Sites under their respective jurisdiction for setting up of Transfer Stations, Processing Facility, Landfill Site, to the Concessionaire on as-is-where-is basis, free from Encumbrance, for the purpose of implementing the Project.
- 3.1.2. Upon the Sites being handed over pursuant to the preceding Clause 3.1.1, 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 such as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- 3.1.3. Annual advance lease rental of Re.1(one rupee) per square metre per annum to be paid by the Concessionaire to the Participating ULBs for each block of three years during 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.
- 3.1.4. The term of the such Land Lease Agreements shall be co-terminus with this Concession Agreement and upon expiry of this Agreement due to efflux of time or due to early termination on account of default, the term of the Land Lease Agreement shall also expire simultaneously and the Concessionaire shall hand over possession of the Site(s) in accordance with the terms of this Agreement and Land Lease Agreements.

3.2. Rights, Title and Use of the Sites

- 3.2.1. The Concessionaire shall have the right of way and right to 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.
- 3.2.2. The Concessionaire shall not part with or create any Encumbrance on the whole or any part the Sites.
- 3.2.3. The Concessionaire shall not, without the prior written approval of the Participating ULBs, use the Sites for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- 3.2.4. The Concessionaire shall allow free access to the Sites to the members of the Project Management Unit, any authorized officer of the Participating ULBs and/ or the Department for inspection of the Sites and the works being undertaken by the Concessionaire.

3.2.5 The Concessionaire shall allow access to and use of the Sites for laying/ installing/ maintaining telephone lines, electric lines or for such other public purposes as the Designated ULB or any of the Participating ULBs 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

3.3.1. The Participating ULBs hereby warrants that the Sites together with the necessary right of way/way-leaves have been acquired through the due process of law and/ or belong to, or is vested in or has been leased to the Participating ULBs and that the Participating ULBs have full powers to hold/ dispose of/ sub-lease and generally 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.

3.3.2. The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession of and provided/ leased by the Participating ULBs. 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 Participating ULBs 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 Permits

The Concessionaire shall obtain and maintain the Applicable Permits 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 Permits have been issued.

ARTICLE 4

4. PROJECT MANAGEMENT UNIT

4.1. Composition

The Designated ULBs shall appoint the Project Management Unit (PMU) comprising of an Independent Expert, who shall be an officer in the grade of an Executive Engineer or an external expert with at least 15(fifteen) years of experience in solid waste management with engineering degree/ masters in environment/ civil engineering and 1(one) representative each nominated by each of the Participating ULBs. Such representative shall be an officer of grade of Executive Officer/ Municipal Engineer or above. The Independent Expert shall head the PMU.

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 Annexure 7.

4.3. Remuneration

The remuneration, cost and expenses of the PMU including *inter alia* the Independent Expert shall be borne by the Designated ULB.

4.4. Replacement

The Designated ULBs may, in its discretion, terminate the appointment of the Independent Expert at any time and appoint another Independent Expert in its place.

The Designated ULBs shall also have the power to replace their nominated members and nominate their replacements by giving 15 (fifteen) days prior notice in writing to the other Parties.

4.5. Tenure

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

ARTICLE 5

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

- 5.1.1. The Concessionaire shall for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee from a scheduled bank acceptable to Designated ULB, in favour of the "Chief Executive Officer, BBND, Baddi, District - Solan (H.P.)", in the form as set out in Annexure 6, ("Performance Security") for a sum Rs.1,00,00,000/- (Rupees One Crore Only) during the entire Concession Period.
- 5.1.2. 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 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 Designated ULB 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.
- 5.1.3. 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 any of the Participating ULBs for or against the Concessionaire under this Agreement or against the Participating ULBs in respect of this Agreement, the Designated ULB shall on behalf of the Participating ULBs, without prejudice to 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.

5.1.4 The decision of the Designated ULB 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 any/all the Participating ULBs under this Concession Agreement is required to be provided in connection with any demand made by the Designated ULB on behalf of the Participating ULB(s) to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.

5.1.5. In the event of encashment of the Performance Security by the Designated ULB, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from Designated ULB 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 Designated ULB to terminate this Concession Agreement in accordance with the provisions hereof.

5.1.6. 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 Designated ULB's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire within 30 (thirty) days pursuant to Transfer Date.

5.2. Scope of Services

5.2.1. The scope of services of the Concessionaire under the present Project shall broadly involve the following :

- (a) carrying out the design, development, construction, operation and maintenance of the Project as per this Agreement particularly Annexure I, Applicable Law and Applicable Permits.
- (b) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

5.3. General Obligations

5.3.1. The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out under this Agreement and the Selected Bidder's obligations under the LOA;
- (b) obtain all Applicable Permits as required for implementing the Project in terms of this Agreement and the Applicable Laws, and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law (including without limitation all public and labor related laws and health, safety, and sanitation laws, as in force from time to time) governing the operations of Project (including electricity generation) at all times during the Concession Period;
- (d) provide adequate security, watch & ward services at the Site(s) of the Project to take adequate preventive measures to safeguard against fires, thefts, accidents, etc.;
- (e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (f) right of entry into sub-contracts for the purposes of terms of this Agreement subject to limitations as set forth herein;
- (g) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the Participating ULBs indemnified against any claims, damages, expenses or losses in this regard. In no case shall any of the Participating ULBs be treated as the employers of the staff employed by the Concessionaire for the purposes of this Project;
- (h) duly supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary;
- (i) be responsible for all the sanitation, 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 office, Site(s) to the authorised representatives of the Participating ULBs 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, workers at the Processing Facility & Sanitary Landfill and drivers engaged by the Concessionaire for the purposes of the Project;

- (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 deployed for the Project, each year before the due date and shall bear any cost or expense associated with the same;
- (p) to operate, maintain, repair and renovate the Project Assets and Project Facilities, in accordance with, *inter alia*, this Agreement, Applicable Laws, Applicable Permits and Good Industry Practices;
- (q) commence collection and transportation of the MSW within the Project Area within 90 (ninety) days of the Effective Date in terms of Clause 2.3;
- (r) 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;
- (s) promptly rectify and remedy any defects or deficiencies, if any pointed out by the PMU/ Participating ULBs in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the PMU/ Participating ULBs;
- (t) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Annexure 2;
- (u) 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;
- (v) to deal with and resolve any complaints regarding incorrect charging of User Charges and submit compliance thereof to such Participating ULB to whose jurisdiction such complaint(s) pertained to;
- (w) pay all Taxes, duties and outgoings, including utility charges relating to the Project;
- (x) transfer the Project to the Designated ULB/ Participating ULBs upon expiry or early Termination of this Agreement, in accordance with the provisions of Article 16;
- (y) provide live GPS feed of movement of transportation vehicles to designated ULB;
- (z) in the event of any accident during the Concession Period, the Concessionaire shall, by most expeditious means, inform the police and other concerned competent authorities including the Designated ULB and the concerned Participating ULB. The Concessionaire shall also take expeditious action to provide emergency medical aid and services to the accident victims;
- (aa) be responsible and indemnify the Participating ULBs for any accident(s) leading to loss of life or injury to any third party or damage to public or private property due to negligence or otherwise in the performance of the project; and

- (bb) keep the entire Project, including the Project Assets and the Project Facilities, and all related equipments, machinery and vehicles adequately insured during the Concession Period and shall pay regular and timely premium, at its own cost;
- (cc) to store, use, appropriate, market and sell or dispose-off all the constituents/ products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- (dd) to share the fiscal incentives and benefits in the ratio of 50:50 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;
- (ee) to suitably enhance the capacity of the Processing Facility from time to time to meet the requirement of increase in processing due to increased generation of MSW in the Cluster over the Concession Period.

5.4. No Breach of Obligations

5.4.1 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 Clause 13.1;
- (ii) ULBs' Event of Default; and
- (iii) Compliance with the instructions of the PMU / Designated ULB 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.

5.5. Penalties & Damages

In case the Concessionaire fails to fulfill the obligations as set under this Agreement, penalties for non-fulfilment/ damages shall be imposed according to provisions of Annexure 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the aggregate liquidated damages levied in terms hereof on the Concessionaire by Designated ULB exceeds Rs.4,00,000/- (Rupees Four Lakhs only) in any Quarter, the same shall be deemed as Concessionaire Event of Default and shall make the Agreement liable for termination.

5.6. 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 as a result of the Concessionaire's activities such that the experience and expertise becomes available to the Concessionaire on an on-going basis:

- (a) arranging the financing for the Project, including mobilization of debt and Equity;
- (b) facilitate procurement of Applicable Permits 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 Permits 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.

5.7. Concessionaire's Representative

5.7.1. The Concessionaire shall deploy a representative on its behalf to be designated as the Project Manager who shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in-charge to ensure implementation of the Project in accordance with the provisions hereof. The Project Manager shall closely co-ordinate with the Project Management Unit/Participating ULBs 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/Participating ULBs within a period not later than 7 (seven) days from the date of conveying of such defect/ shortcoming. The Project Manager or its nominee shall make themselves available for meetings as and when called upon by the Project Management Unit/ /Participating ULBs.

5.7.2. The Concessionaire shall be obligated to deploy its representative in the area falling under each Participating ULB for prompt cognizance and redressal of any service complaints related to one or more of Concessionaire's obligation under the Agreement. The Participating ULB shall provide for the seating arrangement for such representative deployed by the Concessionaire at its office.

5.8. 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 PMU/ Designated ULB, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.9. 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.

5.10. Obligations relating to Project Agreements

5.10.1. 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.

5.10.2. The Concessionaire shall submit to PMU/ Designated ULB the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and PMU/ Designated ULB 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 PMU/ Designated ULB 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 PMU/ Designated ULB to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by PMU/ Designated ULB. No review and/or observation of PMU/ Designated ULB 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 PMU/ Designated ULB be liable for the same in any manner whatsoever.

5.10.3. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Designated ULB 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 Designated ULB 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 be in force and effect on the Transfer Date without any liability whatsoever on the

Designated ULB and the covenant shall expressly provide for such eventuality.

5.10.4. The Concessionaire expressly agrees to include the covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Designated ULB an acknowledgment and undertaking, in a form acceptable to the Designated ULB, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Designated ULB in the event of Termination.

5.11. Equity Lock-in requirements

5.11.1. Where the Selected Bidder is a single entity, it shall hold 100% (one hundred percent) shareholding in the paid-up equity capital of the Concessionaire upto the 5th (fifth) anniversary of the Commercial Operation Date and thereafter at least 51% (fifty one percent) shareholding in the paid up equity capital during the remaining Concession period.

5.11.2. Where the Selected Bidder is a Joint Venture, all members of the Joint Venture whose experience was relied upon for the purpose of qualification at the RFP stage, shall hold in the Concessionaire the equity interest as committed in the Joint Bidding Agreement upto the 5th (fifth) anniversary of the Commercial Operations Date and thereafter all members of the Joint Venture shall jointly hold at least 51% (fifty one percent) equity in the Concessionaire during the balance Concession Period.

5.11.3. In the event that the Selected Bidder or the Joint Venture members or the Concessionaire fail to abide by the minimum ownership requirements as laid down under this Article, the Concessionaire shall be considered to be in Material Breach of the terms and conditions of this Agreement and the Authority may in its discretion terminate this Agreement on account of Concessionaire Event of Default.

5.12. User Changes

The Concessionaire shall be liable to collect User Charges (for and on behalf of the Participating ULBs) from Waste Generators at the rates to be notified from time to time and deposit the same in the Escrow Account.

5.13. Market Development Assistance for sale of City Compost

It is clearly understood and recorded by the Concessionaire that, it shall produce compost compliant with the applicable laws including FCO norms as the Project output. Further, the Concessionaire understands that the compost so produced shall be sold to the relevant end user/ Fertilizer Company, of Concessionaire's

choice. In lieu of per ton of compost sold to end user, the Concessionaire subject to fulfilling the extant eligibility conditions stipulated under the Guidelines for payment of Market Development Assistance notified by Ministry of Chemicals and Fertilizer Government of India, free to avail the incentive available under the Policy on Promotion of City Compost of the Ministry of Chemicals and Fertilizers.

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ARTICLE 6

6. FINANCIAL CLOSURE

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 from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Designated ULB 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 (one hundred and eighty) 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 Designated ULB or any of the Participating ULBs in procuring satisfaction of the Conditions Precedent specified in Clause 2.6 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to such amounts, if any, due and payable under the provisions of penalties.
- 6.1.4. The Concessionaire shall, upon occurrence of Financial Closure, notify the Designated ULB forthwith, and shall have provided to the Designated ULB, 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

- 6.2.1. 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 Clause 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 Clause 6.2 shall not apply.

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ARTICLE 7

7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Parties

7.1.1. 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.

7.2 Representations and Warranties of the Concessionaire:

7.2.1. The Concessionaire represents and warrants to the Designated ULB 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 Designated ULB or to any Government Authority in relation to Applicable Permits 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 Participating ULBs on the Transfer Date free and clear of all liens, claims and Encumbrances.

7.3 Representations and Warranties of Designated ULB/ Participating ULBs

7.3.1. The Designated ULB and/ or the Participating ULBs 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 Participating ULBs.
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.
- (c) it has the financial standing and capacity to perform its obligations under this Agreement.

- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e) all information provided by the Designated ULB in the bid documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects.

7.4 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.

7.5 Disclaimer

- 7.5.1. 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 Designated ULB or any Government Authority, the market and demand conditions, information relating to Participating ULBs; 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.
- 7.5.2. 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 Clause 7.5.1 above and hereby confirms that the Designated ULB, 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.
- 7.5.3. The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Designated ULB, 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.

7.5.4. 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.

7.6 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.

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ARTICLE 8

8. DESIGNATED ULB AND PARTICIPATING ULBS OBLIGATIONS

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

8.1. Specific Obligations

8.1.1. The Designated ULB shall:

- (a) appoint Independent Expert to form part of the PMU who shall monitor, supervise and review Concessionaire's progress, operational details, reports and activities. The Concessionaire shall submit monthly reports to Designated ULB and PMU regarding progress of the Project. Designated ULB shall validate the data provided by the Concessionaire in monthly progress reports after seeking comments of the PMU;
- (b) make timely payments as prescribed in Article 10; and
- (c) shall along with Participating ULBs provide land for the parking and workshop to Concessionaire.

8.1.2. The Participating ULBs shall:

- (a) observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;
- (b) provide the Concessionaire with an authority Letter to collect User Charges on its behalf from Waste Generators;
- (c) notify penalty from time to time to be levied on Waste Generators for default in the payment of User Charges and collected by the Concessionaire;
- (d) undertake to pay the Concessionaire their proportionate share of Payments due under Article 10 of this Agreement;
- (e) identify and earmark/ allocate parcel(s) of land within the Project Area for the purpose of setting up of Transfer Stations, secondary collection points, Processing Facility and Sanitary Landfill for MSW management;
- (f) have right over assets and technology in case of Termination or expiration of Concession Period, whichever is earlier;
- (g) facilitate in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from the Participating ULBs under this Agreement, in connection with

implementation of the Project and the performance of its obligations. Provided where authorization 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 Participating ULBs 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;

- (h) handover to the Concessionaire within 90 (Ninety) days of the date of signing of Concession Agreement, the existing infrastructure of Collection & Transportation (C&T) like dump bins, vehicles, Transfer Stations, decentralized waste management units etc. to be deployed in Project Area, on an ' as is where is' basis, if any, at a price determined by the independent valuer appointed by the Designated ULB;
- (i) on its behalf and on behalf of the Participating ULBs handover the existing infrastructure of Processing & Disposal assets, deployed and used at Project Site, on as is where is basis to the Concessionaire, within 60 (Sixty) days of the date of signing of Concession Agreement; and
- (j) 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.

8.2. Department's Obligations

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

- (a) where appropriate, coordinate with the Concessionaire in securing Applicable Permits;
- (b) coordinate with the Participating ULBs other than the Designated ULB in securing timely payments to the Concessionaire; and
- (c) if required may be called upon to assist in case of dispute resolution according to Article 19.

ARTICLE 9

9. MONITORING AND INSPECTION

9.1. During Pre-COD Period

9.1.1. Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the PMU/ Designated ULB, a monthly report bringing out in detail the progress made by the Concessionaire and also organize monthly review meetings with respect to its scope of services, including inter-alia the Processing Facility (including the Power Plant), Project Facilities, the quantity of MSW collected, processed and disposed and any such information as may be considered essential by the PMU.

9.1.2. Inspection

During the Pre-COD Period, the PMU/ Designated ULB 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 & Applicable Permits.

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.

9.1.3. 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 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 and Designated ULB. 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 Clause 9.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to the PMU and

Designated ULB in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 9.1.3 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 and Designated ULB forthwith.

9.2. Post COD period

9.2.1. Monthly Status Reports

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

9.2.2. 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 manual⁵, performance parameters or requirements as set forth in this Agreement including Annexures, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the PMU shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

9.2.3. 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/ Designated ULB within 15 (fifteen) days of receiving the Post COD Inspection Report; provided that where the remedying of such defects or

⁵Maintenance 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.

deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports to the PMU/ Designated ULB 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 Designated ULB shall be entitled to recover Damages from the Concessionaire at the rate of 0.1 % (zero point one percent) of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the PMU/ Designated ULB.

9.2.4. Designated ULB's/ Participating ULBs right to take Remedial measures

- (a) 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/ Annexures, and fails to commence remedial works within 15 (fifteen) days of receipt of Post COD Inspection Report or notice in this behalf from the PMU or the Designated ULB, as the case may be, the Designated ULB 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 Designated ULB as Damages.
- (b) The Designated ULB shall have the right, and the Concessionaire hereby expressly grants to the Designated ULB the right, to recover the costs and Damages specified in sub-clause (a) 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 ULB under this sub-clause (b). Any demand from Designated ULB stating that a specified amount is payable shall be final, binding and conclusive qua the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

ARTICLE 10

10. PAYMENTS AND CAPITAL GRANT

10.1. {Tipping Fee}

- 10.1.1. *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, Designated ULB agrees and undertake to pay to the Concessionaire (on behalf of all the Participating ULBs) in accordance with terms hereof, the tipping fee (the "Tipping Fee") equivalent to Rs. [.] (Rupees in words) per ton of MSW collected by way of door to door collection in the Project Area, transported to the Processing Facility site and processed by the Concessionaire.*
- 10.1.2. *In the Pre-COD Period, the Concessionaire shall, irrespective of other contrary stipulations herein, be entitled to receive only 45% (forty five percent) of the {Tipping Fee} amount based on the quantity of MSW collected and transported to the Processing Facility site, as measured/ recorded at the Weighbridge, and subject always to verification by the Designated ULB.*
- 10.1.3. *Once the Commercial Operations Date of the Project Facility is achieved in accordance with the terms of this Agreement, the Concessionaire shall, irrespective of other contrary stipulations herein, but subject always to due verification by Designated ULB, be entitled to receive balance 55% (fifty five percent) of the {Tipping Fee} amount for the MSW collected and transported to site in the Pre-COD Period, in terms of Clause 10.1.2 above.*
- 10.1.4. *Further, with effect from Commercial Operations Date and thereafter during the remaining term of Concession i.e. the Post-COD Period, the Concessionaire shall, in respect of the waste collected, transported, processed and disposed after Commercial Operations Date, be entitled to payment of {Tipping Fee} for the said amount of MSW actually processed at the Project Facility.*
- 10.1.5. *The {Tipping Fee} shall, with effect from Commercial Operations Date, be escalated at the rate of 5% (five percent) every 2(two) years over the last paid rate of {Tipping Fee}. The first such enhancement shall be made on the second anniversary of the Commercial Operations Date.*

10.1.6. Irrespective of anything to the contrary contained herein, but subject to Clause 10.1.2 above, the Concessionaire hereby clearly understands and unconditionally agrees that the Tipping Fee amount shall be paid on the basis of actual transportation of MSW carried out by the Concessionaire as weighed on the Weighbridge installed at the Processing Facility.

10.1.7. The Concessionaire shall raise monthly invoice and attach daily weights sheets of the electronic Weighbridge installed at the entrance of the Sanitary Landfill/ Processing Facility site, duly verified and approved by the PMU/ Designated ULB. The payment shall be made to the Concessionaire after due verification of the correctness of the invoice raised by the PMU/ Designated ULB. If some discrepancy is found, the invoice along with supporting documents shall be returned back to the Concessionaire for rectification/ providing clarifications.

10.2. Payment mechanism

10.2.1. The Concessionaire shall raise the bill/ invoice for Tipping Fee for the preceding month to the Designated ULB, by 5th day of the succeeding Month. The invoice thus raised shall, subject to due performance by Concessionaire and other terms and conditions of this Agreement, shall be verified/ approved by the PMU by 15th day of such month and submitted to Designated ULB for release of payment.

10.2.2. The Designated ULB shall pay 90% (ninety percent) of the invoice amount, to the Concessionaire by the end of the month in which the bill has been raised, subject to deductions (including on account of penalty, Damages, etc.) as applicable. The remaining 10% of the bill amount shall be paid by the Designated ULB by the end of the third month, subject to deductions as applicable.

10.2.3. The Designated ULB 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, the Designated ULB shall, by way of additional security for payment, deposit and maintain at all times, an amount equivalent to fee corresponding to next two months payment in the Escrow Account.

By way of illustration, the aforesaid payment mechanism of {Tipping Fee} is shown as following:

Month	Activity
T1	Month of processing of waste
5 th of T2	Bills raised by the Concessionaire, to be approved by the PMU

15 th of T2	Bill approval by the PMU and submission to Designated ULB
End of T2	90% payment by Designated ULB
End of T3	10% payment by Designated ULB) ⁶

OR

10.3. Concession Fee

- 10.3.1. Subject to the provisions of this Agreement and in consideration of the Concession granted, the Concessionaire shall pay to the Designated ULB a Concession Fee of Rs..... (Rupees in words⁷) per annum which shall be shared between the Participating ULBs in proportion to the MSW generated in the Project Area under their respective jurisdictions in terms of the Inter ULB Agreement.
- 10.3.2. The payment of Concession Fee shall commence upon achievement of Commercial Operations Date and shall be payable in 4 (four) equal quarterly installments. The first installment of the Concession Fee in respect of the ongoing Quarter⁸ shall be paid on the Commercial Operations Date. If the Commercial Operations Date falls on a date such that the on-going Quarter falls short by the stipulated days required within such Quarter, then the payment of Concession Fee shall be made on a pro-rated basis for the balance period of that Quarter.
- 10.3.3. In the subsequent Quarters, the payment of Concession Fee shall be made within a period of 5 (five) days from the commencement of each Quarter. The Concession Fee shall be deposited by the Concessionaire by way of online transfer of funds from the Escrow Account directly into the bank account as per the particulars thereof to be intimated by the Designated ULB.
- 10.3.4. The Concession Fee shall escalate at the rate of 5% (five per cent) every 2(two) years after Commercial Operations Date over and above the previous rate of Concession Fee.
- 10.3.5. In the event of delay in depositing the relevant installment of Concession Fee 5 (five) days beyond the date specified in Clause 10.1.3

⁶ To be deleted if the Selected Bidder has quoted Concession Fee

⁷ (mention the amount quoted by the Selected Bidder which has been accepted by the Authority)

⁸ **Quarter** means each period of three (3) months commencing on 1 April, 1 July, 1 October and 1 January in each calendar year.

*above, the Concessionaire shall be liable to pay to the Designated ULB delay penalty at the rate of 0.1% (zero point one percent) of the Performance Security per day of delay till the amount is deposited in the said account along with the penal amount. In the case of delay beyond 30 (thirty) days shall constitute a Concessionaire Event of Default.}*⁹

10.4. Capital Grant

10.4.1. Designated ULB (on behalf of all the Participating ULBs) shall pay to the Concessionaire cash support by way of a non outright payment for an amount equal to Rs.2,00,00,000/- (Rupees Two Crores Only) (the "Capital Grant").

10.4.2. The Capital Grant shall be disbursed to the Concessionaire in two tranches of equal amount. The first tranche of the Capital Grant shall be disbursed to the Concessionaire upon achieving Commercial Operations Date /Commissioning of the Waste to Compost/ Bio-Methanation Processing Facility and the second tranche within 6 (six) months of the previous tranche. In the event of occurrence of a Concessionaire Event of Default, disbursement of the Capital Grant or any part thereof shall be suspended till such Default has been cured by the Concessionaire. The Designated ULB shall disburse the Capital Grant amount by disbursing and depositing the same in the Escrow Account.

⁹Retain whichever is applicable

ARTICLE 11

11. ESCROW ACCOUNT

11.1. Escrow Account

11.1.1. 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.

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

11.2. 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 the Lenders in terms of the Financing Agreements;
- (b) all revenues from or in respect of the Project including amount received under Market Development Assistance Policy for city compost, any other subsidy or incentive received from the Government of India or State Government and insurance claims;
- (c) all payments made by the Designated ULB on account of the Capital Grant and {Tipping Fee}; and
- (d) User Charges recovered from Waste Generators.

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

{The Designated ULB shall at all times and in any month of the Concession, ensure that in the Reserve Sub-Account (“Reserve Fund”) under the Escrow Account, an amount equivalent to immediately next two months {Tipping Fee} payable to the Concessionaire in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and the Designated ULB does not notify the Escrow Bank in respect of any non-performance or breach of obligation by the Concessionaire directing Escrow Bank to stop any appropriation from the Reserve Fund; in case of any delay by the Designated ULB in payment of due and undisputed amount to the Concessionaire subject to and in accordance with the 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 appropriation order agreed in Clause 11.3 below. In case of such tapping, the Designated ULB/Participating ULBs shall forthwith top up and maintain the required reserve in the Reserve Fund.}

11.3. Withdrawals during Concession Period

11.3.1. 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 from in the month when due:

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

11.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 11.3.1 above.

11.4. Withdrawals upon Termination

11.4.1. 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) *{outstanding Concession Fee;}*
- (d) all payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies;
- (f) incurred and accrued O&M Expenses;
- (g) any other payment required to be made under this Agreement; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under sub-clause (h) of this Clause 11.4.1 until a divesting certificate has been issued by the Designated ULB.

- 11.4.2. The provisions of this Article 11 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 11.4.1 have been discharged.

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ARTICLE 12

12. INSURANCE

12.1 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; and
- (g) Any other insurance that may be considered necessary by the Designated ULB/GoHP/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).

12.2 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 Designated ULB and the Participating ULBs, 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 Designated ULB and / or Participating ULBs, 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 be cause of deductible articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

12.3 Evidence of Insurance Cover

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

12.4 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.

12.5 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 Designated ULB. 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 Designated ULB 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 Designated ULB on behalf of itself and/ or Participating ULBs may at its option purchase and maintain such insurance and all sums incurred by the Designated ULB in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Designated ULB on behalf of itself and/ or Participating ULBs by exercising right of set off or otherwise from the Performance Security.

ARTICLE 13

13. FORCE MAJEURE

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

13.1 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-Political Event, Indirect Political Event and Political Event, as defined in Clauses 13.2, 13.3 and 13.4 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.

13.2 Non-Political Event

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

- (a) act of God, epidemic, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting Project development/implementation for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days in an Accounting Year not being an Indirect Political Event set forth in Clause 13.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than failure of the Concessionaire to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, enforcement of this Agreement or exercise of any of its rights under this Agreement by the Designated ULB;

- (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.

13.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage involving the Site(s) and location of the Project;
- (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 7 (seven) days and exceeding an aggregate period of 14 (fourteen) 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 14 (fourteen) days in an Accounting Year;
- (e) failure of the Designated ULB 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 Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

13.4 Political Event

A Political 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 15 and its effect, in financial terms, exceeds the sum specified in Clause 15.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their

respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

13.5 Duty to report Force Majeure Event

13.5.1 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 13 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.

13.5.2 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.

13.5.3 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 Clause 13.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

13.6 Effect of Force Majeure Event on the Concession

13.6.1 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.

13.6.2 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 {Tipping Fee} and/or compost assistance fees under policy of Market Development Assistance for City compost, 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.*

13.7 Allocation of costs arising out of Force Majeure

13.7.1 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.

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

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

13.7.3 Save and except as expressly provided in this Article 13, 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.

13.8 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 13, 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.

13.9 Termination Payment for Force Majeure Event

13.9.1 If Termination is on account of a Non-Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in an amount lowest of following a) or b):

- (a) 90% of book value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original infrastructure and assets which was provided to the Concessionaire.
or
- (b) 75% of Debt Due less pending insurance claims

13.9.2 If Termination is on account of an Indirect Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in an amount lowest of following a) or b):

- (a) 100% of book value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original infrastructure and assets which was provided to the Concessionaire.
or
- (b) 90% of Debt Due less pending insurance claims

13.9.3 If Termination is on account of a Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in an amount

that would be payable under Clause 16.4.6 as if it were an Designated ULB Default.

13.10 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.

13.11 Excuse from performance of obligations

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 14

14. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

14.1. Suspension upon Concessionaire Default

Upon occurrence of an Concessionaire Event of Default, the Designated ULB 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 10) and/ or Capital Grant, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issuance of notice by the Designated ULB 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 Designated ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

14.2. Designated ULB to act on behalf of Concessionaire

14.2.1. During the period of Suspension, the Designated ULB 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 Designated ULB shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations.

14.2.2. 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 Designated ULB 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 Designated ULB for all costs incurred during such period.

14.3. Revocation of Suspension

14.3.1. In the event that the Designated ULB 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 Designated ULB

may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

14.4. 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 Article 17 and the Substitution Agreement, and upon receipt of notice thereunder from the Lender's Representative, the Designated ULB shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 14.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

14.5. Termination

14.5.1. At any time during the period of Suspension under this Article 14, the Concessionaire may by notice require the Designated ULB 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 Clause 14.4, the Designated ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 14.

14.5.2. 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 Clause 14.1, 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 Designated ULB upon occurrence of a Concessionaire Default.

ARTICLE 15

15. CHANGE IN LAW

15.1. Increase in costs

15.1.1. Change in Law shall mean the occurrence or coming into force of any of the following, after the Effective Date:

- a. The enactment of any new Indian law including laws related to environment/emission/ discharge standards;
- b. The repeal, modification or re-enactment of any Applicable Law;
- c. A change in the interpretation or application of any Indian law by a court of record;

15.1.2. Provided that Change in Law shall not include:

- a. Coming into effect, after the Effective Date, of any provision or statute which is already in place as of the Effective Date;
- b. 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 Effective Date which is a matter of public knowledge (including interalia, bye laws, directions, orders, regulations to be issued under the SWM Rules); and
- c. Any change in the rates of the Taxes which have a direct effect on the Project.

15.1.3. 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. 10,00,000 (Rupees Ten Lakhs only) in any Accounting Year, the Concessionaire may so notify the Designated ULB and provide the information's as provided in Clause 15.1.4 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 Clause 15.1.5 below.

15.1.4. Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify Designated ULB and the PMU of the following:

- a. the nature and the impact of Change in Law on the Project;

- b. the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
 - c. 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; and
 - d. The relief sought by the Concessionaire.
- 15.1.5. 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 Designated ULB to pay an amount equivalent to 50% (fifty percent) of Additional Cost as determined/ certified by PMU based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Clause 15.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

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ARTICLE 16

16. EVENTS OF DEFAULT AND TERMINATION

16.1. Events of Default

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

16.2. 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 process the MSW at the proposed site for a continuous period of three days or an aggregate period of seven days in any Month; This period shall be exclusive of the maintenance schedule of the Processing Facility;
- b. 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;
- c. Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- d. A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- e. 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 Designated ULB, 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;
- f. Abandonment of the Project by the Concessionaire;
- g. The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- h. 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;

- i. The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement;
- j. No collection of waste for consecutive 7 (seven) days after starting door to door collection in a particular area; and
- k. *{The Concessionaire fails to pay any instalment of Concession Fee for a period of more than 30 (thirty) days.}*¹⁰

16.3. ULB Event of Default

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

- a. Designated ULB has failed to make any payments including payment of Capital Grant and *{Tipping Fee}* due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;
- b. Any of the Participating ULBs 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 Participating ULBs have unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- d. Any of the Participating ULBs 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; and
- e. Any representations made or warranties given by the Participating ULBs under this Agreement have been found to be false or misleading.

16.4. Termination due to Event of Default

16.4.1 Termination for Concessionaire Event of Default

- a. Without prejudice to any other right or remedy which Designated ULB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Designated ULB shall, be entitled to terminate this Agreement in the manner as set out under sub clause (b) of Clause 16.4.1 and sub clause (c) of Clause 16.4.1.

Provided however that upon the occurrence of a Concessionaire Event of

¹⁰ Delete if not applicable

Default as specified under Clause 16.2, Designated ULB may terminate this Agreement by issue of Termination Notice in the manner set out under sub clause (c) of Clause 16.4 after giving the Concessionaire an opportunity of hearing.

- b. If the Designated ULB decide to terminate this Agreement pursuant to preceding sub clause (a) above, it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to Designated ULB 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 (thirty) days, Designated ULB 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 therefore, the Concessionaire shall have further period of 30 (thirty) 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, Designated ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

16.4.2. Termination for ULB 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 Participating ULBs 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 sub-clause (a), it shall in the first instance issue Preliminary Notice to all the Participating ULBs including the Designated ULB. Within 30 (thirty) days of receipt of Preliminary Notice, the Designated ULB on behalf of defaulting Participating ULB(s) shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "Participating ULB Proposal to Rectify"). In case of non-submission of Participating ULB Proposal to rectify (by the Designated ULB on behalf of the defaulting ULB) within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- c. If Participating ULB Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, such Participating ULB(s) shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however such Participating ULB 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.

16.4.3. Termination Notice

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding Clauses 16.4.1 or 16.4.2, 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 (sixty) days from the date of Termination Notice;
- c. the estimated termination payment including the details of computation thereof; and
- d. any other relevant information.

16.4.4. 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 Designated ULB in accordance with Clause 16.4.6 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and
- c. the Project is handed back to the Designated ULB and all the Participating ULBs, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to Designated ULB.

16.4.5. Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same:

Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

16.4.6. Termination Payment for ULB Event of Default

Upon Termination of this Agreement on account of ULB Event of Default, the Concessionaire shall be entitled to receive back the Performance Security from the and also receive Termination Payment of an amount equal to the lowest of following sub-clause (a) or (b):

- a. 100% (hundred percent) of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of Project Assets would not include the cost of original project facility which was provided to the Concessionaire.

OR

- b. Debt Due less pending insurance claims

16.4.7. Termination Payment for Concessionaire Event of Default

Upon Termination of this Agreement on account of Concessionaire Event of Default no Termination Payment shall be made to the Concessionaire and the Designated ULB shall be entitled to forfeit the Performance Security of the Concessionaire.

16.5. Rights of Participating ULBs on Termination

16.5.1. Upon Termination of this Agreement for any reason whatsoever, Designated ULB shall upon making the Termination Payment, if any, to the Concessionaire, along with other Participating ULBs have the power and authority to:

- a. enter upon and take possession and control of the Project Facilities and Project Assets forthwith; and
- 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.

16.5.2. Notwithstanding anything contained in this Agreement, Participating ULBs shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the hand back of the Project Facilities and Project Assets by the Concessionaire to Participating ULBs, shall be free from any such obligation/ fee/ penalties/ taxes.

- (a) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Designated ULB with the necessary particulars, and in the event of any delay, the Designated ULB shall pay interest at a rate equal to 3% (three per cent) above the Bank Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the Designated ULB upon actual or constructive transfer of the Project Assets by the Concessionaire to the Participating ULBs clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.
- (b) The Concessionaire expressly agrees that Termination Payment under this Clause 16.5 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.
- (c) The Designated ULB and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, the Designated ULB 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 Designated ULB, 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 Designated ULB shall be full and final settlement of Proportionate claim of Termination Payment to the Concessionaire under this Agreement.

16.6. 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.

17. SUBSTITUTION OF THE CONCESSIONAIRE

17.1. Substitution Agreement

17.1.1 The Lender's Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, Designated ULB (on behalf of all the Participating ULBs) and the Lender's Representative, on behalf of the Senior Lenders, substantially in the form set forth in Annexure 8.

17.1.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Designated ULB shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

17.1.3 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 Clause 17.1.1 is not acceptable to Designated ULB, Designated ULB may either substitute the Concessionaire with its own Nominated Company or terminate the Agreement.

17.2. Substitution Process

While carrying out substitution, the Lender's Representative or Designated ULB, 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.

17.3. Consequences of Substitution

Designated ULB 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 Designated ULB on behalf of itself and on behalf of the other Participating ULBs, through the novation of the Agreement, if applicable, in favour of the Nominated Company.

Designated ULB 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 Designated ULB 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.

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ARTICLE 18

18. HAND OVER OF PROJECT

18.1 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.

18.2 Condition Survey

18.2.1. 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 under the supervision of the Designated ULB, 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;

18.2.2. If, as a result of the Condition Survey, the Designated ULB on behalf of itself and/ or Participating ULBs 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 condition well before the Transfer Date.

18.2.3. In the event the Concessionaire fails to comply with the provisions of this Agreement, the Participating ULBs in their respective jurisdictions may itself cause the Condition Survey and inventory of Project to be conducted. The Participating ULBs 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 the event, the Concessionaire fails to pay the cost incurred the Participating ULBs through the Designated ULB shall be entitled to recover the amount from its invoices and/ or the Performance Security.

18.3 Concessionaire's Obligations upon Termination

18.3.1. 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. The Concessionaire shall subject to the provisions of this Agreement:

- a. handover to the Designated ULB or its nominated agency free of cost the vacant and peaceful possession of the Project.

- b. hand over/transfer to the Designated ULB and the Participating ULBs 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 Designated ULB and the Participating ULBs agrees to take over) which are required to be transferred to the Designated ULB and the Participating ULBs 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.
- c. handover to the Designated ULB on behalf of itself and all Participating ULBs 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 Designated ULB and/ or the Participating ULBs. The Concessionaire's employees shall be the Concessionaire's/ Successful Bidder's responsibility even after the expiry of the Term.

- d. transfer or cause to be transferred/ assigned to the Designated ULB and/ or the Participating ULBs any Project Agreements which are (A) valid and subsisting, (B) capable of being transferred to the Designated ULB and/ or the Participating ULBs and (C) those the Designated ULB and/ or the Participating ULBs have chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Designated ULB and/ or the Participating ULBs.
- e. at its cost, transfer to all the Participating ULBs all such Applicable Permits which they may require and which can be legally transferred.
- f. at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Designated ULB and/ or the Participating ULBs. In the event the Concessionaire fails to remove such objects within the stipulated time, the Designated ULB on behalf of itself and/ or the Participating ULBs 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.

18.3.2. 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 Designated ULB and/ or the Participating ULBs 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.

18.3.3. The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.

18.3.4. The Designated ULB on behalf of itself and other Participating ULBs 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.

18.4 Cooperation and assistance on transfer of Project

18.4.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to avoid any undue delay or inconvenience to the public.

18.4.2 The Parties shall provide to each other as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Designated ULB/ Participating ULBs, its concessionaire or agent may reasonably require for operation of the Project after the Transfer Date.

18.5 Divestment Certificate

18.5.1 The divestment of all rights, title and interest in the Project shall be deemed to be completed on the date when all the Hand Over of the Project requirements in respect of each Participating ULB have been fulfilled, and the Designated ULB shall, without reasonable delay, thereupon issue a certificate

(the "Divestment Certificate"), with a copy thereof endorsed to the other Participating ULBs, 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 Participating ULBs pursuant hereto.

ARTICLE 19

19. DISPUTE RESOLUTION

19.1 Amicable Resolution

19.1.1. 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 PMU (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause 19.1.2 below.

19.1.2. 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.

19.1.3. Either Party may require such Dispute to be referred to the Commissioner, Designated ULB (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 Clause 19.2 below.

19.2 Arbitration

19.2.1. Procedure

Subject to the provisions of Clause 19.1, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by Secretary Law, Government of Himachal Pradesh as Sole Arbitrator. 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.

19.2.2. Place of Arbitration

The place of arbitration shall be Shimla, Himachal Pradesh.

19.2.3. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using Hindi/other than English as language

shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

19.2.4. 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.

19.3 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.

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ARTICLE 20

20. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

20.1 Proprietary Material

20.1.1. 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.

20.1.2. The Concessionaire, as beneficial owner, hereby grants to the Designated ULB/ Participating ULBs 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 get extended to the Designated ULB and the Participating ULBs 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.

20.1.3. Nothing in this Clause 20.1 shall be construed to grant the Designated ULB and/ or the Participating ULBs or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

20.2 Confidentiality

20.2.1. The Designated ULB and/ or the Participating ULBs 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 Designated ULB and the Participating ULBs (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.

20.2.2. The Designated ULB and the Participating ULBs shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.

20.2.3. 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 Designated ULB and/ or the Participating ULBs, which have been duly approved by the Designated ULB, with respect to the Project.

20.2.4. The aforesaid provisions shall not apply to the following information:

- a. obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
- b. already in the public domain otherwise than by breach of this Agreement; or
- c. disclosed due to a court order or under any Act of GoI/GoHP.

20.3 Survival

The Concessionaire, the Designated ULB and/ or the Participating ULBs accept and confirm that the provisions of this Article 20 shall survive the expiration or any earlier termination of this Agreement.

ARTICLE 21

21. MISCELLANEOUS

21.1 Assignment and Charges

21.1.1. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Designated ULB and the Department.

21.1.2. Restraint set forth in Clause 21.1.1 shall not apply to:

- a. liens/ encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
- b. mortgage/ pledge/ hypothecation of moveable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) in favour of the Lenders for the Project.

Provided, no charge/ mortgage/ lien/ hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created over the Project Assets including the Site, assets and equipments' provided by the Participating ULBs 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 Participating ULBs, upon expiry or earlier termination of this Agreement, their respective Project Assets free of all encumbrances whatsoever.

21.1.3. The Concessionaire shall not create or permit to subsist any further Encumbrance over the Site(s).

21.2 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 of payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 21.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

21.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at [Solan, Himachal Pradesh] shall have jurisdiction over all matters arising out of or relating to this Agreement.

21.4 Waiver

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

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

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

21.5 Survival

Termination of this Agreement shall not relieve the Concessionaire or the Participating ULBs 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.

21.6 Amendments

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

21.7 Notices

21.7.1. 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/ e-mail/ facsimile transmission, delivered or transmitted to the Parties at their respective addresses as specified below or such address, facsimile number or e-mail 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 recognised international courier or by mail (registered, return receipt requested) at that address, and
- b. in the case of any communication made by facsimile or email when transmitted properly addressed to such facsimile number or email address.

To the Concessionaire
ULB/Participating

To the Designated
ULB

To the Participating ULB 2

To the Department

To the Participating ULB 3

To the Participating ULB 4

21.8 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.

21.9 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.

21.10 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.

21.11 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.

21.12 Counterparts

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

21.13 Liability for Review

21.13.1. Except to the extent expressly provided in this Agreement:

- (a) no review, comment, certification, verification or approval by the Designated ULB and/ or Participating ULBs or PMU 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 Permits; and
- (b) the Designated ULB and/ or Participating ULBs, 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-clause (a) above.

21.14 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.

21.15 Liability and Indemnification

- 21.15.1. The Concessionaire shall indemnify, defend and hold harmless (the “Indemnifying Party”) the Designated ULB and/ or Participating ULBs (the “Indemnified Parties”) during the Term from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, 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 Permits 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.
- 21.15.2. 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 Designated ULB and/ or Participating ULBs and its advisors in this behalf.
- 21.15.3. The Designated ULB and/ or Participating ULBs shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project for any reason whatsoever.
- 21.15.4. The Concessionaire shall keep the Designated ULB and/ or Participating ULBs indemnified during the Term against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the Himachal Pradesh

Pollution Control Board, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.

21.15.5. 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.

21.15.6. The provisions of this Article 21 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 DESIGNATED ULB/PARTICIPATING ULB 1

_____ of Designated ULB,
duly authorized by the _____

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For CONCESSIONAIRE

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

(Signature & Seal)

SIGNED, STAMPED AND DELIVERED BY:

For PARTICIPATING ULB 2

_____ of Participating
ULB2, duly authorized by the

SIGNED, STAMPED AND DELIVERED BY:

For PARTICIPATING ULB 3

_____ of Participating
ULB3, duly authorized by the

(Signature & Stamp)

(Signature & Stamp)

SIGNED, STAMPED AND DELIVERED BY:

For PARTICIPATING ULB 4

_____ of Participating
ULB4, duly authorized by the

(Signature & Stamp)

SIGNED, SEALED AND DELIVERED BY:

For DEPARTMENT *(in its capacity as the Confirming Party)*

_____ of Department, duly authorized by the _____

(Signature & Seal)

IN PRESENCE OF

Sign:

Sign:

Name:

Name:

Address

Address

HPIDB Website-22.01.2018

ANNEXURES

VOLUME - III

HPIDB Website-22.01.2018

ANNEXURE 1: SCOPE OF SERVICES

1. Obligation to set-up Processing Facility

- 1.1. The Concessionaire shall be obligated to set up at its cost and expense, a Processing Facility at the earmarked Site and discharge obligations set out in Annexure 1 for processing of MSW prior to its final disposal at Engineered Sanitary Landfill Site, as per the Implementation Schedule submitted by the Concessionaire. The Implementation Schedule shall be submitted in MS Word format.
- 1.2. The Processing Facility also includes a setting up a waste to compost plant/ RDF plant/ Bio-Methanation having capacity of at least 60 (sixty) TPD. The biogas/ methane/ compost so produced can be sold to any third party/ end user. The Concessionaire shall have the Processing Facility fully set up and obtain an Operational Acceptance Certificate from the PMU for the newly installed Facility within a period no later than 12 (twelve) months from the Compliance Date ("Scheduled Completion Date"). The Concessionaire shall also be obligated to promptly rectify and remedy any defects or deficiencies that are pointed by the PMU and furnish a report in respect thereof to the PMU.
- 1.3. In the event, the Concessionaire is unable to achieve COD within the said time period, the Concessionaire shall be granted an additional period of 30 (thirty) days without levy of any damages. In case of any further delay to achieve COD, Liquidated Damages at the rate of 0.1% (zero point one percent) of the Performance Security per day of delay beyond 30 (thirty) days from Scheduled Completion Date shall be levied by the Designated ULB on the Concessionaire, subject to a maximum of 90 (ninety) days beyond which it shall tantamount to Concessionaire Event of Default. Provided however, if the delay to achieve COD is due to any Force Majeure event or due to delay on the part of PMU in issuing Operational Acceptance Certificate, no such Liquidated Damages shall be levied.

2. Primary collection of waste from the point of generation

- 2.1. The Concessionaire shall undertake daily collection (door to door) of MSW generated within the Project Area commencing from the Commencement Date.
- 2.2. Collection and transportation of street sweeping waste from the designated points established by Participating ULBs in Consultation with Concessionaire.
- 2.3. The Concessionaire shall collect MSW at pre-informed timings. The timings are to be planned after consultation with the Participating ULBs.
- 2.4. The Concessionaire shall provide the Participating ULBs with a route plan and timings of visit/ time table as decided by 15th April and 15th October, every year, for the duration of Concession Period. The Participating ULBs shall notify the route plan and timing of visit for the information of the general public in their respective jurisdictions.

- 2.5. The Concessionaire shall, for and on behalf of the Participating ULBs, collect notified User Charges from each household on a monthly basis and deposit the same in the Escrow Account. A receipt of collected User Charge shall be provided to the end users by the Concessionaire. Record of the same will be maintained by the Concessionaire and submitted at the end of each month along with the copies of the receipts, to the Designated ULB.
 - 2.6. The Concessionaire shall arrange for all vehicles, devices, community bins at its own cost to collect all MSW generated in the Project Area.
 - 2.7. The MSW shall be collected using containerized motorised vehicles (such as auto tippers) or containerized tricycles, handcarts, community bins or any other device which is suitable for collection of waste without necessitating deposition of waste on the ground and multiple handling of waste
 - 2.8. The containers shall be colour coded as per the SWM Rules.
 - 2.9. All such vehicles, devices, community bins shall display a logo of the Participating ULB and Swachh Bharat Abhiyan logo of at least 12 inches by 12 inches size (font size of 6-9 inches) size.
 - 2.10. The Concessionaire shall ensure that the collection bins, vehicles and devices are cleaned on a daily basis using disinfectants.
 - 2.11. The Concessionaire must put a system in place which indicates that the bins are picked up on being full to their capacity.
 - 2.12. The Participating ULB/ PMU reserves right to conduct random checks.
3. Secondary Storage of waste
- 3.1. The Concessionaire shall be provided with land(s) for Secondary Collection Points (including land for Transfer Station/Transfer Point) by Participating ULBs free of cost within 30 (thirty) days of signing of Concession Agreement. The land provided shall only be used for the purposes of the Project.
 - 3.2. Dedicated mobile Transfer Stations/ dumper placers/ container bins of at least 2 (two) cubic meters capacity or any such equipment which is suitable for storage of waste (“Equipment for secondary storage”) shall be positioned by the Concessionaire at such Secondary Collection Points to receive MSW from the vehicles and devices engaged in the primary collection of waste.
 - 3.3. Equipment for secondary storage shall be designed for at least twice the designed capacity (as per the CPHEEO manual specifications). Waste density to be assumed as 500 kg/ cum. The bins should be designed in line with the transportation system so as to avoid any manual handling of waste.
 - 3.4. The Concessionaire shall provide equipment for secondary storage at its own cost.
 - 3.5. All equipment for secondary storage shall be covered and colour coded as per SWM Rules. All equipment for secondary storage shall be marked with ULB and Swachh Bharat Abhiyan logo of at least 12 (twelve) inches by 12 (twelve) inches (font size of 6 -9 inches) size. The Concessionaire shall display any other form of

advertisement on the equipment for secondary storage only after prior approval of the Designated ULB. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.

- 3.6. If required, Transfer Station(s) shall be installed in the Project Area.
- 3.7. The land for setup of Transfer Station, upon request of the Concessionaire, shall be provided/ procured by the Designated ULB in accordance with Land Lease Agreement within 30 (thirty) days of signing of the Concession Agreement.
- 3.8. The Transfer Station shall be refurbished/ constructed by the Concessionaire at its own cost. The Concessionaire shall refurbish/ construct the Transfer Station within a period of 6 (six) months from the date of handing over the vacant land by the Designated ULB to the Concessionaire.
- 3.9. The Transfer Stations/ Dhalaos shall be designed for all weather operations. The Transfer Station shall be operated under cover, so that dust, litter and noise could be effectively controlled. The Transfer Station shall be cleaned daily and the floors washed.
- 3.10. The walls of the Transfer Station/ Dhalaos shall be white-washed every six months for the duration of Concession Period. And all the vehicles/ equipment shall be re-painted every 6 (six) months.
- 3.11. The Transfer Station shall be equipped with internal roads, ramps and platforms at different levels. These shall be concrete built with a capacity to withstand the load of moving machineries/vehicles.
- 3.12. The Concessionaire shall erect at least 1 (one) signboard with details (capacity, contact details and warnings) about the transfer station in local language, Hindi and English of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance to in a manner that it is ordinarily visible to any person using such entrance.
- 3.13. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other safety gear.
- 3.14. The Concessionaire shall make provisions to restrict entry of stray animals into the transfer stations, e.g. animal catchers, etc.
- 3.15. The Transfer Station shall display a logo of the Participating ULB and Swachh Bharat Abhiyan of at least 12 inches X 12 inches each (font size of 6-9 inches) size on the outside of all of its walls. Additionally, all the outer walls of the transfer station shall also be painted with this advisory about solid waste management. The Concessionaire shall display any other form of advertisement on the Transfer Stations only after prior approval of the Designated ULB. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 3.16. The Concessionaire shall have right to advertise on Processing Facility, transfer station, Dhalaos, transportation vehicles and Sanitary Landfill. This will be an additional source of revenue for the Concessionaire.

4. Secondary Transportation of Waste to the Processing Facility

- 4.1. The Concessionaire shall transport MSW from Secondary Collection Points to the Processing Facility on a daily basis. In the case of change of site allocated for Processing Facility & SLF occurs after submission of bid and the new allocated site falls with 10 (ten) kms of road distance, the Concessionaire shall continue with the transportation of MSW from Secondary Collection Points to the new Processing Facility with no additional cost to ULB's. If the new allocated site will be more than 10 (ten) kms far from the previously allocated site, Concessionaire may charge additional amount mutually agreed to both parties in consultation with Independent Expert.
- 4.2. The Concessionaire shall deploy closed vehicles such as tipper trucks, compactors etc. to transport the MSW generated in the Project Area to the Processing Facility at its own cost.
- 4.3. The vehicles deployed shall be roadworthy conforming to approval from the State Transport Authority.
- 4.4. The Concessionaire shall comply with all Applicable Laws, including all rules and regulation prescribed in the regard, from time to time by any other statutory and Competent Authorities concerned, regarding fuel use & pollution control standards or any other norm.
- 4.5. The Concessionaire shall at periodic intervals check their adequateness and their conformity with the manufacturer's specification for their maintenance and replacement.
- 4.6. Designated ULB/ PMU/ Participating ULB reserves right to conduct random checks.
- 4.7. The Concessionaire shall provide automatic position identification systems using Global Positioning System (GPS) technology which shall ensure automatic tracking and recording of vehicle identification and movement in all vehicles.
- 4.8. The Concessionaire shall display Designated ULB (and social message given by Designated ULB) and logo of Swachh Bharat Abhiyaan of at least 12 inches X 12 inches size (font size of 6-9 inches) on the transportation vehicles and shall display any other form of advertisement on the transportation vehicles. For any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
- 4.9. The drivers appointed/engaged by the Concessionaire shall have a valid driving license as desired for the specific vehicle.
- 4.10. All vehicles shall have High Security Registration Plate and be equipped with electronic toll collection tag (if applicable).
- 4.11. All penalties, levies and fines levied in relation to the activities/ operations of the Concessionaire under the Project, shall be borne by the Concessionaire only without any liability of the Designated ULB/ Participating ULB/ Department.

5. Processing & Disposal of MSW

- 5.1. The Concessionaire shall set up Processing Facility & Sanitary Landfill on the designated lands provided by Designated ULB. The land provided shall only be used for the purposes of the Project.
- 5.2. The Concessionaire shall take all Applicable Permits in sequence and comply with the provisions therein from time to time.
- 5.3. The Concessionaire shall design, construct, operate and maintain all the Project Assets and Project Facilities including Processing Facility & Sanitary Landfill in compliance with all applicable laws at its own cost.
- 5.4. For the Processing Facility, use appropriate technology for RDF/ biological processing in line with the Applicable Laws including but not limited to SWM Rules. The Sanitary Landfill shall be set up in accordance with the requirement of SWM Rules.
- 5.5. The Concessionaire shall employ appropriate technology/ processes to manage the waste piled up at the existing site for reclaiming the land to the extent possible including but not limited to the land required for setting up the processing and disposal plant (in case the project site is existing dumpsite).
- 5.6. The Concessionaire shall at its cost and expense procure all machinery and equipment for Processing Facility and Sanitary Landfill. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project.
- 5.7. The Processing Facility shall achieve COD within a period of 12 (twelve) months from the date of signing of this Agreement. The Concessionaire shall submit monthly progress reports during the above period to Designated ULB/ PMU.
- 5.8. The Concessionaire shall operate and maintain the Processing Facility & Sanitary Landfill in accordance with the Applicable Laws.
- 5.9. The Concessionaire shall ensure that the inert/processing rejects/ash generated from the Processing Facility should not be in excess of 20% (twenty percent) of input waste quantity. The Concessionaire will all time ensure the daily capping of SLF as per Solid Waste Management Rules, 2016. Concessionaire will also ensure treatment and discharge of Leachate generated from Processing Facility & SLF.
- 5.10. All penalties, levies due to any non-compliance will be borne by the Concessionaire.
- 5.11. The Concessionaire shall receive revenue generated through products produced out of such processing like compost, energy, RDF, biogas, etc. The revenue generated through carbon credits shall be shared in the ratio of 50:50 between the Concessionaire and the Participating ULBs.
- 5.12. The Concessionaire shall maintain daily records of quantity of incoming, processed waste, rejects, products and product quality in the formats approved by PMU. The monthly report shall be submitted by the Concessionaire to the Designated ULB/ PMU. The monthly report may be subject to verification by Designated ULB or PMU.

- 5.13. The Concessionaire shall arrange for all facilities and equipment for weighing - one electronic weighbridge with CCTV cameras, platforms etc.
- 5.14. The Concessionaire shall erect at least 1 (one) signboard with details (capacity, contact details and signage) about the Processing Facility and Sanitary Landfill in local language, Hindi and English of a size not less than 2 ft. by 4 ft. each, adjacent to the main entrance in a manner that is ordinarily visible to any person using such entrance.
- 5.15. Concessionaire shall all time comply with the statutory norms of CPCB/ HPPCB for pollution control.
- 5.16. Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of Air & Water.
- 5.17. The Concessionaire shall display layout at the entrance and indicate warning signs in the Processing Facility and Sanitary Landfill.
- 5.18. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE).

6. Setup Complaint Redressal Centre

- 6.1. The Concessionaire shall setup at least 1 (one) Complaint Redressal centre which shall be functional by the Commencement Date such that it allows for (a) easy monitoring of operations of the Project and (b) establishment of standard protocol to address customer complaints.
- 6.2. The Complaint Redressal Centre shall be capable to registering complaints by the way of written communication, telephonically or personal visits by the consumers. The Complaint Redressal Centre shall be supported in English, Hindi and Regional Language.
- 6.3. The Complaint Redressal Centre shall have at least three (3) operational dedicated phone lines for receiving customer calls / complaints.
- 6.4. The telephone numbers of the Complaint Redressal Centre shall be clearly reflected on all secondary storage equipment and transportation vehicles. These numbers shall be mentioned in English, Hindi and Regional Language.
- 6.5. The "Complaint Redressal Centre" shall be kept operational by the Concessionaire from 6 am to 10 pm, seven (7) days a week. All complaints shall be verified and shall be redressed within 24 hours of their receipt.
- 6.6. The aggrieved residents for registering of their complaints may also contact the offices of the Participating ULBs who shall immediately forward such complaints to the Complaint Redressal Centre. Each of the Participating ULBs shall designate one of their officers not below the rank of Junior Engineer as the Nodal Officer to receive such complaints. The Concessionaire shall be bound to take action on the complaint so forwarded on an immediate basis and send status report to such Nodal Officer within 24 hours of having redressed the complaint specifying the action taken. In the event, the Concessionaire fails to take action or send status

report within the aforesaid time period, it shall be liable to pay Liquidated Damages mentioned in Penalty clause for each day of delay.

7. Organize and manage IEC activities

- 7.1. The Concessionaire shall undertake the IEC activities or alternatively may hire agency having proven credentials in IEC activities. The agency hired by the Concessionaire may be NGO, Society or Body Corporate. The Concessionaire shall impart project specific training to the hired agency prior to deployment.
- 7.2. IEC activities shall be aimed at creating awareness among the community, and prepare residents for upcoming Project, inform about SWMRules, source segregation, health and environment impacts, roles of ULB and Concessionaire in the Project, etc. through web site, mass media communication strategies such as newspapers releases, hoardings, glow sign boards, radio, TV, street plays, awareness campaigns at schools etc. At least one (1) advertisement in one (1) newspaper of at least 3 by 3 inches shall be released by the Concessionaire every three months. Concessionaire can also distribute the pamphlets with list do's and don'ts as an awareness media'
- 7.3. The Concessionaire shall organise training programs for RWAs to motivate the community towards waste management for ensuring the sustainability of a system at least once in three (3) months for first year of operations and thereafter at the interval of six months for balance concession period
- 7.4. The Concessionaire shall submit an annual program of the IEC activities planned for each year (on a monthly basis) to the ULB/ PMU within the first month of each calendar year clearly notifying the components & expenditure under each head of expense.
- 7.5. All staff uniform and vehicles involved in the Project shall have advisory messages about solid waste management.

ANNEXURE 2: SERVICE LEVEL BENCHMARKS

Following are the benchmarks set by MoUD (Handbook on Service Level Benchmarks). The Concessionaire will need to achieve the same in the proposed timeline:

S.No.	Indicator	Unit	Definition	Benchmark Value	Proposed Timeline												
1.	Household level coverage of SWM services through door-to-door collection of waste	%	Percentage of households and establishments that are covered by a daily doorstep collection system.	100%	From the date of signing of Concession Agreement: <table border="1"> <thead> <tr> <th>Phase</th> <th>Timeline</th> <th>Target</th> </tr> </thead> <tbody> <tr> <td>Phase 1</td> <td>6 months</td> <td>50%</td> </tr> <tr> <td>Phase 2</td> <td>9 months</td> <td>75%</td> </tr> <tr> <td>Phase 3</td> <td>12 months</td> <td>100%</td> </tr> </tbody> </table>	Phase	Timeline	Target	Phase 1	6 months	50%	Phase 2	9 months	75%	Phase 3	12 months	100%
Phase	Timeline	Target															
Phase 1	6 months	50%															
Phase 2	9 months	75%															
Phase 3	12 months	100%															
2.	Extent of segregation of waste	%	Segregation should at least be at the level of separation of wet and dry waste at the source, that is, at the household or establishment level. ¹¹ It is important that waste segregated at the source is not again mixed, but transported through the entire chain in a segregated manner. It is therefore important that this indicator is based on	100%	6 months from the date of signing of the Concession Agreement												

¹¹ Irrespective of the fact whether or not the waste is segregated at source, the Concessionaire will be responsible for processing and disposal of waste without claiming any extra cost from the Authority.

			measurement of waste arriving in a segregated manner at the treatment/disposal site, rather than being measured at the collection point.														
3.	Collection efficiency	%	The total waste collected by the ULB and authorised service providers versus the total waste generated within the ULB, excluding recycling or processing at the generation point. (Typically, some amount of waste generated is either recycled or reused by the citizens themselves. This quantity is excluded from the total quantity generated, as reliable estimates will not be available for these.)	100%	6 months from the signing of the Concession Agreement												
4.	Extent of recovery of waste collected	%	This is an indication of the quantum of waste collected, which is either recycled or processed. This is expressed in terms of percentage of waste collected	80%	From date of commissioning of the Processing Facility: <table border="1"> <thead> <tr> <th>Phase</th> <th>Timeline</th> <th>Target</th> </tr> </thead> <tbody> <tr> <td>Phase 1</td> <td>6 months</td> <td>70%</td> </tr> <tr> <td>Phase 2</td> <td>9 months</td> <td>90%</td> </tr> <tr> <td>Phase 3</td> <td>12 months</td> <td>100%</td> </tr> </tbody> </table>	Phase	Timeline	Target	Phase 1	6 months	70%	Phase 2	9 months	90%	Phase 3	12 months	100%
Phase	Timeline	Target															
Phase 1	6 months	70%															
Phase 2	9 months	90%															
Phase 3	12 months	100%															
5.	Extent of	%	The amount of waste	100%	Six months from the date of												

	scientific disposal of waste at landfill sites		that is disposed in landfills that have been designed, built, operated and maintained as per standards laid down by Central Government. This extent of compliance should be expressed as a percentage of the total quantum of waste disposed at landfill sites, including open dump sites		setup of the Sanitary Landfill									
6.	Efficiency in redressal of customer complaint	%	The total number of SWM-related complaints redressed within 24 hours of receipt of the complaint, as a percentage of the total number of SWM-related complaints received in the given time period.	80%	From the date of signing of Concession Agreement: <table border="1"> <thead> <tr> <th>Phase</th> <th>Timeline</th> <th>Target</th> </tr> </thead> <tbody> <tr> <td>Phase 1</td> <td>6 months</td> <td>75%</td> </tr> <tr> <td>Phase 2</td> <td>9 months</td> <td>99%</td> </tr> </tbody> </table>	Phase	Timeline	Target	Phase 1	6 months	75%	Phase 2	9 months	99%
Phase	Timeline	Target												
Phase 1	6 months	75%												
Phase 2	9 months	99%												

Penalties & Damages

S.No.	Default	Monitoring Mechanism	Cure Period	Penalty
Primary Collection				
1	door to door MSW collection is not provided to minimum percentage of Waste Generators / Households as per target	user complaint /verification by PMU	No collection of Waste for 2 consecutive Days No collection of Waste for 5 consecutive Days	Rs. 5 / Day/ Household Rs. 10/ Day/ Household

	specified in Services Level Benchmark from the Effective Date			
Secondary Storage & transportation				
2	Non-clearance of bins/dhalao for consecutive 2 days	Spot inspection conducted by Designated ULB/ PMU/ user complaint	One day	Rs. 100 per instance
	Transportation of MSW in non-covered vehicles	Spot inspection conducted by Designated ULB/ PMU/ user complaint	One day	Rs. 150 per instance
3	Non-operation of transfer station for one day	Spot inspection conducted by Designated ULB/ PMU	One day	Rs. 2500 per day
Waste processing				
4	Weighbridge is non-operational at Transfer Station/ Processing facility/ landfill due to breakdown for a consecutive period of 4 days	Daily check by PMU	From a list of three weighbridges, located near the project / processing site provided by Designated ULB from where the concessionaire can weigh the MSW at its own cost	Rs. 2500 per day after first 4 days

5	Failure to achieve COD within 30 days of the Scheduled Construction Completion Date	Inspection by PMU/ Designated ULB/ Progress Report	30 days from Scheduled Construction Completion Date	0.1% of the Performance Security per day of delay beyond 30 days
Sanitary Landfill				
6	Inert/ Residual waste greater than 20% sent to landfill	Weightment slips/ Daily reports/ Inspection by PMU	-	for every ton of increase, an amount equivalent to two times of average monthly per ton of Tipping Fee payment made on Processing & Disposal held over immediately preceding three months. In the event Tipping Fee is zero, penalty shall be imposed at the rate of Rs. 500/ ton.
Complaint redressal				
7	Improper working of call centre: Down time exceeds 3 hours per day	Inspection by PMU	3 hours	Rs. 1500 per hour after 3 hours
8	Improper working of call centre: Down time	Inspection by PMU	3 hours	Rs. 50,000 per month

	exceeds 3 hours per day for more than five days in a month			
IEC activities				
9	Non-display of logo of appropriate dimensions	Spot inspection conducted by Designated ULB/ PMU		Rs. 100 per instance
10	Non-issue of advertisement	Copy of advertisement to be provided to PMU/		Rs.10,000 per instance

Notwithstanding anything to the contrary contained herein, in the event in any quarter the aggregate liquidated damages levied by the Designated ULB on account of non-performance exceeds Rs.4,00,000/- (Rupees Four Lakhs only) in any Quarter, then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination. No collection of waste for 7 (seven) consecutive days shall also be construed as Concessionaire Event of Default.

ANNEXURE 3: FINANCIAL BID

(As submitted by Selected Bidder)

HPIDB Website-22.01.2018

ANNEXURE 4 : FORMAT FOR DAILY WEIGHT SHEET

Weighbridge details	
Location	
Capacity	
Date	
Time in	
Time out	
Truck no.	
Tier weight (tons)	
Full weight (tons)	
Waste quantity (Full weight - tier weight)	

HPIDB Website-22.01.2018

ANNEXURE 5: OPERATIONAL ACCEPTANCE CERTIFICATE
(Format as decided by PMU)

HPIDB Website-22.01.2018

ANNEXURE 6: FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE
[ON APPROPRIATE STAMP PAPER]

Bank Guarantee No. [__]

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

IN FAVOUR OF:

The Chief Executive Officer, BBND, Baddi with its principal office at EPIP Phase-I, Jharmajri, Baddi, District Solan, Himachal Pradesh, (hereinafter referred to as "Designated ULB" or "Beneficiary", which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

WHEREAS:

- (A) _____ (the "Concessionaire"),
_____ (the "Department") and the
_____ (the "Designated ULB") have entered into a Concession Agreement dated (the "Agreement") whereby the Designated ULB has agreed to the Concessionaire undertaking the _____ (hereinafter the "Project"), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Designated ULB in a sum of Rs. ***** cr. (Rupees ***** crore) (the "Guarantee Amount") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during its term i.e. the Term (as defined in the Agreement).
- (C) We, through our Branch at (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the term of the Agreement under and in accordance with the provisions of the Agreement, and agrees and undertakes to pay to the Designated ULB, upon its mere first written demand, and

without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Designated ULB shall claim, without the Designated ULB being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

HPIDB Website-22.01.2018

ANNEXURE 7: SCOPE OF WORK OF PMU

1. Role of the PMU

The PMU is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the PMU is to:

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

2. Structure & Scope of Services

- (a) PMU shall be headed by an Independent Expert having the following qualifications:
 - i. A person having at least 15 years of experience in the Solid Waste management sector from private sector with educational background of Environmental Engineering/ Environmental Sciences/ Public Health/ Civil Engineering;
 - ii. An officer of the grade of Executive Engineer from government services; and
 - iii. Salary / Wages of such Independent Expert will be borne by Designated ULB.
- (b) PMU shall also comprise of nominated members of the Participating ULBs. Such members should be officers of rank of executive officer or above.

The services to be provided by the PMU are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Design and Planning

- (a) Ensure that all activities of the Project fully comply with all Applicable Laws and, in particular, SWM Rules, 2016 governing the requirements of Municipal Solid Waste disposal.
- (b) Review of the Implementation Plan submitted by the Concessionaire.

2.2 Construction Inspection and General Services

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

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

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

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

ANNEXURE 8: SUBSTITUTION AGREEMENT

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

AMONGST

1. _____ (hereinafter r eferred t o as t he “Designated ULB” w hich e xpression shal l unl ess r epugnant t o t he context o r meaning t hereof i nclude i ts ad ministrators, su ccessors and assi gns) on be half o f itself and other Participating ULBs;
2. [*****Limited], a company i ncorporated unde r t he pr ovisions o f t he C ompanies Act, 2013 and having its registered office at ****, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ****[NAME AND PARTICULARS of Lenders’ Representative] and having its registered office at ****, acting for and on behalf of the Senior Lenders as their duly authorized agent w ith r egard t o m atters ar ising o ut o f o r r elation t o t his Ag reement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless r epugnant t o t he c ontext o r m eaning t hereof i nclude i ts suc cessors and substitutes);

WHEREAS:

- (A) The Designated ULB, Participating ULBs, and t he Department (as the Confirming Party) have entered into a Concession Agreement dated *** with the Concessionaire (the “ Concession Ag reement”) for se tting up o f Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis (hereinafter r eferred t o as t he “ Project”), and a c opy o f w hich i s annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested t he Designated ULB t o enter i nto t his Substitution Agreement f or se curing t heir i nterests t hrough assi gnment, transfer and substitution o f t he C oncession t o a Nominated C ompany i n ac cordance w ith t he provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering, financing, construction, operation and m aintenance, t he Designated ULB has ag reed and unde rtaken t o transfer and assi gn t he C oncession t o a Nominated Company i n accordance w ith t he terms and c onditions set forth i n t his Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

“Participating ULBs” include the following :

- (i) Municipal Council, Baddi;
- (ii) Municipal Council, Nalagarh;
- (iii) Municipal Council, Parwanoo; and
- (iv) Baddi Barotiwala Nalagarh Development Authority (BBNDA)

1.2 Interpretation

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

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

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the

Concession Agreement shall, unless repugnant to the context, have the meaning assigned thereto in the Concession Agreement.

- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Designated ULB for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Designated ULB to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Designated ULB shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Designated ULB may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Designated ULB may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Designated ULB shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Designated ULB within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Designated ULB shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Designated ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Designated ULB and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Designated ULB under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Designated ULB

under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Designated ULB for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Designated ULB that all or any of such criteria may be waived in the interest of the Project, and if the Designated ULB determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Designated ULB to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Designated ULB has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of bid made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Designated ULB, the Nominated Company shall be deemed to have been accepted. The Designated ULB hereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/ deemed acceptance of the Nominated Company; provided that in the event of such objection by the Designated ULB, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Designated ULB in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Designated ULB taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Designated ULB and the Concessionaire shall have

no right or remedy to prevent, obstruct or restrain the Designated ULB or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Designated ULB to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Designated ULB shall undertake Termination under and in accordance with the provisions of Article 16 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

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

5.3 Realisation of Debt Due

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

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

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

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

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

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

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

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Designated ULB unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

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

9.9 Successors and assigns

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

9.10 Notices

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

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

DESIGNATED ULB OF [***] by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders'

Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

1

2.

ANNEXURE 9: ESCROW AGREEMENT

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

AMONGST

- 1 LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expressions shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. _____ (hereinafter referred to as the “Designated ULB” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) acting on behalf of itself and all the Participating ULBs;

WHEREAS:

- (A) The Designated ULB, the Participating ULBs and the Department (as the Confirming Party) have entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) for undertaking the Setting up of Integrated Solid Waste Management Project for Collection, Transportation, Processing and Disposal in Baddi Cluster in the State of Himachal Pradesh on Public Private Partnership (PPP) basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 *DEFINITIONS AND INTERPRETATION*

1.1 Definitions

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

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

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

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

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

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

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

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

“Participating ULBs” means the following Urban Local Bodies (ULBs):

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

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

“Sub-Accounts” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid

out if due, and if not due in a month then a ppproportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

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

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

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

2.4 Escrow Bank's fee

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

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Designated ULB, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Designated ULB, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution

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

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, and the Designated ULB;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) *{all {Tipping Fee}, received by the Concessionaire from the Designated ULB and}* sell proceedings of compost/ biogas/methane;
- (d) any other revenues from or in respect of the Project,;
- (e) all proceeds received pursuant to any insurance claims; and
- (f) all other monies in accordance with the Concession Agreement.

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

3.2 Deposits by the Designated ULB

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

- (a) Capital Grant, Payments (under Article 10 of the Concession Agreement) and other monies disbursed by the Designated ULB to the Concessionaire;
- (b) all fee collected by the Designated ULB in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments.

3.3 Deposits by Senior Lenders

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

3.4 Interest on deposits

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

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out there from on the Payment Date(s):

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

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- {(c) *outstanding Concession Fee;*}
- (d) all payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies;
- (f) incurred and accrued O&M Expense;
- (g) any other payment required to be made under this Agreement; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in sub-clause (h) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Designated ULB.

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

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

any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Designated ULB may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 14.1 of the Concession Agreement. Any instructions given by the Designated ULB to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Designated ULB hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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

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

- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

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

5.5 Regulatory approvals

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

6 *ESCROW DEFAULT*

6.1 Escrow Default

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

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

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

7 *TERMINATION OF ESCROW AGREEMENT*

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Designated ULB remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

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

8 *SUPPLEMENTARY ESCROW AGREEMENT*

8.1 Supplementary escrow agreement

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

this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Designated ULB, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of a breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

9.2 Notice and contest of claims

In the event that any Party here to receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15(fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be finally decided by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution,

New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Solan, Himachal Pradesh and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Designated ULB unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal

provisions, as n early as is practicable to such invalid, illegal o r unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five-thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of DESIGNATED ULB by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

2.

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the

Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

[£] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

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

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

HPIDB Website-22.01.2018

ANNEXURE 10: LAND LEASE AGREEMENT

Project Site (s) Lease Deed for Transfer Stations, Processing & Disposal

This LEASE AGREEMENT made on the _____ day of _____ in the year Two Thousand and _____

BETWEEN

[Name of Municipal Corporation/ Council/ Committee], a statutory body constituted under the Himachal Pradesh Municipal Act, 1994, having its office at _____, acting through its _____ (hereinafter referred to as "the Lessor" which expression shall unless repugnant to the context thereof, include its successors & assigns)

AND

M/s _____, a special purpose vehicle incorporated under the provisions of Companies Act, 2013 or Concessionaire, and having its registered office at _____ (hereinafter referred to as "Lessee" which expression shall unless it be repugnant to the subject or context be deemed to include its successors and permitted assigns).

WHEREAS

- A. The Government of Himachal Pradesh is desirous of improving municipal solid waste (MSW) management and disposal capabilities of ULBs in order to enable the due discharge of their functions under the Solid Waste Management Rules, 2016 and its amendments framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and including any statutory amendments / modifications thereto or re-enactments thereof, for the time being in force from time to time] and for that purpose has proposed to develop an Integrated MSW Management Project for the Baddi Cluster. To carry out MSW Management activities in the Baddi Cluster and to develop Transfer Station, Processing and Disposal Facilities as a part of Integrated MSW Management project for the Baddi Cluster by the Lessee, the Baddi Barotiwala Nalagarh Development Authority ("the Designated ULB") along with other Participating ULBs of Baddi, Parwanoo and Nalagarh have entered into a Concession Agreement dated _____, with M/s [*name of Concessionaire*], under which it has authorized the Concessionaire/ Lessee to implement the Project.
- B. The Municipal Corporation/ Council/ Committee of in order to enable the due implementation of the Project for the Baddi Cluster and to discharge its obligations under the Concession Agreement signed with the Lessee and the

Department (as the Confirming Party), is hereby providing the Lessee (the Concessionaire under the Concession Agreement), by way of this Lease Agreement (“this Agreement”), the earmarked premises (more particularly delineated in Schedule A hereto and shown in the Site map attached thereto) to setup Transfer Station (Collection & Transportation), Processing and Disposal Facilities for the purposes of implementing the Project for Baddi Cluster and constructing, operating and maintaining the Project site(s) as a part of Project on the earmarked premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. The Lessor hereby leases the earmarked premises to the Lessee for a period commencing from the date of execution and co-terminus with Concession Period (“Term”). This Agreement is to be read, for any interpretation, together with the provisions of the Concession Agreement.
2. The terms that are used but not defined herein shall have the same meaning as given to them in the Concession Agreement.
3. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the lease payment stipulated in Article 4 below; the Lessor hereby demises to the Lessee, all the land (together with any physical structures existing thereon) which is described, delineated and shown in the Schedule A hereto (the “earmarked premises”), to hold the said earmarked premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof. The Term of this Agreement shall be co-terminus with the Concession Agreement. The Lessor hereby agrees and authorizes the construction, operation and maintenance of the Project Site(s) on the earmarked premises in accordance with the terms of the Concession Agreement.
4. In consideration of the transfer of the earmarked premises under this Agreement, the Lessor shall, effective from the date of handover of the possession of the earmarked premises to the Lessee, receive a rent of Rupee one per square meter per annum. The rent for the duration of the Concession Period and the first instalment of rent in respect of a period of three (3) years shall be payable at the time of signing of this Agreement by way of a demand draft in favour of " _____ " payable at _____. Thereafter the rent in respect of each subsequent block of three years shall be payable by the Lessee in advance on the same date after every three years. The Lessor undertakes and assures the Lessee that the lease payment for the earmarked premises shall remain fixed for the entire period that this Agreement remains valid and binding. This Agreement shall be co-terminus with the Concession Agreement.

5. The earmarked premises are being vested with the Lessee, under this Agreement, free from any Encumbrances (other than the existing physical structures thereon which has been inspected by the Lessee and agreed to be taken over in accordance with the terms of This Agreement and the Concession Agreement), whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances upon or under the earmarked premises which materially or adversely affect its rights in relation to the earmarked premises /the Project, it shall notify the Lessor, which shall, within 30 (thirty) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within thirty (30) days from the notice thereof, the Lessee may remove or cause to be removed such encumbrance and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.
6. The earmarked premises are being vested with the Lessee, under this Agreement only for the purposes of the Project, including for the purposes of developing, establishing, designing, constructing, operating, and maintaining the Project site(s), which the Lessor is desirous of being constructed, operated and maintained on the earmarked premises for the purposes of enabling the Project activities in accordance with the Concession Agreement.
7. The Lessor hereby authorizes the Lessee, to construct, erect, own, operate and maintain any superstructure, facility or any movable or immovable structures constituting the Project Site(s) on the earmarked premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the earmarked premises as of the date of this Agreement. The Lessor hereby agrees that the construction, operation and maintenance of the Project Site(s) at the earmarked premises and the collection, storage, transportation, processing and disposal of MSW at the earmarked premises is being undertaken pursuant to the Concession Agreement granted by it and for the purposes of enabling the Lessor to discharge its functions of managing, processing and disposing MSW.
8. The Lessee shall have the right to, after taking prior permission of the Lessor, vest with the Lenders the power to take over the control, possession and all rights and interests in relation to the earmarked premises by appointing a person i.e. the Nominated Company, to replace the Lessee and undertake the construction, operation and maintenance of the Processing Facilities, in accordance with the provisions of the Concession Agreement, upon the occurrence of an event of default by the Lessee, as the case may be, under any of the Financing Agreements. The Lessor shall then novate this Agreement in favour of the Nominated Company, which shall constitute an agreement between the Nominated Company and the Lessor on the terms and conditions of this Agreement as existing at the time of such novation.
9. The Lessee agrees that it is not authorized to create any Encumbrance over the Project Site(s) constructed on the earmarked premises.

10. The Lessor hereby covenants and assures the Lessee that:
- (a) all the land comprising the Site is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Project site (s) as a part of the Project;
 - (b) the site is free from any encroachment or encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any authority, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto;
 - (c) Lessor is the owner of the lands constituting the earmarked premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the earmarked premises for the Project;
 - (d) it shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the earmarked premises and all rights in relation thereto, including the creation of security interest in favour of the Lenders in accordance with the provisions of the Concession Agreement;
 - (e) it shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the Project site (s) (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use, by the Lessee of the earmarked premises and the Project Site(s);
 - (f) it shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Agreements;
 - (g) there is no litigation, claim, demand or any proceedings (whether administrative, legal or quasi-judicial) pending before any authority in respect of the earmarked premises or its use for the purposes of managing, collecting, transporting, processing and disposing MSW; and
 - (h) Lessee shall have complete, lawful and uninterrupted, possession, control and use of the earmarked premises
11. The Lessee hereby covenants with the Lessor as follows:
- (a) that it shall implement the SWM Project as a part of MSW management for Cluster in accordance with the Concession Agreement;
 - (b) that it shall observe and perform all terms, covenants, conditions and stipulations of this Agreement; and
 - (c) that it shall not mortgage or create any third party rights in the earmarked premises.

12. Lessor has requisite right and authority to lease the Site to Lessee for the Term of this Agreement for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful vacant possession, enjoyment/ occupation and use of the earmarked premises throughout the Term, without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person claiming through under or in trust for Lessor or from any third person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Person claiming right, title or interest to or in the earmarked premises or any part thereof or challenging the validity of the usage of the earmarked premises for the Project or challenging the validity of this Agreement, as also against any actions, proceedings, damages, losses and expenses caused to Lessee as a result or in consequence of any such claims or demands as aforesaid.
13. Otherwise as expressly provided in this Agreement no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part by any Party without the written consent of the other Party and in the event of any assignment the assignee shall assume the duties and liabilities of the assignor.
14. Otherwise as expressly provided in this Agreement no mortgage or leasehold interest shall be created of the land/Site(s) under this Agreement in whole or part for obtaining term loan to finance the Project without the written consent of Lessor.
15. The Lessor hereby assures and represents to the Lessee that the vesting of the earmarked premises under this Agreement shall be irrevocable for as long as the Concession Agreement remains in force and the Lessor shall not terminate or seek to terminate this Agreement except upon the expiry or early termination of the Concession Agreement or where the Lessor provides alternate site (equal to or more than the area comprised in the original site) to the Lessee in lieu thereof. The Parties hereby agree that on the expiry or termination of the Concession Agreement the Concessionaire shall hand back to the Lessor or its nominated agency free of cost, the vacant and peaceful possession of the earmarked premises in accordance with the provisions of the Concession Agreement.
16. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration in accordance with the relevant provision of the Concession Agreement as per provisions of the Arbitration and Conciliation Act, 1996.
17. The Lessor hereby recognizes that this is a commercial act being undertaken by the Lessee and that it hereby unconditionally and irrevocably waives any right of immunity, sovereign or otherwise from legal proceedings that may be initiated to enforce any provisions of this Agreement.

IN WITNESS WHEREOF the Parties have affixed thereto their signatures and seals to this Lease Agreement the day and year first hereinabove written:

SIGN SIGNED, SEALED AND DELIVERED IN
THE NAME AND ON BEHALF OF THE LESSOR
THROUGH:

SIGNED, SEALED AND DELIVERED BY LESSEE
THROUGH ITS AUTHORISED SIGNATORY IN
PRESENCE OF:

HPIDB Website-22.01.2018