



MORBI MUNICIPAL CORPORATION

Request for Proposal (RfP) for Establishment of 250 TPD MSW Processing Plant with 15 years O&M on PPP (DBFOT) basis at Morbi (Third Call).

Volume II: Draft Concession Agreement (DCA)

2026

Morbi Municipal Corporation (MRMC)

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DRAFT CONCESSION AGREEMENT

This Concession Agreement (Agreement) is executed on this day of at Morbi:

AMONGST

(1) **Morbi Municipal Corporation**, (“**MRMC**” or “**Authority**”) a statutory body constituted under the Gujarat Provincial Municipal Corporations Act, 1949, with its registered office at Gandhi Chowk, Morbi, Gujarat-363641 acting through the **Municipal Commissioner** (hereinafter referred to as the Authority, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

(2) *The* (“**Selected Bidder**”¹ / “**Concessionaire**”), a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [insert address] acting through [insert name of the authorised signatory and his/her designation] duly authorized by resolution dated [insert date of the Board Resolution] (hereinafter referred to as the **Selected Bidder**² / **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

The Authority and the Selected Bidder shall collectively be referred to as the Parties and individually as a Party.

WHEREAS:

A) By the Seventy Fourth Amendment to the Constitution of India (with effect from 1st June 1993), Part IXA was inserted which inter-alia introduced the concept of local self-governance by urban local bodies (ULBs or Municipalities/Deemed Municipalities). Article 243W entrusts ULBs with the responsibility to implement schemes in relation to the matters listed in the Twelfth Schedule of the Constitution of India (which include, public health, sanitation, conservancy, and solid waste management).

B) The Ministry of Environment, Forest and Climate Change (MoEFCC), under the aegis of Government of India (GoI), formulated the Solid Waste Management Rules, 2016 (**SWM Rules**), which provide that every municipal authority shall, within the administrative area of its municipality, be responsible for implementation of the SWM Rules and development of infrastructure for segregation, storage, collection, transportation, processing and disposal of municipal solid wastes (**SWM Services**). Accordingly, municipal authorities are obligated to provide SWM Services in accordance with SWM Rules and protect the environment and public health of the citizens and public in general.

¹ To be deleted if Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement

² To be deleted if Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement

C) The Authority, recognizing the challenges of solid waste management in Morbi, has identified developing facilities to handle and process waste as one of its priorities. For this purpose, the Authority is keen to undertake the development of a Municipal Solid Waste (**MSW**) Processing Facility which shall be capable of receiving and processing **250 TPD** of Mixed MSW at **Morbi** to meet the solid waste management requirements of Morbi, on a public private partnership (PPP) basis, through a Design, Build, Finance, Operate and Transfer (DBFOT) model (**Project**).

D) In order to implement the Project and for better coordination and implementation of the SWM Services, the Authority intends to engage a concessionaire who will design, develop, finance, construct, operate and maintain the Project Facilities on the Site under and in accordance with the requirements of this Agreement and after the expiry of the Concession Period, transfer the Project Facilities to the Authority, in accordance with this Agreement.

E) The Project comprises processing of the mixed MSW including temporary storage, segregation, sorting and recovery of, and recyclables/ non-recyclables/ RDF/ Inert from mixed MSW and conversion of organic fraction of MSW to compressed methane-rich biogas.

F) On / /..... vide e-tender notice no., the Authority commenced a competitive Bid Process for the Project by issuing the “**RfP for Establishment of 250 TPD MSW Processing Plant with 15 years O&M on PPP (DBFOT) basis at Morbi**” (the **RFP**), inviting interested parties to submit their qualification proposals and financial proposals to the Authority for undertaking the Project.

G) Pursuant to the terms of the RFP, the Authority received proposals from various bidders, including a proposal submitted by the Selected Bidder on / /

H) Following a process of evaluation of qualification proposals and financial proposals submitted by the bidders (including the Selected Bidder), Authority has accepted the proposal submitted by the Selected Bidder for the development of the Project and issued the letter of award vide outward no. to the Selected Bidder (the **LOA**).

I) The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.

J) The Selected Bidder has incorporated the Concessionaire as a limited liability company under the Companies Act, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement and has requested the Authority vide letter dated / / to accept the Concessionaire.³

[The Selected Bidder has informed the Authority by its letter dated / / that it undertakes to incorporate a special purpose vehicle to implement the Project, within days from the Effective Date and once incorporated, the special purpose vehicle (i.e., the **Concessionaire**) is the entity which shall undertake and perform the obligations of the Selected Bidder.]⁴

³ To be deleted if the Selected Bidder has not incorporated the Concessionaire prior to execution of the Agreement.

⁴ To be deleted if the Selected Bidder has incorporated the Concessionaire prior to execution of the Agreement.

K) By its letter dated / /, the Concessionaire also joined the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise of the rights of the Selected Bidder under the LOA, including the obligations to enter into this Agreement, pursuant to the LOA.

L) The Authority has agreed to the request of the Selected Bidder and the Concessionaire and has along with the Confirming Party, agreed to enter into this Agreement with the Concessionaire for execution of the Project on a DBFOT basis, subject to and on the terms, conditions and covenants set out in this Agreement.

IT IS AGREED as follows:

ARTICLE 1

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Acceptable Waste	means unsegregated / mixed municipal solid waste produced by households, commercial enterprises, agricultural establishments, healthcare units (non-bio-medical) including, food waste, animal by-products (cattle dung) and excludes Prohibited Waste.
Acceptable Waste Delivery Schedule	means the schedule according to which the Authority shall undertake the delivery of Acceptable Waste to the Concessionaire for handling and processing at the Waste Processing Facility.
Acceptance Certificate	means the certificate issued by the Authority to the Concessionaire upon successful completion of the Trial Operations of the Processing Facility.
Acceptance Tests Schedule	has the meaning ascribed to it in Clause 16.1 (c)(v).
Access Road	means the road connecting the Project Site to the nearest public road, used for transporting materials, equipment, and personnel to and from the Project Site.
Accounting Year	means the Accounting Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
Acres	means a unit of land area equal to 0.4 Ha.
Adjoining Property	means any land and/or property adjoining or adjacent to the Site, including all conduits, roads, footpaths, walls, fences, buildings and other structures and other apparatus on, under or within such land and/or property.
Affected Party	means the Party affected by a Force Majeure Event.
Agreement	means this concession agreement entered into between the Parties, along with all schedules and annexures to this agreement and includes any Variation Orders and other amendments made in accordance with this agreement.
Alternate Disposal Location	means the location notified by the Authority from time to time to which the Concessionaire is required to transport the Residual Inert Matter and/or Residual Waste for disposal in accordance with the instructions of the Authority.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the Gol, any State Government, any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project Facilities, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way

	limiting the generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules, the SWM Rules and laws concerning any environmental, social, labour, health and safety or security risks of the type contemplated by the Performance Standards.
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws, as set out in Volume-III of this RfP.
Appointed Date	<p>means the date on which all the Conditions Precedent set forth in Article 4 of this Agreement have been either satisfied by the respective Party or waived in writing by the relevant Party in accordance with the terms of this Agreement.</p> <p>Unless extended by the mutual written consent of the Parties or in accordance with the express provisions of this Agreement, the Appointed Date shall occur no later than 90 (ninety) days from the Execution Date.</p> <p>For the avoidance of doubt, this Agreement shall come into full force and effect on the Appointed Date, and the Construction Period shall be deemed to commence on this date.</p>
Arbitration Act	means the Indian Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Selected Bidder, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls the Concessionaire, the Selected Bidder or Member of the Selected Bidder, as the case may be.
Associated Infrastructure	means the infrastructure facilities associated with the operation of the Project Facilities or otherwise required to be provided by the Concessionaire, including weighbridges, site office, administrative buildings, security room, boundary wall/security fence, laboratories, ambient air quality monitoring stations, gas pipelines (if required, for the transportation of the CBG Output), utilities, waste storage facility, waste segregation facility etc., as described in greater detail in the Scope of Work and the Technical Specifications.
Authority	has the meaning ascribed to it in the array of Parties.
Authority Applicable Permits	means the Applicable Permits which are required to be obtained by the Authority to undertake the Project.
Authority Event of Default	has the meaning ascribed to it in Clause 28.3.

Authority Related Parties	means any of the following: (a) an officer, servant, employee or agent of the Authority, acting in that capacity; (b) any contractor or subcontractor of the Authority and their directors, officers, servants, employees, or agents, acting in that capacity; or (c) any entity or Person acting on behalf of the Authority. For the avoidance a doubt, 'Authority Related Parties' does not include the Concessionaire.
Authority's Representative	means any officer nominated by the Authority, from time to time, to act on its behalf and liaise with the Concessionaire for the purposes of this Agreement.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by the Authority to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Execution Date.
Bid Security	means the unconditional, irrevocable bank guarantee submitted by the Concessionaire to the Authority during the Bid Process.
Bids	means the bids submitted in response to the RFP for qualification and award of the Project.
Biodegradable Waste	means any waste that can be degraded by micro-organisms into simpler stable compounds.
Bio-methanation	means the process of enzymatic decomposition of organic matter by microbial action to produce methane rich biogas.
By-Products	means the by-products of processing of the Acceptable Waste at the Project Facilities which meet the standards specified under Applicable Law (including the Fertilizer Control Order 1985 and any associated specifications).
C&T Contractors	means the contractors appointed by the Authority for collection and transportation of waste in Morbi.
CBG Output	means the CBG generated from processing of Acceptable Waste at the Project Facilities.
Change in Law	means the occurrence of any of the following events after the Bid Due Date: (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority; (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or

	<p>(e) the introduction of any new Tax or a change in the rate of an existing Tax.</p> <p>It is clarified that Change in Law shall not include: (i) any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire; or (ii) any withdrawal of, or any amendment to the SATAT Scheme.</p>
Clause	means a clause of this Agreement.
COD Certificate	means the certificate issued by the Authority to the Concessionaire after issue of the Acceptance Certificate and satisfaction of the conditions set out in Clause 17.1 (a), evidencing the date on which the Processing Facility has entered commercial operations.
COD Conditions Completion Notice	has the meaning ascribed to it in Clause 17.1 (a).
Commercial Operations Date or COD	means the date on which the COD Certificate is issued to the Concessionaire.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Compressed Biogas or CBG	means compressed biogas that is purified as per Bureau of Indian Standards IS16087:2016.
Concession	has the meaning ascribed to it in Clause 3.1.
Concession Period	has the meaning ascribed to it in Clause 3.3.
Concessionaire.	has the meaning ascribed to it in the array of Parties
Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the Project Facilities, as set out in Volume-III of this RfP.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 28.1.
Concessionaire Payments	means the payments to be made by the Authority to the Concessionaire in the form of the Grant and/or the Processing Fee.
Concessionaire Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) the Selected Bidder or Associates of the Selected Bidder; (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity; (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or (d) any Person acting on behalf of the Concessionaire
Concessionaire's Representative	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the Authority for the purposes of this Agreement and notified as such in writing to the Authority.
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Clause 4.2, and the obligations of the Authority that are

	set out at Clause 4.3 and ' Condition Precedent ' means any one of these.
Confidential Information	means any part of this Agreement, or any material provided to any Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Construction Period	has the meaning ascribed to it in Clause 14.1. The Construction Period shall be a duration of 270 (Two hundred and seventy) days from the Appointed Date, unless: <ul style="list-style-type: none"> i. Extended in writing by the Authority or in accordance with the provisions of this Agreement; or ii. Shortened by the earlier achievement of the Commercial Operation Date (COD) as certified by the Independent Engineer or relevant Authority.
Construction Plan	means the detailed construction plan for the Project Facilities to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve completion of the works in relation to the construction of the Project Facilities, in order to achieve the COD by the Scheduled COD. The Construction Plan shall be approved by the Authority in accordance with Clause 14.3.
Control	means, with respect to a Person: <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term ' Controlled ' shall be construed accordingly.
Cost	means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges.
Covenant	has the meaning ascribed to it in Clause 5.2(d).
CP Long-Stop Date	has the meaning ascribed to it in Clause 4.5(b).
Daily Accepted Waste Quantity	means the weight of Acceptable Waste received by the Concessionaire daily and calculated in accordance with Clause 18.6(e)(iii).
Daily Guaranteed Acceptable Waste	Quantity means the guaranteed Acceptable Waste that Authority shall supply to the Concessionaire during each day of the O&M Period as set out in Clause 18.5(b).
Delay Event	has the meaning ascribed to it in Clause 14.7(b).
Delay Liquidated Damages	has the meaning ascribed to it in Clause 14.8(a).
Delivery Point	means the SLF or the Alternate Disposal Location (as notified by the Authority), in accordance with this Agreement. For information of the Bidders, the Authority is planning to establish a Sanitary Landfill Facility (SLF) at a location which is at a distance

	of approx. 10-15 km from the Project Site. However, the Concessionaire shall be bound to transport and dispose of inert waste at any disposal site designated by MRMC from time to time, within or outside MRMC jurisdiction, as per the instructions of the Authority.
Design Capacity	means the quantity of Acceptable Waste that the Processing Facility should be designed to handle and process in a day, which shall be minimum 250 TPD .
Designs and Drawings	means the detailed designs and drawings, technical information, plans, specifications, calculations, and models prepared by the Concessionaire for the Project Facilities, based on the Technical Specifications, as approved by the Authority in accordance with Clause 14.2(c).
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 26.1(b)(iii).
Dispute	has the meaning ascribed to it in Clause 34.1.
Dispute Meeting	has the meaning ascribed to it in Clause 34.1.
Dispute Notice	has the meaning ascribed to it in Clause 34.1.
DPR	means a detailed project report prepared in accordance with Clause 14.2(b).
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of the Authority or the Concessionaire, may endanger the environment or lives or security of people at or around the Site (including any ragpickers) or that poses an imminent threat of material damage to any property (including the Project Facilities) at or around the Site.
EMP	means an environmental management plan to be prepared by the Concessionaire in accordance with the Applicable Laws and approved by the Authority in accordance with Clause 14.4.
Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
EPC Contract	means the engineering, procurement and construction contract between the Concessionaire and the EPC contractor named therein for the design and construction of the Project Facilities.
Equity Contribution	means the sum expressed in INR representing the paid up share capital of the Concessionaire for meeting the equity component of its financial obligations under this Agreement and the Financing Documents, which, for the purpose of this Agreement, shall include instruments that shall compulsorily convert into equity share capital and any loans provided by any shareholder of the Concessionaire

	or any Associate of the Concessionaire or any Associate of any shareholder of the Concessionaire and which shall be capped at the amount specified as the equity contribution in the Financial Package submitted to the Authority by Concessionaire in accordance with Clause 4.2(i).
Equity Distribution	means: (a) payments made by the Concessionaire towards dividends, share buy-backs, redemptions of shares, payment of principal, interest or fees in respect of instruments convertible into equity share capital or subordinated loans from its Associates, shareholders or other parties (excluding payments made to Lenders); (b) loans given by the Concessionaire to its Associates or shareholders; or (c) any other payments made by the Concessionaire to its shareholders.
Event of Default	means an Authority Event of Default or a Concessionaire Event of Default, as the context may require.
Execution Date	means the date of signing of this Agreement.
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the Selected Bidder/Member(s) determined in accordance with the RFP.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance.
Financial Model	means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and expected revenues from the Project, on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making the calculations and projections therein.
Financial Package	means the financing package indicating the means of financing the Project Facilities, and includes all Financial Assistance specified in the Financing Documents and the Equity Contribution.
Financial Proposal	means the financial proposal submitted by a bidder in accordance with the RFP for undertaking the Project.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.
FM Notice	has the meaning ascribed to it in Clause 26.2(a).
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.

Forced Unavailability	means an interruption of or a reduction in the availability of the Processing Facility that is the result of: (a) the Authority's failure to deliver sufficient quantities of Acceptable Waste; or (b) the Design Capacity being reached as notified by the Concessionaire to the Authority in accordance with Clause 18.12(b); or (c) a suspension of the performance of the O&M obligations pursuant to Article 27, to the extent any such event is not attributable to the Concessionaire; or (d) delivery of Prohibited Waste to the Concessionaire; or (e) a Force Majeure Event; or (f) instructions issued by a Government Authority to the Authority or the Concessionaire to curtail the operations of processing facility, provided that such instructions are not attributable to the Concessionaire's failure to operate the Processing Facility in accordance with the Agreement and Applicable Laws; or (g) suspension of supply of power by relevant entity / Authority beyond 48 (fortyeight) hours.
GoG	Means the Government of Gujarat
Gol	means the Government of India
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in the construction, operation, and maintenance of waste to energy facilities in India of the type and size similar to the Project Facilities.
Government Authority	means the Gol, any State Government, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the Gol or any State Government exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Agreement.
Grant	means an amount equal to 40% of the capital cost of the project, being the capital support to be paid by the Authority to the Concessionaire in instalments during the Construction Period, upon satisfactory completion of the Project Milestones set out in this Agreement in accordance with the terms of this Agreement.
Gross Revenue	means: (a) all pre-tax revenues from the sale of the CBG, Recyclable Materials and RDF by the Concessionaire; and (b) all pre-tax revenues from the sale of any By-Products by the Concessionaire.

Hand-back Conditions	mean the condition in which the Site and the Project Facilities shall be handed back to the Authority or any entity nominated by the Authority on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement and are described in greater detail in the Scope of Work and Technical Specifications.
Hand-back Date	means the date on which this Agreement and the Concession hereunder expires or terminates pursuant to the terms of the Agreement.
Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the Site and Project Facilities upon termination of the Project, as set out in Clause 30.3.
Independent Engineer	means the Person to be jointly appointed by the Authority and the Concessionaire to act as the independent engineer for the Project in accordance with the provisions of the Agreement.
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 26.1(b)(ii).
Insurance Cover	means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Article 25 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.
Intellectual Property Rights	means patents, copyrights, database rights, design rights, trademarks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Invoice	means an invoice for payment of a Concessionaire Payment , submitted by the Concessionaire to the Authority in accordance with Article 22.
KPI Adherence Report	has the meaning ascribed to it in Clause 0(f).
KPIs	means the key performance indicators set out in Clause 0, which the Project Facilities must achieve during the O&M Period.
Lead Member	means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP conditions
Lenders	includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents but does not

	include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.
Liquidated Damages	means the Delay Liquidated Damages, the Throughput Liquidated Damages, CBG Production Liquidated Damage and the Residual Inert Matter Liquidated Damages.
LOA	has the meaning ascribed to it in Recital H.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.
Member	means, where the Selected Bidder is a consortium, a member of the Selected Bidder.
Milestone Completion Certificate	means, in respect of any Project Milestone, a certificate issued by the Authority in accordance with Clause 16.1(a), to certify that such Project Milestone has been achieved in accordance with the requirements of this Agreement.
Minor Casualty	means any fire or other casualty that results in physical damage to the Project Facilities to the extent that the total cost (as estimated by the Independent Engineer) of repairing and/or replacing the damaged portion of the Project Facilities to the same condition as previously existed would not exceed the amount equivalent to the 5% of the capital cost of the project.
Mixed Waste	means un-segregated wet and dry waste or mixed Biodegradable Waste and Non-biodegradable Waste, that is produced by households, commercial enterprises, healthcare units (non bio-medical) including, solid or semi-solid domestic waste, sanitary waste (as defined under the SWM Rules), commercial waste, institutional waste, horticulture waste, agriculture and dairy waste, catering and market waste and other non-residential wastes, food waste, paper, cardboard, wood, textiles, rubber, leather, plastics, metal and glass, but excludes Prohibited Waste.
MoEFCC	means the Ministry of Environment, Forest and Climate Change, Govt.
Non-biodegradable Waste	means any waste that cannot be degraded by micro-organisms into simpler stable compounds.
Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 26.1(b)(i).
O&M	means operation and maintenance.
O&M Agreement	means the agreement for the operation and maintenance of the Project Facilities executed between the Concessionaire and the O&M contractor named therein.
O&M Expenses	means expenses incurred by the Concessionaire or by the Authority, as the case may be, for all O&M works in relation to the Project, including: (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services;

	(c) premium for insurance; (d) all taxes, duties, cess and fees due and payable for O&M; and (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs.
O&M Period	means the period commencing on the COD and ending on the Hand-back Date during which the Concessionaire is required to operate and maintain the Project Facilities.
O&M Plan	means the plan required to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 18.2, for the operation and maintenance of the Project Facilities.
O&M Security	has the meaning ascribed to it in Article 9.
O&M Standards	means the requirements and performance standards for the operation and maintenance of the Project Facilities set out in Clause 18.13.
Offtake Agreement	means any agreement entered into between the Concessionaire and the Offtaker for sale and purchase of the CBG Output.
Offtaker	means any person that agrees to purchase all or part of the CBG Output from the Concessionaire during the Concession Period.
OHS Plan	means an occupational health and safety management plan to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 14.4(c), which shall include a Site safety plan.
Party	has the meaning ascribed to it array of Parties.
Performance Security	has the meaning ascribed to it in Article 9.
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
PPP	means public private partnership.
Pre-Construction Works	means the works required to be undertaken by the Concessionaire in order to ensure that the Site is suitable and stable for construction of the Processing Facility and shall include conducting geophysical and geotechnical studies and investigations, assessing the soil bearing capacity, conducting tests to determine the design and construction requirements and carrying out piling, soil filling, concrete filling etc.
Processing Fee	has the meaning ascribed to it in Clause 22.4(a).
Processing Fee Statement	has the meaning ascribed to it in Clause 22.4(b).
Prohibited Waste	means hazardous waste (as defined under the Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016), bio-medical waste (as defined under the Bio-Medical Waste Management Rules, 2016), construction and demolition waste (as defined under the Construction and Demolition Waste Management Rules, 2016) industrial waste, e-waste (as defined under the E-Waste (Management) Rules, 2016), waste from

	batteries (as defined under the Batteries (Management and Handling) Rules, 2001, radioactive waste (as defined under the Atomic Energy (Safe disposal of Radioactive Wastes) Rules, 1987), sludge, sewage waste, ash, dirt, soil, and silt.
Project	has the meaning ascribed to it in Recital C.
Project Agreements	means this Agreement, the Financing Documents, the EPC Contract, the O&M Agreement, any Offtake Agreements and any other agreements or material contracts that may be entered into by the Concessionaire with any person in connection with matters relating to the Project but does not include the Substitution Agreement and Escrow Agreement.
Project Execution Plan	means a project execution plan prepared in accordance with Clause 14.2(a).
Project Facility/ies	means the Processing Facility and the Associated Infrastructure, which need to be constructed, installed, operated, and maintained by the Concessionaire in accordance with this Agreement (including the Technical Specifications, Applicable Laws and the Performance Standards), and the term Project Facility shall be construed accordingly.
Project Management Consultancy (PMC)	means a professional firm or individual engaged by the Authority to provide project management services for this Project, including but not limited to planning, scheduling, budgeting, monitoring, controlling, and coordinating the Project activities.
Project Milestones	means the construction milestones, according to which the Grant will be paid to the Concessionaire in accordance with Article 22 and as proposed by the Concessionaire in the Construction Plan and approved by the Authority in accordance with Clause 14.3, and 'Project Milestone' shall mean any one of them, as the context may require.
Proposed Technology	<p>means sorting and segregation of MSW waste into different categories and anaerobic digestion or such other proven technology(ies) proposed to be used by the Concessionaire to develop the Processing Facility, as specified by the Concessionaire in its Bid and Designs and Drawings.</p> <p>The Concessionaire shall allowed to propose appropriate technology and equipment, subject to meeting the minimum performance standards and obtaining prior approval of the Authority.</p>
Receipt Point	means the location at the Site, to be mutually agreed between the Parties as part of the Construction Plan, at which the Authority (or any C&T Contractors on behalf of the Authority) will be required to deliver the Acceptable Waste to the Concessionaire in accordance with this Agreement.
Recyclable Materials	has the meaning ascribed to it in Clause 18.10(b)(i).

Residual Inert Matter	means the waste matter produced after processing of the Acceptable Waste at the Processing Facility.
Residual Inert Matter Guarantee	has the meaning ascribed to it in Clause 0(b).
Residual Inert Matter Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the Processing Facility to achieve the Residual Inert Matter Guarantee, which are to be calculated in accordance with Clause 0.
Residual Waste	means the residual waste that is left after Segregation of the Mixed Waste, which is not capable of being used by the Concessionaire for processing at the Processing Facility to produce CBG and which the Concessionaire shall be required to sell / dispose of in accordance with the terms of this Agreement and applicable laws.
RFP	has the meaning ascribed to it in Recital F.
Right of Way	means all privileges, easements and other rights of way for enabling unfettered and unrestricted access and/or right of use of the Site.
Rupee or Rs. or INR	means Indian Rupees, the lawful currency of India.
Safety Requirements	has the meaning ascribed to it in Clause 19.1.
SATAT Scheme	means the Sustainable Alternative Towards Affordable Transportation initiative launched on 1 October 2018.
SBI MCLR	Means the prevailing marginal cost of fund-based lending rate for a tenor of 1 year, as notified by the State Bank of India.
Schedule	means a schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled COD	means the date which is 270 days from the Appointed date, by which the Concessionaire is required to achieve the COD.
Scheduled CP Completion Date	has the meaning ascribed to it in Clause 4.5(a).
Scheduled Maintenance	means a planned maintenance of the Processing Facility that: (a) has been scheduled and allowed by the Authority in accordance with the Scheduled Maintenance Programme; and (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of the Processing Facility, as the case may be.
Scheduled Maintenance Programme	has the meaning ascribed to it in Clause 18.13(b).
Scheduled Project Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant Project Milestone.
Scope of Work	means the scope of work for construction and O&M of the Project Facilities as set out in Volume-III of this RfP.
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.

Segregation	shall have the meaning as ascribed to the term in the SWM Rules and the terms "Segregate" and "Segregated" shall also have similar meanings.
Selected Bidder	means the bidder selected by the Authority for award of the Project.
Site	means the site indicated in Volume-III of this RfP on which the Concessionaire shall develop the Project Facilities.
SLF	means the sanitary landfill identified by the Authority for safe and scientific disposal of the Residual Inert Matter.
Source Segregated Organic waste or SSO waste	means Biodegradable Waste that is separated from other waste streams at the source of collection
Statutory Auditors	means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act 2013 including any statutory modification or re-enactment thereof, for the time being in force.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Supplemental Waste	has the meaning ascribed to it in Clause 18.5(g).
SWM Rules	means the Solid Waste Management Rules, 2016, issued by the MoEFCC on 8 April 2016, as may be amended from time to time.
Taxes	means any Indian taxes including levies, imposts, cesses, duties and other forms of taxation, including income tax, goods and services tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, stamp duty or capital duty (whether central, state or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Authority, but excludes any interest, penalties and other sums in relation thereto imposed on any account whatsoever.
Technical Capacity	means the technical capacity and experience of the Selected Bidder /Member(s) determined in accordance with the RFP.
Technical Specifications	means the technical specifications for design, development, construction, commissioning, operation, and maintenance of the Project Facilities, as set out in Volume-III of this RfP.
Termination Notice	means a termination notice issued by the Authority in case of a Concessionaire Event of Default (in accordance with Clause 28.2) or a termination notice issued by the Concessionaire in case of an Authority Event of Default (in accordance with Clause 28.4), stating its intention to terminate this Agreement.
Tests on Completion	has the meaning ascribed to it in Clause 16.1(b)(i).
Tests on Completion Notice	has the meaning ascribed to it in Clause 16.1(b)(ii).

Throughput Guarantee	has the meaning ascribed to it in Clause 0(a).
Throughput Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Authority for a failure of the Processing Facility to achieve the daily Throughput Guarantee, which are to be calculated in accordance with Clause 0.
Total Casualty	means any fire or other casualty that results in physical damage to the Processing Facility (or any part thereof), to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Processing Facility (as determined by the Independent Engineer) to the same condition as existed previously would be more than 25% (Twenty five per cent or more of the then total replacement cost of the Processing Facility (or any part thereof).
Total Unloaded Waste	has the meaning ascribed to it in Clause 18.6(e)(ii).
TPD	means tonnes per day.
TPY	means tonnes per year.
Trial Operations	means the operation of the Processing Facility on a trial basis for a period of one month from the date on which the Trial Operations Commencement Notice is issued for the Processing Facility or such longer period as may be determined in accordance with Clause 16.1(c).
Trial Operations Commencement Notice	has the meaning ascribed to it in Clause 16.1(b)(v).
ULB	has the meaning given to it in the array of Parties.
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by the Authority or proposed by the Concessionaire, in accordance with Article 31.
Variation Order	means an order issued by the Authority certifying its approval of a proposed Variation and recording the terms and conditions on which the proposed Variation is required to be implemented.
Vesting Certificate	has the meaning ascribed to it in Clause 30.4.
Waste Acceptance and Rejection Plan	means the plan required to be prepared by the Concessionaire and approved by the Authority in accordance with Clause 18.3, for the inspection, testing, rejection and Segregation of waste delivered to the Concessionaire.
Weighbridge	means the weighbridge to be installed by the Concessionaire at the Receipt Point to weigh each consignment of waste delivered by the Authority or the C&T Contractors on its behalf.
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.
Processing Facility	means the MSW Processing Plant (including CBG plant) to be set up by the Concessionaire in accordance with the terms of this Agreement (including the Scope of Work and Technical

Specifications), which shall be capable of handling and processing Acceptable Waste up to the Design Capacity.
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1.2 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- c) Headings in this Agreement are for convenience of reference only.
- d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- g) If any date specified in this Agreement falls on a day that is not a Business Day, such date shall be deemed to fall on the next succeeding Business Day.
- h) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- i) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- j) The terms of the RFP form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement. In the event of any discrepancy between this Agreement and the RFP, the provisions set out in this Agreement shall prevail.
- k) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the Authority for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Authority shall be responsible to and indemnify the Concessionaire for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.
- l) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Authority, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

- m) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- n) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement and are not in the nature of a penalty.

1.3 Units of Measurement

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the 3rd (third) digit of 5 (five) or above being rounded up and below being rounded down.

1.4 Priority of agreements, clauses and schedules

- a) The provisions of the Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules.
- b) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
 - i. between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - ii. between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and
 - iii. between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules.
- c) In the event of any discrepancy between various documents issued by or provided to the Authority as a part of the Bid Process, the following order of priority shall apply:
 - i. this Agreement;
 - ii. the Schedules to this Agreement;
 - iii. the LOA issued to the Selected Bidder;
 - iv. the Financial Proposal submitted by the Selected Bidder;
 - v. the written clarifications, if any, issued to the bidders; and
 - vi. the RFP.

ARTICLE 2

2 SCOPE OF THE PROJECT

2.1 The scope of the Project shall be as set out in Volume-III of this RfP and shall be including but not limited to the following:

- a) designing, financing, developing, constructing, completing and commissioning the Project Facilities by the Scheduled COD, in accordance with Applicable Laws, the Performance Standards, Applicable Permits, Technical Specifications, Designs and Drawings, the Project Execution Plan, the DPR, the Construction Plan, the EMP, the OHS Plan and Good Industry Practices; and
- b) operating and maintaining the Project Facilities in accordance with Applicable Laws, the Performance Standards, Applicable Permits, Technical Specifications, Designs and Drawings, the O&M Plan, the EMP, the OHS Plan and Good Industry Practices to ensure compliance with the KPIs; and
- c) sale of the CBG Output to the Offtaker(s), sale/disposal of the By-Products, RDF and Recyclable Materials and delivery of Residual Inert Matter in accordance with the requirements of this Agreement; and
- d) hand back of the Project Facilities upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

Please refer Volume-III of this RfP for detailed scope of work, project requirement and specifications.

ARTICLE 3

3 GRANT OF THE CONCESSION

3.1 Concession

On and from the Appointed Date, and subject to, and in accordance with the requirements of this Agreement, Applicable Laws and Applicable Permits, the Authority grants to the Concessionaire the exclusive right and authority to:

- a) design, engineer, finance, develop, install, construct, complete and commission the Project Facilities;
- b) upon completion of construction and commissioning of the Project Facilities, operate and maintain the Project Facilities during the O&M Period, and
- c) market and sell products and byproducts manufactured at the Project Facilities.

for the Concession Period (the **Concession**), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.2 Rights Associated with the Grant of Concession

The grant of the Concession set out in Clause 3.1 shall oblige or entitle the Concessionaire, as the case may be, to the following:

- a) perform and **fulfil all of the Concessionaire's obligations** under, and in accordance with, the requirements of this Agreement;
- b) **access to the Site**, for the sole purpose of implementing the Project;
- c) apply for and **obtain all the Concessionaire Applicable Permits** required to undertake the Project;
- d) **raise funds** (through both debt and equity financing) to finance the Project. However, the Concessionaire shall not be allowed to mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities or Project site in accordance with the terms of this Agreement;
- e) undertake the **Pre-Construction Works** in accordance with the conditions set out in Volume-III of this RfP;
- f) **design, engineer, procure, develop, construct, install, complete and commission** the Project Facilities in order to achieve the COD by the Scheduled COD;
- g) upon completion of construction of the Project Facilities, undertake the **Trial Operations and performance testing** of the Processing Facility;
- h) upon successful completion of the Trial Operations and performance tests, **operate and maintain** the Project Facilities for the O&M Period, either itself or through such person as may be selected by it, provided that the ultimate obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;
- i) **receive, handle and process the Acceptable Waste** in accordance with the terms of this Agreement;
- j) **receive and handle Mixed Waste**;
- k) **transport the Residual Inert Matter** to the Delivery Point;
- l) **store, use, appropriate, dispose of or market and sell all products** of the Acceptable Waste including but not limited to the CBG Output, the By-Products and any Recyclable Materials in accordance with Applicable Laws;

- m) with reasonable assistance from the Authority, **obtain the utilities required** for enabling the construction of the Project Facilities;
- n) Deleted
- o) **supply and deliver the CBG Output** to the Offtaker(s) in accordance with the terms of the Offtake Agreement(s) and this Agreement;
- p) **transfer the Site and the Project Facilities to the Authority** upon the expiry of the Concession Period or termination of this Agreement, after rectification of any defects in the Project Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements;
- q) **receive Concessionaire Payments**, subject to compliance with the terms and performance of the obligations under this Agreement;
- r) **appoint Subcontractors**, agents, advisors and consultants and enter into Subcontracts to undertake the Project, provided that any subcontract exceeding a value of Rs. 2,00,00,000 (Rupees Two Crore) shall be executed only with the prior approval of the Authority. The Authority reserves the right to reject any sub-contractor proposed by the Concessionaire.

3.3 Concession Period

The Authority grants the Concession to the Concessionaire for a term commencing on the Execution Date and for a period of 15 (fifteen) years from the COD (the **Concession Period**) during which the Concessionaire is authorised and obligated to implement the Project in accordance with this Agreement, provided that:

- a) if the Concession Period is extended by the Authority in accordance with Clause 3.4 below, the Concession Period shall include the period by which the Concession Period is so extended; and
- b) in the event of an early termination of the Agreement by either Party in accordance with the terms of this Agreement, the Concession Period shall mean and be limited to the period commencing on the Execution Date and ending on the date of termination of the Agreement.

3.4 Extension of Concession Period

The Concession Period may be extended by mutual agreement of the Parties either on the same terms and conditions, or on modified terms and conditions. Provided that, any such mutually agreed extension of the Concession Period shall be recorded in writing, by way of an amendment to this Agreement, by no later than 30 (thirty) days prior to the expiry of the Concession Period.

3.5 Re-bidding of the Project on Expiry of the Concession Period

- a) The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to invite bids and grant a concession with respect to the Project Facility for a period after the expiry of the Concession Period.
- b) The Authority agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms of the relevant bid documents issued at the time.
- c) During such bidding, the Concessionaire shall have a first right of refusal to match the proposal submitted by the lowest bidder, or highest ranked bidder, as the case may be, subject to the following:

- i. the Concessionaire is otherwise eligible to participate in the bid process in accordance with the terms of the relevant bidding documents;
 - ii. the Concessionaire's bid is within the range of plus-minus (+/-) 10% (ten per cent) of the lowest (or highest) evaluated bid received; and
 - iii. the aggregate amounts paid by the Concessionaire to the Authority during the Concession Period towards Liquidated Damages under the Agreement are not more than 15% (fifteen per cent) of the amount of the Performance Security, or, no more than 5 (five) incidents of a Concessionaire Event of Default have occurred during the entire Concession Period. For the purpose of this Clause 3.5(c)(iii), the aggregate amounts of Liquidated Damages paid by the Concessionaire to the Authority during the Concession Period shall be calculated at present value, which shall be taken as on the Execution Date.
- d) If the successful bidder is not the Concessionaire, then the Concessionaire shall allow the core team (consisting of maximum of four persons) of the successful bidder to enter the Site at least 30 (thirty) days before the date of expiry of the Concession Period to monitor work and undertake inspections of the Project Facilities. Provided that, during such period, the Authority shall ensure that such persons who are given access to the Site and the Project Facilities do not cause any interference with the operations and maintenance of the Project Facilities by the Concessionaire or any loss or harm to the Concessionaire's property and personnel at the Site.

ARTICLE 4

4 CONDITIONS PRECEDENT AND EFFECTIVENESS

4.1 Effectiveness

- a) Save and except for this Article 4, Article 3 (Grant of the Concession), Clause 5.1(t) (Appointment of Concessionaire's Representative), Clause 5.10 (Change in Ownership), Clause 6.1(e) (Appointment of Authority's Representative), Article 7 (Representations and Warranties), Article 9 (Performance Security and O&M Security), Article 10 (Project Site), Article 12 (Financing Support Security), Article 13 (PMC), Clause 14.1 (Commencement and Duration), Clause 14.2 (Project Execution Plan, DPR and Designs and Drawings), Clause 14.3 (Construction Plan), Clause 14.4 (Environment and Occupational Health and Safety Related Obligations), Clause 14.6(a) (Completion of Pre-Construction Works), Article 26 (Force Majeure), Article 32 (Change in Law), Article 34 (Dispute Resolution) and Article 35 (Miscellaneous) and the related Schedules which come into effect on the Execution Date, the rights and obligations of the Parties under this Agreement shall come into full force and effect and be binding on the Parties on and from the day on which all of the Conditions Precedent have been satisfied, or waived in writing, in accordance with this Article 4 (Appointed Date) and shall continue until such time as this Agreement expires or is terminated in accordance with its terms.
- b) For the purposes of this Clause 4.1, the date on which the notice of completion of the last Condition Precedent specified in this Article 4 is issued by the Authority to the Concessionaire will be treated as the **Appointed Date**.

4.2 Concessionaire Conditions Precedent

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- a) provide the **Performance Security** to the Authority;
- b) prepare and **submit the Project Execution Plan** to the Authority for their approval in accordance with Clause 14.2(a);
- c) prepare and **submit the DPR including designs and drawings** to the Authority for their approval in accordance with Clause 14.2(b) and Clause 14.2(c);
- d) prepare and **submit the Construction Plan** to the Authority for their approval in accordance with Clause 14.3;
- e) prepare and submit the EMP to the Authority for their approval in accordance with Clause 14.4(a);
- f) **obtain all Concessionaire Applicable Permits** that are required for achieving Financial Close and for commencement of construction of the Project Facilities at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;
- g) execute and provide a copy to the Authority of **the technology license agreement(s)** executed with the Selected Bidder or the third party technology supplier for setting up the Project Facility, if applicable;

- h) submit to the Authority certified true copies of **all resolutions adopted by the board of directors** of the Concessionaire authorising execution, delivery and performance of this Agreement by the Concessionaire;
- i) achieve Financial Close and submit 2 (two) true copies of the **Financing Documents and the Financial Package to the Authority**, duly certified by a director of the Concessionaire, along with a soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;
- j) **execute a shareholders' agreement** amongst the shareholders of the Concessionaire, and deliver to the Authority a certified true copy of the shareholders' agreement (attested by a director of the Concessionaire);
- k) submit to the Authority certified true copies of the **constitutional documents** of the Concessionaire;
- l) submit to the Authority a confirmation from the Concessionaire, in original, of the correctness of their **Representations and Warranties set out in Article 7** of this Agreement;
- m) submit to the Authority a **legal opinion stating** that: (i) this **Agreement** has been duly executed and are **legally valid, binding and enforceable** in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement have been taken, fulfilled or done; and
- n) submit to the Authority a certificate, duly attested by a director, **certifying the shareholding pattern of the Concessionaire**.

4.3 Authority Conditions Precedent

The Authority shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- a) **grant the Concessionaire Right of Way to the Site** in accordance with Article 10;
- b) **provide access road to the Site**; and
- c) **provide requested support to the concessionaire in provision of any physical infrastructure** required to enable the supply of electricity and water to the Project Site, provided that the Concessionaire shall remain completely liable to obtain the connections for electricity and water supply and pay for the use of such utilities.

4.4 Deleted

4.5 Satisfaction of Conditions Precedent

- a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within 90 (Ninety) days from the Execution Date (the **Scheduled CP Completion Date**).
- b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the Scheduled CP Completion Date due to:
 - i. a Force Majeure Event;
 - ii. a Change in Law;
 - iii. in case of the delay by the relevant Government Authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied

for such Concessionaire Applicable Permit within the specified timelines, having paid the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or

- iv. delay by the other Parties in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the Scheduled CP Completion Date shall be extended on a day-for-day basis for the period of such delay, provided that the Scheduled CP Completion Date shall not be extended beyond the date which is **365 (three hundred and sixty five)** days from the Scheduled CP Completion Date (**CP Long-stop Date**).

- c) Each Party shall cooperate and use its reasonable efforts to assist the other Parties in satisfying the Conditions Precedent.
- d) Deleted.
- e) Concessionaire shall promptly inform the Authority when all Condition Precedent for which it is responsible has been satisfied. The Authority shall issue a notice to the Concessionaire in which it shall declare the Appointed Date of the Agreement.

4.6 Consequences of failure to satisfy Conditions Precedent

- a) If the Concessionaire fails to fulfil any of the Conditions Precedent required to be completed by the Scheduled CP Completion Date, or any extended period (if applicable), for reasons other than those specified in Clause 4.5(b), the Authority shall be entitled to recover liquidated damages, for each week of delay beyond the Scheduled CP Completion Date (or any extended period, if applicable) at a rate as per the **Delay Liquidated Damages** mentioned in the Article 14, up to the CP Long-Stop Date. The Authority may deduct such damages from the payment to the Concessionaire or recover from the Performance Security.
- b) The Parties acknowledge that the damages specified in Clause 4.6(a) above are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Authority as a result of the delay in fulfilment of the Conditions Precedent and consequently, occurrence of the Appointed Date.
- c) Subject to Clause 4.6(e), if the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Authority has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- d) Subject to Clause 4.6(e), if the Authority fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date and the Concessionaire has not waived, fully or partially, such conditions, either the Authority or the Concessionaire may terminate this Agreement forthwith by issuing a notice to the other Parties.
- e) The Concessionaire and the Authority shall be permitted to waive or relax any Condition Precedent required to be fulfilled by the other Party or agree to an extension of the CP Long-stop Date for satisfaction of the Conditions Precedent required to be fulfilled by the other Party.
- f) If the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it, other than due to the reasons set out in Clause 4.5(b), by the CP Long-Stop Date and this Agreement is terminated in accordance with this Clause 4.6, then:

- i. the Authority shall forfeit the Performance Security submitted by the Concessionaire;
 - ii. the Concessionaire shall not be entitled to receive any payment or compensation from the Authority for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Agreement (including preparing, the Construction Plan, the Project Execution Plan and the DPR) prior to the termination of this Agreement;
 - iii. the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement;
 - iv. the Construction Plan, the Project Execution Plan, the DPR, and any other document submitted by the Concessionaire to the Authority prior to termination of this Agreement shall be the property of the Authority and shall not be returned to the Concessionaire;
 - v. the Authority shall retain the right to use any soft copies of the Construction Plan, the Project Execution Plan, the DPR, and any other document submitted by the Concessionaire to the Authority prior to termination of this Agreement;
 - vi. The Authority shall hand over to the Concessionaire any Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement and the Authority shall not use such Confidential Information, without the prior written consent of the Concessionaire; and
 - vii. if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.
- g) If the Authority has failed to satisfy any of the Conditions Precedent required to be satisfied by them or the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it, due to the reasons set out in Clause 4.5(b), in each case by the CP Long- Stop Date, and this Agreement is terminated in accordance with this Clause 4.6, then:
- i. the Authority shall return the Performance Security submitted by the Concessionaire after deducting any Liquidated Damages, if any;
 - ii. the Authority shall not be liable to reimburse the Concessionaire for any costs incurred by the Concessionaire in preparing the Construction Plan, the Project Execution Plan and the DPR.
 - iii. the Concessionaire shall hand over to the Authority all documents, designs, plans, data and any Confidential Information provided by the Authority to the Concessionaire prior to termination of this Agreement;
 - iv. the Construction Plan, the Project Execution Plan, the DPR, and any other document submitted by the Concessionaire to the Authority prior to termination of this Agreement shall be the property of the Authority and shall not be returned to the Concessionaire;
 - v. the Authority shall retain the right to use any soft copies of the Construction Plan, the Project Execution Plan, the DPR, and any other document submitted by the Concessionaire to the Authority prior to termination of this Agreement;

- vi. The Authority shall hand over to the Concessionaire any Confidential Information submitted by the Concessionaire to the Authority prior to termination of this Agreement and the Authority shall not use such Confidential Information, without the prior written consent of the Concessionaire; and
 - vii. if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall remove all equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Authority.
- h) Upon termination of this Agreement pursuant to this Clause 4.6, other than to the extent specified in this Clause 4.6, no Party shall have any liability to the other Party in connection with this Agreement.

ARTICLE 5

5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

The Concessionaire shall:

- a) at its own cost and expense, procure finance for and undertake the design, engineering, procurement, development, construction, commissioning, operation and maintenance of the Project Facilities in a manner that is in compliance with the Technical Specifications, Applicable Laws, the Performance Standards, Applicable Permits, the O&M Plan, the Waste Acceptance and Rejection Plan, EMP, the OHS Plan and Good Industry Practice;
- b) operate and maintain the Project Facilities throughout the O&M Period in a manner that is in compliance with the Technical Specifications, Applicable Laws, the Performance Standards, Applicable Permits, the O&M Plan, the Waste Acceptance and Rejection Plan, EMP, the OHS Plan and Good Industry Practice;
- c) design, engineer, procure, construct, operate and maintain the Associated Infrastructure in accordance with the requirements of this Agreement;
- d) prior to commencement of construction, submit to the Authority for review and approval all plans, layout, process designs, structural designs, architectural drawings, general arrangement drawings (GAD), structural engineering drawings, quality assurance plans (QAP), technical specifications, construction methodology, and any subsequent revisions thereto. The Concessionaire shall not commence or execute any part of the works until such plans, designs and drawings have been reviewed and approved in writing by the Authority. Any modification or deviation from the approved designs shall also require the prior written approval of the Authority.
- e) maintain and comply with the terms and conditions of all Applicable Permits in undertaking the construction and O&M of the Project Facilities;
- f) perform and fulfil all obligations under the Financing Documents;
- g) procure, as required, all necessary rights (including proprietary rights), licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- h) discharge its obligations as a reasonable and prudent person and make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Subcontractors in connection with the performance of its obligations under the Agreement;
- i) ensure that the Processing Facility is capable of handling and processing Acceptable Waste up to its Design Capacity on a daily basis;
- j) obtain all Applicable Permits necessary for the delivery of the CBG Output to the Offtaker in accordance with the terms of the Offtake Agreement. And obtain permission from the Authority before entering into the Offtake agreement with any Offtaker;
- k) procure cylinder cascades, trucks, pipelines or other appropriate vehicles and / or infrastructure that is safe, reliable and fit for purpose in order to transport and deliver the CBG Output;
- l) ensure the availability of a sufficient stock of spare parts and consumables at all times to facilitate the smooth and uninterrupted operation of the plant.

- m) be solely responsible for any loss or damage to any component / equipment / structure / machineries of the plant resulting from mismanagement, mishandling, or any other cause whatsoever. The Concessionaire shall bear the full cost of repair or replacement of the damaged components during the Concession period. The Authority shall have no financial liability in this regard.
- n) ensure the implementation of all necessary firefighting and safety measures within the plant in accordance with applicable laws and standards. Additionally, the Concessionaire must obtain the requisite Fire No Objection Certificate (Fire NOC) from the competent authority prior to commencing operations of the plant;
- o) ensure that no biogas is released into the atmosphere under any circumstances. Any excess gas generated beyond the plant's consumption or storage capacity must be safely flared in compliance with applicable environmental and safety standards;
- p) make all necessary arrangements to achieve the optimum level of required water for plant operations by recycling the digestate, ensuring efficient resource utilization and compliance with environmental standards;
- q) ensure that the plant premises and surrounding areas are maintained in a clean and orderly condition at all times;
- r) comply with all applicable labour laws and regulations for its workers and employees. The Concessionaire shall ensure that the wages provided to its workers and employees are not less than the prescribed minimum wages as per the applicable acts and laws. The Concessionaire shall ensure that all workers and employees engaged in the operation and maintenance of the plant are covered under Provident Fund (PF) and Employees' State Insurance (ESI), as applicable. Additionally, the Concessionaire shall provide them with uniforms, safety boots, masks, identity cards, and other necessary safety materials required for their work. The Concessionaire shall bear the responsibility for providing any additional safety equipment or materials required to ensure the health and safety of the workers and employees, in compliance with all relevant regulations and best practices.
- s) be responsible for arranging all necessary resources, including water, chemicals, electricity, storage, and transportation of Compressed Biogas (CBG), as well as storage and transportation of compost. Additionally, the Concessionaire shall ensure the availability of any other facilities required during the construction, installation, and Operation & Maintenance (O&M) period of the plant.
- t) within 30 (thirty) days of the Execution Date, and in any event, prior to the commencement of any work at the Site, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Project Facilities, and liaise with Authority's Representative during the Concession Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to Authority;
- u) provide all necessary assistance to the Authority in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement;
- v) take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the Adjoining Properties, in accordance with the approved EMP, OHS Plan, and all Applicable Laws;

- w) ensure that all excavated materials, earthworks, waste materials, Residual Inert Matter and hazardous substances are stored and/or disposed in accordance with this Agreement, the EMP, OHS Plan, Applicable Laws and Applicable Permits;
- x) obtain and maintain adequate insurances as per this Agreement;
- y) procure and maintain an adequate supply of water for the construction, operation and maintenance of the Project Facilities;
- z) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- aa) at its own cost and risk, make any necessary retrofits or changes to improve the plant's operations and enhance productivity. However, any such retrofits or changes shall be subject to the prior written approval of the Authority. These improvements shall be implemented only after obtaining the Authority's permission to ensure alignment with project requirements and standards.
- bb) obtain the prior written approval of the Authority for any modification, addition, or alteration in the plant layout, equipment specifications, process flow, or associated infrastructure during the O&M Period.
- cc) hand back the Project Facilities to the Authority upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements. The Concessionaire shall hand over the plant to the Authority in full working condition, ensuring that all systems, components, and equipment are operational and compliant with the agreed-upon standards.

5.2 Obligations relating to Project Agreements

- a) It is expressly agreed that the Concessionaire shall, at all times, be liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreements the Concessionaire may enter into in connection with matters relating to the project, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability under this Agreement.
- b) The Concessionaire shall submit to the Authority copies of all Project Agreements or any amendments or replacements thereto within 15 (fifteen) days from the date of their execution.
- c) The Concessionaire shall not make any addition, replacement or amendment to any of the Financing Documents without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of increasing the financial liability of the Authority under this Agreement, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for the restructuring or rescheduling of the Debt Due to the extent that such restructuring or rescheduling does not increase the financial liability of the Authority under this Agreement.
- d) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of termination or suspension (the **Covenant**). The Parties agree that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Hand-back Date, the Project Agreements shall be deemed to cease to be in force and effect

on the Hand-back Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. 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 Authority an acknowledgment and undertaking, in a form acceptable to the Authority, 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 Authority in the event of termination or suspension.

- e) The Concessionaire shall also procure that such Project Agreements shall also include a covenant that all disputes arising out of such Agreements shall be settled between the Concessionaire and the counter party(ies) and that the Authority or its advisors/contractors/consultants shall not be impleaded in such disputes whatsoever.

5.3 Land Use

The Concessionaire shall ensure optimum utilization of the Site and land available and shall not use the same for any purpose unconnected with, or which is not incidental to the Project.

5.4 Processing of Acceptable Waste

The technologies adopted for processing Acceptable Waste shall be those proposed in the Concessionaire's Bid submitted in response to the RFP or those proposed by the concessionaire in the DPR approved by the Authority.

5.5 Employment of Trained Personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are appropriately qualified and at all times properly trained for their respective functions. The Authority reserves the right to require the Concessionaire to replace any person engaged by the concessioner at any time during the concession period.

5.6 Branding of the Project

- a) The Concessionaire agrees that the Project shall be known, promoted, displayed and advertised by the name of "**MRMC's Resource Recovery Facility**".
- b) Notwithstanding the name of the Project set out in Clause 5.6(a), the Concessionaire shall have the right to:
 - i. brand the Project or any part thereof in any manner that advertises, displays or reflects the name or identity of the Concessionaire or its shareholders; and
 - ii. utilize the name of the Project to exhibit technical and financial capability of the Concessionaire when bidding for other projects,
- c) provided that, any such branding of the Project or utilization of the name of the Project is subject to the Concessionaire expressly stating that the Project was developed on a PPP basis with the Authority.

5.7 Obligations relating to Information

- a) Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information forthwith in the manner and form required by the Authority.

- b) After receiving a notice from the Authority for comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments in the manner and form required by the Authority.

5.8 Obligations in relation to Other Charges

- a) The Concessionaire shall make timely payments for all utility services in respect of the Site, including water, sewerage, electricity, telecommunication, internet and cable charges, etc. on its own account.
- b) The Concessionaire shall hold harmless and keep the Authority indemnified from any fine, penalty, charges, levies, damages and losses that arise on account of any claims, suits, demands and proceedings due to the non-payment or delayed payment of such charges.

5.9 Sole purpose of the Concessionaire

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

5.10 Obligations relating to Change in Ownership

- a) Ownership Information

The shareholding pattern of the Selected Bidder/Members in the Concessionaire is as follows:

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity / Preference]	Value of the shares held [in Rs.]	Shareholding [in %]

The Concessionaire represents and warrants to the Authority that no arrangements are in place that have resulted or may result in a breach of the change in ownership restrictions set out in Clause 5.10(b) below.

- b) Change in Ownership Restrictions

- i. [The Concessionaire shall ensure that the Selected Bidder holds at least: (i) 51% (fifty one percent) of the total Equity Contribution and voting rights of the Concessionaire until 2 (two) years after COD; and (ii) 26% (twenty six percent) of the total Equity Contribution and voting rights of the Concessionaire during the remaining Concession Period.]⁵ **OR**

[i. The Concessionaire shall ensure that Members of the Selected Bidder, being the shareholders of the Concessionaire, comply with the following ownership restrictions:

⁵ This paragraph may be deleted if the Selected Bidder is a consortium

- A. the consortium shall cumulatively hold not less than 51% (fifty one percent) of the total Equity Contribution and voting rights of the Concessionaire until 2 (two) years after the COD;
- B. the Lead Member shall hold not less than 26% (twenty six percent) of the total Equity Contribution and voting rights of the Concessionaire until 2 (two) years after the COD; and
- C. Deleted.

After the expiry of 2 (two) years from the COD, the cumulative shareholding of the consortium in the Concessionaire shall be at least 26% (twenty six percent) of the total Equity Contribution and voting rights of the Concessionaire during the remaining Concession Period.]⁶

- ii. The Concessionaire shall ensure that the change in ownership restrictions set out in Clause 5.10(b) are incorporated in the articles of association of the Concessionaire.

⁶ This paragraph may be deleted if the Selected Bidder is a single entity.

ARTICLE 6

6 OBLIGATIONS OF THE AUTHORITY

6.1 General Obligations of the Authority

The Authority shall:

- a) comply with all its obligations under Applicable Laws;
- b) make reasonable endeavours to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- c) grant all such approvals, permissions and authorizations which the Concessionaire may require, or is obliged to seek, from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations;
- d) provide reasonable assistance to the Concessionaire in obtaining permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities that may be required for the Project, including providing reasonable assistance to the Concessionaire in procuring the water and power supply for the construction, operation and maintenance of the Project Facilities;
- e) appoint a Person with sufficient skill and expertise to act as Authority's Representative. The Authority's Representative shall liaise with the Concessionaire's Representative during the Concession Period. At any time during the Concession Period, Authority may replace Authority's Representative;
- f) grant to the Concessionaire, Right of Way and peaceful and actual possession of the Site in accordance with the timelines in this Agreement, provide access road(s) to the Site and ensure that the Concessionaire enjoys peaceful access to the Site;
- g) not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement;
- h) Deleted;
- i) make the SLF or any Alternate Disposal Location available in time to allow the Concessionaire to deliver any Residual Inert Matter generated from the Trial Operations and operation of the Processing Facility;
- j) cause the Authorised Representative of the Authority to carry out inspection at any time during the Concession period of the Project Facilities, and perform its other obligations and duties under this Agreement;
- k) upon progressive completion of the works for the construction of the Project Facilities, inspect or cause to inspect the works and issue the Milestone Completion Certificates to the Concessionaire;
- l) monitor and review the operations and performance of the Project Facilities, including the obligation to review the records and reports that the Concessionaire is required to maintain, during normal working hours;
- m) supply adequate quantities of Acceptable Waste required by the Concessionaire for it to conduct the Trial Operations and performance testing of the Project Facilities;
- n) engage sufficient number of C&T Contractors to ensure that it supplies the Daily Guaranteed Acceptable Waste Quantity to the Concessionaire at the Receipt Point in accordance with the requirements of this Agreement;

- o) ensure that Acceptable Waste is delivered to the Concessionaire free of cost at the Receipt Point as per availability;
- p) make the Grant payments, on satisfactory completion of the relevant Project Milestones in accordance with Article 22; and
- q) make the Processing Fee payments, after approval of the Invoice, in accordance with Article 22.

6.2 Obligations relating to Refinancing

- a) Without prejudice to any rights or remedies of the Authority under this Agreement or otherwise, upon a request made by the Concessionaire to this effect, the Authority shall, in conformity with Applicable Laws, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing, provided that any refinancing undertaken shall not have the effect of increasing the Authority's financial obligations under this Agreement. Any refinancing shall be subject to the prior consent of the Authority, provided that such consent shall not be withheld if the effect of such refinancing will not result in an increase in the Authority's financial obligations under the Agreement.
- b) The Authority shall endeavour to convey its decision on a request for refinancing submitted by the Concessionaire. For the avoidance of doubt, the tenure of debt refinanced may be determined mutually between the Lenders and the Concessionaire, but the repayment of the debt due shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ARTICLE 7

7 REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and any other agreements required in relation to the Project;
- b) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement or any other agreements in relation to the Project; and
- c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement or any other agreements in relation to the Project.

7.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to Authority that:

- a) it is duly organized, validly existing and of good standing under the laws of India;
- b) it has carefully examined and understood the terms of this Agreement, the Project requirements and the Site conditions, and has undertaken independent due diligence prior to execution of this Agreement;
- c) it has entered into this Agreement based on its own independent investigation and assessment of the Project;
- d) it shall not be entitled to any relief or claim against the Authority on the ground of mistake, misrepresentation or misunderstanding;
- e) it has the financial standing and capacity to design, finance, construct, complete, operate and maintain the Project Facilities in accordance with this Agreement;
- f) it possesses the necessary technical expertise, financial capability, managerial competence and operational experience required for implementation of the Project;
- g) it shall obtain and maintain all Applicable Permits including CTE, CTO, EPR/PWP registrations and any other statutory approvals required for the Project;
- h) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- 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) the information furnished in the Bid of the Selected Bidder or in response to the RFP, and as updated on or before the date of this Agreement is true and accurate in all respects as on the Execution Date;
- k) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- l) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the Gol or GoG which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- m) it has complied with all Applicable Laws and Applicable Permits in all material respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- n) it shall comply with all Applicable Laws, environmental norms, labour laws and safety standards;
- o) the Selected Bidder and any Member of the Selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to LOA and has agreed to unconditionally accept the terms and conditions set forth in this Agreement;
- p) all its rights and interests in the Project shall pass to and vest in the Authority on the Hand-back Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or act of the Authority and none of the assets of the Project shall be acquired by it or be subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided for in this Agreement;
- q) it has not engaged in any corrupt, fraudulent, coercive or collusive practice in relation to the award of the Project.
- r) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- s) it shall at no time undertake or permit any change in ownership except as permitted by Clause 5.10; and
- t) no representation or warranty by it contained in this Agreement or in any other document furnished by it to Authority, the Gol or GoG in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty.

7.3 Authority's Representations and Warranties

Authority represents and warrants to the Concessionaire that:

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- c) it has taken all necessary approvals to execute this and perform its obligations under this Agreement; and
- d) all information provided by it in the RFP and this Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

7.4 Acknowledgement

- a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. 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 obligation of a Party under this Agreement.
- c) Authority and Authority Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - i. any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by Authority to the Concessionaire; or
 - ii. any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

ARTICLE 8

8 DISCLAIMER

- 8.1 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 RFP, Scope of Work, Technical Specifications, the Site, existing structures, local conditions, physical qualities of ground, subsoil, and geology, waste characteristics and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Concessionaire Related Parties or any person claiming through or under any of them.
- 8.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1 above shall not vitiate this Agreement or render it voidable.
- 8.4 In the event that any Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1 above, that Party shall immediately notify the other Parties, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire. And the Authority shall not be liable in any manner for such risks or the consequences thereof.
- 8.6 The Authority shall not be liable for any financial commitment, expenditure, loss of revenue, loss of profit or return on investment except to the extent expressly provided in this Agreement and subject to the maximum financial limits specified herein. Under no circumstances shall the Authority be liable for:
- a. CAPEX cost overrun beyond the approved limit;
 - b. OPEX beyond the capped contribution;
- 8.7 The Concessionaire expressly waives any claim against the Authority arising out of:
- a. commercial underperformance of the Project;
 - b. inability to achieve projected revenues;
 - c. variability in input material characteristics;
 - d. regulatory or statutory changes except as provided under Change in Law provisions.

ARTICLE 9

9 PERFORMANCE SECURITY AND O&M SECURITY

- 9.1 The Concessionaire shall be required to submit to the Authority, prior to the Execution Date, a fixed deposit receipt (FDR) for an amount equal to **7.5% (five per cent) of the final and negotiated capital cost of the project**, in favour of the Morbi Municipal Corporation payable at Morbi issued by any nationalised bank or scheduled bank as per the list of Government of Gujarat (the **Performance Security**).
- a) If the Contract price for construction of the plant offered by the selected bidder is lower than 10% but up to 20% of the Authority's Estimated Capital Cost, then the additional performance security shall be calculated @ 20% of the difference in the Authority's Estimated Capital Cost minus 10% of the Authority's Estimated Capital Cost and Contract price for construction of the plant offered by the selected bidder.
 - b) If the Contract price for construction of the plant offered by the selected bidder is lower than 20% of the Authority's Estimated Project Cost, then the additional performance security shall be calculated @ 30% of the difference in the Authority's Estimated Project Cost minus 10% of the Authority's Estimated Project Cost and Contract price for construction of the plant offered by the selected bidder.
 - c) The Additional Performance Security, as required under sub-clauses (a) and (b) above, shall form an integral part of and be treated as the Performance Security.
 - d) Until the Performance Security has been submitted to the Authority, the Bid Security shall remain in force and effect, and upon the submission of the Performance Security, the Authority shall release the Bid Security to the Concessionaire. Notwithstanding anything to the contrary in this Agreement, in the event that the Performance Security is not provided by the Concessionaire on or before the execution of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as damages, and all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the LOA shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire.
- 9.2 The Performance Security shall remain valid for a period until 90 (ninety) days after the COD.
- 9.3 To secure the performance of its obligations during the O&M Period, the Concessionaire shall be required to submit a fixed deposit receipt (FDR) in favour of the Authority, for an amount equivalent **7.5% (five per cent) of the 15 years' total operation & maintenance cost**, in favour of the Morbi Municipal Corporation payable at Morbi issued by any nationalised or scheduled bank as per the list of Government of Gujarat (**O&M Security**) at least 30 (thirty) days prior to the COD.
- a) If the Contract price for 15 years O&M offered by the selected bidder is lower than 10% but up to 20% of the Authority's Estimated O&M Cost, then the additional O&M security shall be calculated @ 20% of the difference in the Authority's Estimated O&M Cost minus 10% of the Authority's Estimated O&M Cost and Contract O&M price offered by the selected bidder.
 - b) If the Contract price for 15 years O&M offered by the selected bidder is lower than 20% of the Authority's Estimated 15 years O&M Cost, then the additional performance security shall be calculated @ 30% of the difference in the Authority's Estimated O&M

Cost minus 10% of the Authority's Estimated O&M Cost and Contract price offered by the selected bidder.

- c) The Additional O&M Security, as required under sub-clauses (a) and (b) above, shall form an integral part of and be treated as the O&M Security.
 - d) Until the O&M Security has been submitted to the Authority, the Performance Security shall remain in force and effect, and upon the submission of the O&M Security, the Authority shall release the Performance Security to the Concessionaire.
- 9.4 The Performance Security shall secure the due performance of the Concessionaire's obligations up to the COD and the O&M Security shall secure the due performance of the Concessionaire's obligations from the COD till the expiry of the Concession Period. The cost of procuring the Performance Security and the O&M Security shall be borne solely by the Concessionaire.
- 9.5 If the Performance Security is scheduled to expire before the timeline mentioned in Clause 9.2, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Authority shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.
- 9.6 If the O&M Security is not renewed by the expiry of the 11th (eleventh) month of the relevant year after the COD, then the Authority shall be entitled to drawdown the total amount available under the O&M Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security.
- 9.7 The Authority shall be entitled to utilize such retained amount in the same manner as it would utilise the Performance Security or the O&M Security, as the case may be.
- 9.8 Upon receipt of a renewed or replacement Performance Security, or O&M Security, as the case may be, the Authority shall return the unutilized cash security amount for the Performance Security, or O&M Security, to the Concessionaire.
- 9.9 The interest earned on any retained amounts or cash security shall be to the account of the Authority and the Authority shall not be required to pass on such sums to the Concessionaire.
- 9.10 The Authority shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments up to the COD, or any amount due and payable by the Concessionaire to the Authority (including any Delay Liquidated Damages and any amounts the Concessionaire is liable to pay for breach of the indemnities under Article 33), in accordance with this Agreement.
- 9.11 The Authority shall have the right to draw on the O&M Security and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments after the COD till the expiry of the Concession Period, or any amount due and payable by the Concessionaire to the Authority (including any Liquidated Damages, any amounts the Concessionaire is liable to pay for breach of the

indemnities under Article 33 and any amounts the Concessionaire is liable to pay under Clause 30.2), in accordance with this Agreement.

- 9.12 The Authority shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Security or the O&M Security, as the case may be. However, the Authority shall provide the Concessionaire with a copy of any demand notice issued by the Authority under the Performance Security or the O&M Security, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Performance Security or the O&M Security.
- 9.13 If the Authority makes a demand under the Performance Security or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 (fifteen) days of such demand, restore the value of such Performance Security or O&M Security to the amount stated in Clause 9.1 or Clause 9.3.
- 9.14 The amount retained by Authority as cash security under Clause 9.5, shall be released to the Concessionaire (after setting-off any sums payable by the Concessionaire to the Authority), provided that, where the Agreement has not been terminated and the COD has occurred, the Performance Security shall not be released to the Concessionaire until the O&M Security has been provided by the Concessionaire.
- 9.15 Upon the expiry of the Concession Period or the termination of this Agreement, whichever is earlier, the O&M Security or, as the case may be, the amount retained by the Authority as cash security under Clause 9.6, shall be released to the Concessionaire (after setting-off any sums payable by the Concessionaire to the Authority) after the expiry of 90 (ninety) days from the date of expiry or termination of this Agreement.

ARTICLE 10

10 PROJECT SITE

10.1 The Site

- a) The Site of the Project Facilities shall comprise the land as described in Volume-III of this RfP, and in respect of which the Rights of Way shall be provided and granted by the Authority to the Concessionaire under and in accordance with this Agreement.
- b) The Site would include the land for setting up of Project Facilities relating to project facilities and supporting infrastructure, if any.
- c) Without prejudice and subject to the Agreement, the ownership of the Project except the Site, including all improvements made therein by the Concessionaire, during the Concession Period, shall at all times remain with the Concessionaire.

10.2 Handover of the Site

- a) The Authority shall, on and from the Execution Date, grant the Concessionaire access to the Site, along with all necessary Right of Way to enter upon the Site for conducting any site inspection and studies that may be required for preparing the Construction Plan, the Project Execution Plan and the DPR.
- b) The Authority shall handover to the Concessionaire the project Site and from such date, the Authority shall grant Site handover to the Concessionaire, along with all necessary Right of Way to enter upon and utilise the Site for the Project purpose under this Concession Agreement. Provided that, access to the Site granted to the Concessionaire shall always be subject to the right of the Authority and its nominated contractors to enter upon and access the Site. The Site handover to the Concessionaire shall include the exclusive right to:
 - i. undertake the Pre- Construction Works;
 - ii. design, construct and commission the Project Facilities at the Site;
 - iii. operate and maintain the Project Facilities during the O&M Period;
 - iv. install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - v. use access roads, gates, fences and utilities at or about the Site; and
 - vi. construct, use, operate, maintain, replace and repair site office, electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Site.
- c) Any charges payable for clearing and levelling the Site, granting access to the Concessionaire and obtaining all necessary Right of Way will be paid directly by the Concessionaire.
- d) The Concessionaire shall not without the prior written consent or approval of Authority use the Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by Authority.
- e) The Concessionaire shall not without the prior written consent or approval of Authority use the Site for any purpose other than to undertake the Project and purposes

incidental thereto, as permitted under this Agreement or as may be otherwise approved by Authority.

- f) The full ownership and title over the Site shall, at all times during the Concession Period, vest with the Authority.
- g) The Authority warrants that the Concessionaire shall, subject to Clause 10.1(a), occupy the Site, from such time that access is granted to the Concessionaire and until the expiry of the Concession Period. If the Concessionaire is obstructed by any Person claiming to be affected by the Project, including construction of the Project Facilities at the Site or if any injunction is granted by a court against the construction of the Project Facilities at the Site, the Authority shall, if called upon by the Concessionaire, take appropriate actions to tackle or defend such claims and proceedings.
- h) Subject to any substitution rights exercised by the Lenders, the right to use the Site and Right of Way granted by the Authority shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.

10.3 Right, Title and Interest in the Project Facilities

- a) The full ownership, rights and title to the Project Facilities constructed or installed by the Concessionaire pursuant to this Agreement shall vest with the Authority during the Concession Period.
- b) Except as otherwise provided in this Agreement, the Concessionaire shall not:
 - i. Sell, mortgage or create any Security over the Project Facilities or any part thereof, except in accordance with the terms of the Financing Documents;
 - ii. dispose of any assets forming part of the Project Facilities, other than for the purposes of replacement due to normal wear and tear; or
 - iii. transfer, assign or novate all of its rights and obligations under this Agreement and in contravention of the terms of this Agreement,

without the prior written consent of the Authority (such consent not being unreasonably withheld or delayed).

10.4 Site Data and Verification

- a) The Authority has made available to the Concessionaire, relevant data, studies and reports in the Authority's possession in connection with the Site and the Project Facilities.
- b) The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- c) The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by Authority and any other information available with respect to the Project Facilities and the Site and to have satisfied itself as to all the relevant matters including:
 - i. the nature of the Site, including the subsurface conditions, ecosystem, water table, drainage, subsoil, the load bearing and other characteristics of the Site;
 - ii. the suitability of the Site for undertaking the construction and operation of the Project Facilities;
 - iii. the adequacy of the utilities available till the battery limits of the Site;

- iv. the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
 - v. the nature of design, construction work and O&M services necessary to perform its obligations under this Agreement;
 - vi. Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
 - vii. the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
 - viii. the precautions, and methods of working necessary to prevent any public nuisance; and
 - ix. all other matters that may affect the performance of its obligations under this Agreement.
- d) The Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Authority, then the Authority and the Concessionaire may mutually arrive at a decision regarding any extension of the relevant Scheduled Project Milestone Completion Date or the Scheduled COD and/or compensation for additional costs incurred due to such error or discrepancy. Provided that, the Concessionaire shall not be entitled to any extension as mentioned above, nor shall it be open to the Concessionaire to justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites' conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by the Authority shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.4(c) above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

10.5 Site Related Covenants

The Concessionaire agrees and undertakes that:

- a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
- b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site where such encroachment or unauthorized occupation occurs after the date on which the Site is handed over to the Concessionaire in accordance with Clause 10.2(b);
- c) the Concessionaire shall not use the Site for any purpose unconnected with the Project;
- d) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
- e) the Concessionaire shall be wholly responsible for safety at and security of the Site and the Project Facilities;

- f) the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
- g) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform the Authority of such discovery and carry out the instructions of the Authority in this regard;
- h) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties; and
- i) the Concessionaire shall use all reasonable endeavours not to do or permit to be done anything which might:
 - i. cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
 - ii. be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
 - iii. cause any contamination or damage to any Adjoining Property,

and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of any Government Authority to undertake such construction works and/or the O&M services. The Authority shall provide all assistance to the Concessionaire for procuring such approvals.

10.6 Access to the Authority Related Parties and Government Authorities

The Concessionaire shall ensure that the Authority Related Parties and relevant Government Authorities have access to the Site and the right to use the Site granted to the Concessionaire over the Site shall always be subject to:

- a) the rights of the Authority, the Authority's Representative and other Authority Related Parties to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the Authority shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project Facilities in any manner whatsoever; and
- b) the rights of the Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose.

ARTICLE 11

11 UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing Utilities and Roads

The Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the Authority as the controlling body of such road, right of way or utility.

11.2 Shifting of Obstructing Roads and Utilities

- a) The Concessionaire shall, subject to obtaining prior permission from the respective Authority (depending on the respective jurisdiction) and in accordance with Applicable Laws, undertake the shifting of any roads and utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and to the extent that such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such shifting, including all associated expenses, shall be borne by the Concessionaire.
- b) The Concessionaire shall not obstruct, damage or alter any public road or any other public utilities without prior written permission of the Authority.

11.3 New Utilities and Roads

- a) The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the construction and operations of the Project Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- b) The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities.
- c) The Concessionaire shall not be entitled to any extension of time or costs or in any other manner be relieved from the performance of its obligations in relation to Project Facilities to comply with its obligations under Clause 11.1, 11.3(a) and 11.3(b) above.
- d) The Authority shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities. However, such facilitation shall not impose any financial or legal obligation upon the Authority to procure or guarantee availability of such utilities.
- e) The Concessionaire shall be responsible for payment of all connection charges, deposits, user charges and tariffs, Installation of internal distribution systems, and compliance with applicable utility regulations and safety norms.

11.4 Felling of Trees

- a) The Concessionaire shall not cut, remove, damage or relocate any tree within the Project Site without prior written approval of the Authority and compliance with Applicable Law. Where tree cutting or transplantation is permitted by the Authority, if such trees cause a Material Adverse Effect on the construction and O&M of the Project, the Concessionaire shall, obtain all statutory approvals, bear the cost of compensatory plantation or transplantation and undertake plantation in accordance with environmental regulations.

- b) The Authority shall assist the Concessionaire in obtaining Applicable Permits for felling of any trees identified by the Concessionaire if such trees cause a Material Adverse Effect on the construction and O&M of the Project. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling of the trees for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations under this Agreement if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

11.5 Restoration of Damage

- a) The Concessionaire shall promptly restore, at its own cost, any damage caused to public roads, municipal utilities, adjacent properties and public infrastructure arising out of construction or operation of the Project. Failure to do so shall entitle the Authority to undertake such restoration and recover the cost from the Concessionaire.

11.6 No Additional Financial Liability of Authority in relation to utilities

- a) Except as expressly provided in this Agreement, the Authority shall not bear any cost or liability in relation to utilities, internal roads, tree relocation or associated infrastructure for the Project.

ARTICLE 12

12 FINANCING SUPPORT AND SECURITY

12.1 CAPEX Contribution by the Authority

- a) The Authority shall contribute 40% of the approved CAPEX.
- b) Any cost overrun beyond the above limits shall be borne solely by the Concessionaire and shall not entitle the Concessionaire to any additional financial support from the Authority.
- c) The remaining 60% of the CAPEX shall be financed by the Concessionaire.
- d) The CAPEX contribution of the Authority shall be released in accordance with project milestones as per the conditions mentioned in Article 22.

12.2 OPEX Support by the Authority

- a) The Authority shall contribute 40% of the approved OPEX during the O&M Period.
- b) Any cost overrun beyond the above limits shall be borne solely by the Concessionaire and shall not entitle the Concessionaire to any additional financial support from the Authority.
- c) The remaining 60% shall be financed by the Concessionaire.
- d) The OPEX support shall be disbursed on a monthly basis during the O&M Period pursuant to the conditions of this Concession Agreement.
- e) The OPEX support shall be subject to achievement of Performance Standards and KPIs, deduction of applicable Liquidated Damages (if any), and submission of required reports as per this Agreement.

12.3 No Escrow Arrangement

Payments under this Article shall be made directly to the designated bank account of the Concessionaire, and no escrow account shall be required unless otherwise mutually agreed in writing.

12.4 No Additional Financial Commitment

Except as expressly provided in this Agreement and subject to the maximum financial limits stated herein, the Authority shall not be liable for any additional funding, subsidy, guarantee or financial support.

12.5 Financing and Bankability Support

The Parties acknowledge that for the purposes of implementing the Project, the Concessionaire may require Financial Assistance from the Lenders. To this end, the Authority shall co-operate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.

12.6 No Security Creation

The Concessionaire shall not be entitled to create any Security over its rights, title and interests or over the Project Facilities or over the Site or any part thereof whether in favour of the Lenders or any third Persons.

ARTICLE 13

13 PROJECT MANAGEMENT CONSULTANT

- a. The Project Management Consultant (PMC), appointed by the Authority for the purpose, shall inspect the construction and operation of the Project Facilities, defects or deficiencies, if any, and status of compliance with Project Execution Plan, Construction Plan, DPR, Technical, Specifications, Designs and Drawings, OHS Plan, Feedstock Sourcing Plan, Subcontractor management plan, O&M Plan, and KPIs.
- b. The PMC shall at all times during the Concession Period have the right to enter upon and access the Site to carry out any inspections or to attend meetings or discussions at the Site, in accordance with its scope of work and responsibilities. The Concessionaire shall have the right to accompany the PMC during its inspection of the Project Facilities.
- c. The PMC shall, at all times, have the right to attend any meetings held by the Concessionaire or Authority to review the progress of the construction or O&M of the Project Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works or O&M services is being undertaken. Neither any comments/suggestions provided by the PMC nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the EMP, OHS Plan, Subcontractor management plan, the O&M Plan and all Applicable Laws and Applicable Permits.
- d. The Concessionaire agrees that notwithstanding any review by the PMC of any or all of the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Facilities and its compliance with the terms of this Agreement.
- e. The Concessionaire shall, at its own cost and without any delay, provide to the PMC all such information, documents, purchase orders, agreements, drawings, designs, calculations, reports, data, and any other details, including financial information, as may be requested by the PMC for review or verification of compliance with this Agreement. The Concessionaire shall ensure that all such submissions are accurate, complete, and provided within the time specified by the PMC. The Concessionaire shall extend full cooperation to the PMC in the discharge of its duties and shall not obstruct or delay any inspection, review, or data request made by the PMC in accordance with this Agreement. The Concessionaire shall also ensure that its Subcontractors and personnel cooperate with and provide necessary assistance to the PMC.
- f. The PMC shall promptly report to the Authority any material deviations, non-conformities, or defaults observed during its inspections or reviews and shall recommend corrective actions, if necessary. The Authority may, at its discretion, issue directions to the Concessionaire based on the PMC's recommendations.
- g. All fees, costs, charges, and expenses payable to the PMC shall be borne by the Authority. Such amounts shall be paid to the PMC by the Authority.

ARTICLE 14

14 CONSTRUCTION PERIOD

14.1 Commencement and Duration

The period for construction of the Project Facilities shall commence on and from the **Appointed Date** and shall continue until the **COD** (the **Construction Period**).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Appointed Date, be entitled to commence:

- a) soil or geophysical investigation or testing at the Site;
- b) the Pre-Construction Works; and
- c) appointment of Subcontractors for the construction works for the Project Facilities, with the prior approval of the Authority.

14.2 Project Execution Plan, DPR and Designs and Drawings

- a) Project Execution Plan
 - i. Within 15 days from the Execution Date, the Concessionaire shall prepare and submit to the Authority a **Project Execution Plan**. The Project Execution Plan shall include details of the execution strategy for the Project, project schedule, manpower deployment, estimated timelines for procurement of equipment and materials and construction of the Project and a Site mobilization plan.
 - ii. The Authority shall review and provide comments, if any, on the draft Project Execution Plan to the Concessionaire, or notify the Concessionaire of their approval of the draft Project Execution Plan. The Authority may require the Concessionaire to amend or modify the draft Project Execution Plan if the Authority identifies any deficiencies or shortcomings in the draft Project Execution Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Project Execution Plan (including any plan included within the Project Execution Plan) from the Authority, then the Concessionaire shall incorporate the suggestions made by the Authority and modify the draft Project Execution Plan to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised Project Execution Plan to the Authority for their approval. The process set out in this Clause 14.2(a)(ii) shall continue until the Project Execution Plan is approved by the Authority in accordance with this Clause 14.2(a)(ii). After the approval of the Project Execution Plan from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the Project Execution Plan to the Authority.
 - iii. The Concessionaire shall design, engineer and construct the Project Facilities strictly in accordance with the approved Project Execution Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Project Execution Plan without the prior written approval of the Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Project Execution Plan in accordance with this Clause 14.2(a).

- iv. Notwithstanding any approval of the Project Execution Plan by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Project Execution Plan and complying with the requirements of this Clause 14.2(a).

b) Detailed Project Report

- i. Within 30 days from the Execution Date, the Concessionaire shall prepare and submit the DPR to the Authority for review and approval. The DPR shall include details of the plant layout, Proposed Technology, mass and energy balances, tentative equipment list, demand assessment, technical feasibility, process flow diagrams, piping/process & instrumentation diagram, cost estimates, capital investment plan, project financing details, revenue projections and financial analysis.
- ii. The Authority shall review and provide comments, if any, on the draft DPR to the Concessionaire or notify the Concessionaire of their approval of the draft DPR. The Authority may require the Concessionaire to amend or modify the draft DPR if the Authority identifies any deficiencies or shortcomings in the draft DPR. If the Concessionaire receives any comments, suggestions or instructions to modify the draft DPR (including any plan included within the DPR) from the, then the Concessionaire shall incorporate the suggestions made by the Authority and modify the draft DPR to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised DPR to the Authority for their approval. The process set out in this Clause 14.2(b)(ii) shall continue until the DPR is approved by the Authority in accordance with this Clause 14.2(b)(ii). After the approval of the DPR from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the DPR to the Authority.
- iii. The Concessionaire shall design, engineer and construct the Project Facilities strictly in accordance with the approved DPR. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved DPR without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the DPR does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the DPR in accordance with this Clause 14.2(b).
- iv. Notwithstanding any approval of the DPR by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the DPR and complying with the requirements of this Clause 14.2(b).

c) Designs and Drawings

- i. The Concessionaire shall prepare the structural design calculations & reports, general arrangement drawings and structural drawings in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The Designs and Drawings shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth development of the Project Facilities. The Project Facilities should be designed in a manner such that the Concessionaire can obtain an permits / clearance for the Processing Facility, an authorisation under the SWM Rules for setting up the Processing Facility and a consent to operate for the operation of the Project Facilities.
- ii. Within 45 days from the Execution Date, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the draft Designs and Drawings to the Authority for their review and approval. The draft Designs and Drawings submitted by the Concessionaire shall be reviewed and approved by the Authority. By submitting the Designs and Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the Designs and Drawings, including the field construction criteria related thereto, are in conformity with the Technical Specifications, Applicable Laws and Good Industry Practice.
- iii. The Authority shall provide comments if any, on the draft Designs and Drawings to the Concessionaire or notify the Concessionaire of their approval of the draft Designs and Drawings. The Authority may require the Concessionaire to amend or modify the draft Designs and Drawings if the Authority identifies any deficiencies, inaccuracies or shortcomings in the draft Designs and Drawings. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Designs and Drawings from the Authority, then the Concessionaire shall modify the draft Designs and Drawings to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, the Authority's comments on the draft Designs and Drawings and submit the revised Designs and Drawings to the Authority for their approval within 07 (seven) days of receipt of comments. The process set out in this Clause 14.2(c)(iii) shall continue until the Designs and Drawings are approved by Authority in accordance with this Clause 14.2(c)(iii).
- iv. After the approval of the Designs and Drawings from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the final Designs and Drawings to the Authority.
- v. The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of the Authority. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Designs and Drawings in accordance with this Clause 14.2. If the Concessionaire undertakes any construction work for the Project Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and the Authority shall have the right

to reject any such construction work that does not comply with the approved Designs and Drawings.

- vi. Notwithstanding any approval of the Designs and Drawings by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 14.2.

d) Use of Proposed Technology

- i. The Concessionaire shall design and develop the Processing Facility on the basis of the Proposed Technology, approved by the Authority as part of the Designs and Drawings.
- ii. If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the Processing Facility.
- iii. If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the Authority be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.
- iv. Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the Processing Facility to the Authority at no additional cost to the Authority.
- v. The Concessionaire shall indemnify the Authority for any claims, losses, damages and costs suffered by the Authority as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.
- vi. The Concessionaire shall be permitted to undertake any upgradation or augmentation of the Proposed Technology with the prior approval of the Authority, provided that, such upgradation or augmentation is at no additional cost to the Authority and does not, in any manner, increase the financial liability of the Authority under this Agreement. If such upgradation or augmentation of the Proposed Technology requires the Authority to bear any additional costs, or increases the Authority's financial liability under this Agreement in any manner, the Concessionaire may seek a Variation in accordance with Article 31.

14.3 Construction Plan

- a) Within 60 days from the Execution Date, the Concessionaire shall prepare and submit to the Authority a detailed Construction Plan. The Construction Plan must include;

- i. the proposed **Project Milestones** for disbursement of the Grant and the specific activities to be performed by the Concessionaire to achieve the Project Milestones
 - ii. the **detailed plan for completing the construction** of the Project Facilities in order to complete the Project Milestones by the Scheduled Project Milestone Completion Date and achieve the COD by the Scheduled COD;
 - iii. a **quality assurance plan** setting out the activities and actions, proposed to be undertaken and the construction materials, equipment, and machinery to be used for the construction of the Project Facilities to ensure that the Project Facilities comply with the requirements of the Technical Specifications and Applicable Laws; and
 - iv. **an emergency response plan** setting out in detail the procedures to be followed by the Concessionaire, its Sub-Contractors, agents and employees upon the occurrence of an Emergency.
- b) The Authority shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Construction Plan. The Authority may require the Concessionaire to amend or modify the draft Construction Plan if the Authority identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan (including any plan included within the Construction Plan) from the Authority, then the Concessionaire shall incorporate the suggestions made by the Authority and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised Construction Plan to the Authority for their approval. The process set out in this Clause 14.3(b) shall continue until the Construction Plan is approved by the Authority in accordance with this Clause 14.3(b). After the approval of the Construction Plan from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the Construction Plan to the Authority.
- c) The Concessionaire shall construct the Project Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of the Authority. Provided that the Authority shall not unreasonably withhold such approval if the proposed modification or amendment to the Construction Plan does not result in an extension of the Scheduled COD. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Construction Plan in accordance with this Clause 14.3.
- d) Notwithstanding any approval of the Construction Plan by the Authority, the Concessionaire shall, subject to Clause 14.7(b), be solely liable for achieving the COD by the Scheduled COD. Subject to Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Construction Plan and complying with the requirements of this Clause 14.3.
- e) If, after completing the Pre-Construction Works, the Concessionaire is of the view that the Construction Plan approved under this Clause 14.3 needs to be amended or modified in any way so as to incorporate any learnings from the Pre-Construction Works, it shall revise the Construction Plan and submit it to the Authority and the process set out in Clause 14.3(b) shall follow for approval of the revised Construction

Plan. After the approval of the revised Construction Plan, the Concessionaire shall submit 2 (two) hard copies and 1 (one) soft copy on a USB drive of the Construction Plan to the Authority.

14.4 Environment and Occupational Health and Safety Related Obligations

- a) Within 75 days of the Execution date, the Concessionaire shall prepare and submit a detailed EMP to the Authority. The EMP shall set out the environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project. The details set out in the EMP will include (i) measures to mitigate the environmental impact of construction and operations of the Project Facilities; and (ii) details of the stakeholder communications plan to be developed, implemented and maintained by the Concessionaire.
- b) The Concessionaire shall develop an OHS Plan, which sets out the health and safety policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project and shall include a comprehensive Site safety assurance plan developed in accordance with the approved Applicable Laws, Applicable Permits, the Technical Specifications and Good Industry Practices.
- c) The Authority shall provide comments, if any, on the draft EMP and OHS Plan to the Concessionaire or notify the Concessionaire of their approval of the draft EMP and OHS Plan. The Authority may require the Concessionaire to amend or modify the draft EMP and/or OHS Plan if the Authority identifies any deficiencies or shortcomings in the draft EMP and/or OHS Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft EMP and/or OHS Plan from the Authority, then the Concessionaire shall modify the EMP and/or OHS Plan to address any such comments, shortcomings or deficiencies identified by the Authority. Thereafter, the Concessionaire shall submit the revised EMP and/or OHS Plan to the Authority for their approval. The process set out in this Clause 14.4(c) shall continue until the EMP and OHS Plan are approved by the Authority in accordance with this Clause 14.4(c). After the approval of the EMP and OHS Plan from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the EMP and OHS Plan to Authority.
- d) The Concessionaire shall ensure that its Subcontractors also, comply and conform with all aspects of the EMP and OHS Plan, approved in accordance with this Clause 14.4, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify the Authority against all costs, expenses, penalties and liabilities incurred/suffered by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with the EMP or OHS Plan in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved EMP or OHS Plan without the prior written approval of the Authority.
- e) Neither any approval of the EMP and OHS Plan by the Authority, nor any failure to review and provide comments on the EMP or OHS Plan shall excuse any failure by the Concessionaire or any Subcontractor to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final EMP or OHS Plan in ensuring compliance with all Applicable Laws, the Performance Standards, Applicable Permits and Good Industry Practices in the execution of the

Project. Subject to Clause 14.4(c), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the EMP or OHS Plan and complying with the requirements of this Clause 14.4.

14.5 Subcontracting

- a) The Concessionaire shall, within 75 days of the Execution date submit to Authority, the draft Subcontractor management plan, which outlines the works and services (including procurement of equipment and materials) which the Concessionaire proposes to Subcontract, along with the estimated value of each Subcontract, details of the Subcontractor and methods by which the Concessionaire will ensure the Subcontractors comply with the terms of this Agreement, the Construction Plan, the Project Execution Plan, the DPR, the EMP and OHS Plan, the O&M Plan, Applicable Laws and Applicable Permits. The Authority shall review and provide comments, if any, on the draft Subcontractor management plan to the Concessionaire or notify the Concessionaire of their approval of the draft Subcontractor management plan. The Authority may require the Concessionaire to amend or modify the draft Subcontractor management plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Subcontractor management plan from the Authority, then the Concessionaire shall incorporate the suggestions made by the Authority and modify the draft Subcontractor management plan to address any such comments. Thereafter, the Concessionaire shall submit the revised Subcontractor management plan to the Authority for their approval. The process set out in this Clause 14.5(a) shall continue until the Subcontractor management plan is approved by Authority in accordance with this Clause 14.5(a). After the approval of the Subcontractor management plan from the Authority, the Concessionaire shall submit 3 (three) hard copies and 1 (one) soft copy on a USB drive of the Subcontractor management plan to Authority. The Concessionaire shall not make any subsequent modification or amendment to the approved Subcontractor management plan without the prior written approval of Authority.
- b) The Concessionaire may enter into Subcontracts to perform any part of its Scope of Work, in accordance with the approved Subcontractor management plan, provided that notwithstanding the approval of the Subcontractor management plan, subcontracts of a value above Rs. 2,00,00,000 (Rupees Two Crore) will be executed only with the prior approval of the Authority. To clarify, subcontracts proposed to be executed by the Concessionaire of a value below Rs. 2,00,00,000 (Rupees Two Crore) with an approved Subcontractor do not need to be separately approved by the Authority.
- c) The Concessionaire shall provide a copy of each proposed Subcontract of a value above Rs. 2,00,00,000 (Rupees Two Crore), along with details of the relevant Subcontractor, to the Authority for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement and the approved Subcontractor management plan.
- d) The Authority shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- e) The approval of any Subcontractor and the corresponding Subcontract by the Authority shall be subject to the following conditions:

- i. the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire;
 - ii. the Subcontract is on terms consistent with this Agreement;
 - iii. the Subcontract contains provisions that provide, at the Authority's option, for the subcontract to be novated or assigned to the Authority or its nominee without any further consent or approval from the Concessionaire or the Subcontractor or entitle the Authority or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default; and
 - iv. the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.
- f) Within 7 (seven) days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the Authority for its records.
- g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the Authority and the process set out in this Clause 14.5 shall apply in such case.
- h) Notwithstanding the approval of the Subcontractor management plan or any Subcontractor by the Authority, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

14.6 Concessionaire's Pre-Construction and Construction Obligations

The Concessionaire shall design, finance, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the EMP, OHS Plan, the Designs and Drawings, the Construction Plan, the Project Execution Plan, the DPR and other provisions of this Agreement.

For this purpose, from the Execution Date and during the Construction Period, the Concessionaire shall:

- a) complete Pre-Construction Works in accordance with Scope of Work and Technical Specifications. Subject to Clause 4.3(a) and Article 26, the Concessionaire shall not be entitled to any extension of time or costs on account of any delays in completing the Pre-Construction Works.
- b) complete the work corresponding to each Project Milestone by the Scheduled Project Milestone Completion Date and so as to ensure that the Project Facility achieves the COD on or before the Scheduled COD in a manner that:
 - i. is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the Project Execution Plan, the DPR, the EMP, OHS Plan, Applicable Laws, the Performance Standards, Applicable Permits and

Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications, and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;

- ii. the Project Facilities are free from all defects in design, materials, and workmanship;
 - iii. the Project Facilities are safe, reliable and fit for purpose;
 - iv. the Processing Facility is capable of handling and processing the Acceptable Waste up to the Design Capacity;
 - v. the Project Facilities are capable of Segregating Mixed Waste; and
 - vi. all aspects of the Project Facilities, including the processes and materials employed in the construction, operation, and maintenance of the Project Facilities comply with the Applicable Laws and the Performance Standards in relation to environment, health, and safety, including in particular the SWM Rules, and there is no damage to the environment resulting from the construction of the Project Facilities.
- c) reasonably consider and act upon the comments/suggestions made by the Authority and PMC during any meetings with the Concessionaire;
- d) rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by the Authority;
- e) ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all labour charges, fees, cess, payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the Building and Other Construction Workers Welfare Cess Act, 1996. The Concessionaire shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the Authority from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Authority due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislations);
- f) arrange for all equipment, machinery, tools and other resources, including trucks for transportation of the Residual Inert Matter to the Delivery Point and transportation of Residual Waste during the Concession Period, required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources, in accordance with the quality assurance plan submitted as part of the Construction Plan;
- g) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
- h) maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the Project Facilities in accordance with Applicable Laws; and

- i) prepare and keep up-to-date, "as-built" records of the execution of the work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site and be made available to the Authority's representatives for review and verification.

14.7 Construction Timelines

- a) The Concessionaire shall comply with the DPR, the Project Execution Plan, the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities so as to ensure that the Processing Facility achieves the COD on or before the Scheduled COD.
- b) Subject to Clause 14.7(c) below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled Project Milestone Completion Date or the Scheduled COD, as the case may be, if the completion of construction, Trial Operations, and testing of the Project Facilities is delayed due to any of the following reasons (each such event, a **Delay Event**):
 - i. occurrence of a Force Majeure Event, provided that the requirements of Article 26 have been complied with;
 - ii. a Change in Law;
 - iii. undue delay by the relevant Government Authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - iv. undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - v. any delay attributable to unforeseen site conditions in accordance with Clause 10.4;
 - vi. any delay by the Authority in providing comments or approving the Plans, DPR, Designs and Drawings in accordance with the process and timelines set out in Clause 14.2(c);
 - vii. a suspension of construction of the Project Facilities pursuant to Clause 27.1(a)(i) or Clause 27.2(a)(i), which is not attributable to the Concessionaire;
 - viii. delay by the Authority in inspecting the completed portion of the works or notifying the Concessionaire of any defects or deficiencies in the works in accordance with Clause 16.1(a)(iv);
 - ix. delay by the Authority in issuing the Milestone Completion Certificate in accordance with Clause 16.1(a);
 - x. delay by the Authority in issuing the Trial Operations Commencement Notice in accordance with Clause 16.1(b);
 - xi. undue delay by Authority in obtaining any Applicable Permit required to be obtained by it under this Agreement;
 - xii. any variation proposed by Authority or necessitated by actual Site conditions in the Scope of Work, Technical Specifications or the Designs and Drawings in accordance with Article 31; or

- xiii. any extension in Scheduled Project Milestone Completion Date or the Scheduled COD, as the case may be, approved by the Authority pursuant to Clause 22.3 (c)(ii).

The Concessionaire shall promptly provide the Authority with a notice upon becoming aware of any Delay Event listed in this Clause 14.7(b). The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Clause 14.7(b), within 7 (seven) days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 14.7(b).

- c) Without prejudice to the Concessionaire's obligations to notify the Authority regarding the occurrence of a Delay Event above, the Concessionaire shall:
 - i. keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 14.7(b); and
 - ii. give the Authority access to such records and documents or provide the Authority with copies, if so requested.
- d) If the Concessionaire claims an extension of time in accordance with Clause 14.7(b) and Authority is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 14.7(b), then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- e) If two or more of the Delay Events listed in Clause 14.7(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 14.7(b).
- f) Except as provided in Clause 14.7(b), the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - i. delay caused in complying with any instructions of Authority which are attributable to any act or omission of the Concessionaire;
 - ii. failure of any Subcontractor to commence or carry out any work within the prescribed timelines; or
 - iii. unavailability or shortage of equipment, materials, or any other resources.
- g) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 34.

14.8 Delay Liquidated Damages

- a) Subject to Clause 14.7(b), if the Concessionaire fails to complete the work corresponding to any Project Milestone by the relevant Scheduled Project Milestone Completion Date or fails to achieve the COD by the Scheduled COD, then the Authority shall be entitled to recover liquidated damages for each week (or part thereof) of delay beyond the Scheduled Project Milestone Completion Date, or, as the case may be, the Scheduled COD, at the following rate.

- i. **Rs. 50,000/- for delay of each week** from the relevant Scheduled Project Milestone Completion Date to actual milestone completion date.
- ii. **Amount equivalent to 1% of the Performance Security for delay of each week** from the Scheduled COD to actual COD, upto 06 weeks of delay.
- iii. **Amount equivalent to 2% of the Performance Security for delay of each week** from the Scheduled COD to actual COD, for more than 06 upto 12 weeks of delay.
- iv. **Amount equivalent to 4% of the Performance Security for delay of each week** from the Scheduled COD to actual COD, beyond 12 weeks of delay.

Liquidated Damages mentioned in the clause 14.8(a)(i), 14.8(a)(ii), 14.8(a)(iii) & 14.8(a)(iv) above shall be called as the **Delay Liquidated Damages**.

The decision of the Authority shall be final in this regard.

- b) The Delay Liquidated Damages will be payable until the work for the relevant Project Milestone is completed or, as the case may be, the COD is achieved in accordance with Article 17. If the Concessionaire achieves the COD by the Scheduled COD, the aggregate Delay Liquidated Damages recovered by the Authority under Clause 14.8(a) for a delay in achieving any Project Milestone shall be refunded by the Authority to the Concessionaire, without any interest.
- c) The amount of **Delay Liquidated Damages** to be charged under the contract, shall not exceed 10% of the Capital cost of the project. If the cumulative liquidated damage amount exceeds the maximum amount of liquidated damages mentioned above the Authority may:
 - i. Terminate the Concession Agreement and forfeit the Performance Security, or;
 - ii. Retain the Concessionaire by depositing the amount equivalent to such liquidity damage. However, the retention of the Concessionaire on such ground shall not free it from its liabilities for completion of the work or any future imposition of liquidity damages.
 - iii. The decision of the Authority in this regard shall be final and binding to the Concessionaire.
- d) The Authority shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any Project Milestone, and if such amounts are insufficient, the Authority shall have a right to invoke the Performance Security to the extent of the Delay Liquidated Damages.
- e) Deleted.
- f) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Authority as a result of the delay in the completion of the Project Facilities, and not as penalty.
- g) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle the Authority from claiming any Delay Liquidated Damages, then the Authority will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Project Milestone by the Scheduled Project Milestone Completion Date, or for the delay in achieving the COD by the Scheduled COD.

- h) if the Concessionaire fails to achieve the COD within 6 (six) months of the Scheduled COD, other than on account of any Delay Event, then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 28.1.
- i) The payment of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Project Facilities and commission the Processing Facility, or from any of its other duties, obligations or responsibilities under the Agreement.
- j) Deleted

ARTICLE 15

15 MONITORING OF CONSTRUCTION

15.1 Monthly Progress Reports

During the Construction Period, the Concessionaire shall, submit monthly reports to the Authority, no later than 7 (seven) days after the end of each month, which should set out the following:

- a) extent of progress of construction activities performed by the Concessionaire for the Project Facilities;
- b) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
- c) details of any accident or hazardous incident at the Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
- d) status of rectification of defects and/or deficiencies discovered by the Authority.

The Concessionaire shall promptly give such other relevant information as may be required by the Authority.

15.2 Inspection

- a) The Concessionaire shall be required to provide reports, designs, drawings, test results and other documents, as may be required for the inspection of the construction of the Project facilities.
- b) During the Construction Period, the Authority shall carryout or shall cause to be carried-out the inspection of the construction of the Project Facilities and notify the Concessionaire about the defects or deficiencies, if any, observed during such inspection with particular reference to the Scope of Work and Technical Specifications. Upon receipt of such information from the Authority, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated by the Authority. Such inspection or submission of the Inspection Report by the Authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

15.3 Tests

- a) For determining that the construction works conform to the Technical Specifications, the Authority may require the Concessionaire to carry out, or cause to be carried out, tests, in accordance with Good Industry Practice, for quality assurance. The costs incurred on the tests shall be borne solely by the Concessionaire.
- b) If the results of any tests conducted under this Clause 15.3 establish any defects or deficiencies in the construction works, the Concessionaire shall carry out remedial measures and furnish a report to the Authority in this regard. The Authority shall have the right to verify such reports and if required, request the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the construction works into compliance with the Technical Specifications, and the procedure set forth in this Clause 15.3 shall be repeated until such construction works conform to the Technical Specifications.

15.4 Suspension of Unsafe Construction Works

- a) The Authority may, by notice, require the Concessionaire to suspend forthwith the whole or any part of the construction work if, in the reasonable opinion of the Authority, such work is unsafe and a potential safety hazard.
- b) The Concessionaire shall, pursuant to a notice under this Clause 15.4, suspend all or part of the construction works for such time and in such manner as may be specified by the Authority and carry out remedial measure to secure the safety of the suspended works. The Concessionaire shall be required to submit an action take report on such remedial measures adopted to the Authority. The Authority may carry out or cause to be carried-out inspection of such remedial measures. Upon submission of action taken report by the Concessionaire or upon inspection by the Authority, as the case may be, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out further remedial measures that are necessary, in the reasonable opinion of the Authority, and the procedure set forth in this Clause 15.4 shall be repeated until the suspension is revoked.

15.5 Photos and Video Recording of the Progress

- a) During the Construction Period, the Concessionaire shall provide to the Authority for every quarter, photos and video recording, which will be compiled into a USB drive, covering the status and progress of construction works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.
- b) Upon completion of the processing plant, the Concessionaire shall prepare and submit to the Authority a 2-minute video highlighting the plant's success story. The video shall include drone footage and separate videos shall be prepared and submitted with Hindi, Gujarati and English voiceover, designed to engage visitors to the plant and be showcased at various MRMC events.

ARTICLE 16

16 COMPLETION CERTIFICATE

16.1 Completion of Works

a) Completion of Project Milestones

- i. Upon completion of construction of the works corresponding to the Project Milestone, as specified in the clause 22.3 (c), the Concessionaire shall issue a notice to the Authority, requesting the Authority to carry out or cause to be carried-out inspection of the completed works covered by the relevant Project Milestones. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Project Milestones have been completed in accordance with the requirements of Clause 14.6.
- ii. If the Authority is satisfied that the works for the relevant Project Milestone have been completed in accordance with the requirements of Clause 14.6, then it shall issue a Milestone Completion Certificate to the Concessionaire for such completed Project Milestone.
- iii. If the Authority is of the view that the works for the relevant Project Milestone do not satisfy the requirements of Clause 14.6, then the Authority shall have the right to provide comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 14.6. Upon receipt of such comments, suggestions, or instructions from the Authority, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Authority. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the Authority is satisfied that the works for the relevant Project Milestone have been completed in accordance with the requirements of Clause 14.6 and the Authority issues a Milestone Completion Certificate in accordance with this Clause 16.1(a).
- iv. If:
 - A. the Authority fails to inspect the completed portion of the works covered by the relevant Project Milestone, within 15 (fifteen) days from the date of receipt of a notice from the Concessionaire under Clause 16.1(a)(i) above;
 - B. the Authority fails to provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Project Milestone, within 15 (fifteen) days from the date of inspection of such completed portion of the works; or
 - C. the Authority fails to issue the Milestone Completion Certificate, within 7 (seven) days from the date of inspection of the completed portion of the works covered by the relevant Project Milestone;

then, such delay shall be treated as a Delay Event under Clause 14.7.

b) Tests on Completion

- i. Upon the complete construction and installation of the plant facilities, and issuance of its respective Milestone Completion Certificate, as specified in the clause 22.3 (c), by the Authority, the Concessionaire shall proceed to conduct the tests on completion in accordance with this Clause 16.1(b) and the Technical Specifications (the **Tests on Completion**).
- ii. The Concessionaire shall notify the Authority of the date(s) on which the Tests on Completion shall be conducted by the Concessionaire, at least 7 (seven) days prior to such date(s) (the **Tests on Completion Notice**).
- iii. The Concessionaire shall, on the dates specified in the Tests on Completion Notice, carry out the Tests on Completion under the supervision of the Authority to demonstrate that the Project Facilities have been constructed and installed in accordance with the Technical Specifications.
- iv. If, pursuant to the Tests on Completion, the Authority identifies any defects or deficiencies in the Project Facilities, then the Concessionaire shall remedy such defects or deficiencies identified by the Authority. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Tests on Completion demonstrate, to the Authority's satisfaction, that the Project Facilities have been constructed and installed in accordance with the Technical Specifications. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
- v. If the Authority is satisfied that the Project Facilities have been constructed and installed in accordance with the Technical Specifications, then the Authority shall issue a notice to the Concessionaire after the completion of the tests that the Trial Operations may be commenced (the **Trial Operations Commencement Notice**).

c) Trial Operations and Acceptance Tests

- i. Subject to Clause 16.1(c)(iv) below, within 15 days of issuance of the Trial Operations Commencement Notice, the Concessionaire shall commence the Trial Operations of the Processing Facility in accordance with the Technical Specifications, to determine whether the Processing Facility meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations for handling and processing of Acceptable Waste and production of the CBG Output in accordance with this Agreement. The Concessionaire shall undertake the Trial Operations of the Processing Facility, including any cascades and/or pipelines used for the storage and transportation of the CBG Output, for a period mentioned in clause 22.3 (c).
- ii. At least 07 (Seven) days prior to commencement of the Trial Operations, the Concessionaire shall notify the Authority of the schedule for supply of the quantity of Acceptable Waste required by it on a daily basis to undertake the Trial Operations of the Processing Facility. The Authority shall ensure that such quantities of Acceptable Waste is delivered to the Concessionaire at the Receipt Point during the Trial Operations to enable the Concessionaire to demonstrate that the Processing Facility meets the Technical Specifications and the KPIs. The Authority shall also ensure that during the period of Trial

- Operations, the SLF or an Alternate Disposal Location is available for scientific disposal of the Residual Inert Matter during such Trial Operations period.
- iii. Deleted.
 - iv. During the Trial Operations, the Authority's representative shall monitor the performance of the Processing Facility on a regular basis and shall have the right to test the compliance of the Processing Facility with the KPIs, Technical Specifications, Designs and Drawings, Applicable Laws, the Performance Standards and Applicable Permits.
 - v. Within 07 days of the issuance of the Milestone Completion Certificate for the Project Milestone corresponding to trial run, as specified in the clause 22.3 (c), the Concessionaire shall prepare and submit to the Authority, a schedule of acceptance tests to be carried out for the Processing Facility as a part of the Trial Operations to demonstrate that the Processing Facility is capable of achieving the KPIs (**Acceptance Tests Schedule**).
 - vi. The Authority may request the Concessionaire to vary the date(s) of the acceptance tests and the Concessionaire shall accommodate such request.
 - vii. The Concessionaire shall, on the dates specified in the Acceptance Tests Schedule, carry out the acceptance tests under the supervision of the Authority's representative to demonstrate that the Project Facilities are capable of achieving the KPIs and comply with the Technical Specifications.
 - viii. If the Authority is not satisfied with the results of the acceptance tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities identified by the Authority or revealed through the acceptance tests. The Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the acceptance tests demonstrate that the Processing Facility is capable of achieving the KPIs and the Authority is satisfied that the Project Facilities have been completed in accordance with Clause 14.6 and are safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
 - ix. It is clarified that no Liquidated Damages for failure to achieve the KPIs will be payable by the Concessionaire during the Trial Operations period.
 - x. After the expiry of 30 days from the date of commencement of Trial Operations or after successful completion of the acceptance tests, whichever is later, the Concessionaire shall issue a report to the Authority, stating that the Trial Operations have been successfully completed, along with details of compliance with the KPIs, performance of various components of the Project Facilities and details of defects identified during the Trial Operations and steps taken by the Concessionaire to rectify such defects.
 - xi. If, the Authority is satisfied that the Project Facilities are capable of meeting the KPIs on a consistent basis and are otherwise in compliance with the Technical Specifications, and capable of safe and reliable operations, then, the Authority shall issue the **Acceptance Certificate**.
 - xii. If, the Authority believes that the Project Facilities do not comply with the KPIs, Technical Specifications, or any other Conditions of the Agreement, then the Authority shall notify the Concessionaire and the Concessionaire shall rectify

any defects identified by the Authority and resubmit a report in accordance with Clause 16.1(c)(x). This process shall continue until the Authority issues an Acceptance Certificate in accordance with Clause 16.1(c)(xi) above.

xiii. If:

- A. if the Authority fails to supply sufficient quantities of Acceptable Waste for commencement or continuation of Trial Operations in accordance with Clause 16.1(c)(iii);
- B. the Authority fails to notify the Concessionaire of any defects in the Project Facilities within 15 (fifteen) days of receiving the Concessionaire's report under Clause 16.1(c)(x); or
- C. the Authority fails to issue the Acceptance Certificate within 15 (fifteen) days of receiving the Concessionaire's report under Clause 16.1(c)(xi);

then, such delay shall be treated as a Delay Event under Clause 14.7.

- xiv. The Concessionaire will not be entitled to any payment for conducting the Trial Operations and the acceptance tests, which shall be carried out solely at the cost and risk of the Concessionaire.

ARTICLE 17

17 ENTRY INTO COMMERCIAL SERVICE

17.1 Commercial Operations Date

- a) The Concessionaire shall, upon satisfaction of the conditions set out in this Clause 17.1(a) below, issue a notice to the Authority requesting the Authority to issue the COD Certificate (**COD Conditions Completion Notice**). The Authority shall issue the COD Certificate to the Concessionaire after receiving the COD Conditions Completion Notice from the Concessionaire, subject to fulfilment of the conditions set out below:
 - i. the Authority having issued the Acceptance Certificate in accordance with 16.1(c)(xi);
 - ii. the Concessionaire having obtained all Applicable Permits necessary for operation of the Processing Facility (including but not limited to all approvals for the safety, installation and energization of any electrical equipment and the consent to operate from the relevant Government Authorities);
 - iii. the Concessionaire having obtained adequate insurance for the Project Facilities in accordance with Article 25;
 - iv. the Concessionaire having paid, or the Authority having fully recovered any Delay Liquidated Damages due and payable to Authority in accordance with Clause 14.8;
 - v. the Concessionaire having submitted to the Authority the Scheduled Maintenance Programme for the first-year post COD; and
 - vi. the Concessionaire having submitted the O&M Security to the Authority.
- b) If the Authority fails to issue the COD Certificate to the Concessionaire within 15 (fifteen) days from the date of the issue of the COD Conditions Completion Notice, then such delay shall be treated as a Delay Event under Clause 14.7.
- c) The date on which the COD Certificate is issued to the Concessionaire shall be the COD of the Project Facilities.
- d) Within 60 (sixty) days from the COD of the Project Facilities, the Concessionaire shall:
 - i. notify the Authority of the actual capital cost of the Project; and
 - ii. provide 2 (two) hard copies and 1 (one) soft copy on a USB drive, of the complete set of "as-built" drawings for the Project Facilities to the Authority.

ARTICLE 18

18 OPERATIONS AND MAINTENANCE PERIOD

18.1 Commencement and Duration

The period for the operation and maintenance of the Project Facilities shall commence on and from the COD and shall continue until the expiry of the Concession Period, unless terminated earlier in accordance with Article 28.

18.2 O&M Plan

- a) At least 30 (thirty) days prior to the Scheduled COD, the Concessionaire shall prepare and submit a detailed O&M Plan for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, EMP, OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits. The O&M Plan shall specify the operation procedures and maintenance procedures (separately for each component of the Project Facilities). If there are any errors or deficiencies in the Technical Specifications, the O&M Plan shall take in account, address or rectify such errors or deficiencies.
- b) The Authority shall review and provide comments, if any, on the draft O&M Plan to the Concessionaire, or notify the Concessionaire of their approval of the draft O&M Plan. The Authority may require the Concessionaire to amend or modify the draft O&M Plan if the Authority identify any deficiencies, inaccuracies or shortcomings in the draft O&M Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Plan from the Authority, then the Concessionaire shall modify the draft O&M Plan to correct any shortcomings, inaccuracies or deficiencies identified by the Authority and/or address, in writing, the Authority's comments on the draft O&M Plan and submit the revised O&M Plan to the Authority for their approval. The process set out in this Clause 18.2(b) shall continue until the O&M Plan is approved by the Authority in accordance with this Clause 18.2(b). Provided that, if the Authority fail to approve the O&M Plan at least 10 (ten) days prior to the Scheduled COD, then the delay in approval of the O&M Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations in accordance with Clause 17.1. Provided further that, if the Authority revert with comments, modifications or suggestions on the draft O&M Plan after the COD, the Concessionaire shall be required to respond to or incorporate such modifications, at its own cost, in accordance with this Clause 18.2(c). The Concessionaire shall submit 03 hard copies and 1 (one) soft copy on a USB drive of the approved O&M Plan to the Authority.
- c) The Concessionaire shall revise the O&M Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.2(b) will apply as is to the approval of the revised plan.
- d) The Concessionaire shall undertake the O&M of the Project Facilities strictly in accordance with the approved O&M Plan (or where the O&M Plan has not been approved prior to the COD, in accordance with the draft O&M Plan submitted to the Authority until the O&M Plan is approved). The Concessionaire shall not deviate from or make any amendment to the approved O&M Plan without the prior written approval of the Authority.
- e) Notwithstanding any approval of the O&M Plan by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and

practicality of the O&M Plan. Subject to Clause 18.2(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Plan and complying with the requirements of this Clause 18.2.

18.3 Waste Acceptance and Rejection Plan

- a) At least 30 (thirty) days prior to the Scheduled COD, the Concessionaire shall prepare and submit a Waste Acceptance and Rejection Plan for the Processing Facility. The Waste Acceptance and Rejection Plan shall specify the procedures to be followed by the Parties in relation to the delivery, acceptance and rejection of waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point, including rejection of Prohibited Waste.
- b) The Waste Acceptance and Rejection Plan shall set out the methodology that the Concessionaire proposes to use when inspecting, testing, Segregating, processing and disposing of waste that is delivered at the Receipt Point. In particular, the Waste Acceptance, and Rejection Plan shall detail the manner in which the Mixed Waste that is delivered shall be Segregated such that any Biodegradable Waste that is capable of being processed at the Processing Facility is set aside for processing at the Processing Facility to produce the CBG Output, and any Residual Waste is separated, stored and disposed of in accordance with the requirements of this Agreement.
- c) The Authority shall review and provide comments, if any, on the draft Waste Acceptance and Rejection Plan to the Concessionaire or notify the Concessionaire of their approval of the draft Waste Acceptance and Rejection Plan. The Authority may require the Concessionaire to amend or modify the draft Waste Acceptance and Rejection Plan if the Authority identify any deficiencies, inaccuracies or shortcomings in the draft Waste Acceptance and Rejection Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Waste Acceptance and Rejection Plan from the Authority, then the Concessionaire shall modify the draft Waste Acceptance and Rejection Plan to correct any shortcomings, inaccuracies or deficiencies identified by the Authority and/or address, in writing, the Authority's comments on the draft Waste Acceptance and Rejection Plan and submit the revised Waste Acceptance and Rejection Plan to Authority for their approval. The process set out in this Clause 18.3(c) shall continue until the Waste Acceptance and Rejection Plan is approved by the Authority in accordance with this Clause 18.3(c). Provided that, if the Authority fail to approve the Waste Acceptance and Rejection Plan at least 10 (ten) days prior to the Scheduled COD, then the delay in approval of the Waste Acceptance and Rejection Plan shall not prevent the Concessionaire from obtaining the COD Certificate and commencing commercial operations in accordance with Clause 17.1. Provided further that, if the Authority revert with comments, modifications or suggestions on the draft Waste Acceptance and Rejection Plan after the COD, the Concessionaire shall be required to respond to or incorporate such modifications in accordance with this Clause 18.3(c), and any additional costs incurred by the Concessionaire in accepting such modifications shall be to the Authority's account. The Concessionaire shall submit 03 hard copies and 1 (one) soft copy on a USB drive of the approved Waste Acceptance and Rejection Plan to the Authority.
- d) The Concessionaire shall revise the Waste Acceptance and Rejection Plan as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 18.3(c) will apply as is to the approval of the revised plan.

- e) The Authority (or any C&T Contractors on behalf of the Authority) shall deliver waste to the Concessionaire at the Receipt Point strictly in accordance with the approved Waste Acceptance and Rejection Plan (or where the Waste Acceptance and Rejection Plan has not been approved prior to the COD, in accordance with the draft Waste Acceptance and Rejection Plan submitted to the Authority until the Waste Acceptance and Rejection Plan is approved). The Concessionaire shall also ensure that any acceptance and/or rejection of waste that is delivered at the Receipt Point, is done strictly in accordance with the approved Waste Acceptance and Rejection Plan (or where the Waste Acceptance and Rejection Plan has not been approved prior to the COD, in accordance with the draft Waste Acceptance and Rejection Plan submitted to the Authority until the Waste Acceptance and Rejection Plan is approved).
- f) Notwithstanding any approval of the Waste Acceptance and Rejection Plan by the Authority, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Waste Acceptance and Rejection Plan. Subject to Clause 18.3(c), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the Waste Acceptance and Rejection Plan and complying with the requirements of this Clause 18.3.

18.4 Concessionaire's rights and obligations during the O&M Period

- a) The Concessionaire shall operate and maintain the Project Facilities in a manner that:
 - i. results in the Project Facilities achieving the KPIs;
 - ii. is compliant with the O&M Standards, Applicable Law, the Performance Standards and the terms of Applicable Permits;
 - iii. ensures the Project Facilities are capable of handling and processing Acceptable Waste up to its Design Capacity on a daily basis, including handling, processing, Segregating, storing and disposing of Mixed Waste;
 - iv. is safe and reliable, subject to normal wear and tear of the Project Facilities;
 - v. ensures safe and reliable transportation of the Residual Inert Matter to the Delivery Point; and segregate, store, transport and sell / dispose any Residual Waste in confirmation with the applicable laws;
 - vi. ensures that there is no damage to or deterioration of the environment resulting from the operation of the Project Facilities;
 - vii. ensures that any effluent discharge from the operations of the Project Facilities do not mix with and pollute any surface water, ground water, stream, pond, or other water body/source The Concessionaire shall ensure that any effluent discharged from the Project Facilities shall be treated in accordance with Applicable Laws, the Performance Standards and Applicable Permits prior to the discharge of the effluent.;
 - viii. ensures that there is no leakage from the operations of the Project Facilities which could endanger the environment, persons or property at or about the Site;
 - ix. ensures that the Project Facilities comply with all emission control and effluent discharge norms specified under Applicable Law, failing which the Concessionaire shall be liable to pay any penalties and/or fines levied by any Government Authority under Applicable Law;
 - x. ensures safe and proper handling of any Prohibited Waste delivered at the Site;

- xii. is in compliance with the terms of the Offtake Agreements and Applicable Laws in relation to the production and delivery of the CBG Output at the delivery point agreed with the Offtaker;
 - xiii. ensures that the CBG Output meets the IS 16087: 2016 Standard at a minimum, or such higher standard as may be prescribed under the Offtake Agreement;
 - xiv. maintains the safety and security of personnel, material and property at the Site, in accordance with the approved EMP, OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits;
 - xv. is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Project Facilities, if applicable; and
 - xvi. ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EMP, OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits.
- b) During the O&M Period, the Concessionaire shall:
- i. ensure that it reasonably considers and acts upon the comments/suggestions made by the Authority's Representatives during any meetings of the Concessionaire with its Subcontractors;
 - ii. provide the Authority's Representatives with reasonable access to the Site during office hours to monitor and inspect the Project Facilities;
 - iii. ensure that all equipment, machinery, tools and other resources required to undertake the O&M of the Project Facilities are arranged for and take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not unreasonably hinder or cause excess interference with local traffic in the vicinity of the Site;
 - iv. install meters required for measuring the total volume of CBG produced by the Processing Facility, ensure that the meters installed are calibrated once every year during the O&M Period in accordance with Good Industry Practices and the Technical Specifications and bear all costs for installation, testing, calibration, maintenance, renewal and repair of meters installed;
 - v. develop and implement a safety and surveillance programme for the Project Facilities and adopt appropriate measures and safeguards for the security of the environment, life, and property at the Site.

18.5 Delivery of Acceptable Waste

- a) From the COD and until the expiry of the Concession Period or early termination of this Agreement, the Authority shall, or shall cause its C&T Contractors to, deliver Acceptable Waste to the Concessionaire for processing at the Processing Facility, in accordance with the Acceptable Waste Delivery Schedule notified by the Authority to the Concessionaire.
- b) The Acceptable Waste supplied by the Authority on any day shall not be less than 250 TPD with 20% variation in the quantity (the **Daily Guaranteed Acceptable Waste Quantity**).
- c) The Authority will make reasonable efforts to ensure that the supply of Daily Guaranteed Acceptable Waste Quantity remains consistent, with minimal variation in

feed quantity not exceeding 20%. However, in the event of significant deviations that impact the biological anaerobic process within the biogas digester, the time required to rectify the process will be considered, and the Authority shall be authorised to relax the liquidated damages on shortfall in production during that period on a case-to-case basis.

- d) Deleted
- e) The Concessionaire shall receive and accept all quantities of Acceptable Waste delivered by the Authority at the Receipt Point subject to the following:
 - i. on any day during the O&M Period, the Concessionaire shall not be required to accept any quantities of Acceptable Waste in excess of 120% (one hundred and twenty per cent) of the Design Capacity; and
 - ii. the aggregate quantity of Acceptable Waste required to be accepted by the Concessionaire during any consecutive 7 (seven) day period shall not exceed 2100 tons; and
 - iii. the Concessionaire shall not accept any waste, including any Acceptable Waste, which is not delivered by the Authority, or any C&T Contractors appointed by Authority, provided that, the Concessionaire shall have the right to accept Supplemental Waste in accordance with Clause 18.5(g).
- f) The Authority shall ensure that the waste delivered to the Concessionaire at the Receipt Point on any day of the O&M Period does not include Prohibited Waste.
- g) If the Acceptable Waste delivered by the Authority is less than the Daily Guaranteed Acceptable Waste Quantity for any 7 (seven) days or more in a month during the O&M Period, the Concessionaire shall have the right to issue a notice to the Authority (the **Supplemental Waste Notice**) seeking the Authority's consent for the procurement of supplemental waste from third parties that the Concessionaire may process at the Project Facilities (the **Supplemental Waste**) on any day during the O&M Period. The Authority shall respond to the Concessionaire's notice and either approve or reject the Concessionaire's request to procure Supplemental Waste. If the Concessionaire's request under the Supplemental Waste Notice is approved, the Concessionaire shall have the right to procure, accept and process Supplemental Waste at the Project Facilities, subject to the following conditions:
 - i. the quantity of Supplemental Waste procured by the Concessionaire on any day during the O&M Period shall not exceed the Shortfall Quantity on any day in the preceding month during the O&M Period;
 - ii. any approval for procuring Supplemental Waste shall expire on the date on which the Authority reasonably demonstrates, over a consecutive period of 2 (two) months during the O&M Period, that it has supplied Acceptable Waste equal to the Daily Guaranteed Acceptable Waste Quantity to the Concessionaire;
 - iii. the Supplemental Waste is procured at no additional cost to the Authority;
 - iv. procuring, accepting, and processing of the Supplemental Waste does not, in any manner, hamper, impede or prevent the Concessionaire from complying with its obligations to receive, accept and process all quantities of Acceptable Waste delivered by the Authority in accordance with the terms of this Agreement;

- v. procuring, accepting, and processing of the Supplemental Waste by the Concessionaire shall be at its own risk and cost and shall not relieve the Concessionaire from complying with any of its obligations under the Agreement (including its obligations to comply with the KPIs); and
 - vi. the Concessionaire shall always prioritize accepting and processing of the Acceptable Waste delivered by the Authority over any Supplemental Waste procured by the Concessionaire at all times during the O&M Period.
- h) If any approval for procuring Supplemental Waste expires in accordance with Clause 18.5(g)(ii) and the Authority subsequently delivers Acceptable Waste less than the Daily Guaranteed Acceptable Waste Quantity for any 7 (seven) days or more in a month during the O&M Period, the Concessionaire shall have the right to issue another Supplemental Waste Notice to the Authority and the process set out in Clause 18.5(g) shall apply in such a situation.

18.6 Weighment, Inspection, Acceptance, and Rejection of Waste

- a) As part of the Associated Infrastructure, the Concessionaire shall provide at least one weighbridge (**Weighbridge**) in accordance with the Technical Specifications, to weigh the waste delivered by the Authority (or any C&T Contractors on behalf of the Authority) at the Receipt Point and the Residual Inert Matter generated from the operations of the Processing Facility. The Receipt Point shall be equipped with adequate facilities for video surveillance, a office room, electronic display unit, and Weighbridge shall be duly calibrated as per BIS norms and duly certified by the Weights and Measures Department.
- b) The Concessionaire shall weigh each truck carrying a consignment of waste to the Site at the Weighbridges as follows:
 - i. Each truck entering the Site must obtain an identification number from the Concessionaire's personnel posted at the gate.
 - ii. At the Weighbridges, the weight of the truck loaded with the consignment of waste will be taken and the Concessionaire shall record the following details (to the extent applicable) in the format to be approved by the Authority as part of the O&M Plan and enter such information into the electronic database:
 - A. date of entry into the Site;
 - B. registration number of the truck;
 - C. time of entry into the Site;
 - D. gross weight of the truck;
 - E. tare weight of the truck (from the electronic database);
 - F. weight of the waste received; and
 - G. zone/circle/ward from which the waste has been collected and delivered to the Concessionaire.
- c) Visual Inspection prior to Unloading
 - i. Once a truck carrying a consignment of waste has been weighed at the Weighbridge, the Concessionaire shall undertake a visual inspection of the consignment of waste on the truck to determine if any Prohibited Waste has been delivered.

- ii. If, upon such visual inspection of a consignment of waste prior to unloading, the Concessionaire determines that such consignment includes any Prohibited Waste, then the Concessionaire may refuse to accept such consignment and proceed to reject the consignment without allowing it to be unloaded. Such refusal shall be subjected to the confirmation from the Authority representative on site.

d) Inspection after Unloading

- i. Once a truck carrying a consignment of waste has been weighed at the Weighbridge, and the Concessionaire has completed its visual inspection prior to unloading, then, subject to the Concessionaire's right to reject the entire consignment of waste in accordance with Clause 18.6(c)(ii) above, the Concessionaire shall unload the waste for further inspection.
- ii. If pursuant to a further inspection of a consignment of waste after unloading, the Concessionaire determines that such consignment includes any Prohibited Waste which is greater than 5% (five per cent) of the total quantity (by weight) of waste in such consignment, then the Concessionaire shall promptly notify the Authority about the presence of such prohibited waste in the consignment, along with details of the truck carrying the consignment of waste, details of who supplied the consignment of waste and such other details as the Authority may require
- iii. The Concessionaire shall physically set aside such prohibited waste, for inspection by the Authority's representative, if required by the Authority. The Authority's representative may inspect such prohibited waste before the Concessionaire remove such waste from the project Site.
- iv. The Concessionaire shall remove such consignment of waste from the Site and transport to the designated place as suggested by the Authority. The costs associated with the removal and transportation of such waste from the Site, including additional costs to load the consignment of waste onto trucks, shall be borne by the Concessionaire.
- v. In handling any Prohibited Waste that has been delivered to the Site, the Concessionaire shall comply with the Waste Acceptance and Rejection Plan, the EMP, the OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits.

e) Calculation of the Acceptable Waste Delivered

- i. After inspection and unloading of the waste, the Concessionaire shall weigh the empty truck, if the Authority may require to do so. The Concessionaire shall record the weight of the empty truck and the time of exit of the truck in the format to be approved by the Authority as part of the Waste Acceptance and Rejection Plan.
- ii. The difference between the weight of the truck carrying the waste, as recorded at the time of entry of the truck into the Site, and the weight of the empty truck, will be treated as the weight/volume of the total waste unloaded by a truck at the Receipt Point (the **Total Unloaded Waste**).
- iii. The aggregate of the Total Unloaded Waste quantities in a day will be treated as the weight/volume of Acceptable Waste actually received by the

Concessionaire for processing at the Processing Facility on such day (the **Daily Accepted Waste Quantity**).

- iv. The Daily Accepted Waste Quantity will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance and Rejection Plan. The daily weight sheets must be certified by the Authority's Representative present at the project site.
- v. If the Weighbridges are unavailable for any reason, then the Concessionaire has to make alternate arrangements for weighing of trucks at its own cost and in a manner acceptable to the Authority. If the Concessionaire is unable to make acceptable alternate arrangements to weigh the trucks carrying the waste, then the following formula will be used to estimate the quantity of waste delivered to the Concessionaire on the days that the weighbridges are unavailable:

$$W = W_{AVG} * N$$

Where,

W = weight of the Acceptable Waste delivered to the Concessionaire at the Receipt Point during each day for the period when the Weighbridges are not available;

W_{AVG} = the average Daily Accepted Waste Quantity, per truck delivered at the Receipt Point over 30 (thirty) days immediately preceding the date on which the Weighbridges were first unavailable; and

N = the number of truckloads of consignment of waste, received by the Concessionaire at the Receipt Point during the period that the Weighbridges are not available.

18.7 Deleted

18.8 Segregation of Mixed Waste

- a) The Concessionaire shall be responsible for Segregation of the Mixed Waste in accordance with the Waste Acceptance and Rejection Plan.
- b) Any Biodegradable Waste that is Segregated from the Mixed Waste will be processed at the Processing Facility as if such waste was Acceptable Waste and any Recyclable Materials recovered from the Segregation of the Mixed Waste may be sold by the Concessionaire in accordance with Clause 18.10.
- c) Any Residual Waste (including any Non-biodegradable Waste) left after Segregation of the Mixed Waste, and that cannot be processed at the Project Facilities or be sold as Recyclable Materials.

18.9 Transportation of Residual Inert Matter and Residual Waste

- a) The Concessionaire shall procure the trucks and other vehicles required for the transportation of the Residual Inert Matter to the Delivery Point and transportation of Residual Waste and shall ensure that such trucks and vehicles are operated and maintained in a manner which poses no risk of harm or damage to the environment, life or property in the course of transportation to the relevant disposal or delivery location. The Concessionaire shall be required to transport and dispose of inert waste

at any disposal site designated by the Authority from time to time, within or outside MRMC jurisdiction, as per the instructions of the Authority.

- b) The Concessionaire shall load the Residual Inert Matter and transportation of Residual Waste onto trucks and have the weight of each truck taken at the Weighbridges. The Concessionaire shall record the following details with respect to each truck which is used to transport the Residual Inert Matter and/or any Residual Waste:
 - i. date of exit from the Site;
 - ii. registration number of the truck;
 - iii. time of exit from the Site; and
 - iv. total weight of the truck
- c) The details specified in Clause 18.9(b), will be recorded in a daily weight sheet, in the format approved by the Authority as part of the Waste Acceptance and Rejection Plan. The daily weight sheets must be certified by the Authority's representative present at the project site.
- d) The Concessionaire shall be responsible for safe and reliable transportation of the Residual Inert Matter to the Delivery Point and transportation of Residual Waste and ensure that there is no spillage or leakage which could cause public nuisance or otherwise endanger environment, life or property.
- e) From the COD and until the expiry of the Concession Period, the Authority shall cause the SLF or the Alternate Disposal Location to accept the Residual Inert Matter for disposal.
- f) If at any time during the O&M Period, the SLF or the Alternate Disposal Location is unavailable to accept the Residual Inert Matter, and the Authority instructs the Concessionaire to deliver the Residual Inert Matter to an alternate location, then, the Concessionaire shall be obligated to transport the Residual Inert Matter to the alternate location.

18.10 Sale of CBG Output, By-Products and Recyclable Materials

- a) Sale of CBG Output
 - i. The Concessionaire shall be free to store, use, appropriate, market and sell the CBG, compost / fertiliser, recyclables, non-recycleables, RDF, or any other by-products, and retain the revenue earned from the selling of such products / by-products. The Concessionaire shall not be required to share revenue generated from the sale of such products / by-products with the Authority..
 - ii. The Concessionaire may sell the CBG Output, at such price and to such Person as it deems fit, and the proceeds of such sale shall be to the account of the Concessionaire.
 - iii. The Concessionaire shall enter into an Offtake Agreement with any Offtaker of the CBG Output and the CBG shall be delivered at the delivery point agreed between the Concessionaire and the Offtaker.
 - iv. The Concessionaire shall be responsible for the transportation and delivery of the CBG to any Offtaker at its own cost, including for the cost of laying pipelines for the transportation of CBG and/or for the cost of arranging cylinders and cascades for transportation of CBG.
 - v. The Concessionaire shall ensure that any cylinder cascades, trucks, pipelines or other appropriate vehicles and / or infrastructure for the transport of the CBG

Output, are deployed and maintained in good working condition and designed, operated and maintained in a manner which poses no risk of harm or damage to the environment, life or property in the course of transportation to the relevant delivery location.

- vi. The Concessionaire shall maintain records and submit reports to the Concessionaire of the quantum of the CBG Output sold and delivered on a monthly basis. The Authority's Representative shall have the right to, at any time during the O&M Period, inspect the records maintained by the Concessionaire in order to verify the quantum of CBG sold and delivered to the Offtakers.

b) Sale of Recyclable Materials, RDF and By-Products

- i. The Concessionaire shall, as a part of the Associated Infrastructure, create an area of storage at the Site for the By-Products and any material that is recyclable (**Recyclable Material**).
- ii. The By-Products, RDF and the Recyclable Material shall be handled safely and stored by the Concessionaire in accordance with the EMP, OHS Plan, Applicable Laws, the Performance Standards and Applicable Permits.
- iii. The Concessionaire shall maintain records and submit reports to the Authority of the quantum of By-Products generated from the Project Facilities and the Recyclable Material recovered on a monthly basis. The Authority's Representative shall have the right to, at any time during the O&M Period, inspect the records maintained by the Concessionaire in order to verify the quantum of By-Products generated and Recyclable Material recovered.
- iv. The ownership of the By-Products and the Recyclable Material will vest with the Concessionaire.
- v. The Concessionaire shall be free to sell or otherwise dispose of the By-Product and /or the Recyclable Material, at such price and to such person as it deems fit, and the proceeds of such sale shall be to the account of the Concessionaire.
- vi. The Concessionaire shall arrange for transportation of the By-Products and the Recyclable Material from the Site, at its own cost.

18.11 Utilities

- a) The Concessionaire shall maintain at its cost, all utilities necessary for undertaking the O&M of the Project Facilities, including all power connections, lighting facilities, telephone connections, internet connections, etc. at the Site. The Authority shall support the concessionaire in provision of any physical infrastructure required to enable the supply of electricity and water to the Project Site.
- b) The Concessionaire shall be responsible for arranging for adequate supply of water for use in the operation of the Processing Facility during the O&M Period. The Authority shall provide reasonable assistance to the Concessionaire in obtaining water supply for the Processing Facility. The charges for any water supplied to the Concessionaire for utilization at the Processing Facility shall be as per the tariff to be notified by MRMC or concerned authority, as the case may be, and the Concessionaire shall be responsible to pay all such charges directly to MRMC / the concerned authority.
- c) The Concessionaire shall be responsible for arranging for adequate supply of power for use in the operation of the Processing Facility during the O&M Period. The Authority shall provide reasonable assistance to the Concessionaire in obtaining the power

supply for the Processing Facility. The charges for electricity connection and the charges for any power supplied to the Concessionaire for utilization at the Processing Facility shall be as per the tariff to be notified by relevant entity for power supply and the Concessionaire shall be responsible to pay all such charges directly to relevant entity for power supply.

- d) Notwithstanding anything contained in this Clause 18.11, if relevant entity for water supply and power supply, fails to supply adequate quantities of water and power, respectively, to the Concessionaire for the operation of the Processing Facility, the Concessionaire shall be responsible for arranging an alternate source of water or power (as applicable) in order to ensure the continuous operations of the Processing Facility at its own cost..

18.12 Design Capacity Utilization

- a) During each day of the O&M Period, the Concessionaire shall ensure that the Processing Facility can accept and process Acceptable Waste up to its Design Capacity.
- b) The Concessionaire shall notify the Authority as soon as it becomes aware that the quantity of Acceptable Waste received at the Receipt Point is more than the quantities of Acceptable Waste that the Concessionaire is required to accept in accordance with Clause 18.5(e).
- c) If the quantity of Acceptable Waste received at the Receipt Point is more than the quantities of Acceptable Waste that the Concessionaire is required to accept in accordance with Clause 18.5(e), as a result of which the Concessionaire is unable to accept the Acceptable Waste at the Processing Facility, then such a situation shall be treated as a **Forced Unavailability** for which the Concessionaire shall not be liable, subject to the Concessionaire having notified the Authority in accordance with Clause 18.12(b) above. In such cases, the Authority shall (or shall cause the C&T Contractors to) remove any excess waste from the Site within 24 hours of receiving a notice from the Concessionaire. The Authority has the right to require its Representative to verify the capacity utilization of the Processing Facility at any time during the O&M Period.

18.13 O&M Standards and Maintenance and Repair of the Project Facilities

- a) During the O&M Period, the Concessionaire shall operate and maintain the Project Facilities and repair any damage to the Project Facilities either by itself, or through an approved Subcontractor, such that:
 - i. the Project Facilities shall be operated and maintained in accordance with the O&M Plan, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice, the recommendations of the technology providers and the maintenance standards provided by the original equipment manufacturers;
 - ii. the Project Facilities and all equipment, components and parts are in good working condition (subject only to wear and tear and Force Majeure);
 - iii. the Project Facilities are capable of achieving their useful economic life in accordance with the Designs and Drawings;
 - iv. any equipment, components or parts of the Project Facilities, including the Weighbridges, digesters etc., that are damaged or worn out or, in the Concessionaire's judgement, no longer practicable to repair as a result of normal wear and tear shall be replaced by the Concessionaire at its cost;

- v. the Project Facilities shall be subject to Scheduled Maintenance in accordance with the Scheduled Maintenance Programme; and
 - vi. the Project Facilities shall be capable of meeting the KPIs,
(the O&M Standards).
- b) For the first year of the O&M Period, the Concessionaire shall, at least 1 (one) month before the Scheduled COD, submit to the Authority its scheduled maintenance programme for the Processing Facility, specifying the Scheduled Maintenance periods for the Processing Facility and the impact of such Scheduled Maintenance periods on the Availability of the Processing Facility (**Scheduled Maintenance Programme**). For every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 (one) month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs.
- c) The Authority shall notify the Concessionaire of its approval of such Scheduled Maintenance Programme.
- d) If the Authority does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the availability of the Processing Facility to accept and process the Acceptable Waste, the Authority shall advise the Concessionaire on when any Scheduled Maintenance can be rescheduled or how its impact on the availability of the Processing Facility may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If the Authority fails to object to any Scheduled Maintenance or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 18.13, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 (sixty) days' prior written notice to the Authority. The Authority shall respond to such request and shall not unreasonably withhold its permission for such re-scheduling.

- e) Within 5 (five) days of any re-scheduling of a Scheduled Maintenance in accordance with Clause 18.13(d) above, the Concessionaire shall provide to the Authority, the amended Scheduled Maintenance Programme, which shall then be the "**Scheduled Maintenance Programme**".
- f) If at any time during the O&M Period, the Processing Facility is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the Processing Facility to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- g) If at any time during the O&M Period, the Processing Facility is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out at Clause 26.7 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged Processing Facility to the same condition that it was in before the occurrence of such

Total Casualty at the concessionaire's own risk and cost. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

18.14 O&M Personnel

- a) The Concessionaire shall engage (either directly or through an approved Subcontractor) adequate number of suitably skilled and adequately qualified (in accordance with their respective job profile) personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 18.
- b) The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable labour laws.
- c) Subject to compliance with the Applicable Laws and the Performance Standards, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.
- d) The Authority is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify the Authority against all losses, claims, costs and damages that the Authority may suffer due to the Concessionaire's or any of its Subcontractor's failure to comply with applicable labour laws.

18.15 Subcontracting

- a) In accordance with the Subcontractor management plan prepared by the Concessionaire and approved by Authority under Clause 14.5(a), the Concessionaire may enter into Subcontracts to perform any of its O&M obligations, provided that a Subcontract of a value above Rs. 2,00,00,000 (Rupees Two Crore) will be executed by the Concessionaire only with the prior approval of Authority.
- b) The provisions of Clause 14.5 shall apply to all Subcontracts executed by the Concessionaire for any O&M aspects of its Scope of Work.

ARTICLE 19

19 SAFETY REQUIREMENTS

19.1 Safety Requirements

The Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Facilities, and shall comply with the safety requirements set out in this Article 19 and applicable laws.

19.2 Guiding Principles

- a) The Safety Requirements aim at minimising threat of injuries, loss of human life and damage to property resulting from accidents on, or in relation to the construction, operation and maintenance of the Project Facilities, irrespective of the person(s) at fault.
- b) The Safety Requirements shall apply to all phases of construction, operation and maintenance of the Project Facilities with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.

19.3 Obligations of the Concessionaire

- a) The Concessionaire shall abide by the following to ensure safety of Project Facilities, human life and property:
 - i. instructions issued by the Authority;
 - ii. Applicable Laws, the Performance Standards and Applicable Permits;
 - iii. provisions of this Agreement;
 - iv. relevant standards/guidelines contained in internationally accepted codes; and
 - v. Good Industry Practice.
- b) The Concessionaire shall impart safety training to its employees and shall at all times be responsible for observance of safety procedures by the Concessionaire Related Parties.
- c) The Concessionaire shall be responsible for undertaking all the measures under its control to ensure the safety and security of the Project Facilities.
- d) The Concessionaire agrees that the Authority shall be entitled to inspect the Project Facilities to verify adherence to Safety Requirements and the Concessionaire shall be obliged to facilitate such inspection and implement the corrective measures identified in such inspection.

19.4 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of Work.

19.5 Liability for Accidents

The Authority shall not bear any responsibility for any casualty, death, or injury to any individual arising from accidents during the execution of the project or during O&M period of the Project Facility. The Concessionaire shall be solely and fully responsible for any such incidents, including all associated liabilities and claims. Furthermore, the Concessionaire

agrees to indemnify and hold the Authority harmless against any claims, damages, or liabilities arising out of or in connection with such accidents.

ARTICLE 20

20 MONITORING OF OPERATION AND MAINTENANCE

20.1 Monitoring and Reporting

a) Environmental Monitoring

- i. The Concessionaire shall operate the Project Facilities and process the Acceptable Waste at the Processing Facility strictly in accordance with the O&M Plan, EMP, the Waste Acceptance and Rejection Plan, OHS Plan, SWM Rules, other Applicable Laws, the Performance Standards and Applicable Permits and in a manner that causes no damage to the environment, including any air pollution, odours, pests, insects, litter, soil or ground water contamination.
- ii. The Concessionaire shall ensure that any effluent discharge from the Project Facilities shall be treated in accordance with Applicable Laws, the Performance Standards and Applicable Permits prior to the discharge of the effluent. If an incident occurs at the Site, as result of which there is any untreated effluent discharged on the Site or Adjoining Property, the Concessionaire shall ensure proper collection, clean-up and disposal of any such untreated effluent discharged in accordance with the EMP and O&M Plan.
- iii. The Concessionaire shall carry out environmental monitoring of the Processing Facility in accordance with the EMP, O&M Plan, Applicable Laws and the Performance Standards. The monitoring schedule and parameters will be set out in the EMP.
- iv. For the purposes of the continuous environmental monitoring of the Processing Facility, the Concessionaire shall install and maintain an online monitoring system as part of the Project Facilities, in accordance with the Technical Specifications, the Performance Standards and Applicable Laws to monitor compliance with the KPIs.

b) Records and Reporting Requirements

The Concessionaire shall deliver to the Authority the following within the specified timelines:

- i. no later than 7 (seven) days after the close of each month, a monthly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the O&M Plan, O&M Standards, EMP and the OHS Plan and identify and state in reasonable detail the defects and deficiencies that require rectification, and shall give such other relevant information as may be required by the Authority;
- ii. reports relating to any activity, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Site or the Project Facilities or any Adjoining Property, and any action taken to mitigate the effect of such incident as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;
- iii. reports on any critical breakdowns or failures in the Project Facilities, including any of the Weighbridges, within 12 (twelve) hours of such occurrence;

- iv. reports on accidents or other incidents in relation to the O&M personnel or any third party, including any non-compliance with the EMP or the OHS Plan, along with the actions taken to minimise recurrence, within 72 (seventy-two) hours of such occurrence;
- v. daily weight sheets prepared in the format approved by the Authority as part of the O&M Plan/Waste Acceptance and Rejection Plan, recording the details specified in Clause 18.6 on the next day through email (i.e., on or before 12:00 hours of next day);
- vi. daily report on the volume of CBG Output produced from the Processing Facility, on the next day (i.e., on or before 12:00 hours of next day);
- vii. monthly report compiling the data collected from the environmental monitoring system, on or before the 7th (seventh) day of the following month;
- viii. monthly report on compliance with the KPIs, details of sale of the By-Products and Recyclable Materials, and details of any Emergency during the relevant month, on or before the 7th (seventh) day of the following month. The monthly progress report must be certified by the Authority's representative on project site;
- ix. copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws, the terms of this Agreement or Applicable Permits, within 2 (two) days of receipt of such notice from or submission of replies to the relevant Government Authority; and
- x. reports on any material litigation, to which the Concessionaire is a party, and any adverse orders or judgments passed by any Government Authority that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

20.2 Inspection

- a) The Authority's Representative shall inspect the Project Facilities as per requirement. It shall notify the Concessionaire the defects or deficiencies, if any, observed during such inspection with particular reference to the O&M Plan, O&M Standards, KPIs, EMP and the OHS Plan.
- b) The representative of the Engineering department of the Authority shall inspect the civil, electrical and mechanical components of the Processing facility during the O&M period at regular interval as per requirement.

20.3 Tests

- a) For determining that the Project Facilities conforms to the O&M Plan and the O&M Standards, the Authority's Representative shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority's Representative and furnish the results of such tests to the Authority. The costs incurred on the Tests shall be borne solely by the Concessionaire.

20.4 Remedial Measures

- a) The Concessionaire shall repair or rectify the defects or deficiencies, if any, notified by the Authority or in the test results referred to in Clause 20.3 and furnish a report to the

Authority within 15 (fifteen) days of receiving such information or the test results, as the case may be.

- b) The Authority's Representative shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine if such remedial measures have brought the Project Facilities into compliance with the O&M Plan and the O&M Standards and the procedure set forth in this Clause 20.4 shall be repeated until the Project Facilities conforms to the O&M Plan and the O&M Standards.

ARTICLE 21

21 KEY PERFORMANCE INDICATORS & LIQUIDATED DAMAGES

During the O&M Period, the Concessionaire shall comply with the Key Performance Indicators ("KPIs") set out in this Article. The KPIs shall be monitored monthly unless otherwise specified in this Agreement. The Concessionaire's failure to meet KPIs shall attract Liquidated Damages in accordance with this Agreement. The KPIs shall be measured using data recorded at the Project Site and certified by the Authority or its authorised representative.

21.1 Throughput Guarantee

- a) The Concessionaire shall ensure that it accepts all quantities of Acceptable Waste delivered by the Authority at the Receipt Point, subject to Clause 18.5(e). On any day during the O&M Period, if the Concessionaire is unable to accept quantities of Acceptable Waste equivalent to 250 TPD (**the Throughput Guarantee**), then the Concessionaire shall be liable to pay **Throughput Liquidated Damages** calculated in accordance with following Clause 21.1 (a) (ii).
- b) If the Concessionaire fails to accept the full quantity of Acceptable Waste equivalent to 250 TPD (the Throughput Guarantee) on any day during the O&M Period, the Concessionaire shall be liable to pay Throughput Liquidated Damages at the rate of INR 800 (Indian Rupees Eight Hundred) per ton of shortfall quantity. For example, if the actual quantity of waste accepted by Concessionaire is 200Tons on any day during the first year of O&M period, then the shortfall quantity shall be 250 Ton – 200 Ton = 50 Ton and the Throughput Liquidated Damages shall be INR 750 * 50 Tons = INR 37,500. The Throughput Liquidated Damages rate shall be subject to an annual increment of 5% (five percent), commencing from the second year of the O&M Period and continuing for each subsequent year, to account for inflation and escalation. The Liquidated Damages accrued under this clause shall be calculated on a daily basis and aggregated on a monthly basis for recovery from the Concessionaire.
- c) The Concessionaire shall be exempt from achieving the Throughput Guarantee in case of the following:
 - i. a Forced Unavailability; or
 - ii. an Emergency affecting the Project Facilities, which is not attributable to the Concessionaire.
 - iii. Scheduled maintenance of the plant

21.2 Residual Inert Matter Guarantee

- a) The Concessionaire shall ensure that the Residual Inert Matter that is generated from the Processing Facility on any day during the O&M Period shall not exceed in aggregate 20% (twenty percent) of the Daily Accepted Waste Quantity (**Residual Inert Matter Guarantee**). If the Concessionaire is unable to achieve the Residual Inert Matter Guarantee on any day of the O&M Period, then the Concessionaire shall be liable to pay **Residual Inert Matter Liquidated Damages** calculated in with following Clause 21.1 (b) (ii).
- d) If the Concessionaire fails to meet the Residual Inert Matter Guarantee, such that the Residual Inert Matter generated from the Processing Facility exceeds 20% (twenty

percent) of the Daily Accepted Waste Quantity on any day during the O&M Period, the Concessionaire shall be liable to pay Liquidated Damages at the rate of INR 800 (Indian Rupees Eight Hundred) per ton of excess Residual Inert Matter generated. This rate of Liquidated Damages shall be subject to an annual increment of 5% (five percent), commencing from the second year of the O&M Period and continuing for each subsequent year, to account for inflation and escalation. The Liquidated Damages accrued under this clause shall be calculated on a daily basis and aggregated on a monthly basis for recovery from the Concessionaire.

21.3 CBG Production Guarantee

- a) As the CBG plant is proposed to be designed to produce 3 ton per day of CBG from 100 tons per day of biodegradable waste, the daily production of 3 ton of CBG is expected under normal operating conditions. Over a 30-day period, production shall be assessed against a minimum target equivalent to 50% of the expected production, which is **45 tons in a month** (calculated as 30 days x 3 ton/day x 50%). (**CBG Production Guarantee**)
- b) If a shortfall in production is identified, a Liquidated Damages shall be imposed based on the shortfall quantity and the prevailing selling rate of gas (**CBG Production Liquidated Damage**). The Liquidated Damages accrued under this clause shall be calculated on a daily basis and aggregated on a monthly basis for recovery from the Concessionaire.

Example: Minimum expected production in 30 days (a) = 45,000 kg
 Actual production in 30 days (b) = 40,000 kg
 Assumed gas price for explanation (c) = Rs. 73/kg
 Penalty in 30 days = (a - b) * (c)
 = (45,000 – 40,000) * 73
 = Rs. 3,65,000/-

- c) In case of any breakdown of the plant resulting in decreased gas production, the Concessionaire must ensure the system is made operational within two (2) working days. Failure to do so will result in a Liquidated Damage, calculated based on the minimum targeted production per day, at the unit rate at which the contractor sells CBG to CGD or CNG stations, for each day of non-production beyond the stipulated timeframe.
- d) The Authority shall endeavour to ensure consistent supply of Acceptable waste, with any variations in feed quantity not exceeding 20%. In cases where significant deviations in feed quality or quantity disrupt the biological anaerobic digestion process, the Authority shall consider the time required to stabilize the process. During such periods, the Authority reserves the right to relax the Liquidated Damages for production shortfalls on a case-by-case basis.
- e) In the event of scheduled maintenance activities for the digester, the Authority reserves the right to waive the penalty for production shortfalls during the maintenance period, as determined from time to time.

21.4 Discharge Guarantee (Near Zero Liquid Discharge - NZLD)

- a) The Concessionaire shall ensure that the processing facility is operated as a near zero liquid discharge facility throughout the O&M Period (**Discharge Guarantee**). The Concessionaire shall make all reasonable efforts to reuse and recycle the treated

effluent within the facility, and any discharge outside the project premises shall be limited, controlled, and strictly in compliance with applicable CPCB/GPCB norms and permissions.

- b) Any liquid discharge outside the project premises, other than discharge expressly permitted by MRMC, shall be treated as a non-compliance. For every such incident of liquid discharge from the MRF Facility, the Concessionaire shall be liable to pay the Discharge Liquidated Damages of INR 50,000 (Indian Rupees Fifty Thousand) per incident.
- c) The Discharge Liquidated Damages shall be calculated, and payable by the Concessionaire, for each month of the O&M Period, if applicable.

21.5 Environmental Compliance Guarantee

a) Environmental Compliance Obligation

(i) The Concessionaire hereby irrevocably undertakes and guarantees that, throughout the O&M Period, the Project Facilities shall at all times be operated, maintained and managed in full compliance with all Applicable Laws, environmental regulations, rules, notifications, guidelines and standards prescribed by competent statutory authorities, including but not limited to the Gujarat Pollution Control Board (GPCB) and / or Central Pollution Control Board (CPCB).

(ii) The Concessionaire shall ensure that no act, omission or operational deficiency at the Project Facilities results in environmental degradation, public nuisance, contamination, or regulatory non-compliance.

b) Statutory Permits and Approvals

The Concessionaire shall:

- (i) Obtain and maintain valid Consent to Operate (CTO) and any other environmental approvals required for the Project;
- (ii) Ensure continuous compliance with all conditions stipulated in such approvals;
- (iii) Promptly renew such approvals prior to their expiry;
- (iv) Immediately notify the Authority of any notice, direction, show-cause notice, warning or regulatory action issued by any statutory authority.

c) Operational Environmental Standards

The Concessionaire shall ensure that:

- (i) Air emissions, dust levels and particulate matter remain within permissible limits prescribed by law;
- (ii) Noise levels generated by operations remain within statutory thresholds;
- (iii) No untreated effluent or leachate is discharged into the environment;
- (iv) Hazardous or Prohibited Waste is handled, transported and disposed of strictly in accordance with Applicable Law;

d) Monitoring and Reporting

The Concessionaire shall:

- (i) Submit environmental compliance reports to the Authority as per the requirement;
- (ii) Permit inspection and verification by the Authority or regulatory bodies;
- (iii) Rectify any identified environmental non-compliance within the time specified by the Authority.

Approval, inspection or review by the Authority shall not relieve the Concessionaire of its environmental obligations.

e) Environmental Liquidated Damages

In the event of environmental non-compliance attributable to the Concessionaire:

- (i) Minor non-compliance capable of rectification within seven (7) days shall attract Liquidated Damages of INR 50,000 per instance;
- (ii) Repeated minor non-compliance (three or more instances in a calendar quarter) shall attract Liquidated Damages of INR 2,00,000;
- (iii) Major environmental violation, including issuance of closure notice or regulatory penalty by competent authority, shall attract Liquidated Damages of INR 5,00,000 per occurrence, in addition to suspension of OPEX payments until compliance is restored.

Payment of such Liquidated Damages shall not prejudice the Authority's right to invoke the O&M Security or terminate this Agreement in the event of persistent breach.

f) "Minor Environmental Non-Compliance" shall mean any deviation from Applicable Environmental Standards which:

- (i) Does not result in material environmental damage or public health risk;
- (ii) Does not attract issuance of a statutory show-cause notice, closure direction, or penalty by a competent authority;
- (iii) Is capable of being rectified within seven (7) days of identification; and
- (iv) Does not involve discharge of untreated effluent, hazardous material leakage, or illegal dumping.

Examples (illustrative only):

- Temporary dust suppression failure
- Minor exceedance of noise limit during peak hours
- Incomplete record keeping
- Delay in submission of environmental report

g) "Major Environmental Non-Compliance" shall mean any environmental violation which:

- (i) Results in material environmental degradation or public nuisance;

- (ii) Leads to issuance of show-cause notice, closure direction, suspension order or monetary penalty by GPCB/SPCB or other competent authority;
- (iii) Involves discharge of untreated effluent, hazardous waste mishandling, illegal dumping, or contamination of soil, air or water;
- (iv) Persists beyond seven (7) days from notice of rectification;
- (v) Is repeated three (3) times within a Financial Year.

Examples (illustrative only):

- Closure notice by Pollution Control Board
- Fire incident due to improper storage
- Illegal disposal of residual waste

h) Persistent Non-Compliance

Any of the following shall constitute a Concessionaire Event of Default:

- (i) Failure to maintain valid Consent to Operate;
- (ii) Repeated major environmental violations;
- (iii) Failure to rectify environmental non-compliance within thirty (30) days of notice.

21.6 Safety Compliance Guarantee

a) General Safety Obligation

- i. The Concessionaire hereby irrevocably undertakes and guarantees that, throughout the Concession Period, the Project Facilities shall be operated, maintained and managed in a safe and secure manner in accordance with Applicable Law, Good Industry Practice and the approved Occupational Health and Safety Plan ("OHS Plan").
- ii. The Concessionaire shall ensure that all operations at the WtW Facility are conducted in a manner that does not pose risk of injury, accident, fire, explosion, structural failure, or harm to life, property or the environment.

b) Compliance with Applicable Laws

The Concessionaire shall comply with all Applicable Laws relating to occupational health and safety, including but not limited to:

- i. Factory safety regulations;
- ii. Fire safety norms and fire department requirements;
- iii. Electrical safety regulations;
- iv. Labour and workplace safety legislation;
- v. Hazardous material handling regulations, if applicable.

The Concessionaire shall obtain and maintain all necessary safety clearances, licenses and certifications required for operation of the Facility.

c) Safety Management System

The Concessionaire shall:

- i. Conduct regular safety training;
- ii. Maintain adequate personal protective equipment (PPE) for all personnel;
- iii. Ensure safe storage and handling of materials;
- iv. Install and maintain functional fire detection, fire suppression and emergency response systems.

d) Incident Reporting and Investigation

- i. The Concessionaire shall promptly report to the Authority any accident, injury, fire incident, structural failure or safety breach occurring at the Project Facilities.
- ii. Major incidents shall be reported within twenty-four (24) hours of occurrence.
- iii. The Concessionaire shall conduct an internal investigation into each significant safety incident and submit a corrective action report to the Authority within seven (7) days.

e) Inspection and Audit

- i. The Authority shall have the right to conduct safety inspections of the Project Facilities at reasonable intervals.
- ii. Any observations made by the Authority shall not relieve the Concessionaire of its safety obligations or transfer liability to the Authority.

f) Classification of Safety Non-Compliance

- i. Minor Safety Non-Compliance shall mean any safety lapse that:
 - Does not result in injury or material property damage;
 - Is capable of rectification within seven (7) days;
 - Does not attract regulatory penalty.
- ii. Major Safety Non-Compliance shall mean any safety lapse that:
 - Results in serious injury, fatality or significant property damage;
 - Causes fire, explosion or structural hazard;
 - Attracts regulatory notice or prosecution;
 - Persists beyond cure period.

g) Safety Liquidated Damages

In the event of safety non-compliance attributable to the Concessionaire:

Type of Non-Compliance	Liquidated Damages
Minor Safety Non-Compliance	INR 25,000 per instance
Repeated Minor (3 in quarter)	INR 1,50,000
Major Safety Non-Compliance	INR 3,00,000 per occurrence
Fatal accident due to negligence	INR 5,00,000

Imposition of Liquidated Damages shall not prejudice the Authority's right to invoke the O&M Security or terminate this Agreement.

h) Indemnity

- i. The Concessionaire shall indemnify and hold harmless the Authority against all claims, liabilities, damages, penalties, compensation and expenses arising out

of safety violations, accidents or negligence attributable to the Concessionaire or its employees, contractors or agents.

i) Persistent Safety Breach

Any of the following shall constitute a Concessionaire Event of Default:

- i. Two (2) or more Major Safety Non-Compliances in a Financial Year;
- ii. Failure to rectify a Major Safety Non-Compliance within thirty (30) days;
- iii. Fatal accident attributable to gross negligence.

j) No Transfer of Liability

- i. Nothing in this Agreement, including inspection or review by the Authority, shall be construed as transferring operational or safety responsibility from the Concessionaire to the Authority.

21.7 Reporting Compliance Guarantee

a) General Reporting Obligation

- i. The Concessionaire shall maintain complete, accurate and verifiable operational, financial and compliance records relating to the Project Facilities and shall submit periodic reports to the Authority in accordance with this Agreement.
- ii. Reporting under this Clause is a material obligation of the Concessionaire and is essential for monitoring performance, regulatory compliance and financial disbursement.

b) Monthly Operational Report

The Concessionaire shall submit a Monthly Operational Report within seven (7) days from the end of each calendar month. The Monthly Operational Report shall include, inter alia:

- i. Daily Accepted Waste Quantity;
- ii. Segregation data and residual inert waste quantities;
- iii. CBG Production output;
- iv. Throughput Guarantee Status;
- v. Discharge Guarantee Status;
- vi. CBG Productions details;
- vii. Environmental compliance status;
- viii. Safety incidents, if any;
- ix. Summary of CBG, compost/fertiliser, recyclables, non-recyclables/ RDF sales and revenue generated from the sale.
- x. Any other information as suggested by the Authority

c) Accuracy and Integrity of Information

- i. All reports submitted shall be true, complete and accurate in all material respects.

- ii. Any material misrepresentation, suppression of facts, manipulation of data or falsification of records shall constitute a Major Reporting Non-Compliance.
- iii. The Authority shall have the right to audit, verify and inspect underlying records at reasonable intervals.

d) Classification of Reporting Non-Compliance

- i. Minor Reporting Non-Compliance shall include:
 - Delay in submission not exceeding thirty (30) days;
 - Incomplete documentation capable of rectification within seven (7) days.
- ii. Major Reporting Non-Compliance shall include:
 - Delay exceeding thirty (30) days;
 - Submission of materially inaccurate data;
 - Repeated minor non-compliance (three instances in a Financial Year);
 - Falsification or suppression of information.

e) Liquidated Damages for Reporting Non-Compliance

Type of Non-Compliance	Liquidated Damages
Delay up to 7 days	INR 10,000
Delay 8–30 days	INR 25,000
Delay beyond 30 days	2% of Monthly OPEX Support
Major Reporting Non-Compliance	5% of Monthly OPEX Support
Wilful Falsification of records	10% of Monthly OPEX Support

f) Persistent Reporting Failure

The following shall constitute a Concessionaire Event of Default:

- i. Failure to submit reports for three consecutive months;
- ii. Repeated Major Reporting Non-Compliance within a Financial Year;
- iii. Wilful falsification of records.

g) No Payment Without Reporting

- i. Submission of Monthly Operational Report in accordance with this Clause shall be a condition precedent for release of OPEX support for the relevant month.

h) Survival

- i. The obligation to maintain and provide records shall survive expiry or termination of this Agreement for a period of three (3) years for audit purposes.

21.8 The Parties acknowledge that the Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused and losses that the Authority may suffer due to the Concessionaire's failure to comply with the KPIs and not as penalty. The payment of Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, including any tortious

liability, for causing any environmental pollution or health hazard due to its failure to comply with the KPIs and/or Applicable Laws.

- 21.9 Within 7 (seven) days from the end of each month, the Concessionaire shall be required to provide a report on compliance of the Processing Facility with the KPIs (prepared in accordance with Clause 20.1(b)(viii) above), which should indicate the periods during which the Processing Facility did not meet the KPIs and the reasons for such failure. The Authority's representative deployed at the project site shall be required to certify each such report. Such certified report on compliance with KPIs shall be referred to as the **KPI Adherence Report**.

ARTICLE 22

22 GRANT & PROCESSING FEE

22.1 In consideration of the works and services required to be performed by the Concessionaire for designing, constructing, installing, testing and commissioning the Project Facilities in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, by way of cash support, an amount equal to 40% of the final capital cost of the plant / final construction cost (CAPEX), subject to, and in accordance with, the provisions of this Article 22 (**Grant or Authority's share in capital cost of the project**).

22.2 The Concessionaire shall be deemed to have satisfied itself regarding the sufficiency of the Grant. No adjustments shall be made to the Grant payable to the Concessionaire, except for any adjustment in accordance with Clause 32.2 (as a consequence of a Change in Law) or any permitted Variation. The Grant shall be disbursed by the Authority in accordance with the provisions of Clause 22.3.

22.3 Grant Payments

- a) Upon the completion of the Project Milestones, the Authority shall pay the corresponding portion of the Grant to the Concessionaire in accordance with Clause 22.3(c)(iv) below. The Grant shall be applied by the Concessionaire to meet the Capex.
- b) Deleted
- c) Grant Disbursal
 - i. Subject to this Clause 22.3(c), the Grant will be paid by the Authority to the Concessionaire in the following instalments:
 - A. 1st (first) instalment of 50% (fifty per cent) of the Grant, upon issue of the Milestone Completion Certificate for the Project Milestone 01, 02, 03 & 04;
 - B. 2nd (second) instalment of 35% (thirty five per cent) of the Grant, upon issue of the Milestone Completion Certificate for the Project Milestone 05; and
 - C. 3rd (third) instalment of 15% (ten per cent) of the Grant, upon issue of the COD Certificate

Milestone	Activities required to be completed for payment of respective grant instalments	Scheduled Project Milestone Completion Date	Payment Stage	Payment (% of Grant)
Milestone 01	- Approval of Concessionaire's Applicable Permits - Submission and approval the Detailed Project Report including plant layout, process flow diagram, mass & energy balance, P&ID and detailed engineering documents like structural designs calculation/report, architectural drawings,	90 Days from Contract Execution date	Instalment 01 (Milestone 01, 02, 03 & 04)	50%

	general arrangement drawings (GAD) and structural drawings.			
Milestone 02	- Commencement of civil work, and; - Commencement of procurement of the plant equipment / machineries	30 days from the Appointed date		
Milestone 03	- Commencement of supply of plant equipment / machineries, and; - 40% Completion of Civil Work (including Digester, plant office, sheds, foundation for machineries, bio-sludge tank, compound wall, underground trenches, and other items as per the approved construction plan.)	90 days from the Appointed date		
Milestone 04	85% Completion of Civil Work (including Digester, plant office, sheds, foundation for machineries, bio-sludge tank, compound wall, underground trenches, and other items as per the approved construction plan.) And 40% completion of Mechanical, Electrical, Piping and Fire (MEPF) works.	150 days from the Appointed date		
Milestone 05	100% Completion of Civil Work And Complete of Installation of equipment / machineries (including MRF plant, gas up-gradation system heating system, compressor & cooling tower, filters, clarifiers, DG set, pipelines & valves, flair stack and other equipment as per the approved construction plan.)	210 days from the Appointed date	Instalment 02 (Milestone 05)	35%
Milestone 06	Commencement of the Trial run & testing of plant	240 days from the Appointed date	Instalment 03 (Milestone 06 & 07)	15%
Milestone 07	After Commercial Operations Date (COD)	270 days from the Appointed date		

- ii. The Authority reserves the right to amend the Scheduled Project Milestone Completion Date, activities required to be completed with the Milestones, and grant payment instalment conditions mentioned above in Clause 22.3(c)(i). If the Concessionaire requires an extension in Scheduled Project Milestone Completion Date or the Scheduled COD, as the case may be, it must submit a

written request to MRMC at least one week prior to the deadline, providing reasonable and justified grounds for the extension. The Authority may grant an extension in writing if the reasons stated in the application are deemed satisfactory and acceptable to the Authority. Failure to submit such a written request within the specified time frame will be considered as the Concessionaire's agreement to complete the milestone within the stipulated timeline. The decision of Authority regarding the extension shall be final and binding to the Concessionaire.

- iii. Within 7 (seven) days of issue of the Milestone Completion Certificate for a Project Milestone, or the COD Certificate, as the case may be, the Concessionaire shall submit an Invoice to the Authority for the amount of the Grant linked to such Project Milestone. Any Invoice raised by the Concessionaire for the Grant shall be accompanied by a copy of the relevant Milestone Completion Certificate and/or the COD Certificate, as the case may be, issued by the Authority.
- iv. The Authority shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - A. approve the Invoice and release the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws and Liquidated Damages, if any); or
 - B. issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority. If the Authority disputes only part of the Invoice, the Authority may, at its discretion, release the undisputed amount specified in the Invoice less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws.
- v. The Concessionaire shall submit a revised Invoice to the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice.
- vi. Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 34.
- vii. Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to release the Payment unless:
 - A. the Performance Security remains valid and in effect at the time;
 - B. the insurances to be obtained by the Concessionaire in accordance with Article 25 are valid and in effect;
 - C. the Concessionaire Applicable Permits for design, construction and completion of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - D. the Concessionaire has complied with the EMP and OHS Plan in undertaking the design, construction and O&M of the Project Facilities; and
 - E. there is no subsisting Concessionaire Event of Default.

22.4 Processing Fee

- a) As consideration for accepting, handling, Segregating, processing and disposing of Acceptable Waste in accordance with this Agreement, the Authority agrees to pay to the Concessionaire, an amount equal to 40% of the operation and maintenance cost (OPEX), on a monthly basis (**Processing Fee or Authority's share in the O&M cost of the project**), provided that no Processing Fee shall be paid during the Trial Operations period. The Processing Fee shall be disbursed by the Authority to the Selected Bidder in equal monthly instalments subject to achievement of the performance standards, KPIs and other relevant tender conditions.
- b) The Concessionaire shall, on the 5th (fifth) day of every month after the COD, or in case the 5th (fifth) day of a month is a holiday, then on the following working day of such month, submit to the Authority a statement (**Processing Fee Statement**) setting out the aggregate Daily Acceptable Waste Quantities delivered by the Authority during the preceding month, along with copies of the daily weight-sheets for the Daily Accepted Waste Quantity certified by the Authority's representative deployed at the site.
- c) The Processing Fee Statement shall be accompanied by an Invoice setting out the total amounts payable by the Authority towards the Processing Fee.
- d) The Authority shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - i. approve the Invoice and the release the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws and Liquidated Damages, if any); or
 - ii. issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Authority. If the Authority disputes only part of the Invoice, the Authority shall release the undisputed amount specified in the Invoice less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws.
- e) The Concessionaire shall submit a revised Invoice to the Authority after rectifying the errors or discrepancies identified by the Authority and this process will be repeated until the Authority approves the Invoice.
- f) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 34.
- g) Notwithstanding anything to the contrary in this Agreement, the Authority shall have no obligation to release the Payment unless:
 - i. the Performance Security remains valid and in effect at the time;
 - ii. the insurances to be obtained by the Concessionaire in accordance with Article 25 are valid and in effect;
 - iii. the Concessionaire Applicable Permits for design, construction and completion of the Project Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;

- iv. the Concessionaire has complied with the EMP and OHS Plan in undertaking the design, construction and O&M of the Project Facilities; and
- v. there is no subsisting Concessionaire Event of Default.

22.5 Taxes and Royalties

- a) Applicable GST as per prevailing rates shall be paid on the Payments (Grant and Processing fee) to the Concessionaire by the Authority.
- b) The Authority may deduct from the Concessionaire Payments and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.
- c) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- d) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Subcontractor for the construction of the Project Facilities and furnish proof of payment of such royalties to the Authority along with the Invoices for the Concessionaire Payments
- e) Upon a request from the Concessionaire, the Authority will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the Authority shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.
- f) The Concessionaire shall indemnify the Authority from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.

22.6 No Interest Payable by the Authority

In the event of a delay or failure by the Authority to make any undisputed payment due to the Concessionaire, the Authority shall not be liable to pay any interest on such outstanding amounts.

22.7 Right of Set-Off

The Concessionaire shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Concessionaire under this Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

ARTICLE 23

23 ACCOUNTS AND AUDIT

23.1 Audited Accounts

- a) The Concessionaire shall maintain books of accounts recording all its receipts (including revenue from sale of the CBG Output and other revenues derived/collected by it from or on account of the Project Facilities and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.
- b) The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by the Parties under this Agreement, to the extent required. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by the Parties under this Agreement.
- c) The Concessionaire shall, within 45 (forty-five) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

23.2 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

ARTICLE 24

24 Deleted

ARTICLE 25

25 INSURANCE

- 25.1 The Concessionaire shall, obtain and maintain the policies of insurance set out in this Article 25 in the minimum coverage amounts and during the specified periods for the Project Facilities. In addition, the Concessionaire shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Concessionaire, the Lenders or the Authority in accordance with this Article 25.
- 25.2 During the Construction Period, the Concessionaire shall obtain and maintain such insurances for such maximum sums as may be required under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices.
- 25.3 During the O&M Period, the Concessionaire shall obtain and maintain insurance policies including but not limited to the following:
- a) loss, damage or destruction of the Processing Facility, at replacement value;
 - b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
 - c) the Concessionaire's general liability arising out of the Project;
 - d) liability to third parties for goods or property damage;
 - e) workmen's compensation insurance; and
 - f) any other insurance that may be necessary to protect the Project Facilities, the Concessionaire and its employees, including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.
- 25.4 The level of insurance to be maintained by the Concessionaire shall be determined in accordance with the Financing Documents. The level of insurance to be maintained by the Concessionaire after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of the Lenders' dues, in accordance with the Financing Documents.
- 25.5 The Concessionaire shall, within 30 (thirty) days of the Appointed Date, provide a notice to the Authority, setting out information in respect of the insurances that it proposes to obtain and maintain. The Authority may require the Concessionaire to obtain and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 34 shall apply.
- 25.6 The Concessionaire shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 (fifteen) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.
- 25.7 Each insurance policy shall contain the following endorsements:
- a) the Authority shall be additional insured under all policies maintained by the Concessionaire in relation to the Site and the Project, against loss or damage;
 - b) the insurers shall waive all rights of subrogation against the Authority;

- c) the insurance policy may not be cancelled or materially changed by the insurer without giving 45 (forty-five) days' prior written notice, except in the case of non-payment, in which case it will be 10 (ten) days' prior written notice, to the Authority; and
 - d) the Authority shall not be responsible for payment of any insurance premium.
- 25.8 Any changes in the insurances which impact the Site or the Project Facilities will need the prior written consent of the Authority, which consent shall not be unreasonably withheld.
- 25.9 The Concessionaire shall apply proceeds from all insurance claims, except life and injury, for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.
- 25.10 If the Concessionaire fails to procure or maintain any insurance required pursuant to this Article 25 which is required to be obtained for the Site or the Project, the Authority shall have the right to procure and maintain such insurance in accordance with the requirements of this Article 25 and charge the full cost thereof to the Concessionaire.

ARTICLE 26

26 FORCE MAJEURE

26.1 Force Majeure Events

- a) A Force Majeure Event means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
 - i. beyond the reasonable control of the Affected Party;
 - ii. such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
 - iii. which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - iv. such that it/they has/have a Material Adverse Effect.
- b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 26.1(a):
 - i. Non-Political Force Majeure Events
 - A. acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
 - B. fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - C. chemical or radioactive contamination or ionising radiation;
 - D. epidemic, pandemic, plague or quarantine;
 - 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;
 - F. strikes or boycotts (other than those involving the Concessionaire, its Subcontractors or its employees) interrupting supplies or services for a continuous period of 7 (seven) days and an aggregate period exceeding 14 (fourteen) days and not being an Indirect Political Force Majeure Event;
 - G. accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Project Facilities; and
 - H. any failure or delay by a Subcontractor but only to the extent caused by another Non- Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- A. heavy rainfall;
- B. unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;

- C. a delay in the performance of any Subcontractor;
 - D. a termination of any Offtake Agreement;
 - E. non-performance resulting from normal wear and tear; or
 - F. non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.
- ii. Indirect Political Force Majeure Events
- A. hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the Gol or the Gujarat State Government or occurring in Gujarat;
 - B. invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the Gol or the GoG or occurring in Gujarat state;
 - C. strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
 - D. any protests by rag pickers who are meant to be relocated and resettled by the Authority;
 - E. any protests/agitation by members of the public against development of the Project Facilities at the Site;
 - F. delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit;
 - G. failure of the Authority to permit the Concessionaire to continue perform its obligations under this Agreement, with or without modifications, in the event of stoppage of any works after discovery of any geological or archaeological finds or for any other reason;
 - H. any failure or delay of any Subcontractor but only to the extent caused by another Indirect Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor;
 - I. the imposition, by any Government Authorities, of any lockdowns, curfews or mandatory quarantine rules arising out of the occurrence of any Non-Political Force Majeure Event or otherwise, which prevents the construction and/or O&M of the Project Facilities for an aggregate period exceeding 7 (seven) days in an Accounting Year;
 - J. suspension of the construction or O&M of a Project Facility pursuant to an Emergency not attributable to the Concessionaire under, and in accordance with, Clause 27.1(b)(ii)(B) and Clause 27.2(b)(ii)(B); and
 - K. any event or circumstances of a nature analogous to any of the foregoing.
- iii. Direct Political Force Majeure Events

- A. occurrence of a Change in Law, to the extent that its consequences cannot be dealt with under and in accordance with the provisions of Article 32 and its effect, in financial terms, exceeds the sum specified in Clause 32.1;
 - B. compulsory acquisition in national interest or expropriation of the Site and/or the Project Facilities;
 - C. any order, notification or judgement issued or passed by any Government Authority, including the National Green Tribunal, which declares the construction and/or operation of the Project Facilities on the Site to be unlawful or opposed to public health and sanitation or as being a threat to the environment and/or ecologically sensitive areas/zones near the Site (including bird sanctuaries, wildlife sanctuaries, etc.) and accordingly requires the Authority to cease the construction and/or operation of the Project Facilities at the Site, unless such judgement is, in any manner, attributable to the Concessionaire;
 - D. any failure or delay of any Subcontractor but only to the extent caused by another Direct Political Force Majeure Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Subcontractor;
 - E. any event or circumstance of a nature analogous to any of the foregoing.
- c) Without prejudice to the provisions of Clauses 26.1(a) or 26.1(b) above,
- i. any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Clause 26.1; and
 - ii. any act, event or circumstance which primarily affects any of Authority Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected Authority, it would have come within the definition of Force Majeure Event under this Clause 26.1.
- d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 34, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

26.2 Notice of Force Majeure Events

- a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 3 (three) days after the Affected Party knew of its occurrence. The FM Notice shall set out (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof; (ii) 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 and (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event.

- b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 26.2.

26.3 Excuse of Performance

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed 120 (one hundred and twenty) days for a Non-Political Force Majeure Event, 90 (ninety) days for an Indirect Political Force Majeure Event and 60 (sixty) days for a Direct Political Force Majeure Event from the date of issuance of the FM Notice.

26.4 No Liability for Other Losses

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 26.

26.5 Resumption of Performance

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

26.6 Allocation of costs during a Force Majeure Event

- a) Upon occurrence of any Non-Political Force Majeure Event or Indirect Political Force Majeure Event or Direct Political Force Majeure Event, before or after the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay any costs to the other Parties.

26.7 Termination due to Force Majeure Event

- a) Termination due to a Non-Political Force Majeure Event

If a Non-Political Force Majeure Event continues for a period of 180 (one hundred and eighty) days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of 180 (one hundred and eighty) days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Clause 26.7(a):

- i. if the Processing Facility is affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the 180 (one hundred and eighty) days' period stipulated for a Non-Political Force Majeure Event;

- ii. if the Processing Facility is affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Processing Facility to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

b) Termination due to an Indirect Political Force Majeure Event

If an Indirect Political Force Majeure Event continues for a period of 120 (one hundred and twenty) days after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of 120 (one hundred and twenty) days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

c) Termination due to a Direct Political Force Majeure Event

If a Direct Political Force Majeure Event continues for a period of 90 (ninety) days after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Clause 26.3, any Party shall, after the expiry of the period of 90 (ninety) days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

- d) All the other consequences of termination that are set out at Article 28 shall apply in case of termination of this Agreement due to a Force Majeure Event.

26.8 Effect of Force Majeure Event on the Concession Period

- a) Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.5 for fulfilment of Conditions Precedent and for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.
- b) At any time after the Appointed Date and up until the COD, if any Force Majeure Event occurs, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from performing its obligations.

ARTICLE 27

27 SUSPENSION OF THE CONCESSIONAIRE'S RIGHTS

27.1 Suspension by the Concessionaire

a) Suspension of construction or O&M of the Project Facilities

- i. At any time during the Concession Period, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of any Project Facility, in case of an Emergency.
- ii. The Concessionaire acknowledges that suspension of the construction of any Project Facility pursuant to Clause 27.1(a)(i) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire, provided that any suspension of construction of the Project Facilities pursuant to Clause 27.1(a)(i) for reasons not attributable to the Concessionaire shall be treated as a Delay Event.
- iii. Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than 3 (three) days after such occurrence, notify the Authority of such occurrence.
- iv. If, upon notification, the Authority does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the relevant Project Facility, as the case may be. Upon re- commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 34, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

b) Mitigation, Resumption and Termination

- i. The Concessionaire shall make best endeavours to:
 - A. mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.1(a)(i) above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to receive any payments for the duration that the Authority steps-in to operate and maintain the Processing Facility, provided that, any revenue earned from the O&M of the Processing Facility shall be to the account of the Authority; and
 - B. within 24 (twenty-four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.1(a)(i) or such longer period as may be approved by the Authority, mobilize the personnel employed by it or its Subcontractor in order to resume the construction or O&M services of the relevant Project Facility as soon as reasonably

practicable, and once the works or services have resumed, notify the Authority of the resumption of the works or services.

- ii. Without prejudice to Clause 27.1(b)(i):
 - A. if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1(a)(i) continues for a consecutive period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 28.1; and
 - B. if suspension of the construction or O&M of a Project Facility pursuant to Clause 27.1(a)(i) continues for a consecutive period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period, and such event is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in Article 26 shall apply.

27.2 Suspension by Authority

a) Suspension of construction and/or O&M of the Project Facilities

- i. At any time during the Concession Period, the Authority may suspend, whether partially or wholly, the construction or O&M of a Project Facility, in any of the following events or circumstances:
 - A. upon the occurrence of an Emergency; or
 - B. if the Concessionaire fails to comply with Applicable Laws, the Performance Standards, Applicable Permits, the Construction Plan, the Project Execution Plan, the DPR, OHS Plan, the O&M Plan, the Waste Acceptance and Rejection Plan or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).
- ii. The Concessionaire acknowledges that suspension of the construction of the Project Facilities shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire, provided that any suspension of construction of the Project Facilities pursuant to Clause 27.2(a)(i) for reasons not attributable to the Concessionaire shall be treated as a Delay Event.

b) Mitigation, Resumption and Termination

- i. The Concessionaire shall make best endeavours to:
 - A. mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 27.2(a) above. Notwithstanding anything to the contrary contained in this Agreement, if the Authority, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Authority shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire and the Concessionaire shall not be entitled to

receive any payments for the duration that the Authority steps-in to operate and maintain the Processing Facility, provided that, any revenue earned from the O&M of the Processing Facility shall be to the account of the Authority; and

- B. within 24 (twenty-four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 27.2(a) or such longer period as may be agreed between the Parties, mobilize the personnel employed by it or its Subcontractor in order to resume the construction or O&M services of the relevant Project Facility as soon as reasonably practicable, and once the works or services have resumed, notify the Authority of the resumption of the works or services.
- ii. Without prejudice to Clause 27.2(b)(i):
- A. If suspension of the construction or O&M of the relevant Project Facility pursuant to Clause 27.2(a)(i)(A) continues for a consecutive period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period and the Emergency is attributable to the Concessionaire, or a suspension pursuant to Clause 27.2(a)(i)(B) continues for a consecutive period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 28.1; and
 - B. if suspension of the construction or O&M of the relevant Project Facility pursuant to Clause 27.2(a)(i)(A) continues for a consecutive period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period, and the Emergency is not attributable to the Concessionaire, then such event will be treated as an Indirect Political Force Majeure Event and the consequences set out in Article 28 shall apply.

ARTICLE 28

28 EVENTS OF DEFAULT

28.1 Concessionaire Events of Default

A Concessionaire Event of Default means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of an Authority Event of Default or any Force Majeure Event, and where the Concessionaire has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of 30 (thirty) days:

- a) the Concessionaire fails to complete the works for a Project Milestone as per the Scheduled Project Milestone Completion Date;
- b) the Concessionaire fails to achieve the COD on or before the Scheduled COD other than on account of a Delay Event;
- c) Deleted
- d) the Concessionaire fails to pay the Delay Liquidated Damages within the timelines specified in this Agreement;
- e) a failure to achieve the KPIs which results in the Concessionaire's aggregate liability for Liquidated Damages pursuant to Article 21 to exceed 10% of the Capex;
- f) suspension of construction or O&M of the Project Facilities pursuant to Clause 27.1(a)(i) or Clause 27.2(a)(i)(A) (to the extent the Emergency is attributable to the Concessionaire) or a suspension pursuant to Clause 27.2(a)(i)(B), for a continuous period of 90 (ninety) days or a cumulative period of 180 (one hundred and eighty) days over the Concession Period;
- g) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within 30 (thirty) days of issuance of written notice from Authority specifying such breach and requiring the Concessionaire to remedy the same;
- h) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
- i) failure of the Concessionaire to submit and maintain a valid Performance Security in accordance with Clause 9.1 or a valid O&M Security in accordance with Clause 9.3;
- j) breach by the Concessionaire of its obligations under Clauses 12.6 (Security Creation), 10 (Project Site) or 35.12 (Assignment);
- k) breach of the Concessionaire's obligations under Clause 5.10 (Change in Ownership);
- l) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- m) failure of the Concessionaire to comply with any Applicable Law;
- n) failure of the Concessionaire to obtain and maintain Insurance Cover in accordance with Clause 25.2;
- o) failure of the Concessionaire or the Subcontractors to comply with the EMP or OHS Plan in accordance with Clause 14.4(c);
- p) the Concessionaire being admitted into corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016, entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a

receiver or administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect;

- q) the breach of the Concessionaire's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or termination of the Financing Documents (for reasons attributable to the Concessionaire);
- r) the Concessionaire abandons the construction and operation of the Project Facilities without the prior written consent of the Authority; or
- s) the breach of the Concessionaire's obligations under any of the Project Agreements that has or may have a Material Adverse Effect.

28.2 Termination Notice upon occurrence of a Concessionaire Event of Default

- a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority may initiate termination by delivering a Termination Notice to the Concessionaire. The Termination Notice shall specify with reasonable detail the grounds on which termination is sought.
- b) If, within 15 (fifteen) days from the date of the Termination Notice, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the Authority or the Authority is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, the Authority shall withdraw the Termination Notice, in writing.
- c) If, within 15 (fifteen) days from the date of the Termination Notice, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of the Authority or the Authority is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, the Authority shall terminate the Agreement and the consequences set out in Clause 28.5 shall apply.
- d) Deleted.
- e) Notwithstanding anything contained in this Clause 28.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

28.3 Authority's Events of Default

An Authority Event of Default means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or any Force Majeure Event and where the Authority has failed to remedy the default within the cure period set forth below, or where no cure period is specified then within a cure period of 60 (sixty) days:

- a) a breach by the Authority of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within 30 (thirty) days of a notice being given by the Concessionaire; or
- b) a breach by the Authority of its obligations under Clause 6.1(f) and Clause 6.1(g), in relation to its rights, title and interest in the Site;

28.4 Termination Notice upon occurrence of an Authority Event of Default

- a) Without prejudice to the other provisions of this Agreement, upon the occurrence of an Authority Event of Default, the Concessionaire may initiate termination of this

Agreement by delivering a Termination Notice, which shall specify with reasonable detail the grounds on which termination is sought.

- b) If, within 15 (fifteen) days from the date of the Termination Notice, the Authority rectifies or remedies the Authority Event of Default to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the Authority or the Authority Event of Default has ceased to exist, the Concessionaire shall withdraw the Termination Notice, in writing.
- c) If, within 15 (fifteen) days from the date of the Termination Notice, the Authority Event of Default has not been remedied or the Authority has not taken steps or proposed to take steps to remedy the Authority Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Agreement and the consequences set out in Clause 28.5 shall follow.
- d) During the subsistence of an Authority Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

28.5 Consequences of termination of the Agreement post the Appointed Date

In case of termination of the Agreement (including for any termination due to the occurrence of a Force Majeure Event in accordance with Article 26) after the Appointed Date:

- a) the Concessionaire shall cease all work in relation to construction or O&M, as the case may be, of the Project Facilities;
- b) the Concessionaire shall cease the Trial Operations, if the Trial Operations of the Processing Facility have commenced and are ongoing;
- c) the Concessionaire shall take all necessary steps to safeguard and protect the Project Facilities (at whatever stage of completion) and all other equipment, materials and goods on the Site;
- d) In case of Termination by the Concessionaire, the Authority shall return the Performance Security in accordance with Clause 9.15 or the O&M Security in accordance with Clause 9.16, as the case may be, within 90 (ninety) days from the date of the Termination Notice; and In case of Termination by the Authority, it shall forfeit the Performance Security;
- e) the Concessionaire shall hand over the Site and the Project Facilities (provided that, in case of termination of the Agreement due to a Force Majeure Event, the Concessionaire shall hand over the Site and the Project Facilities to the Authority on an "as is where is" basis), to the Authority or its nominee in accordance with the Hand-back Requirements set out in Clause 30.3, to the extent applicable; and
- f) the Authority shall have the right to succeed, upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Subcontractors and/or Offtakers only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Subcontractors and/or Offtakers (including any penalties or other dues claimed by any Offtaker) as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall

constitute debt between the Concessionaire and such Subcontractors and/or Offtakers, and the Authority shall not in any manner be liable for such sums, penalties or other dues. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Performance Security.

ARTICLE 29

29 TERMINATION COMPENSATION

29.1 The Parties acknowledge that no termination payment shall be payable by either Party in case of a termination of this Agreement for an Authority Event of Default or Concessionaire Event of Default or Non-Political Force Majeure Event or Indirect Political Force Majeure Event or Direct Political Force Majeure Event, before or after the Appointed Date, other than as provided under Clause 4.6.

ARTICLE 30

30 DIVESTMENT OF RIGHTS AND INTEREST

30.1 Transfer of the Site and the Project Facilities

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Site and the Project Facilities to the Authority, or any other entity nominated by Authority in accordance with this Article 30.

30.2 Inspection of the Site and the Project Facilities

- a) No later than 30 (thirty) days from the end of the last of O&M or 30 (thirty) days from the date of termination of the Agreement, as the case may be, the Authority shall carry out a survey of the Site and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- b) The Authority shall notify the Concessionaire at least 7 (seven) days prior to the date on which it wishes to carry out the survey of the Site and the Project Facilities.
- c) If the survey carried out by the Authority shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the Authority shall notify the Concessionaire of the rectification and/or maintenance work which is required to be undertaken by the Concessionaire to ensure that the condition of the Site and the Project Facilities, is restored to the Hand-back Conditions.
- d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Handback Conditions within 30 (thirty) days from the receipt of a notice from the Authority in accordance with Clause 30.2(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request the Authority to carry out a final survey and inspection of the Site and the Project Facilities. The Authority shall carry out the final survey within 7 (seven) days of receipt of a notice from the Concessionaire pursuant to this Clause 30.2(d).

If the Authority is satisfied with the results of the final survey, then the Authority shall, after carrying out the final survey, notify the Concessionaire that the Site and the Project Facilities, comply with the Hand-back Conditions. If the Authority is not satisfied with the results of the final survey, then the Authority shall estimate the cost of restoring the Site and the Project Facilities, to the Hand-back Conditions and recover such cost from the Concessionaire, including through deduction of such cost from the from the Performance Security, O&M Security, or the Termination Compensation, as the case may be, payable to the Concessionaire.

30.3 Hand-back Requirements

On the expiry or early termination of this Agreement, the Concessionaire shall:

- a) hand over to the Authority or any entity nominated by the Authority, Site and the Project Facilities, free of any consideration;
- b) transfer to the Authority, or any entity nominated by the Authority, all its rights, title and interest in the assets comprising in the Project Facilities and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;

- c) hand over all documents relating to the Site and the Project Facilities, including Designs and Drawings, "as-built" drawings and other "as-built" record of the execution of the works, O&M Plan, operating logs, manuals, reports, plans and records;
- d) assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the Project Facilities to the Authority at no additional cost to the Authority;
- e) transfer or cause to be transferred to the Authority or its nominee any Subcontract that the Authority or its nominee has chosen to take over and terminate all other Subcontracts;
- f) transfer to the Authority or its nominee all Concessionaire Applicable Permits which the Authority or its nominee may require, and which can be legally transferred; and
- g) remove from the Site all employees and workmen, and assets, equipment and materials that are not required to be taken over by the Authority or its nominee.

The provisions of this Article 30 shall survive the termination of this Agreement.

30.4 Vesting Certificate

The divestment of all rights, title and interest in the Project Facilities shall be deemed to be complete on the date when all of the Hand-back Requirements set out in Clause 30.3 above have been fulfilled, and the Authority shall, without unreasonable delay, issue a certificate (the **Vesting Certificate**), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Facilities, and their vesting in the Authority. It is expressly agreed that any defect or deficiency in the Hand-back Requirements shall not in any manner be construed or interpreted as a restriction on the exercise of any rights by the Authority in respect of the Project Facilities on the basis that all Hand-back Requirements have been complied with by the Concessionaire.

ARTICLE 31

31 VARIATION

31.1 Both the Authority and the Concessionaire may, at any time during the Concession Period, propose a Variation to the Scope of Work, Technical Specifications, Proposed Technology and/or the Designs and Drawings.

31.2 Authority Proposed Variation

- a) The Authority may propose a Variation in the Scope of Work, Technical Specifications or the approved Designs and Drawings. Provided that, the Authority shall not propose a Variation, which:
 - i. is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permits.
- b) Within 15 (fifteen) days of receipt of a request for Variation from the Authority, the Concessionaire shall submit a proposal to the Authority setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, the Scheduled Project Milestone Completion Date, the Scheduled Completion Date and Scope of Work and additional costs incurred in undertaking the Variation or any reduction in costs resulting from the Variation. It is clarified that the additional costs incurred in undertaking the Variation or any reduction in costs resulting from the Variation will be determined on the basis of the Authority's schedule of rates for similar works.
- c) Notwithstanding anything to the contrary in this Clause 31.2, the Concessionaire shall have the right to reject a Variation proposed by the Authority if, in the Concessionaire's view, the proposed variation will result in: (i) the Concessionaire incurring additional costs, of more than 10% of the Total Project Cost; (ii) reduction in the Total Project Cost by more than 10%; or (iii) a delay of more than 120 (one hundred and twenty)] days in a Scheduled Project Milestone Completion Date / the Scheduled Completion Date.
- d) Based on its review of the proposal submitted by the Concessionaire, the Authority may, at its sole discretion: (i) accept the proposal; or (ii) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the proposal submitted by the Concessionaire and withdraw the proposed Variation, within 15 (fifteen) days from the date of receipt of the Concessionaire's proposal under Clause 31.2(b) above.
- e) To the extent the Authority seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Authority's comments and submit a revised proposal.
- f) On approval of the proposal or the revised proposal, as the case may be, the Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- g) If the Parties are unable to agree on the implications of a Variation proposed by the Authority, which in the Authority's view is necessary or desirable for the Project, the Authority shall have the right to require the Concessionaire to carry out the proposed variation at the cost determined in accordance with the Authority's schedule of rates for similar works. Where the Authority's schedule of rates does not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation

will be decided by the Authority. Any dispute on the terms of the Variation will be resolved in accordance with Article 34.

- h) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the Construction Plan, the, Scheduled Project Milestone Completion Date, Scheduled Completion Date and/or payment of additional amounts, if any, set out in the Variation Order.

31.3 Concessionaire Proposed Variation

- a) The Concessionaire may propose a Variation where it is necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the Project Facilities. Such a Variation may be on account of reasons such as if, during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, including as a result of a failure by any contractor appointed by the Authority to rehabilitate the Site prior to its handover to the Concessionaire. Provided that, the Concessionaire shall not be entitled to propose a Variation where the underlying circumstances leading to the proposed Variation are attributable to the Concessionaire's failure to perform the works in accordance with the Construction Plan, the Project Execution Plan, the DPR and Designs and Drawings or due to the Concessionaire's inefficiency.
- b) To propose a Variation, the Concessionaire shall submit a proposal to the Authority, with a statement setting out:
 - i. the need for a Variation;
 - ii. the additional work required;
 - iii. adjustment to the Construction Plan, the Scheduled Project Milestone Completion Date and the Scheduled COD; and
 - iv. adjustment to the Total Project Cost.
- c) Based on its review of the proposal submitted by the Concessionaire, if the Authority is of the view that the proposed Variation is justified, then it will determine the cost of the proposed Variation using the Authority's schedule of rates for similar works and where the Authority's schedule of rates does not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be decided by the Authority. Thereafter, the Authority shall notify the Concessionaire of the additional cost determined by the Authority for the proposed Variation and any other comments that the Authority may have on the implications of the proposed Variation. To the extent the Authority seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Authority's comments.
- d) On the Concessionaire's acceptance of the costs determined by the Authority for the proposed Variation and any other amendments sought by the Authority to the Concessionaire's proposal, the Authority shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- e) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the Construction Plan and/or additional costs, as set out in the Variation Order.

- f) Notwithstanding anything to the contrary in this Article 31, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the Construction Plan and additional costs shall be determined in accordance with Article 32.
- g) Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Subcontractor in the performance of the Concessionaire's obligations under this Agreement shall not entitle the Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.
- h) No Variation shall invalidate this Agreement.

ARTICLE 32

32 CHANGE IN LAW

32.1 Change in Law

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 32.

32.2 Increase in Costs

- a) If as a result of a Change in Law, the Concessionaire suffers an increase in costs, a reduction in the net after-tax return or any other financial burden, the aggregate financial effect of which exceeds 10% of the capital cost of the project or 10% of the O&M cost in any Accounting Year, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law.
- b) As soon as practicable, on receiving notice from the Concessionaire under Clause 32.2(a) above, the Parties shall agree on any amendments to this Agreement or on any other mutually agreed arrangement by which the Authority will compensate the Concessionaire.
- c) If no agreement is reached between the Parties within 90 (ninety) days of receipt of any notice under Clause 32.2(a) above, then such dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 34.
- d) For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to any Change in Law that directly affects the Concessionaire's costs of performing its obligations under the Agreement.

32.3 Reduction in Costs

- a) If as a result of a Change in Law, the Concessionaire benefits from a reduction in costs, an increase in the net after-tax return or any other financial gains, the aggregate financial effect of which exceeds 10% of the capital cost of the project or 10% of the O&M cost in any Accounting Year, the Authority may notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law.
- b) As soon as practicable on receiving notice from the Authority under Clause 32.2(a) above, the Parties shall agree on any amendments to this Agreement or on any other mutually agreed arrangement.
- c) If no agreement is reached between the Parties within 90 (ninety) days of receipt of any notice under Clause 32.2(a) above, then such dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 34.
- d) For the avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to any Change in Law that directly affects the Concessionaire's costs of performing its obligations under the Agreement.

32.4 Restriction on Cash Compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 32 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of

the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

32.5 Change in GST

Notwithstanding anything contrary provides in the clause 31.1 to clause 32.4 above, any change in Good and Service Tax (GST) applicable on the payment (grant and processing fee) of the Concessionaire shall be paid by the Authority as per the prevailing rates from time to time, without the need for issuing any notice as specified under Article 32.

ARTICLE 33

33 INDEMNITY

33.1 Indemnity

- a) Subject to Clause 33.1(b) below, the Concessionaire shall be responsible for, release, hold harmless and indemnify the Authority and the Authority Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:
- i. death or personal injury of any person;
 - ii. loss of or damage to property;
 - iii. non-compliance by the Concessionaire or its Subcontractor(s) with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents and labour welfare legislations);
 - iv. non-compliance by the Concessionaire or its Subcontractor(s) with the EMP or OHS Plan;
 - v. any damage caused to the environment by the Concessionaire;
 - vi. Concessionaire's failure to pay all applicable Taxes, in connection with the Project;
 - vii. any third party losses or claims; and
 - viii. any claims and/or fines or penalties imposed by any Government Authority in relation to the Site or the Project Facilities, which may arise out of, or in consequence of the performance or non-performance of the Concessionaire's obligations under this Agreement.
- b) The Concessionaire shall not be required to indemnify the Authority for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of the Authority or the Authority Related Parties or by a breach by the Authority of its obligations under this Agreement.
- c) The Authority shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against them in respect of, resulting from, related to or arising out of any matter for which they are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof, shall be subject to the indemnification obligations of the Concessionaire.

If, however, the Concessionaire acknowledges in writing its obligations to indemnify the Authority in respect of loss to the full extent provided by this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Authority and reimburses the Authority for the costs and expenses incurred by the Authority prior to the assumption by the Concessionaire of such defence. A Party shall not settle or enter into a compromise with respect to any such claim, action, suit or proceeding without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and

expenses of such counsel, as and when incurred, shall be at the expense of the Authority.

- d) The Authority shall be responsible for, release, hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) any other liability incurred or suffered by the Concessionaire under Applicable Laws, or pursuant to the law of torts, principles of absolute liability or strict liability or polluter pays principle, as a result of:
 - i. any environmental pollution, contamination or health hazard at or below the Site (including contamination of the land, water, environment and air quality and/or any findings of pollutants, chemical waste, hazardous waste, minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest) that existed at the Site prior to handover of the Site to the Concessionaire; or
 - ii. any environmental pollution, contamination or health hazard caused by the delivery of any Prohibited Waste to the Site after the handover of the Site to the Concessionaire.
- e) The Authority shall not, directly or indirectly, bring or cause to be brought any action, demand, claim, or other proceedings against the Concessionaire in connection with any pre-existing contaminations.
- f) The provisions of this Article 33 shall survive the termination of this Agreement.

ARTICLE 34

34 DISPUTE RESOLUTION

34.1 Amicable Settlement

In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (a **Dispute**), the representatives of the Parties shall, within 15 (fifteen) days of service of a written notice from one Party to the other Parties (the **Dispute Notice**) hold a meeting (the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of Authority in Morbi.

If the parties fail to resolve such a dispute or difference by mutual consultation within 30 (Thirty) Days from the issuance of such Dispute Notice, the formal mechanism for the resolution of disputes shall be as follows:

- a) All questions and disputes relating to the meaning of the specifications, and instructions mentioned in the contract and as to the quality of workmanship or material used for the product supplied or as to any other question claimed, right, matter or thing whatsoever in any way arising out of or relating to the contract, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure or execute the same whether arising due to the progress of the works or after the completion or abandonment there of shall be referred to the Arbitration Tribunal, Gujarat State and the settlement of dispute shall be carried out in accordance with the Gujarat Public Work Contracts Dispute Arbitration Tribunal Act, 1992.
- b) The provision of Section-2 of the GPWD disputes Arbitration Tribunal Act 1992, & order issued by the government in connection with this Act will now apply for Arbitration. (as per government in N. & W.R.D letter no. SUT/1090/2679/K2 dtd. 9/2/94)
- c) The provision of Arbitration Act., shall in so far as they are inconsistent with the provision of this act cease of to apply to any dispute arising from a works contract and all arbitration proceedings in relation to such dispute before an arbitration, court of Authority shall stand transferred to the tribunal
- d) The awards declared by the arbitrator should be speaking award, giving reasons, and calculations for every items of claims. The decision will have to be implemented by all the departments of the state government and public sector enterprises of Gujarat (Resolution F.D.NO. PB/1088/735/KT/Sachivalaya/Gandhinagar 5th October 1988.)
- e) In case of dispute leading to the contractor or Government of Gujarat approaching to Court of Law, it shall be within the jurisdiction where the site of work is situated.
- f) The reference to the arbitration proceedings under this clause shall not:
 - i. Preclude the Authority from utilizing the materials purchased by the contractor in any work or from removing the contractor's equipment, machineries, materials, etc. to other place, during the period the work is stopped or suspended in pursuance of notice if any, given to the contractor.
 - ii. Entitle the contractor to stop the progress of the work or carrying out the additional or altered work as directed by the authority
- g) The Authority shall have the rights to take possession of all or any tools, plants, materials and stores in or upon the works of site thereof belonging to the contractor or

procured by him and intended to be used for execution of work or any part thereof during such arbitration proceedings or reference to the court for the settlement of dispute.

34.2 Survival

The provisions of this Article 34 shall survive the termination of this Agreement.

ARTICLE 35

35 MISCELLANEOUS

35.1 Survival

- a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Concession Period or by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Concession Period or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

35.2 Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement and the RFP constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

35.3 Government Assistance on the CBG Plant

- a) Any financial assistance, subsidies, grants, or other benefits provided by the Government of India, State Government, or any statutory authority in relation to the CBG project shall accrue solely to the Concessionaire. The Authority shall provide all reasonable assistance to the Concessionaire in applying for, obtaining, and utilizing such benefits but shall not claim or retain any portion of the same unless expressly authorized in writing by the Concessionaire.

35.4 Notices

- a) Any notice or request in reference to this Agreement shall be written in English language and shall be sent by email, registered post, courier or facsimile and shall be directed to the other Party at the address mentioned below:

Authority

Attention: Deputy Municipal Commissioner (Administration), Morbi Municipal Corporation
Address: Gandhi Chowk, Morbi, Gujarat 363641
Tel: (02822) 220551
Email: swm-mmc-mor@gujarat.gov.in / commi-mmc-mor@gujarat.gov.in

Concessionaire

Attention:
Address:
Tel:

Fax:

Email:

- b) Deleted.
- c) Any Party may change the above address by prior written notice to the other Parties.

35.5 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India and shall be subject to the exclusive jurisdiction of the courts at Morbi, Gujarat.

35.6 Counterparts

This Agreement may be executed in 2 (two) counterparts, each of which, when executed and delivered, will be an original, and the 2 (two) counterparts together shall constitute one and the same instrument.

35.7 Language

- a) The formal text of this Agreement and other agreements in relation to the Project shall be in the Gujarati or English language.
- b) All notices and communications between the Parties under this Agreement shall be in Gujarati or English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

35.8 Confidentiality

- a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Concession Period and for a period of 5 (five) years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including Authority Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.
- b) This Clause 35.8 shall not apply to Confidential Information, which:
 - i. at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - ii. is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - iii. was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - iv. is disclosed by the Concessionaire to the Lenders, any actual or bona fide potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;

- v. is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- vi. is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;
- vii. is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
- viii. is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- ix. is disclosed to any professional advisors or consultants of any Persons to whom a Party is entitled to disclose Confidential Information under this Clause 35.8(b);
- x. is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- xi. is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- xii. is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 35.8(a) above.

- c) A Party making a disclosure of Confidential Information pursuant to Clause 35.8(a) shall,
 - i. at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - ii. be liable for any breach of such obligations by such representatives and Associates.
- d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 35.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.
- e) The recipient party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - i. return, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on

- compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
- ii. destroy, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information, provided that the recipient party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient party or such Affiliate and/or which the recipient party or its Associates is required to retain by Applicable Law if it continues to keep such Confidential Information confidential in accordance with this Agreement.
- f) Notwithstanding anything to the contrary in Clauses 35.8(a) to 35.8(e) above, the Authority shall have the right to disclose any applicable information as required under the Right to Information Act, Swachh Bharat Mission (including Swachh Survekshan and Garbage-Free City Star Rating initiatives), or any other similar statutory or regulatory requirements, without seeking prior consent from the Concessionaire.

35.9 Amendments

- a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- b) A Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by the other Parties, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

35.10 Waivers and Consents

- a) Unless otherwise specified, any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- c) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

35.11 Severability

- a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

35.12 Assignment

- a) Except as expressly permitted in this Agreement, the Concessionaire shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of the Authority.
- b) The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - i. is a single entity;
 - ii. acquires the whole of the Agreement;
 - iii. has the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement, as the case may be; and
 - iv. has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement.

35.13 Inclusion of MSW Collection and Transportation

The Authority may, by mutual agreement with the Concessionaire, amend this Agreement to include the collection and transportation of municipal solid waste (MSW) for the processing plant in the scope of the Concessionaire. Such amendment may encompass all or a portion of the MSW required. Payment for any additional services shall be at MRMC's prevailing rates for similar work, as further defined in a mutually agreed amendment.

35.14 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and no Party shall have any authority to bind, commit or make any representations on behalf of any other Party.

35.15 Costs and Expenses

- a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement or any other Agreements related to this Concession Agreement.

35.16 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of the Authority to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to the Authority upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Authority in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Authority in respect of any other default.

35.17 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Authority Related Parties, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

In witness whereof the Parties hereto have signed this Agreement on this day of _____ of _____ 20__

For and on behalf of the Authority:

Authorised Representative,
Morbi Municipal Corporation (MRMC)

For and on behalf of the Concessionaire:

Authorised Representative,
<Name of Selected Bidder / Concessionaire>

In the presence of:

Name:

Sign:

Name:

Sign: