

**CONCESSION AGREEMENT**

**BETWEEN**

**SOUTH DELHI MUNICIPAL CORPORATION OF DELHI (SDMC)**

**AND**

**TEHKHAND WASTE TO ELECTRICITY PROJECT LIMITED (CONCESSIONAIRE)**

**For**

**Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility**

**At Tehkhand, Okhla, New Delhi**

**On 10<sup>th</sup> May, 2018**



*Concession Agreement for Tehkhand WtE Project*



Page 1 of 140

## Table of Contents

1. DEFINITIONS & INTERPRETATION .....	10
1.1 Definitions .....	10
1.2 Interpretation .....	18
2. THE PROJECT .....	19
2.1 Grant of Concession .....	19
2.2 Rights Associated with the Grant of Concession .....	20
2.3 Use of Supplementary fuel for Power Plant .....	21
2.4 Term of Concession .....	21
2.5 Renewal of Concession .....	21
2.6 Sharing of CDM Benefits .....	21
3. CONDITIONS SUBSEQUENT .....	22
3.1. Conditions Subsequent .....	22
3.2. Consequences of non-fulfilment of the Concessionaire's Conditions Subsequent .....	22
3.3. Consequences of non-fulfilment of the Conditions Subsequent by the Concessionaire on account of Force Majeure Event(s) .....	23
3.4. Progress Reports .....	24
4. THE SITE .....	25
4.1. Vesting of Site with Concessionaire .....	25
4.2. Lease .....	25
4.3. Land Lease Agreement to terminate with Concession Agreement .....	25
5. CONSTRUCTION OF THE POWER STATION .....	25
5.1 Commencement of Construction of the Power Station .....	25
5.2 Quality of Workmanship .....	26
5.3 Applicable Approvals .....	26
5.4 Type Test Reports .....	26
5.5 Co-ordination of Construction Activities and the Role of the Independent Engineer .....	26
6. COLLECTION OF MSW .....	27
6.1 Collection of MSW .....	27
6.2 Collection from Vegetables Markets and Bulk Generators .....	27
6.3 Collection at Cost of SDMC .....	28
6.4 MSW Quantity .....	28
7. DELIVERY OF MSW .....	28



*[Handwritten signature]*

7.1	Delivery of MSW Prior to COD .....	28
7.2	Delivery of MSW after COD.....	28
7.3	Measurement of MSW Delivered .....	28
7.4	Maintenance of Records .....	29
7.5	Determination of the Rejected Waste .....	30
7.6	Failure to deliver MSW Quantity .....	30
8.	OPERATION AND MAINTENANCE .....	32
8.1	O&M Obligations of the Concessionaire.....	32
9.	LANDFILL SITE.....	32
9.1	The Landfill Site.....	32
9.2	Disposal of Residual Inert Matter and C&D Debris and Silt Waste.....	32
10.	OBLIGATIONS OF THE CONCESSIONAIRE .....	34
10.2	Obligation of the Concessionaire for Land Lease and Residual Inert Matter Handling Charges .....	35
10.3	Obligation of the Concessionaire with regard to Equity Lock-in .....	35
10.4	Sole purpose of the Concessionaire.....	36
10.5	Obligations relating to Taxes .....	36
10.6	Adequate Organization .....	36
10.7	Compliance with Applicable Laws and Environment Laws .....	36
10.8	Repair and Maintenance Work of the Plant .....	36
10.9	No Breach of Obligations in Certain Circumstances .....	37
10.10	Processing of MSW .....	37
11.	OBLIGATION OF SDMC .....	38
11.1	Financial Assistance to the Concessionaire .....	38
11.2	Disposal of Waste during Plant Shutdown.....	38
11.3	Applicable Approvals.....	38
12.	NO PROPERTY TAXES ON PROJECT FACILITIES.....	39
13.	CONVENANT OF NON-INTERFERENCE .....	39
13.1	Non Interference by SDMC.....	39
13.2	Site Visits by SDMC .....	39
14.	GRANT .....	41
14.1	Financial Assistance .....	41
15.	TIMELY COMPLETION OF THE POWER PLANT .....	43
15.1	Timeline for Commissioning .....	43
15.2	Delay Due to Concessionaire's Default:.....	43
16.	ESCROW ACCOUNT .....	44



16.1	Escrow Account.....	44
16.2	Deposits into Escrow Account.....	44
16.3	Withdrawals during Concession Period.....	45
16.4	Withdrawals upon Termination.....	45
17.	ADDITIONAL OBLIGATIONS OF CONCESSIONAIRE.....	46
17.1	Concessionaire Obligation.....	46
17.2	Insurance Proceeds.....	46
17.3	No Breach of Insurance Obligation.....	47
18.	EVENTS OF DEFAULT, TERMINATION & EFFECT OF TERMINATION.....	47
18.1	Events of Default.....	47
18.2	Termination for Concessionaire Event of Default.....	49
18.3	Termination for SDMC Event of Default.....	50
18.4	Termination Notice.....	51
18.5	Obligation of Parties.....	51
18.6	Withdrawal of Termination Notice.....	52
18.7	Rights of SDMC on Termination.....	52
18.8	Accrued Rights of Parties.....	52
19.	SUSPENSION OF CONCESSIONAIRE'S RIGHTS.....	52
19.1	Suspension upon Concessionaire Default.....	52
19.2	SDMC to act on behalf of Concessionaire.....	53
19.3	Revocation of Suspension.....	53
19.4	Substitution of Concessionaire.....	54
19.5	Termination.....	54
20.	ARBITRATION.....	54
21.	FORCE MAJEURE.....	56
21.1	Force Majeure.....	56
21.2	Non-Political Event.....	56
21.3	Indirect Political Event.....	57
21.4	Political Event.....	57
21.5	Duty to report Force Majeure Event.....	58
21.6	Effect of Force Majeure Event on the Concession.....	58
21.7	Allocation of costs arising out of Force Majeure.....	59
21.8	Excuse from performance of obligations.....	60
21.9	Termination due to Force Majeure Event.....	60
21.10	Additional Compensation and SDMC's Subrogation.....	61



*[Handwritten signature]*

21.11	Liability for other losses, damages etc.....	61
22	CHANGE IN LAW.....	61
22.2	Exclusions to Change in Law: .....	62
22.3	Notification of Change in Law .....	62
22.4	Increase in Cost .....	62
22.5	Reduction in Cost .....	62
22.6	Tariff Adjustment .....	63
23	JURISDICTION .....	63
24	NO WAIVER OF RIGHTS AND CLAIMS .....	63
25	SCHEDULES AND ANNEXURES.....	63
26	SUPERCESSION OF EARLIER AGREEMENTS .....	63
27	NOTICES .....	64
28	Legal Charges .....	64
29	COUNTERPARTS .....	64
30	ASSIGNMENT.....	65
30.1	Restriction on assignment and charges by the Concessionaire.....	65
30.2	Permitted Charges .....	65
30.3	Assignment by the SDMC.....	66
31	NO PARTNERSHIP .....	66
32	SEVERABILITY .....	66
33	REPRESENTATIVE AND WARRENTIES .....	67
SCHEDULE I: .....		69
[Description of Project Site] .....		69
SCHEDULE II: .....		70
[Flow Diagram of Plant] .....		70
Quoted Tariff.....		71
SCHEDULE IV .....		72
Commissioning Tests.....		72
SCHEDULE V – .....		74
FORMAT FOR BANK GUARANTEE .....		74
SCHEDULE VI .....		78
LAND LEASE AGREEMENT .....		78
SCHEDULE – VII .....		85
ESCROW AGREEMENT.....		85
1	DEFINITIONS AND INTERPRETATION.....	87



*[Handwritten signature]*

2	ESCROW ACCOUNT .....	88
3	DEPOSITS INTO ESCROW ACCOUNT .....	90
4	WITHDRAWALS FROM ESCROW ACCOUNT .....	91
5	OBLIGATIONS OF THE ESCROW BANK .....	94
6	ESCROW DEFAULT .....	95
7	TERMINATION OF ESCROW AGREEMENT .....	96
8	SUPPLEMENTARY ESCROW AGREEMENT .....	96
9	INDEMNITY .....	97
10	DISPUTE RESOLUTION .....	98
11.	MISCELLANEOUS PROVISIONS .....	98
	SCHEDULE VIII .....	102
	SUBSTITUTION AGREEMENT .....	102
1	DEFINITIONS AND INTERPRETATION .....	103
2	ASSIGNMENT .....	103
3	SUBSTITUTION OF THE CONCESSIONAIRE .....	104
4	PROJECT AGREEMENTS .....	106
5	TERMINATION OF CONCESSION AGREEMENT .....	106
6	DURATION OF THE AGREEMENT .....	107
7	INDEMNITY .....	107
8	DISPUTE RESOLUTION .....	108
9	MISCELLANEOUS PROVISIONS .....	108
	SCHEDULE IX .....	112
	ARTICLE 1: DEFINITION AND INTERPRETATION .....	116
	ARTICLE 2: AGREEMENT AND TERMS OF FINANCIAL ASSISTANCE .....	120
	ARTICLE 3: CREATION OF CHARGE TO SECURITIZE FINANCIAL ASSISTANCE .....	122
	ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION .....	123
	ARTICLE 5: INSPECTION OF SITE /WORKS AND PROGRESS REPORTING .....	126
	ARTICLE 6: INSURANCE OF CHARGED PROPERTIES .....	127
	ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC. ....	128
	ARTICLE 8: CONCESSIONAIRE'S WARRANTIES/ GUARANTEES .....	129
	ARTICLE 9: WAIVER .....	130
	ARTICLE 10: GOVERNING LAW AND DISPUTE RESOLUTION .....	131
	ARTICLE 11 - SPECIAL CONDITIONS .....	133
	ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT .....	134
	Schedule X: Operation and Emission Standards .....	139





## CONCESSION AGREEMENT

**THIS AGREEMENT** made on this 10<sup>th</sup> day of May, 2018 at Delhi.

### **BETWEEN**

**South Delhi Municipal Corporation of Delhi**, a statutory body constituted under the Delhi Municipal Act 1957 and having its office at 9<sup>th</sup> Floor, Civic Centre, JLN Marg, New Delhi 110002 and acting through its Executive Engineer (Store), (hereinafter referred to as “**SDMC**” or “**Authority**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the ONE PART

### **AND**

**Tehkhand Waste to Electricity Project Limited**, a company incorporated under the Companies Act, 2013 and having its registered office at 28 Shivaji Marg, Najafgarh Road, New Delhi 110015”, and acting through its DIRECTOR, Mr. Umesh Chopra, (hereinafter referred to as ‘**Concessionaire**’ which expression shall, unless repugnant to the context or meaning thereof, mean and include its associate/group companies, successors and assigns) of the OTHERPART

SDMC and Concessionaire are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

### **WHEREAS**

1. SDMC is constituted under the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as “the Act”) and is responsible for providing municipal and civic services to the citizens of South and Western part of Delhi State, including collection, transportation and disposal of Municipal Solid Waste (MSW) generated within their jurisdiction.
2. Government of India has formulated Solid Waste Management Rules 2016 (“**SWM Rules**”), which impose an obligation on SDMC to adopt suitable process for processing and disposal of MSW (as defined hereinafter). In furtherance of its functions and pursuant to the SWM Rules, SDMC desires to establish facilities to process, manage and dispose MSW;
3. SDMC is desirous of augmenting its waste management capability and expanding its waste processing, management and disposal capabilities and has decided to set up MSW to Energy Processing Facility at Tehkhand, Okhla, New Delhi as per Solid Waste Management Rules, 2016 for 2000 TPD of MSW (“**Project**”);
4. SDMC has incorporated **Tehkhand Waste to Electricity Project Limited** a Special Purpose Vehicle, under the Companies Act, 2013 with its registered office at 28 Shivaji Marg, Najafgarh Road, New Delhi 110015, to ensure smooth and expeditious development of the Project;
5. SDMC had accordingly issued a Notice Inviting Tender along with Request for Proposal (RFP) on July 31, 2017 for selection of developer to design, engineer, finance, construct,



commission, operate and maintain the above referred Project and invited bids for undertaking the Project;

6. Pursuant to the said bidding process and the evaluation of the Bids received, the SDMC have accepted the Bid of JITF Urban Infrastructure Limited ("**Successful Bidder**") and issued it the Letter of Award (LOA) No. D/EE (Engg Store)/2017-18/370 dated 01.03.2018 and Corrigendum in Letter of Award (Ref. No. D/EE (Engg Store)/2017-18/380) dated 08.03.2018 requiring, *inter-alia* the execution of this Concession Agreement following which, the Successful Bidder has executed the share purchase agreement in the format provided in the RFP and has acquired 100%(hundred percent) shareholding of the **Tehkhand Waste to Electricity Project Limited ("Concessionaire")**, which shall undertake and perform the obligations and exercise the rights of the JITF Urban Infrastructure Limited under the LOA, and sign the Concession Agreement with SDMC pursuant to the LOA for undertaking the Project.
7. For the successful implementation of the Project, the Delhi Development Authority (DDA) has allotted and the SDMC has received on lease with all right, title and interest to further grant in concession for a term of 25years a piece and parcel of land which is admeasuring fifteen (15)Acre and is more specifically described in Schedule I attached to this Concession Agreement at Tehkhand, Okhla, New Delhi ("Site") and on which the Concessionaire shall design, build, own, maintain, and operate all the Project Facilities in accordance with this Concession Agreement for the Term (as defined hereinafter);
8. Pursuant to the issuance of the LOA, Concessionaire has submitted a Performance Bank Guarantee in favour of SDMC;
9. The SDMC have now agreed to sign this Agreement with Concessionaire vesting it with the rights and obligations required to enable it to duly undertake the development, financing, construction, operation and maintenance of the Project.
10. SDMC has agreed to execute a Land Lease Agreement with the Concessionaire in respect of the Project Land.

**NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**



A handwritten signature in blue ink.

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

- 1.1.1 **“Agreement”** shall mean this concession agreement between SDMC and Concessionaire, including its schedules and annexure and includes any amendments made hereto in accordance with the provisions hereof;
- 1.1.2 **“Agreed Form”** shall mean in relation to any document, the form of the said document most recently agreed to by the Parties and initialled by them for identification;
- 1.1.3 **“Adjusted Equity”** shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:
- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of after last of the Conditions Subsequent is satisfied by the Concessionaire and the Reference Date;
  - (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
  - (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.27% (zero point two seven per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

- 1.1.4 **“Applicable Approvals”** shall mean all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required by Applicable Laws, to be procured by the Concessionaire in connection with the construction, commissioning and operation of the Project;
- 1.1.5 **“Applicable Laws”** shall mean all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which have the force of law, in the force and effect, as

of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or order of any court of record, as may be in force and effect during the subsistence of this agreement and applicable to the project;

- 1.1.6 **"Bid"** shall mean the response to the RFP submitted by the Successful Bidder;
- 1.1.7 **"Bidder"** shall mean the Bidding Company and the Bidding Consortium as the case may be;
- 1.1.8 **"Bidding Company"** shall mean the reference to a single company, if the Bid has been submitted by a single company;
- 1.1.9 **"Bidding Consortium"** shall mean the reference to the group of companies, each being a Member, if the Bid has been submitted jointly by more than one company;
- 1.1.10 **"Bid Due Date"** shall mean the last date for submission of the Bid, in response to the RFP;
- 1.1.11 **"Bidding Documents"** shall mean the RFP including Feasibility Report along with all its attachments and any amendments thereto or clarifications thereof;
- 1.1.12 **"Condition Subsequent"** shall mean the conditions to be fulfilled by the Concessionaire as set forth in clause 3.1;
- 1.1.13 **"Concession"** shall mean the grant of concession to the Concessionaire by SDMC in terms of Clause 2 of this Agreement;
- 1.1.14 **"Daily MSW Deficiency Amount"** Shall have the meaning given to the phrase in Clause 7.6;
- 1.1.15 **"Daily Weight Sheet"** shall have the meaning given to the term in Clause 7.3;
- 1.1.16 **"Date of Commissioning" or "COD"** shall mean the date notified by Concessionaire as the date on which the Plant is ready to commence commercial operations after issuance of test certificate of the Independent Engineer certifying successful completion of Commissioning Tests;
- 1.1.17 **"Debt Due"** shall mean the aggregate of the following, expressed in Indian Rupees, outstanding on the relevant date: (a) the principal amount under the Financing Documents excluding the principal amount that had fallen due for repayment 2 (two) years prior to the issuance of the Termination Notice by the Procurers and (b) Interest on Debt;

Provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of computation of Debt Due;



A handwritten signature in blue ink, consisting of a stylized 'f' followed by a horizontal line.

- 1.1.18 **"Debt Service"** shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in a financial year to the Lenders for and in respect of Debt Due under the Financing Documents;
- 1.1.19 **"Delivery Point"** shall mean 66kV side of 440/220/66 kV Tughlakabad Sub-station of BRPL wherein the Generating Company shall inject power. The metering for sale of power shall be done at this point. All charges and losses upto the Delivery Point shall be borne by the Concessionaire and after the Delivery Point by the Procurer;
- 1.1.20 **"Development Costs"** shall mean the aggregate of the amounts spent by Concessionaire in undertaking activities in relation to the implementation of the Project till the Date of Commissioning which amounts will include but not be limited to:
- (a) Expenditure incurred for and in relation to the Project which have been charged/assigned to Concessionaire.
  - (b) Expenditure incurred in relation to preparation of all reports studies and other papers relating to the Project and the Project Facilities.
  - (c) Expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Approvals,
  - (d) Fees of all consultants, experts, accountants, lawyers, lenders and other independent persons hired in relation to the Project,
  - (e) Costs of maintaining offices of Concessionaire that is attributable to the Project,
  - (f) Any payments made to SDMC or on behalf of SDMC in relation to the Concession or the Project and
  - (g) Costs of any contractors appointed by Concessionaire in relation to the implementation of the Project.
- 1.1.21 **"Eneumbrances"** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the Site;
- 1.1.22 **"Effective Date"** shall mean the date on which the Authority shall provide the Certificate of Change of Land Use to the Concessionaire;
- 1.1.23 **"Equity"** shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the total cost of the Project, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;
- 1.1.24 **"Expiry Date"** shall mean the 25<sup>th</sup> anniversary of the Scheduled COD of the Plant unless otherwise specified herein or extended by the Parties in accordance with the terms of this Agreement;

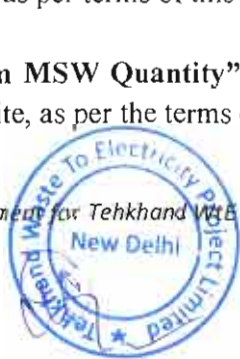


- 1.1.25 **“Financial Closure”** shall mean the execution of all the Financing Documents required for the Project and fulfilment of all the conditions precedent specified in the Financing Documents unless waived by the Lenders for the initial draw down of funds there under;
- 1.1.26 **“Financial Package”** shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the financial model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Documents and Subordinated Debt, if any;
- 1.1.27 **“Financing Documents”** shall mean collectively the agreements entered into for providing the debt Financing for implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Plant or any part thereof, for securing the debt provided;
- 1.1.28 **“Functional Specifications”** shall mean the technical requirements and parameters provided in Grid Code relating to the operation, maintenance and dispatch of any Unit and the Power Station;
- 1.1.29 **“Grid Code”** shall mean the Delhi Electricity Grid Code 2008 as notified by the Delhi Electricity Regulatory Commission or any succeeding set of regulations or code or Indian Electricity Grid Code 2010 as notified by Central Electricity Regulatory Commission as applicable;
- 1.1.30 **“Good Industry Practice”** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of facilities similar to the facilities to be constructed, operated and maintained pursuant to the Project;
- 1.1.31 **“Government”** shall mean the Government of India or the Government of the Delhi, as the case may be;
- 1.1.32 **“Government Instrumentality”** shall mean any department, division or sub-division of the Government of India or the Government of NCT of Delhi and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat, under the control of the Government of India or the Government of NCT of Delhi, as the case may be, and having jurisdiction over all or any part of the Plant or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.33 **“Hazardous Waste”** shall have the meaning as defined under the Hazardous and Other Wastes (Management and Trans-boundary Movement) Rules, 2016 and any amendment thereof;



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

- 1.1.34 **"Installed capacity"** shall mean the sum of the name plate capacities of the Units of the generating station or the capacity of the generating station reckoned at the generator terminals;
- 1.1.35 **"Interest on Debt"** shall mean the interest which is due under the Financing Documents but excluding (a) any interest, fees or charges that had fallen due 1(one) year prior to the relevant computation date (b) any penal interest or charges payable under the Financing Documents to any Lenders and (c) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a SDMC default;
- 1.1.36 **"Land Lease Charges"** shall have the meaning as set forth in clause 10.2.3;
- 1.1.37 **"Landfill Site"** means the sanitary landfill site within a radius of 4km of the Site notified by SDMC pursuant to Clause 9 as being available for disposal of Residual Inert Matter and Rejected Waste pursuant to this Agreement.
- 1.1.38 **"Landfilling"** shall mean the disposal of the Residual Inert Matter from the pre-processing/recycling facility including bottom ash, fly Ash and rejects at the Sanitary Landfill in accordance with the terms of this Agreement;
- 1.1.39 **"Lease Agreement"** shall mean the lease agreement pursuant to which SDMC shall lease the Site to Concessionaire;
- 1.1.40 **"Lenders' Representative"** shall mean the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;
- 1.1.41 **"Lenders"** shall mean the persons that provide the financing for the Project pursuant to Financing Documents and who hold *paripassu* charge on the assets, rights, title and interests of the Concessionaire;
- 1.1.42 **"Material Adverse effect"** shall mean a material adverse effect on (a) the ability of either Party to exercise any of the rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or(b) the legality, validity, binding nature or enforceability of this Agreement;
- 1.1.43 **"Material Breach"** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.44 **"Maximum MSW Quantity"** shall mean a total of 2400(2000 plus20%) Tons per day of MSW Site as per terms of this Agreement;
- 1.1.45 **"Minimum MSW Quantity"** shall mean a total of 1600 (2000 minus20%) Tons per day of MSW at Site, as per the terms of this Agreement;



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

- 1.1.46 **“MSW” or “Municipal Solid Waste”** shall mean and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio medical waste excluding industrial waste, bio medical waste and e-waste, battery waste, radioactive waste generated in the area under the Authority;
- 1.1.47 **“MSW Quantity”** shall mean Two Thousand metric tons per day (2000 TPD) (with a permitted variation level of plus minus twenty percent) at Tehkhand, Okhla Site which is the quantity of MSW that Concessionaire will obtain from SDMC or any Person located within the jurisdiction of SDMC, for processing at the Plant;
- 1.1.48 **“O&M Expenses”** shall mean expenses incurred by or on behalf of the Concessionaire or by the SDMC, as the case may be, for all O&M 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, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Approvals or this Agreement;
- 1.1.49 **“Organic Waste”** shall mean waste that can be degraded by micro-organisms;
- 1.1.50 **“Performance Guarantee”** shall mean the bank guarantee submitted by the Concessionaire in the format enclosed at Schedule V for aggregate amount of Rupees Eighteen Crore Seventy Five Lakh (Rs. 18,75,00,000/-) initially valid for a period of one year after the Scheduled COD. The Concessionaire shall ensure that the validity of the Performance Guarantee is extended till one year after the COD.;
- 1.1.51 **“Person”** shall mean any individual, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity;
- 1.1.52 **“Plant”** shall mean the integrated MSW management and processing facility comprising the RDF Plant, facility for handling organic waste, the Power Plant to be designed, constructed, operated and maintained by Concessionaire in accordance with terms and provisions of this Agreement, and Land Lease Agreement;
- 1.1.53 **“Power Plant”** shall mean the power generation plant of a name plate capacity of minimum 25 Mega Watt to be established at the Site that will generate electricity by using the Municipal Solid Waste or Supplementary Fuel or both, as the case may be;



- 1.1.54 **“Power Purchase Agreements”** or “PPA” mean the Power Purchase Agreement entered into between the Concessionaire and the Discoms in regard to Project;
- 1.1.55 **“Preliminary notice”** shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.56 **“Project”** shall mean the project for enabling the processing of Municipal Solid Waste equivalent to the MSW Quantity and for that purpose to design, develop, finance, construct, operate and maintain the Plant under and in accordance with the terms and provisions of this Agreement;
- 1.1.57 **“Project facilities”** shall mean, as the context may require either all or one or more of the following: (i) the Site and (ii) the individual facilities comprising the Plant, namely the RDF Plant, (iii) and the Power Plant;
- 1.1.58 **“Prudent Utility Practices”** shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities or waste management plants entities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power stations and handling of MSW and power generation equipment as specified in this Agreement and which practices, methods and standards shall be adjusted as necessary, to take account of the:
- (a) operation and maintenance guidelines recommended by the manufacturers of the Power Station and equipment to be incorporated in the Project;
  - (b) the requirements of Applicable Law; and the
  - (c) physical conditions at the Project Land;
- 1.1.59 **“Quoted Tariff”** shall mean the fixed charge in Rs/kWh quoted by the Successful Bidder for each Contract Year after the COD for the supply of Contracted Capacity as specified in Schedule III;
- 1.1.60 **“RDF”** shall mean product derived by processing (sorting, sizing, segregation and dehydrating) of municipal solid waste by separating non-combustible fraction and preparing the combustible fraction into a form that can be effectively used as fuel for energy conversion;
- 1.1.61 **“RDF Plant”** shall mean the facility having a capacity to process upto Two Thousand Tons per day (2000 TPD) of MSW, that will be constructed, operated and maintained as part of the Plant, for producing RDF from the MSW;
- 1.1.62 **“Reference Exchange Rate”** shall mean, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12:00 (twelve) noon on the relevant date quoted in Delhi by the State



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

- 1.1.63 **“Receipt Point”** shall mean the place within the Site, specified in writing by Concessionaire and marked on a layout plan by Concessionaire not later than four (4) months prior to Scheduled COD, at which SDMC shall be required to deliver the MSW in accordance with the terms of this Agreement;
- 1.1.64 **“Residual Inert Matter”** shall mean the waste matter including but not limited to inerts and all rejects obtained after pre-processing and post-processing (WtE section) of MSW such as fly ash, bottom ash or any other rejects.
- 1.1.65 **“Residual Inert Matter Handling Charges”** shall have the meaning as set forth in Clause 10.2.1
- 1.1.66 **“Rejected Waste”** shall mean such components of a consignment of Municipal Solid Waste delivered by SDMC that are refused to be accepted by Concessionaire as per provision of clause 7.5(a);
- 1.1.67 **“Request for Proposal”** or **“RFP”** shall mean the request for proposal dated 31<sup>st</sup> July 2017 along with the feasibility report issued to Bidders along with the RFP, all schedules, annexures attached thereto, issued by the SDMC for tariff based bidding process for selection of concessionaire for the Project, and shall include any revision, modifications, amendments or alterations thereto;
- 1.1.68 **“Site”** shall have the meaning as set forth in clause 4.1;
- 1.1.69 **“Scheduled COD”** shall be the date which shall be no later than twenty seven months of the Effective Date;
- 1.1.70 **“Successful Bidder”** shall mean the Bidder selected pursuant to the bidding process to undertake the Project through the Concessionaire pursuant to the terms of this Agreement;
- 1.1.71 **“Supplementary Fuel”** shall have the meaning given to the term in clause 2.3;
- 1.1.72 **“Suspension”** shall have the meaning as set forth in Clause 19.1;
- 1.1.73 **“SWM Rules”** shall mean the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments/modification thereto or re-enactments thereof, for the time being in force;
- 1.1.74 **“Technology”** shall mean RDF based grate combustion technology along with a process diagram provided in Schedule II.



- 1.1.75 **"Term"** shall have the meaning as set forth in clause 2.4;
- 1.1.76 **"Termination"** shall mean the early termination of this Agreement pursuant to Termination Notice given by either Party to the other Party or otherwise in accordance with provisions of this Agreement but shall not, unless otherwise requires, include expiry of this Agreement due to the expiry of its Term;
- 1.1.77 **"Termination Notice"** shall mean the notice issued by the SDMC to the Concessionaire in terms of this Agreement for terminating this Agreement;
- 1.1.78 **"Termination Date"** shall mean the date specified in the Termination Notice as the date on which Termination occurs;
- 1.1.79 **"Termination Payments"** shall mean the payment payable pursuant to clause 18.3 of this Agreement;
- 1.1.80 **"Unit(s)"** shall mean one MSW combustion steam generator, steam turbine, generator and associated auxiliaries of the Power Plant;
- 1.1.81 **"Weighbridge"** shall mean the electronic weighbridge capable of performing the operations specified in clause 7.3;

## 1.2 Interpretation

- (a) The words ,phrases and expressions defined hereinabove in clause 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said clause 1.1 or in this Agreement and shall be interpreted accordingly. Expression which have not been defined in this Agreement shall carry the respective meaning assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (b) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (c) The words "include" and "including" are to be construed without limitation;
- (d) The headings of the clauses in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
- (e) The Schedules and Annexure to this Agreement form an integral part of this Agreement and shall be interpreted accordingly.



A handwritten signature in blue ink.

- (f) The terms which are used in this Agreement but are defined in the Power Purchase Agreement shall have the meaning ascribed to them in the Power Purchase Agreement.
- (g) The terms which are not defined herein in this Agreement shall be given a meaning which is ascribed to them in Municipal Solid Waste Management Rules, 2016 and Hazardous and Other Waste (Management and Trans-boundary Movement) Rules, 2016;

## 2. THE PROJECT

### 2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, SDMC hereby grants to the Concessionaire and the Concessionaire hereby accepts exclusive right, interest and authority, until the end of the Term to design, finance, build, test & commission and operate the Project for processing of MSW to energy by utilizing the Technology and maintaining Project Facility at the Site in accordance with Applicable Law and in additions to the other rights granted under this Agreement and specifically to do:

- (a) Lease of the Site for the purpose of and to the extent provided in this Agreement and to pay lease rent to SDMC as per the terms of this Agreement and Land Lease Agreement;
- (b) to design engineer, procure, finance, construct, operate and maintain the Plant and Project facilities, with MSW waste processing facility of MSW Quantity based on Technology;
- (c) to sell the entire power generated from the Power Plant to Discoms namely BSES Rajdhani Power Limited, BSES Yamuna Power Limited, Tata Power Delhi Distribution Limited and New Delhi Municipal Council (the "Procurers") as per the terms of the Power Purchase Agreement;
- (d) to receive at the Receipt Point, during each day of the Term, MSW from SDMC for the Project, to be transported and supplied by SDMC at the Receipt Point at its own cost and expense;
- (e) to inspect the MSW delivered by SDMC and identify Rejected Waste in accordance with the provisions of this Agreement, in such manner as it deems fit, and refuse to accept the Rejected Waste;
- (f) to process the reject and recover the recoverable material from pre-processing and ash and transport the Residual Inert Matter to the Landfill Site in accordance with the provisions of this Agreement and pay to SDMC the cost of handling the Residual Inert Matter as per the terms of the Agreement;
- (g) to segregate and processing for bio-stabilization of biodegradable waste through by a suitable processing/ recycling facility;



- (h) to receive all the fiscal incentives and benefits accruing in respect of or on account of the Project
- (i) to receive effluent water from the sewage treatment plant, Okhla managed by Delhi Jal Board and to utilize the water so received after the treatment for the generation of power;
- (j) to construct, commission, manage and operate a effluent treatment plant at the Site;

## 2.2 Rights Associated with the Grant of Concession

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

- (a) to design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such Person as may be selected by it;
- (b) to borrow or raise money or funding required for the due implementation of the project and mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities;
- (c) to process MSW delivered by SDMC to Concessionaire and transport the Residual Inert Matter to the Landfill Site as per provisions of this Agreement.
- (d) to store, use, appropriate, market and sell or dispose all the products derived or produced from the Plant as a consequence of undertaking the processing of the MSW including electricity or RDF or fluff or gas or residual treated waste or any other products or by-products, other material recovered or produced from MSW at the plant, without any interference or requirement of any additional reporting, clearance or approval in this regard from SDMC and save and except where expressly provided to the contrary, to further retain and appropriate any revenues generated from the sale of such products.
- (e) to obtain the utilities required for enabling the construction of the Project facilities, at its own cost and expenses.
- (f) exclusively hold, possess, and control the Site, in accordance with the terms of the Concession Agreement and Land Lease Agreement, for the purpose of the due implementation of this Project, in accordance with the terms of this Agreement.



### 2.3 Use of Supplementary fuel for Power Plant

The Parties hereby agree that Concessionaire shall have the right to use, at such times as it may deem fit, any fuel as a supplement to the MSW (as per MNRE Guidelines/ SWM Rules/ NGT orders from time to time) to enrich the RDF and/or to directly support the operation of Power Plant (such fuel shall be referred to as “Supplementary Fuel”).

### 2.4 Term of Concession

This Agreement shall come into force and effect from the Effective Date and shall remain valid until the Expiry Date (“Term”), unless terminated earlier in accordance with the terms provided herein.

### 2.5 Renewal of Concession

SDMC may by notice to the Concessionaire, to be issued atleast 24 months prior to Expiry Date, extend the Term of Concession by 5 years on such terms and conditions as mutually agreed upon. SDMC may exercise this right twice during the Term of the Agreement. However, any such extension shall be co-terminus with Land Lease Agreement.

### 2.6 Sharing of CDM Benefits

In case the Project is eligible for carbon credits, the proceeds from carbon credit shall be shared between Procurers and the Concessionaire in the following manner:

- i. 100% of the gross proceeds on account of carbon credit benefit shall be retained by the Concessionaire in the first year beginning from the date of complete Commissioning of the Power Plant;
- ii. In the second year from the date of Commissioning of the Power Plant, the share of the Procurers shall be 10% which shall be progressively increased by 10% every year till it reaches 50%, where after the proceeds shall be share in equal proportion between the Authority and the Concessionaire.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

### 3. **CONDITIONS SUBSEQUENT**

#### 3.1. **Conditions Subsequent**

The Concessionaire agrees and undertakes to duly perform and complete the following activities ("**Concessionaire's Conditions Subsequent**") within 6 (six) months from the Effective Date unless mutually extended by the SDMC ("**Concessionaire's Conditions Subsequent Period**") and unless such completion is affected due to the occurrence of any Force Majeure Event or if any of the Concessionaire's Conditions Subsequent is specifically waived off in writing by the Authority:

- (i) the Concessionaire shall have awarded the Engineering, Procurement and Commissioning Contract ("**EPC Contract**") or the main plant contract for Boiler, Turbine and Generator Contract ("**BTG Contract**"), for the Project and shall have given to the EPC Contractor/ BTG Contractor an irrevocable Notice to Proceed (**NTP**),
- (ii) the Concessionaire shall have attained the Financial Closure, and shall have submitted a true copy of the Financing Documents.
- (iii) Execute Financial Assistance Securitization Agreement as per format provided in Schedule IX of this Agreement,
- (iv) Obtain all the Applicable Approvals that are required to commence and undertake construction of the Plant,
- (v) Open and establish an Escrow Account with a Bank in accordance with clause 16.
- (vi) Submit a true copy of the letter from the STU/CTU confirming the technical feasibility of connectivity of the Power Station switchyard to the Delivery Point.

#### 3.2. **Consequences of non-fulfilment of the Concessionaire's Conditions Subsequent**

- 3.2.1 If the Concessionaire does not duly fulfil the Concessionaire's Conditions Subsequent even within a period of 2 (two) months after the Concessionaire's Conditions Subsequent Period, then on and from the expiry of such period, the Concessionaire shall be entitled to extension of the Concessionaire's Conditions Subsequent Period subject to a maximum of 5 (five) months from the expiry of the Concessionaire's Conditions Subsequent Period provided the Concessionaire furnishes to the Procurers additional weekly Performance Bank Guarantee calculated as 5 % (five percent) of amount of the Performance Bank Guarantee within 2 (two) business days of expiry of every week. Such additional Performance Guarantee shall become a part of the Performance Bank Guarantee and all the provisions of this Agreement shall be construed accordingly.
- 3.2.2 Unless completion of the Concessionaire's Conditions Subsequent is affected due to the reasons attributable to the Authority or by the occurrence of any Force Majeure Event, if:



- (i) the fulfilment of any of the Concessionaire's Conditions Subsequent is delayed by the Concessionaire beyond a period of 2 (two) months from the expiry of the Concessionaire's Conditions Subsequent Period and the Concessionaire fails to furnish any Additional Weekly Performance Guarantee to the Authority in accordance with Clause 3.2.1 ; or
- (ii) the Concessionaire furnishes Additional Weekly Performance Guarantee to the Authority in accordance with Clause 3.2.1 hereof but fails to fulfil the Concessionaire's Conditions Subsequent for a period of 5 (five) months beyond the expiry of the Concessionaire's Conditions Subsequent Period as mentioned in the said Clause 3.1,

then the Concessionaire shall be liable to pay to the Authority an amount of Rupees Twenty Five (25) Crore only as Liquidated Damages. The Authority shall be entitled to recover this amount of damages by invoking the Performance Guarantee and shall then return the balance Performance Guarantee, if any, to the Concessionaire. In the event the Authority are unable to recover the aforesaid amount of Liquidated Damages in whole or any part thereof from the Performance Guarantee, then the amount not recovered from the Performance Guarantee, if any, shall be payable by the Concessionaire to the Authority within 7 (seven) business days of the Authority's encashment of the Performance Guarantee. The SDMC shall also have the right to terminate this Agreement by issuing a Termination Notice.

### **3.3. Consequences of non-fulfilment of the Conditions Subsequent by the Concessionaire on account of Force Majeure Event(s).**

3.3.1 In case of inability of the Concessionaire to fulfil the Concessionaire's Conditions Subsequent due to any Force Majeure Event, the following consequences shall ensue:

- (A) **Extension of Time:** The Concessionaire's Conditions Subsequent Period shall be extended for the period of the subsistence of such Force Majeure Event, subject to a maximum extension period of 6 (six) months, continuous or non-continuous in aggregate, unless the Concessionaire and the SDMC mutually agree to increase the maximum extension period as provided herein. Consequently, the Scheduled COD shall also get extended equal to the period of the subsistence of the Force Majeure Event, subject to the maximum extension period. In the event the Force Majeure Event subsists even after the extended period in terms of this clause then the Parties may terminate this Agreement by issuing Termination Notice.
- (B) **Allocation of Costs:** In the event at this stage, the Financial Closure has been attained and the loan has been disbursed by the Lenders in accordance with the Financing Documents, the Parties shall allocate the Force Majeure Costs in terms of Article 21. However, in the event the Financial Closure has not been attained or the Financial Closure has been attained but the loan has not been disbursed by the Lenders in accordance with the Financing



Documents, the Parties shall bear their respective costs on account of a Force Majeure Event, and no Party shall be liable to pay to the other Party any costs thereof.

### 3.4. Progress Reports

The Concessionaire shall notify to SDMC in writing at least once a month on the progress made in satisfying the conditions in Clause 3.1. Upon completion of each of the or any of the Condition Subsequent, the Concessionaire shall inform SDMC about the completion of such Condition Subsequent within a period of 3 (three) days from the date of completion of such Condition Subsequent, in writing and along with document evidencing the completion of the said Condition Subsequent.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

#### 4. **THE SITE**

##### 4.1. **Vesting of Site with Concessionaire**

The site of the Project shall comprise the one contiguous piece of land admeasuring fifteen(15) Acres earmarked by SDMC at Tehkhand, Okhla, New Delhi described in Schedule-I, and in respect of which lease shall be provided and granted by the SDMC to the Concessionaire in accordance with this Agreement (collectively, the "Site").

##### 4.2. **Lease**

In consideration of the Concession granted to the Concessionaire concerning utilization of the MSW as RDF Fuel for the Power Plant, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the SDMC, in accordance with the terms and conditions set forth herein, has executed a lease deed in favour of the Concessionaire, effective from the date on which the last of the Concessionaire's Conditions Subsequent is achieved, in respect of the Site as set forth in Schedule-I, until the Expiry Date and, for the purposes permitted under this Agreement, and in accordance with the Land Lease Agreement. It is being expressly agreed and understood that the SDMC shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

##### 4.3. **Land Lease Agreement to terminate with Concession Agreement.**

SDMC hereby agrees and ensures that the Land Lease Agreement shall terminate along with the termination of this Agreement.

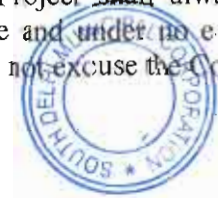
#### 5. **CONSTRUCTION OF THE POWER STATION**

##### 5.1 **Commencement of Construction of the Power Station**

Immediately upon the fulfilment of the Conditions Subsequent, the Concessionaire shall undertake construction of the Plant in accordance with the following, it being clearly understood that in the event of any inconsistency between two or more of the following, the order of priority between them shall be the order in which they have been placed herein, with Applicable Laws being the first:

- (i) Applicable Laws;
- (ii) Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 ;
- (iii) Technical standard for Connectivity to the Grid Regulation, 2007
- (iv) The terms and conditions of this Agreement;
- (v) The Functional Specifications; and
- (vi) Prudent Utility Practices.

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall ensure that the technical parameters of the Project shall always be subject to the requirements as specified in points (i) to (vi) above and under no event shall override or contradict the provisions of this Agreement and shall not excuse the Concessionaire from the performance of its obligations under this Agreement.



## 5.2 Quality of Workmanship

- 5.2.1 Concessionaire shall ensure that the Power Station is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade quality such that, the useful life of the Power Station will be at least till the Expiry Date.
- 5.2.2 The Concessionaire shall ensure that design and construction of all equipment, facilities, components and systems of the Project are in accordance with Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2010 and the Central Electricity Authority (Safety requirements for Construction, Operation and Maintenance of Electrical Plants and Electric Lines) Regulations, 2011.

## 5.3 Applicable Approvals

Concessionaire shall be responsible for obtaining the Applicable Approvals required for designing, financing, construction, operating and maintaining the Project and retain and renew all such Applicable Approvals in order to carry out its obligations under this Agreement in general and this Article 5 in particular. The Concessionaire shall supply to the SDMC, promptly, with copies of each application that it submits, and copies of each Applicable Approval so obtained. For the avoidance of doubt, it is clarified that the Concessionaire shall also be responsible for maintaining and renewing the Applicable Approvals and for fulfilling all conditions specified therein.

## 5.4 Type Test Reports

The Concessionaire shall retain at the Project Land and make available for inspection to the SDMC at all reasonable times, copies of the results of all tests.

## 5.5 Co-ordination of Construction Activities and the Role of the Independent Engineer

- 5.5.1 The SDMC shall appoint an Independent Engineer who shall perform all the responsibilities and duties specified in clause 5.6 below including review of design of the complete Project, construction of the Plant and during Operation and Maintenance of the Plant.
- 5.5.2 Before the 10<sup>th</sup> (tenth) day of each month during the until the COD, the Concessionaire shall prepare and submit to the SDMC and the Independent Engineer, monthly progress report, in the Agreed Form and such other information that may be sought by the SDMC and/or the Independent Engineer; and
- 5.5.3 Notwithstanding anything contained in this Agreement, the Independent Engineer shall as and when deemed fit and necessary and make a report of such inspection (the “**Inspection Report**”) detailing the defects or deficiencies, if any, with particular reference to the Technology of the Project and the specifications and standards in terms of the Prudent Utility



Practices. The Independent Engineer shall send a copy of the Inspection Report to the SDMC and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall endeavour to rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

## **5.6 Duties and Functions**

- 5.6.1 The Independent Engineer shall as and when deemed fit and necessary, but normally not more than once every 1 (one) month, inspect the Plant and make a report of such inspection (the "Inspection Report") detailing the defects or deficiencies, if any, with particular reference to the Scope of the Project and the specifications and standards in terms of the Prudent Utility Practices. The Independent Engineer shall send a copy of the Inspection Report to the SDMC and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall endeavour to rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 5.6.2 the Independent Engineer shall each designate qualified and authorised representatives to witness and monitor the Commissioning Test.
- 5.6.3 the Independent Engineer shall within 48 (forty-eight) hours of receipt of the Commissioning Test results from the Concessionaire, provide the SDMC and the Concessionaire, in writing, the Independent Engineer's findings from the evaluation of Commissioning Test results, either vide the issuance of the Final Test Certificate certifying the matters specified in clause\_\_ or the reasons for non-issuance of the Final Test Certificate.

## **5.7 Remuneration**

- 5.7.1 The remuneration, cost and expenses of the Independent Engineer shall be borne by the SDMC.

## **6. COLLECTION OF MSW**

### **6.1 Collection of MSW**

Commencing from the COD, SDMC shall during the Term of the Agreement, supply MSW Quantity to Concessionaire at the Receipt Point either by itself or through its nominated agencies.

### **6.2 Collection from Vegetables Markets and Bulk Generators**

- a. SDMC and Concessionaire hereby agree that any waste from vegetables markets or bulk generators may be directly transported to Concessionaire in duly segregated condition upon directions of SDMC. However, it may be noted that if the vegetables markets and bulk waste



A handwritten signature in blue ink.

generators, are paying or start paying SDMC, any fee for the disposal of the MSW generated by them ("Bulk Generator Tipping Fee"), then such bulk generator tipping fee shall keep on accruing to SDMC and the Concessionaire shall have no claims in respect of such Bulk Generator Tipping Fee.

- b. It may also be noted that the MSW so provided by SDMC shall be a part of MSW Quantity, provided however; such quantity shall not generally exceed 20% of MSW Quantity on any given day.

### **6.3 Collection at Cost of SDMC**

SDMC shall be responsible for providing MSW at the Receipt Point of the Project Facility at no cost to the Concessionaire.

### **6.4 MSW Quantity**

SDMC shall schedule the delivery of MSW at the Receipt Point in such a manner so as to ensure that the daily rate of delivery of MSW at the Receipt Points shall be the MSW Quantity at Site. Any deviations in the said MSW Quantity shall be only with the prior consultation of Concessionaire. This provision shall not prejudice SDMC's primary obligation to supply MSW under this Agreement.

## **7. DELIVERY OF MSW**

### **7.1 Delivery of MSW Prior to COD**

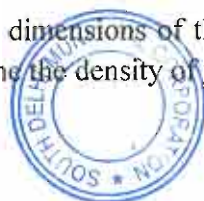
Any time during the period from the Effective Date and until the COD, SDMC shall supply and make available to Concessionaire at the Receipt Point, free of any cost, upto MSW Quantity at Receipt Point, as requisitioned by Concessionaire by seven days advance notice in writing. Provided that such MSW Quantity shall be utilized only and only for processing at the Project Site.

### **7.2 Delivery of MSW after COD**

From the COD during the Term, SDMC shall supply and make available to Concessionaire during each day, MSW of a quantity equal to MSW Quantity in accordance with the provisions of this Agreement.

### **7.3 Measurement of MSW Delivered**

- (a) Concessionaire shall cause atleast two (2) Weighbridge to be constructed at the Receipt Point and atleast one (1) Weighbridge to be constructed at the exit point of the Project Facility which should have video surveillance, a server room, an electronic display unit and suitable technology, with duly calibrated as per BIS norms and duly certified by weight and measures Department of Government of India/Delhi, weighbridge having the maximum possible accuracy, to carry out the following operations.
  - i. Weigh the MSW delivery trucks, take the dimensions of the delivery trucks, determine the weight of the consignment and determine the density of the consignment,



- ii. Generate and maintain an electronic data base for each delivery and provide a print out of the specifications and details for each consignment, as stated in sub-clause (i) above (such printout is hereinafter referred to as **"Daily Weight Sheet"**).
  - iii. Additionally, Concessionaire should provide weight receipt in Duplicate to the driver of the truck.
- (b) The Weighbridge(s) shall be operated and maintained by Concessionaire, at no cost to SDMC.
- (c) Each consignment shall be first weighed at the Weighbridge. SDMC or its transporters shall provide the weight and volume of each empty delivery truck, to enable the due operation of the Weighbridge.
- (d) The Weighbridge shall be monitored and inspected regularly to ensure its due calibration and accuracy and any errors shall be rectified immediately.
- (e) The Daily Weight Sheet shall be final and binding on the Parties. Concessionaire shall also be liable to provide monthly weight sheets (consolidated daily weight sheets) to SDMC at the end of every calendar month.
- (f) In the event the Weighbridge is not operational, the weight of the MSW delivered at the Receipt point during such time shall be measured by an appropriate alternate arrangement established by Concessionaire and agreed to by SDMC, to weigh the MSW being delivered. The weighing of MSW is critical to ensure SDMC's and Concessionaire's obligations under this Agreement and hence Concessionaire shall also be obliged to get the Weighbridge repaired within 24 hours of it being in operational. In case Concessionaire is unable to get the Weighbridge repaired within 24 hours, Concessionaire shall be liable to pay a penalty to SDMC at the rate of Rs. 50,000/- per day (Rupees fifty thousand per day) and SDMC shall have the right to get the weighbridge repaired on its own, but at the cost and risk of Concessionaire.

#### 7.4 Maintenance of Records

The Daily Weight Sheet will be maintained on a day to day basis by Concessionaire to record the quantity of MSW delivered and the quantity of MSW entered therein as having been received and measured shall, subject to the right of Concessionaire to inspect and reject the Rejected Waste that may be part of any consignment, be deemed to have been received by Concessionaire for the purposes of this Agreement. A copy of the Daily Weight Sheet shall be sent to SDMC by Concessionaire by 9:00 am on the next day by e-mail and physical copy of the Concessionaire shall maintain the records of the Daily Weight Sheets (in electronic form) for a period of three years. Concessionaire shall also provide soft copy of the data at the end of every Calendar year to SDMC.



## 7.5 Determination of the Rejected Waste

- (a) If the Weighbridge determines that a consignment, other than a consignment of Organic Waste (to which the provisions of this Clause 7.5(a) shall not be applicable), has a density greater than,
- (i) In the case of an open truck, five hundred and fifty kilograms per cubic meter ( $550 \text{ kg/m}^3$ ) and
  - (ii) In the case of a compactor truck, eight hundred fifty kilograms per cubic meter ( $850 \text{ kg/m}^3$ )

then, the relevant consignment shall be rejected and the truck shall not be allowed to unload the consignment. SDMC hereby agrees that in order to enable the screening to be carried out effectively, it shall adhere to the MSW Quantity.

- (b) The quantity of Rejected Waste identified during a period, shall be deducted from the MSW being supplied by SDMC while determining whether SDMC has delivered the MSW Quantity for such relevant period.

## 7.6 Failure to deliver MSW Quantity

SDMC hereby agreed that the delivery by SDMC every day of the MSW Quantity is critical for ensuring the due implementation of the Project. SDMC hereby agrees that in consideration of Concessionaire implementing the Project and processing the MSW generated within in the areas under the jurisdiction of SDMC, it hereby assures and undertakes that it shall deliver, on every day after the COD, MSW of a quantity that is equal to at least the Minimum MSW Quantity at the Receipt Point. The reconciliation for delivery of Minimum MSW Quantity will be done on monthly basis and in the event if the average MSW supplied is less than the Minimum MSW Quantity, it shall pay Concessionaire, a pre-agreed reasonable compensation, an amount ("**MSW Deficiency Amount**") that is the Lower of:

- (i) In the event, Supplementary Fuel is used to enable the due operation of Power Plant, then the MSW Deficiency Amount shall be the aggregate of the cost incurred by Concessionaire for a month in procurement of Supplementary Fuel (*as defined below*);

OR

- (ii) The "**Fixed Cost**" of the Plant assumed to be equivalent to Seventy percent (70%) of the revenue that would be obtained from sale of electricity produced by deemed generation of the Power Plant at 75% plant load factor shared in the following proportion:

Amount payable by SDMC per month=

= Power Plant Capacity (in MW)\*1000\*24\*(Total Number of days of the Month)\*0.75\*0.7\*(Quoted Tariff)\*(Minimum MSW Quantity *less* Average MSW Quantity Supplied/ Minimum MSW Quantity)



Provided however, that non-delivery of MSW on a day or MSW being supplied by SDMC is less than MSW Quantity due to Rejected Waste during rainy season on account of high moisture content, shall not be considered as a failure on part of SDMC to deliver Minimum MSW Quantity for the purposes of this clause 7.6.

Provided further that the MSW Deficiency Amount shall be payable by SDMC to the Concessionaire if and only if the operation of the Plant is affected due to failure of SDMC to provide the MSW Quantity.

For this clause "**Supplementary Fuel**" means any fuel that is used as a supplement to the MSW to enrich the RDF and or to directly support the operation of Power Plant.

This amount shall be notified by Concessionaire to SDMC together with a certification of the same by the auditor of Concessionaire and agreed to by auditor of SDMC. The Daily MSW Deficiency Amount shall be paid by the SDMC on monthly basis to the Concessionaire and shall be reconciled at the end of each financial year.



## 8. OPERATION AND MAINTENANCE

### 8.1 O&M Obligations of the Concessionaire

The Concessionaire shall operate and maintain the Power Plant either by itself or through an O&M contractor, in accordance with the Applicable Approvals and Applicable Laws, including in particular, the Grid Code, the Functional Specification and Prudent Utility Practices. During the Term, the Concessionaire shall have the following obligations:

- (i) ensure safe, smooth and uninterrupted supply of electricity from the Power Plant;
- (ii) undertake operation and maintenance of the Power Plant, in compliance with the Applicable Laws including the Central Electricity Authority (Grid Standards) Regulations, 2010 and the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010;
- (iii) carry out periodic preventive maintenance of the Power Plant;
- (iv) decommission or shut down the Power Station, in whole or in part, in the event of any disturbance at the Grid or forced outage, after duly intimating the particulars thereof to the Discom and SDMC, the SLDC and abide by the directions, if, any, given by them;
- (v) Re-commission the Power Plant or whole or in part, as early as possible upon the cessation of the circumstances necessitating the decommissioning;
- (vi) As far as possible, not schedule the maintenance of a Unit when another Unit of the Project is shut down or expected to be shut down except under Force Majeure or when the operation of Unit is not permissible due to technical considerations;
- (vii) Cooperate with the Discom and the Independent Engineer in conducting the performance test time to time.

## 9. LANDFILL SITE

### 9.1 The Landfill Site

SDMC shall be responsible for the due operation and maintenance of the Landfill Site and for the ensuring its availability and suitability for accepting the Residual Inert Matter and rejected Wastes. The SDMC shall cause the Landfill Site to be operated and maintained at its own cost and expense (including payment of all levies, charges and taxes whatsoever) and as per the requirements prescribed under Applicable Law. SDMC hereby indemnifies Concessionaire and agrees to hold it harmless against any liability, expense, cost, loss, claim, action, damage that Concessionaire suffers on account of non-availability of the Landfill site to accept the Residual Inert Matter and Rejected Wastes.

### 9.2 Disposal of Residual Inert Matter and C&D Debris and Silt Waste

SDMC shall maintain and make available the Landfill Site in Delhi to Concessionaire at the fees as mentioned in Clause 10.2 of this agreement to dispose the Rejected Waste and Residual



inert matter if any. SDMC and Concessionaire agree that Concessionaire shall deliver the Residual Inert Matter at Landfill Site while Rejected Waste shall be transported by SDMC itself.

Concessionaire shall, however, bear the cost of transportation and off-loading of the Residual Inert Matter (but not of the Rejected Waste) from the Site, as the case may be to the agreed point at the Landfill Site. Provided however, if location of the Land fill Site is more than 4km from the Site then the increase in transportation cost shall be borne by SDMC;

Provided further that the Residual Inert Matter shall generally be not more than 20% of the MSW quantity delivered during the calendar Month.



## 10. OBLIGATIONS OF THE CONCESSIONAIRE

10.1 Subject to the terms and conditions of this Agreement, the Concessionaire undertakes to be responsible for the following, at the Concessionaire's own cost and risk:

- a) obtain all Applicable Approvals in its name from the relevant authority in terms of the Applicable Law and maintain the same in full force and effect for the entire Term of the Agreement and furnish to SDMC copies of all the Applicable Approvals;
- b) to use the land for the Site for the purpose of constructing and operating the Project as per terms of this Agreement and Land Lease Agreement and make Land Lease payments to SDMC
- c) design, engineer, procure, finance, construct, operate and maintain the Project in terms of the scope provided in this Agreement, in a timely manner, so as to enable Plant as a whole to be commissioned no later than its Scheduled COD, save and except as provided in this Agreement, and such that as much of the MSW Quantity could be processed during the Term of this Agreement;
- d) receive the MSW supplied at the Site by SDMC and properly measure every day and provide report to SDMC;
- e) to sort the Rejected Waste from the MSW and ensure that such Rejected Waste is returned to SDMC and intimate the MSW Quantity of such Rejected Waste during the day to the SDMC;
- f) to process the MSW Quantity so received at the Power Plant with an option to treat the bio degradable waste so received in the MSW Quantity to be treated by a suitable processing/recycling facility;
- g) to do processing of the Residual Inert Matter for selling it to third parties such that the Residual Inert Matter to be transported to the Landfill Site is generally not more than 20% of the MSW delivered by SDMC and to make payment to SDMC for handling the Residual Inert Matter as per the terms of this Agreement;
- h) to construct and maintain the Power Plant in accordance with the provisions of this Agreement;
- i) to treat the effluent discharge and utilize it at the Power Plant;
- j) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, the whole or any part of the Project Facility, nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement;
- k) procure the requirements of utilities including electricity and water at the Site for construction and operation of the Project (including commissioning and start up power); to meet in a timely manner all formalities for getting such a supply; and also pay for the user charges for the utilities so availed.
- l) provide on a timely basis relevant information to the Discoms on Power Plant specifications which may be required for interconnecting system with the Transmission System;
- m) comply with all the Applicable Laws and the terms and conditions of the Applicable Approvals in the performance of its obligations under this Agreement;



- n) perform and fulfil its obligations under the Financing Documents;
- o) support, cooperate with and facilitate the SDMC & Discoms in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- p) transfer the Project and ensure that its shareholders transfer the equity share capital of the Concessionaire in accordance with the terms of this Agreement to the /SDMC or its nominees, in accordance with the provisions herein;
- q) utilize the Lease Land exclusively for the benefit of the Project;
- r) fulfil all other obligations to be undertaken by the **Concessionaire** under this Agreement.

## 10.2 Obligation of the Concessionaire for Land Lease and Residual Inert Matter Handling Charges

10.2.1 The Concessionaire shall pay to the Authority Rs. 300/- per ton (for the first 12 years after CoD) and Rs. 400/- per ton (for the period from 13th year to 25th year after CoD) for the quantity of Residual Inert Matter (including bottom ash & fly ash) to be received back by SDMC from the Project for the cost of the handling/providing space in the Sanitary Landfill site(**"Residual Inert Matter handling Charges"**).

10.2.2 The Concessionaire shall make full payment of the amount as detailed in Clause 10.2.1 above against Monthly Bills raised by the SDMC to Concessionaire within thirty (30) days through Escrow arrangement as per Clause 16.3.

10.2.3 The Concessionaire shall be required to pay land lease charges of Rs. 25.00 lacs per annum per acre (from the COD till the end of the 12th year after CoD) and Rs. 30.00lacs per annum per acre (for the period from 13th year to 25th year after CoD).The land lease charges shall be paid in advance for the financial year as per the terms in Land Lease Agreement(**"Land Lease Charges"**).

## 10.3 Obligation of the Concessionaire with regard to Equity Lock-in

10.3.1 The Concessionaire shall ensure that it shall not, except with the prior written approval of the SDMC, either directly or indirectly transfer their Equity or issue further Equity that causes the Equity holding of the {Successful Bidder in the total Equity of the Concessionaire to decline, below 51% (fifty one per cent) till the 5 (five) years from the COD/ Lead Member in the Consortium to decline below 51% (fifty one per cent) and that of other Members whose credentials was evaluated to decline below 10% till the 5 (five) years from the COD}.

10.3.2 The associate i.e. Timarpur Okhla Waste Management Co. Ltd. whose credentials the Successful Bidder has relied upon during the bidding process shall continue to remain an associate till the actual COD of the Power Plant. It is further clarified that until the satisfaction of the Conditions Subsequent by the Concessionaire in terms of clause 3.1, the JITF Urban Infrastructure Limited shall continue to hold 100% Equity in the Concessionaire.



#### **10.4 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 shall not, except with the previous written consent of SDMC, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

#### **10.5 Obligations relating to Taxes**

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Plant.

#### **10.6 Adequate Organization**

Concessionaire shall, through the Term have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate for implementing the Project properly and for carrying out the purposes of this Agreement in accordance with the terms hereof.

#### **10.7 Compliance with Applicable Laws and Environment Laws**

10.7.1 Concessionaire shall construct, operate and maintain the Plant (and each of the Project Facilities) in accordance with Applicable Laws, including but not limited to SWM Rules, 2016, Hazardous and Other Waste (Management and Trans-boundary Movement) Rules, 2016 and any amendment thereof and various orders issued by the National Green Tribunal/ Hon'ble Courts from time to time and all the other applicable laws relating to protection and safeguard of the environment and the laws for preventing and monitoring pollution of environment, and obtain and maintain the Applicable Approvals required for the same.

10.7.2 Concessionaire shall also establish a fully equipped laboratory to monitor the quality of water, air, soil and impact of the project on the same, and would deploy suitable technical staff.

10.7.3 Concessionaire shall also establish a laboratory to monitor the quality of input waste, processed waste (RDF), input raw water, soft water, de-mineralised water, effluent water, additives, flue gas emissions. The concessionaire shall be further required to establish a mechanism to transmit the test data online on real time basis to the SDMC/ designated agencies such as CPCB, DPCC etc.

#### **10.8 Repair and Maintenance Work of the Plant**

Concessionaire shall have the right to suspend receiving and processing of MSW, if required for undertaking, maintenance or repair of any of the Project Facilities. Subject to the provisions of the Grid Code, Concessionaire shall provide SDMC of 15 days advance notice of any planned repair or maintenance work of any of the project facilities that will result in the suspension of the operations of the Plant or a reduction in the capacity of the Plant to process the MSW being supplied by SDMC provided however no such notice would be required in the event of any unplanned repair or maintenance caused by an emergency or accident or any such unforeseeable event. Tentative maintenance schedule shall be provided to SDMC every year in January month of each year.



The maximum period for repair and maintenance during any Calendar year shall be restricted to 30 days in year.

#### 10.9 No Breach of Obligations in Certain Circumstances

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

- (i) Force Majeure Event, subject to the provision of Clause 21, or
- (ii) SDMC Event of Default, or
- (iii) Termination of Concession Agreement by efflux of time; or
- (iv) Termination of Lease Agreement by efflux of time; or
- (v) Compliance with the directions of any government agency/competent authority, or
- (vi) Closure of the project facilities or part thereof as permitted under this Agreement or otherwise with the written approval of the SDMC, or
- (vii) Any repair or maintenance work being undertaken on one or more of the project facilities that requires suspension of the operations of the plant subject to clause 10.8.

#### 10.10 Processing of MSW

- (a) Concessionaire hereby assures SDMC that from the date of commissioning and subject to provision of this Agreement and delivery of the required MSW by SDMC, the plant shall be able to accept for processing a minimum of 2400 tonnes per day. At the beginning of each calendar month, after the Date of Commissioning, Concessionaire shall submit report to SDMC providing the calculation of the quantity of MSW that had been delivered by SDMC and the quantity MSW that had been accepted by the Plant of the relevant immediately preceding month.
- (b) In the event the Power Plant has not been able to accept MSW equivalent to the quantity stated in clause 10.10 a) , Concessionaire shall pay except under the provisions of clause 10.8, as due compensation for such default, an amount that shall be the higher of:
  - (i) Any tipping fee, plus additional transportation cost borne by SDMC, that the SDMC had to bear in order to dispose of the Unaccepted Quantity or
  - (ii) An amount of Rupees five hundred (Rs. 500/-) per ton of Unaccepted Quantity. This amount of Rs. 500 per ton shall be increased at the rate of 5% per annum from the COD.

For the purposes of this clause 10.10(b):

“**Unaccepted Quantity**” means the difference between the 2400 tonnes per day or average of the daily MSW delivered by SDMC whichever is lower and the actual MSW quantity accepted by the Project from SDMC in the relevant month, provided however, that the quantity of MSW that Rejected Waste shall not be included for the purposes of determining the Unaccepted Quantity.



## **11. OBLIGATION OF SDMC**

Without prejudice and in addition to the other obligations of SDMC specified in this Agreement, SDMC shall have the following obligations to enable the due implementation of the Project by Concessionaire:

### **11.1 Financial Assistance to the Concessionaire**

SDMC shall, in accordance with clause 14.2, provide timely financial assistance to the Concessionaire upon the Concessionaire providing all the necessary documents to establish achievement of the relevant milestone.

### **11.2 Disposal of Waste during Plant Shutdown**

The MSW that cannot be accepted by Concessionaire for processing in the Plant for any other reason such as suspension of operation of the Plant or maintenance of any of the Project Facilities subject to Clause 10.8, or occurrence of Force Majeure Event; shall be disposed by SDMC, at its own cost, as may be deemed appropriate by SDMC to any feasible location outside the Project Facility.

### **11.3 Applicable Approvals**

- (a) SDMC, shall, at the request of Concessionaire, facilitate Concessionaire in procuring all Applicable Approvals and to provide/facilitate all co-ordination with various authorities and agencies of Government of NCT of Delhi and all other assistance and facilities (including for supply of utilities like water and electricity required during construction and maintenance of the plant) as envisaged herein, extend all required assistance to Concessionaire in getting permission of all agencies/authorities.
- (b) Without prejudice to the generality of Clause 11.2(a) above, SDMC shall:
  - (i) facilitate the Concessionaire in procuring the construction, commissioning and start up power at the Project as requisitioned by the Concessionaire;
  - (ii) upon the written request from the Concessionaire, and subject to the Concessionaire complying with the Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring the Applicable Approvals, required from any Governmental Instrumentality for implementation and operation of the Project;
  - (iii) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line.

- (iv) laying of line for supply of water at Project Site required for operation of the Project and facilitate adequate agreement for supply of water required for the operation of the Plant from Delhi Jal Board (DJB) atleast six months before Scheduled CoD;
- (v) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws, and
- (vi) fulfil all other obligations to be undertaken by the SDMC under this Agreement.

## 12. NO PROPERTY TAXES ON PROJECT FACILITIES

Having regard to the nature and importance of the Project aimed at reducing environmental pollution and being implemented in said discharge of the statutory liabilities and social responsibility of SDMC, and being a kind of utility service established by Concessionaire for SDMC, it is agreed that Concessionaire shall be exempt from the levy assessment and payment of property tax in respect of the Project facilities from the Effective Date until Expiry Date. SDMC undertakes to give full effect to this provision by issuing such necessary exemption as required under the act/relevant rules there under and by taking all such steps as necessary for the purpose.

## 13. COVENANT OF NON-INTERFERENCE

### 13.1 Non Interference by SDMC

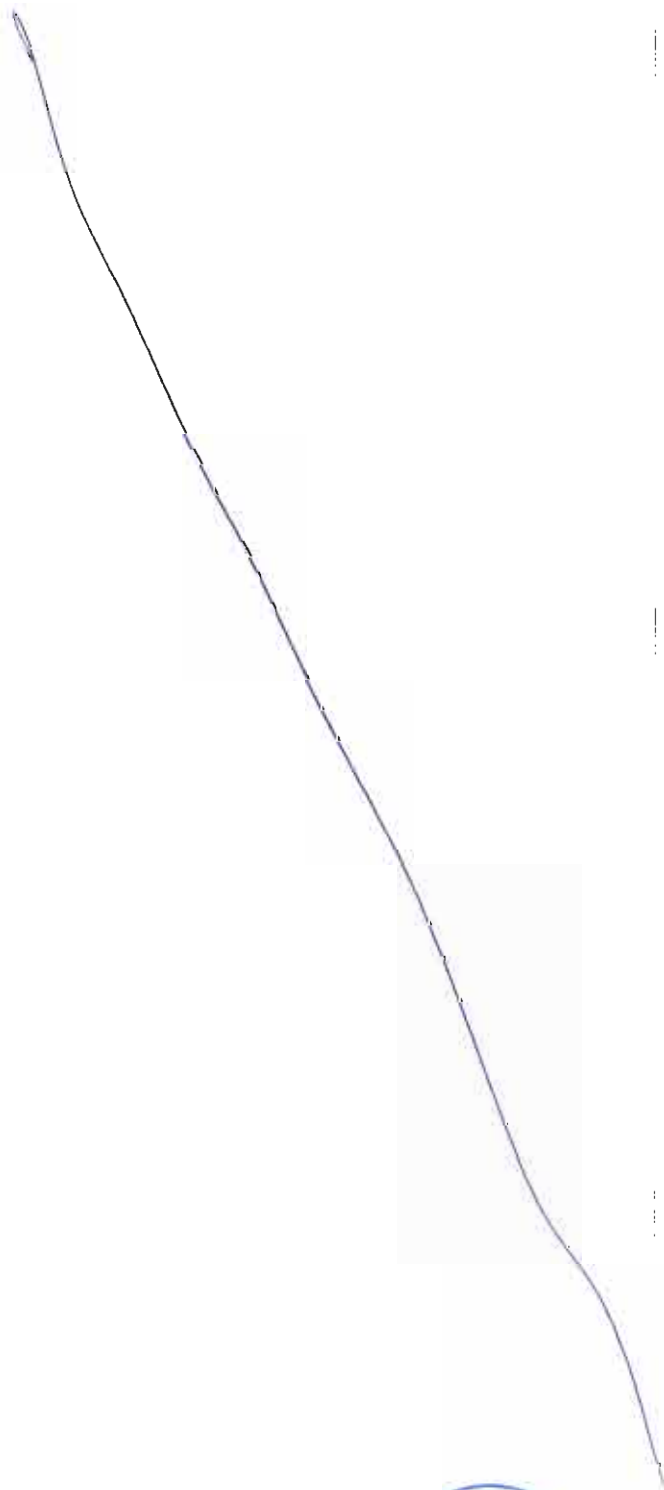
- a. SDMC covenants with Concessionaire that SDMC or any of its officers, employees or workmen shall not, at any time, during the Term of this Agreement interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.
- b. SDMC shall have no right title or interest to the Technology that would be used by Concessionaire in the development, operation and maintenance of the Project Facilities. SDMC agrees that any Technology that may be employed by Concessionaire in the development, operation and maintenance of the Project Facilities would be proprietary technology obtained under specific license

### 13.2 Site Visits by SDMC

SDMC shall have the right to send its duly authorized representatives/ Independent Engineer to visit the Site, after providing at least one hour notice, provided however, the representatives of SDMC shall not interfere with or prevent Concessionaire officials from discharging their functions and further the SDMC representatives shall not cause the



suspension of the operations of the Plant and will abide by the safety and other regulations (including but not limited to regulations limiting movement of personnel) put in place by Concessionaire at the Site.



A handwritten signature in blue ink.

## 14. GRANT

### 14.1 Financial Assistance

14.1.1 SDMC agrees and undertakes to pay to the Concessionaire a Financial Assistance of an amount of Rs. 105.00Crore - (Rupees One Hundred &Five Crore) for the purpose of development of Project, in accordance with the provisions of this Clause 14 (the "**Financial Assistance**").

14.1.2 the Financial Assistance amount shall be credited to the Escrow Account and shall be applied by the Concessionaire for the purpose of development and construction of the Project.

14.1.3 The Financial Assistance shall be due and payable to the Concessionaire after the Project has achieved the following milestones:

S. No.	Milestone	Percentage of Grant to be released
1	Placement of order for Boiler, Turbo-generator and Air Pollution Control (APC) equipment accompanied with payment of advance.	25%
2	Erection of Boiler, Turbo-generator and Air Pollution Control (APC) etc. at Project Site	35%
3	Completion of successful trial operation for a continuous period of 72 hours for demonstrating compliance of installed capacity of the project to be witnessed by representatives of SDMC and Delhi DISCOMs	30%
4	Achieving 100% Commercial Operation	10%

14.1.4 Subject to clause 14.1.3, the SDMC shall disburse each tranche of the Financial Assistance as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars concerning the completion of the milestones set out above.

14.1.5 In the event of occurrence of a Concessionaire Default, disbursement of Financial Assistance shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

14.1.6 The Financial Assistance to be disbursed upon achieving either of the first three milestones shall be disbursed to the Concessionaire provided that Concessionaire submits a Bank Guarantee of equivalent amount in favour of SDMC which shall remain valid until two years after Scheduled COD. Such Bank Guarantees shall be returned by the SDMC in three instalments with an interval of six months starting six months after COD of the Plant. SDMC shall have the right to encash the Bank Guarantee if the developer fails to operate the Project



or produce power or the Project is left idle for any reason for over four months or the project doesn't meet the generation criteria specified in the Agreement and/or Power Purchase Agreement.

- 14.1.7 If the project fails to generate any power continuously for a period of four months during any financial year or its major assets (components) are sold or the project is dismantled during this tenure, SDMC will have a right to get refund of Financial Assistance from the Developer on pro-rata basis and if not paid by the developer, then a claim will be made on assets equal to the value of Financial Assistance, on pro-rata basis as specified hereunder: (Any Bank Guarantee encashed under clause 14.1.6 above will be treated as Financial Assistance already recovered)

<b>Year of default (From COD)</b>	<b>SDMC's right to refund of Financial Assistance/ claim on assets (% of Financial Assistance paid)</b>
Up to 5 years	100%
5-6 years	90%
6-7 years	80%
7-8 years	70%
8-9 years	60%
9-10 years	50%
10-11 years	40%
11-12 years	30%
12-13 years	25%
13-14 years	23%
14-15 years	21%
15-16 years	19%
16-17 years	17%
17-18 years	15%
18-19 years	13%
19-20 years	11%
20-21 years	9%
21-22 years	7%
22-23 years	5%
23-24 years	3%
24-25 years	1%

- 14.1.8 If the Project is transferred or sold to a third party during its tenure (after initial lock-in period of 5 year after COD), SDMC will retain full rights to operationalize the PPA with the third party, which will be under full obligation to honour all the obligations and terms & conditions of the Concession Agreement.



14.1.9 In case the lending institution exercises its right to step-in or take-over the project, SDMC will also have the right to step-in along with the lending institutions to reclaim the Financial Assistance in accordance with this Agreement or hand over the project to another party for operation.

14.1.10 Developer and SDMC shall execute the Financial Assistance Securitization Agreement creating a charge over the Project assets in favour of SDMC along with signing of Concession Agreement. SDMC shall have a second charge over the Project assets in case of Projects being financed by lending institutions. In all other cases, SDMC shall have the first charge over the Project assets to the extent of 100% of the Financial Assistance.

## 15. TIMELY COMPLETION OF THE POWER PLANT

### 15.1 Timeline for Commissioning

The Concessionaire agrees and undertakes that the Plant shall be commissioned no later than its Scheduled COD.

### 15.2 Delay Due to Concessionaire's Default:

In the event the in the event Plant is not commissioned by Scheduled COD, for reasons solely attributable to the Concessionaire, i.e. not being attributable to any SDMC Event of Default or to a Force Majeure Event (s), the Concessionaire shall pay to SDMC, Liquidated Damages during the period beginning with the day from the Scheduled COD of the Plant up to and including the COD, equal to a sum calculated in accordance with the following formula, which the Parties agree is a genuine and accurate pre-estimation of the actual loss that will be suffered by the SDMC in the event of a Concessionaire's delay in achieving a its Scheduled COD:

If  $dm \leq 60$ : One lakh (100,000) of damages per day of delay

If  $dm > 60$ : Two lakh (200,000) of damages per day of delay

where "dm" is the number of days in the period beginning with the day after the Scheduled Commercial Operation Date up to and including the day on COD;



Provided that the Concessionaire's maximum liability shall be limited to the amount derived in accordance with this clause for a period of 7 (seven) months from the Scheduled COD /, pursuant to which the provisions of Clause 18 shall apply.

Provided further that the Concessionaire shall pay the amount derived by the aforesaid formula within 10 (ten) days of COD.

Provided further that recovery of Liquidated Damages under this Clause 15 shall be without prejudice to the rights of the SDMC under this Agreement, including the right to termination as stated below.

## 16. ESCROW ACCOUNT

### 16.1 Escrow Account

16.1.1 The Concessionaire shall, prior to the expiry of Concessionaire's Condition Subsequent Period, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

16.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered amongst the Concessionaire, the SDMC, the Escrow Bank and the Lenders, which shall be substantially in the form set forth in Schedule-VII.

### 16.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financing Document and Equity;
- (b) all payments by the Discoms, including Tariff; and
- (c) the proceeds of any deposits, capital receipts or insurance claims:

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

- (a) Financial Assistance and any other monies disbursed by the SDMC to the Concessionaire;
- (b) Termination Payments:

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



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

### 16.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Plant;
- (b) all payments relating to construction of the Plant, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Documents;
- (d) O&M Expenses and other costs and expenses incurred by the SDMC in accordance with the provisions of this Agreement, and certified by the SDMC as due and payable to it;
- (e) any amounts due and payable to the SDMC, including Land Lease and Residual Inert Matter Handling Charges, to the extent not set off in accordance with the provisions of this Agreement;
- (f) monthly proportionate provision of Debt Service due in a Financial Year;
- (g) all payments and Damages, including Liquidated Damages certified by the SDMC as due and payable to it by the Concessionaire;
- (h) monthly proportionate provision of debt service payments due in a Financial Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Documents; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

16.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 16.3.1, except with the prior written approval of the SDMC.

### 16.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Plant;
- (b) Debt Due excluding Subordinated Debt;



- (c) outstanding Land Lease and Residual Inert Matter Handling Charges and any other amounts due and payable to the SDMC;
- (d) all payments and Damages, including Liquidated Damages certified by the SDMC as due and payable to it by the Concessionaire;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made until a Vesting Certificate has been issued by the SDMC under the provisions of this Agreement.

16.4.2 The provisions of Clause 16 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in this Clause have been discharged.

## 17. ADDITIONAL OBLIGATIONS OF CONCESSIONAIRE

### 17.1 Concessionaire Obligation

Concessionaire shall at its cost and expense, obtain and maintain, during the Term, all such insurances (in addition to those mandated by Applicable Laws or required by the Lenders) as may be required by the Lenders and such insurances as may be necessary or prudent with Prudent Utility Practices.

### 17.2 Insurance Proceeds

Subject to the provisions of the Financing Agreements and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any thereof which may have been damaged or destroyed. Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project.



*[Handwritten signature]*

### 17.3 No Breach of Insurance Obligation

If during the Term, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/re-instated in respect of such risk, Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

## 18. EVENTS OF DEFAULT, TERMINATION & EFFECT OF TERMINATION

### 18.1 Events of Default

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

#### (a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of one or more reasons set out in this clause:

- (i) negligence in designing or default in design of the Project Facility that results in Material Adverse Effect to the Project; However, the Concessionaire shall not be permitted to defend termination on the ground that it has based its designing on the parameters, figures, drawings, analysis, geographic study or topography study provided along with either NIT, RFP or RFQ by the SDMC. The Concessionaire is required to undertake its own study to design, construct and commission the Project.
- (ii) defects in construction of the complete Project which are of such nature that they cannot be rectified or that they shall have Material Adverse Effect;
- (iii) failure to remit the Liquidated Damages as stipulated relating to the delay in construction or commissioning of the Project;
- (iv) the failure of achieving COD of the Plant even after a period of 7 (seven) months from the Scheduled COD;
- (v) after the commencement of construction of the Project, the abandonment by the Concessionaire or the Contractor for a continuous period of 2 (two) months and such default is not rectified within 1 (one) month from the receipt of first notice from the SDMC in this regard;
- (vi) Save and except as provided in clause 10.8, if at any time following the COD, the Plant suspend receiving and processing MSW Quantity



- (vii) the Concessionaire fails to make any payment (a) of an amount exceeding Rupees 1 (One) Crore required to be made to the SDMC under this Agreement, within 3 (three) months after the Due Date of an undisputed Bill raised by the SDMC on the Concessionaire or (b) of an amount upto Rupees 1 (One) Crore required to be made to SDMC under this Agreement within 6 (six) months after the Due Date of an undisputed Bill;
- (viii) any of the representations and warranties made by the Concessionaire in terms of Clause 33 of this Agreement is found to be untrue or inaccurate. Further, in addition to the above, any of representations made or the undertakings submitted by the Successful Bidder at the time of submission of the Bid is found to be breached or inaccurate. Provided however, prior to considering any event specified under this sub-article to be a Concessionaire's Event of Default, the SDMC shall give a notice to the Concessionaire in writing of at least 1 (one) month,
- (ix) In the event the Concessionaire, (a) assigns or purports to assign any of its assets or rights in violation of this Agreement; or (b) transfers or novates any of its rights and/or obligations under this Agreement, in violation of this Agreement;
- (x) if (a) the Concessionaire becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of 1 (one) month, or (b) any winding up or bankruptcy or insolvency order is passed against the Concessionaire, or (c) the Concessionaire goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law.

Provided that a dissolution or liquidation of the Concessionaire shall not be a Concessionaire's Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation, amalgamation or reorganization and where the resulting company continues to meet the financial and technical requirements as per RFP, and retains creditworthiness as that of the Concessionaire, to be decided by the SDMC in their sole discretion and it expressly assumes all obligations of the Concessionaire under this Agreement and is in a position to perform them;

- (xi) the Concessionaire repudiates this Agreement and does not rectify such breach within a period of 1 (one) month from a notice from the SDMC in this regard;
- (xii) except where due to any SDMC's failure to comply with its material obligations, the Concessionaire is in breach of any of its material obligations pursuant to this Agreement or of any of the other agreements for this Project where the SDMC and Concessionaire are parties, and such material breach is not rectified by the Concessionaire within 1 (one) month of receipt of first notice in this regard given by the SDMC to the Concessionaire
- (xiii) any direct or indirect change in the Equity of the Concessionaire in contravention of the terms provided herein;
- (xiv) breach or default of the Concessionaire of any of the terms and conditions of this Agreement and/or the Land Lease Agreement, which has caused a Material Adverse Effect;



- (xv) upon the occurrence of a material breach of the terms and conditions of the Financing Documents;
- (xvi) occurrence of Concessionaire Event of Default in terms of the PPA;
- (xvii) the associate of the Successful Bidder whose credentials the Successful Bidder has relied upon during the bidding process ceasing to be its associate at any time prior to the actual COD of the Plant;
- (xviii) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect.

(b) **SDMC Event of Default**

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

- (i) SDMC has failed to pay compensation or any other Payments due to Concessionaire under this Agreement within 4 months of such Payments getting due.
- (ii) SDMC fails to supply MSW to the Concessionaire the Minimum MSW Quantity at the Receipt Point for a continuous period of 30 days.
- (iii) SDMCs is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within (sixty) days of receipt of notice thereof issued by the Concessionaire.
- (iv) SDMC has unlawfully repudiated this Agreement or otherwise has refused to be bound by this Agreement.

**18.2 Termination for Concessionaire Event of Default**

- 18.2.1 Without prejudice to any other rights or remedies which the SDMC may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the SDMC shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the SDMC shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 18.2.2.
- 18.2.2 The SDMC shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 18.2.1 inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Concessionaire or take over Project Facilities



and the implement the Project under this Agreement in accordance with the Substitution Agreement. In the event, the SDMC receives such representation on behalf of Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the SDMC shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

18.2.3 In the event the SDMC give a Termination Notice to the Concessionaire pursuant to clause 18.2.1 owing to a Concessionaire Default and the Lenders do not exercise their right to Substitute the Concessionaire within the time period given in clause 18.2.2 or in the event there are no Lenders on account of the Debt in terms of the Financing Documents having been repaid by the Concessionaire, the SDMC shall have the right to Issue the Takeover Notice to the Concessionaire and require the Concessionaire to transfer, within a period of 6 (six) months thereof, the ownership of the Project alongwith all its assets, the project agreements and this Agreement to the SDMC in accordance with in accordance with Paragraphs 3, 4 and 5 of Schedule VIII, free and clear of all Encumbrances ("SDMC' Takeover"), for a price equal to the Debt Due, or such other amount as may be mutually agreed to between the SDMC and the Lenders, which shall be paid by the SDMC to the Lenders ("Takeover Payment") directly within 1 (one) month of the Project Takeover, as a full and final payment settlement of any claims of the Concessionaire.

18.2.4 In the event of Lenders do not elect to substitute entity and the SDMC decide against issuing Takeover Notice, then the Lenders shall ensure that, they enforce and satisfy their security charges and other encumbrances (including but not limited to by auctioning the secured assets of the plants) that they may have over the plant and provide back the vacant possession of the Land in terms of the Land Lease Agreement.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the SDMC shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the SDMC may deem appropriate.

### 18.3 Termination for SDMC Event of Default

18.3.1 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a SDMC Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the SDMC; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the SDMC of its intention to issue the Termination Notice and grant 15 (fifteen) days to the SDMC to make a representation, and may after the



A handwritten signature in blue ink, appearing to be a stylized 'R' or 'K' followed by a horizontal line.

expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

18.3.2 Upon Termination on account of a SDMC Default, the SDMC shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity;

#### 18.4 Termination Notice

If a Party, having become entitled to do so decides to terminate this Agreement pursuant to the proceeding Sub-Clause, it shall issue Termination Notice setting out:

- (i) In sufficient detail the underlying Event of Default;
- (ii) The Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) The estimated termination payment including the details of computation thereof; and
- (iv) Any other relevant information.

The Parties hereby agree that any Termination Notice shall also be sent to all Lenders by registered post/courier and a public notice of default of the Concessionaire in leading daily newspaper (of both English and the prevalent local language) of the city.

#### 18.5 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall, subject to the provision of the Financing Documents and the rights of the Lenders provided therein, promptly take all such steps as may be necessary or required to ensure that:

- (i) Until Termination the Parties shall fully possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities.
- (ii) The Termination Payment, if any, payable by SDMC is paid to Concessionaire on the Termination Date; and
- (iii) The Project Facilities are handed back to respective Parties as under this Agreement, and Land Lease Agreement, by Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by Concessionaire to SDMC.



## 18.6 Withdrawal of Termination Notice

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

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

## 18.7 Rights of SDMC on Termination

Subject to the provision of Clause 18, upon Termination of this Agreement and after Concessionaire has received all the payments due from SDMC under this Agreement. SDMC shall have the power and authority to prohibit Concessionaire and any person, claiming through or under Concessionaire from entering upon/dealing with the Project Facilities.

## 18.8 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to accrued rights of either party including its rights to claim and recover its money damages and other rights and remedies which may have in law or contract. The rights and obligations of either party under this Agreement, including without limitations those relating to the termination payment, shall survive the termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## 19. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

### 19.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the SDMC shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to:

(a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect revenues from sale of electricity pursuant hereto, and

(b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension").



Suspension hereunder shall be effective forthwith upon issue of notice by the SDMC to the Concessionaire with a copy to the Lenders' Representative and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the SDMC shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

## **19.2 SDMC to act on behalf of Concessionaire**

19.2.1 During the period of Suspension, the SDMC shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The SDMC shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension, and thereafter for defraying such expenses specified in Clause 16.3. For the avoidance of doubt, the Tariff payment received under and in accordance with the PPA shall continue to be deposited in the Escrow Account after appropriating the expenses and costs specified hereinabove.

19.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the SDMC for discharging the obligations of the Concessionaire under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the SDMC for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the SDMC or any other person authorized by it under Clause 19 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Plant and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

## **19.3 Revocation of Suspension**

19.3.1 In the event, that the SDMC shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the SDMC may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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



A handwritten signature in blue ink.

#### 19.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the SDMC shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 19.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Lenders.

#### 19.5 Termination

19.5.1 At any time during the period of Suspension under this Article 19, the Concessionaire may by notice require the SDMC to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 19.4, the SDMC shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 18, as if it is a Concessionaire Event of Default under Clause 19.1.

19.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 17.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the SDMC upon occurrence of a Concessionaire Default.

#### 20. ARBITRATION

20.1 Any dispute, difference or controversy of whatever nature, howsoever, arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, may be raised by either Party by giving a written notice to the other Party (the "Dispute"), which shall contain:

- (i) a description of the Dispute;
- (ii) the grounds for such Dispute; and
- (iii) all documents in support of its claim.

20.2 The Dispute shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 20.4.



A handwritten signature in blue ink, appearing to be a stylized 'A' or similar character.

- 20.3 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 20.4 In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Commissioner of the SDMC and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 20.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 20.5.
- 20.5 In the event the Parties fail to resolve the Dispute amicably by conciliation, as provided in clause 20.4 shall be decided by reference to arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules made thereunder, in accordance with the process specified below
- (i) In the event of a Dispute remaining unresolved as referred to in Clause 20.4, any Party to such Dispute may initiate arbitration by notifying the other Party.
  - (ii) The Arbitration tribunal shall consist of 3 (three) arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected. In the event of any disagreement between the two arbitrators, the third arbitrator shall be appointed in accordance with the Indian Arbitration and Conciliation Act, 1996 and the Rules made thereunder.
  - (iii) The place of arbitration shall be New Delhi, India. The language of the arbitration shall be English.
  - (iv) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
  - (v) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.



A handwritten signature in blue ink.

## 21. FORCE MAJEURE

### 21.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

### 21.2 Non-Political Event

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

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Plant for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Approvals, or (ii) on account of breach of any Applicable Law or Applicable Approvals or any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the SDMC;
- f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through an inspection of the Site; or
- g) any event or circumstances of a nature analogous to any of the foregoing.



A handwritten signature in blue ink, consisting of a stylized 'f' followed by a horizontal line.

### 21.3 Indirect Political Event

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- d) any civil commotion, boycott or political agitation which prevents generation or transmission of electricity by the Concessionaire for an aggregate period exceeding 7 (seven) days in a financial year;
- e) failure of the SDMC to permit the Concessionaire to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- g) any Indirect Political Event that causes a Non-Political Event; or
- h) any event or circumstances of a nature analogous to any of the foregoing.

### 21.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 22.2 and its effect, in financial terms, exceeds the sum specified in Clause 22.4;
- (b) compulsory acquisition in national interest or expropriation of any Project facilities or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Financing Documents; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such



clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

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

## 21.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

21.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## 21.6 Effect of Force Majeure Event on the Concession

21.6.1 Upon the occurrence of any Force Majeure Event prior to the Concessionaire satisfying last of the Conditions Subsequent as set forth in Clause 3.1, the period set forth in Clause 3.1 for fulfilment of Conditions Subsequent, and Scheduled COD shall be extended by a period equal in length to the duration of the Force Majeure Event.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

21.6.2 At any time after the Concessionaire satisfies last of the Conditions Subsequent set forth in Clause 3.1, if any Force Majeure Event occurs:

- (a) prior to Scheduled COD, the dates set forth for achieving Scheduled COD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after Scheduled COD, whereupon the Concessionaire is unable to process the MSW and transmit electricity to the Grid despite making best efforts or it is directed by the Discoms, or SLDC or any Government Instrumentality to suspend generation or transmission during the subsistence of such Force Majeure Event, the Term shall be extended by a period equal in length to the period during which the Concessionaire was prevented from processing of MSW, generating or transmitting electricity on account thereof; provided that in the event of reduction in generation on account of partial inability or suspension, as the case may be, which causes the generation of electricity on any day to decline below the Plant Load Factor determined for the month preceding the Force Majeure Event, the SDMC shall extend the Term in proportion to the loss of such generation due to Force Majeure.

## 21.7 Allocation of costs arising out of Force Majeure

21.7.1 Upon occurrence of any Force Majeure Event prior to the Concessionaire fulfilling last of the Conditions Subsequent set forth in clause 3.1, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

21.7.2 Upon occurrence of a Force Majeure Event after the Concessionaire fulfilling last of the Conditions Subsequent set forth in clause 3.1, the costs incurred and attributable to such event and directly relating to the Plant (the "**Force Majeure Costs**") shall be allocated and paid as follows:

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

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of construction works necessary to completed the Plant on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Tariff, or debt repayment obligations, and for determining



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line.

such costs, information contained in the Financing Documents may be relied upon to the extent that such information is relevant.

21.7.3 Notwithstanding anything contained in this Clause 21.7, if during the occurrence of a Force Majeure Event, the Plant or a part thereof is able to generate electricity, the SDMC shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Clause 21.7.

21.7.4 Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **21.8 Excuse from performance of obligations**

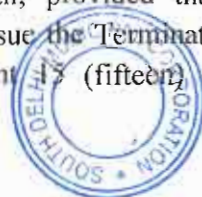
21.8.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided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

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

## **21.9 Termination due to Force Majeure Event**

### **(a) Termination**

In the event the effect of a Force Majeure Event subsists, for a duration of 6 (six) months or more within a continuous period of 2(two) years, unless otherwise mutually agreed to between the Parties, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 21, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a



A handwritten signature in blue ink.

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

**(b) Termination Payment**

Upon Termination of this Agreement due to a Force Majeure Event, SDMC shall not be liable to pay any Termination Payments to Concessionaire. All Termination Payments shall be as made good by Insurance only under the provisions of Insurance obligations of Concessionaire.

**21.10 Additional Compensation and SDMC's Subrogation**

In the event the Concessionaire is entitled, whether actually or contingently, to be compensated by any person other than the SDMC as a result of the occurrence of a Force Majeure Event for which the Force Majeure Costs have been shared between the Parties or paid for by the SDMC in accordance with this Agreement, the SDMC shall be fully subrogated to the Concessionaire's rights against that person to the extent of the compensation paid by the SDMC to the Concessionaire. Provided that in case the Concessionaire has actually received compensation from the any person other than the SDMC as well as the SDMC as a result of the occurrence of a Force Majeure Event, then the Concessionaire shall forthwith refund the compensation received by it from the SDMC but only to the extent of the compensation received by the Concessionaire from any person other than the SDMC.

**21.11 Liability for other losses, damages etc.**

Save and except as expressly provided in this Clause 20, neither Party hereto shall be liable in any manner whatsoever to the other party in respect of any loss, damage cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**22 CHANGE IN LAW**

22.1 The term "Change in Law" shall mean the occurrence of any of the following events after the Bid Due Date:

- (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any Applicable Law;
- (ii) the repeal, modification or re-enactment of any existing Applicable Law;
- (iii) commencement of any Applicable Law which has not been made effective or notified until the Bid Due Date;
- (iv) a change in interpretation of any Applicable Law by a Competent Court or an Governmental Instrumentality provided such Competent Court or the



Governmental Instrumentality is the final authority under the Applicable Law for such interpretation;

- (v) any change in the rates of any Taxes which have a direct effect on the Project;
- (vi) change in any Applicable Approvals, available or obtained for the Project, otherwise than for default of the Concessionaire;

## 22.2 Exclusions to Change in Law:

The term 'Change in Law' shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the Concessionaire, or (ii) change in respect of the UI charges or frequency intervals by the Delhi Electricity Regulatory Commission.

## 22.3 Notification of Change in Law

22.3.1 In the event the Concessionaire is affected by a Change in Law in accordance with clause 22.1 subject to clause 22.2, whether adversely or beneficially, and wishes to claim a Change in Law under this Article, it shall give notice to the SDMC of such Change in Law as soon as reasonably practicable after becoming aware of the same or should reasonably have known of the Change in Law giving in details about the Change in Law and the effects of the same on the Concessionaire.

22.3.2 The obligation to notify the Concessionaire shall be mandatory. In the event the Concessionaire fails to adhere to this requirement in the event of being beneficially affected by a Change in Law, the SDMC or the Discoms shall have the right to issue such notice to the Concessionaire.

## 22.4 Increase in Cost

If as a result of any Change in Law, the Concessionaire suffers from an increase in cost or other financial burden, the aggregate financial effect of which exceeds Rs 5 (five) Crore for a financial year, the Discoms shall, subject to the Concessionaire complying with the notification obligation in terms of Article 22.3 and the furnishing of documentary proofs of such increase in cost for establishing the impact of such Change in Law, compensate the Concessionaire, with an amount to be determined by the Delhi Electricity Regulatory Commission, in order to place the Concessionaire in the same economic position as it would have enjoyed had it not been for the occurrence of the Change in Law resulting in the increase in cost or financial burden to the Concessionaire. The compensation shall be payable from the date a Change in Law has become effective or is brought into force.

## 22.5 Reduction in Cost

If as a result of a Change in Law, the Concessionaire benefits from a reduction in cost or incurs other financial gains, the aggregate financial effect of which exceeds Rupees 5 (five)



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

Crores for a financial year, the Discoms shall, subject to the Concessionaire complying with the notification obligation in terms of Article 22.3 and the furnishing of documentary proofs of such reduction in cost for establishing the impact of such Change in Law, failing which, the SDMC or the Discoms may *suo-moto* notify the Concessionaire in terms of Article 22.3, seek the necessary documentary proofs to amend the Tariff in order to place the Concessionaire in the same economic position as it would have enjoyed had it not been for the occurrence of the Change in Law resulting in the decrease in cost or financial burden to the Concessionaire. The revision in Tariff shall be subject to the approval of the Delhi Electricity Regulatory Commission.

## **22.6 Tariff Adjustment**

The amount determined by the Delhi Electricity Regulatory Commission in terms of Articles 22.4 and 22.5 in the eventuality of any increase or decrease in cost of the Concessionaire on account of a Change in Law shall be adjusted in the Tariff payment under the Power Purchase Agreement.

## **23 JURISDICTION**

This Agreement shall be governed by and constructed in accordance with the laws of India and only the courts in Delhi shall have jurisdiction to try all disputes and matters arising out of an under this Agreement.

## **24 NO WAIVER OF RIGHTS AND CLAIMS**

Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favor of any party under the terms of this agreement shown or made by such a party in whose favor such as rights or claims might have vested by the virtue of this agreement shall neither constitute nor constructed to be a waiver of such rights or claims accruing in respect of such a party.

## **25 SCHEDULES AND ANNEXURES**

All schedules and annexures and other explanatory details attached to this agreement shall be deemed to be a part of this agreement.

## **26 SUPERCESSION OF EARLIER AGREEMENTS**

This Agreement represents the entire Agreement between SDMC and Concessionaire and all agreements, correspondence, notes or any other documents submitted or understandings made or reached by and between the parties inter se in respect of the subject matter of these



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

presents prior to the date hereof shall be deemed to have been superseded and revoked on the execution of this agreement.

## 27 NOTICES

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of Term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery/recognized national/international courier, mail, telex or facsimile and delivered or transmitted to the parties at their respective addresses set forth below:

### If to SDMC:

**The Commissioner South Delhi Municipal Corporation**

9<sup>th</sup> Floor, Civic Centre, JLN Marg, New Delhi - 110002

### If to Concessionaire

Tehkhand Waste to Electricity Project Limited,  
28, Shivaji Marg, New Delhi, West Delhi 110015

or at such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time.

All notices under this Agreement shall be in English.

## 28 Legal Charges

The Prescribed legal charges for execution of this agreement shall be borne by Concessionaire

## 29 COUNTERPARTS

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



A handwritten signature in blue ink.

## 30 ASSIGNMENT

### 30.1 Restriction on assignment and charges by the Concessionaire

The Concessionaire shall not assign, create or permit to subsist any Encumbrance in whole or in part, its rights and obligations under this Agreement to any third Party without the prior written consent of all the SDMC, except in case of an assignment/novation required to be made by the Concessionaire in favour of the Selectee identified by the Lenders or the SMDC in terms of this Agreement.

### 30.2 Permitted Charges

30.2.1 Notwithstanding anything contained in Clause 30.1, the Concessionaire may create in favour of the Lenders any Encumbrance, subject to Article 30, over all or part of the receivables, or the other assets of the Project or the project documents, as security for:

- (i) the amounts payable under the Financing Documents executed by the Concessionaire for the purpose of availing finance for the Project; and
- (ii) any other amounts agreed by the Parties,

Provided that:

- (i) the Lenders shall have agreed in writing to the provisions of Article 30.2.3 read with **Schedule VIII** of this Agreement; and
- (ii) any Encumbrances granted by the Concessionaire in accordance with this Clause 30.2 shall contain provisions pursuant to which the Lenders agree unconditionally with the Concessionaire acting for itself and as trustee of the SDMC to release from such Encumbrances all of the right, title and interest to Additional Compensation so as to enable the SDMC to claim their right of subrogation. For the purposes of this Clause, Additional Compensation shall mean the compensation that the Concessionaire is entitled, whether actually or contingently, by any person other than the SDMC for which it has received compensation from the SDMC pursuant to the terms of this Agreement. It is further clarified that the SDMC shall be fully subrogated to the Concessionaire's rights against that person to the extent of the compensation paid by the SDMC to the Concessionaire. Provided that in case the Concessionaire has actually received compensation from the any person other than the SDMC as well as the SDMC, then the Concessionaire shall forthwith refund the compensation received by it from the SDMC but only to the extent of the compensation received by the Concessionaire from any person other than the SDMC.

30.2.2 The restrictions laid down in Article 30 shall not apply to liens or Encumbrances arising by operation of Applicable Laws (or by an agreement evidencing the same) in the ordinary course of the Concessionaire carrying out the Project.



A handwritten signature in blue ink, located at the bottom right of the page.

### 30.2.3 Mortgage of the Lease Rights on the Plant Land and the Plant

- (i) Notwithstanding anything to the contrary contained in this Agreement and subject to the lease deed, if any, executed between the SDMC and the Concessionaire, upon request made in this behalf by the Lenders, the Concessionaire shall execute a mortgage deed (the "**Mortgage Deed**") forthwith, as a security for the Debt Due and for the benefit of the Lenders, subject to the following terms:
  - (a) The Concessionaire may mortgage its lease rights on the Plant Land as well as the Plant and all the Project assets therein (the "**Mortgaged Assets**");
  - (b) Following any unsuccessful attempt to identify a Selectee in terms of this Agreement, the Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets until the SDMC have exercised their options to either terminate this Agreement and/or takeover the Project;
  - (c) Except as otherwise provided in this Agreement, the charge created over the Mortgaged Assets shall stand released and extinguished of the upon the earlier of the (i) all dues under the Financing Documents being paid by the Concessionaire or (ii) Expiry Date or (iii) Upon the termination of this Agreement by the SDMC.
- (ii) The Lenders shall prepare a draft Mortgage Deed in conformity with this Clause 30.2.3 and furnish copies to the SDMC, Procurers and the Concessionaire.

### 30.3 Assignment by the SDMC

Notwithstanding anything to the contrary contained in this Agreement, the SDMC may, after giving 2 (two) months notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the SDMC, capable of fulfilling all of the SDMC's then outstanding obligations under this Agreement and has the financial standing necessary for this purpose.

## 31 NO PARTNERSHIP

Nothing herein contained shall be construed to constitute a partnership between SDMC and Concessionaire, or to constitutes either party as the agent of the other and neither party shall hold itself out as such.

## 32 SEVERABILITY

If any provision of this agreement shall be declared illegal void or unenforceable, the same shall not affect the other provisions herein which shall be considered severable from such provision and shall remain in full force and effect.



### 33 REPRESENTATIVE AND WARRENTIES

#### 33.1 Representation and Warranties of SDMC

SDMC hereby represents. Assures, confirms and undertakes to Concessionaire as follows:

- a. That it duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- b. That it has full power, capacity and authority to execute, deliver and perform this Agreement to authorize the execution, delivery and performance of this Agreement.
- c. Nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it.
- d. All approvals and permissions as are necessary for the execution of this Agreement have been obtained and all the required procedure for the due execution of this Agreement have been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian Law;

#### 33.2 Representation and Warranties of Concessionaire

Concessionaire hereby represents, assures, confirms and undertakes to SDMC as follows:

- (a) That it duly incorporated under the laws of India and had to power to conduct its business as presently conducted and to enter into this Agreement.
- (b) That it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedure required to authorize the execution, delivery and performance of this Agreement.
- (c) Nothing in this Agreement conflicts with its Memorandum and Articles of Association or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it.

This Agreement will be valid, legal and binding against it under the Indian Law.



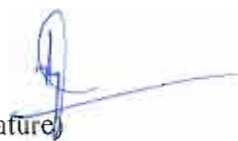
A handwritten signature in blue ink, consisting of a stylized 'G' followed by a horizontal line.

IN WITNESS WHEREOF the parties hereto have placed their respective hands and seals hereto on the day and year first herein above mentioned.

**SIGNED SEALED AND DELIVERED BY:**

**FOR SOUTH DELHI MUNICIPAL CORPORATION**

Executive Engineer (Store) of SDMC duly authorized by the Corporation vide its Resolution NO 240 Dated 27/02/2018 and Commissioner SDMC vide Order dated 04<sup>th</sup> May 2018.

(Signature) 

**FOR Concessionaire**

Director of Concessionaire, duly authorized by the resolution of the Board of Directors Passed at its meeting held on 16<sup>th</sup> April 2018

(Signature)  

**IN PRESENCE OF** .....

1. NAME: **SHRI DILIP RAMNANI**  
ADDRESS: **Room No 603, 6<sup>th</sup> FLOOR,  
CIVIC CENTRE.**

(Signature)

2. NAME: **SANDIP DUTT**  
ADDRESS: **JINDAL WTE OKHLA  
TOWNSHIP, BEHIND CERI  
MATHURA ROAD.**

(Signature)







**SCHEDULE 1:**  
**[Description of Project Site]**

[Clause 4.1]

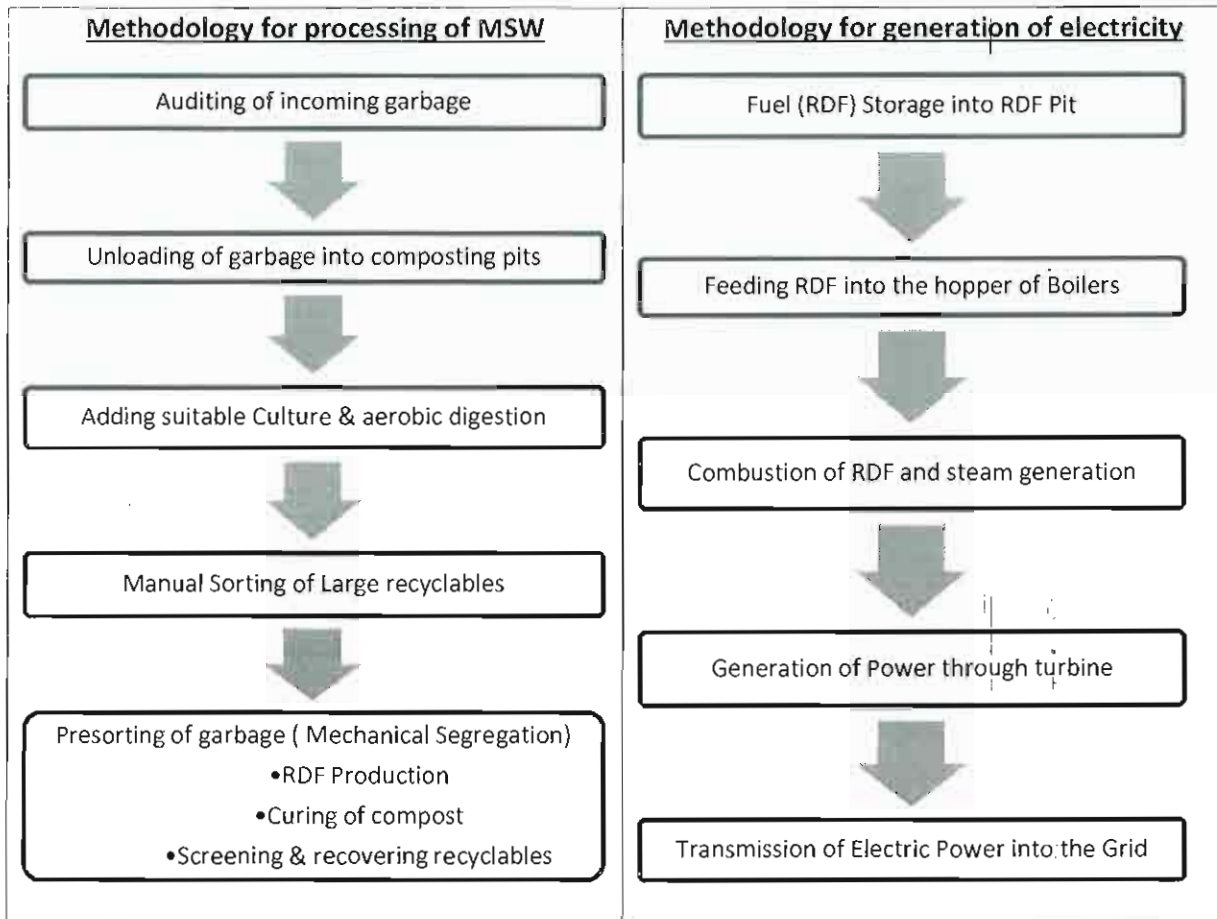
One contiguous piece and parcel of land admeasuring fifteen (15) Acres being a portion of the SDMC Site situated at Tehkhand, Okhla.



A handwritten signature in blue ink.

## SCHEDULE II:

### [Flow Diagram of the Plant]



**SCHEDULE III:****Quoted Tariff**

S. No.	Contract Year from CoD of the Power Station	Quoted Fixed charges (Rs./ kwh)
1.	COD of the Power Station (Year 2020 - 2021)	4.30
2.	Year 2021 - 2022	4.75
3.	Year 2022 - 2023	5.25
4.	Year 2023 - 2024	5.25
5.	Year 2024 - 2025	5.50
6.	Year 2025 - 2026	5.50
7.	Year 2026 - 2027	5.82
8.	Year 2027 - 2028	6.00
9.	Year 2028 - 2029	6.00
10.	Year 2029 - 2030	6.00
11.	Year 2030 - 2031	6.00
12.	Year 2031 - 2032	5.10
13.	Year 2032 - 2033	5.00
14.	Year 2033 - 2034	4.50
15.	Year 2034 - 2035	4.50
16.	Year 2035 - 2036	4.50
17.	Year 2036 - 2037	4.50
18.	Year 2037 - 2038	4.50
19.	Year 2038 - 2039	4.50
20.	Year 2039 - 2040	4.50
21.	Year 2040 - 2041	4.50
22.	Year 2041 - 2042	4.50
23.	Year 2042 - 2043	4.50
24.	Year 2043 - 2044	4.50
25.	Year 2044 - 2045	4.50



**SCHEDULE IV**  
**Commissioning Tests**

**1.1 Performance Test**

- (i) (a) The Performance Test shall be conducted under any ambient condition (temperature, humidity etc.) and any MSW quality that may exist during the time of the Performance Test. Corrections in final gross and net output will be allowed as a result of prevailing ambient conditions or MSW quality in accordance with the correction curves provided by the BTG Contractor.
- (b) The Generating Company shall perform in respect of a Performance Test, and, subject to Article 5.3, the Plant shall be deemed to have passed if it operates continuously for seventy two consecutive hours at or above ninety five (95%) percent of its Contracted Capacity, within the electrical system limits and the functional specifications. Provided that the short interruptions, for a cumulative duration of 4 hours, shall be permissible, with corresponding increase in the duration of the test. Cumulative interruptions of more than 4 hours shall call for repeat of trial operation or trial run. Provided further that partial loading may be allowed with the condition that average load during the duration of the trial run shall not be less than Contracted Capacity. Further, 105 % of the Contracted Capacity (subject to maximum load capability under Valve Wide Open conditions) at designed ambient conditions for 30 minutes continuous shall also be demonstrated.
- (ii) For the purposes of any Performance Test pursuant to this sub-article 1.1, the electrical system limits to be achieved shall be as follows:

**(a) Voltage**

The Unit must operate within the voltage levels described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, voltage tests cannot be performed due to Grid System, data supplied from tests of the generator step-up transformers and generators supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified voltage limits.

**(b) Grid System Frequency**

The Unit shall operate within the Grid System frequency levels described in the Functional Specification for the duration of the Performance Test.

**(c) Power Factor**

The Unit shall operate within the power factor range described in the Functional Specification for the duration of the Performance Test. If, during the Performance Test, power factor tests cannot be performed due to the Grid System, data supplied from tests of the generators and the generator step-up transformers supplied by the manufacturers shall be used to establish the ability of the Unit to operate within the specified power factor range.



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

(d) **MSW quality and cooling water temperature**

The Unit must operate to its Contracted Capacity with the MSW and water temperature available at the time of Testing and no adjustment shall be allowed for any variation in these parameters except as provided in 1.1(i)(a) above.

- iii As a part of the Performance Test, the Generating Company shall demonstrate that the Unit meets the Functional Specifications for ramp-up rate as mentioned in Article 11.7. For this purpose, representative samples of ramp rates shall be taken, by ramping up or down the gross turbine load while maintaining the required temperatures and temperature differences associated with each ramp rate within the turbine while maintaining all other operational parameters within equipment limits.
  - iv Further, as a part of the Performance Test, the plant SHR shall be less than 4500 kcal/kWh.
- 1.2 Testing and Measurement procedures applied during Performance Test shall be in accordance with codes, practices or procedures as generally/ normally applied for the Performance Tests, including the tests specified in the Performance Test Code (PTC 4.1 and PTC 6) of American Society of Mechanical Engineer Standards (ASME) for boiler and generator respectively.
- 1.3 The Generating Company shall comply with the prevailing Laws, rules, regulations and the provisions of CERC (Grant of Connectivity, Long term access and Medium term open access in inter-state transmission and related matters) Regulations as applicable to the provisions contained in this Schedule from time to time.



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

**SCHEDULE V –  
FORMAT FOR BANK GUARANTEE**

To,

South Delhi Municipal Corporation (SDMC)  
Office of the Ex. Engineer (Store)  
Room No. 16, Ambedkar Stadium, Delhi Gate  
Delhi, India 110002

**WHEREAS:**

(A) Following the Bidding Process for the Setting up of the Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi, **JITF Urban Infrastructure Limited**, a company incorporated under companies Act 1956 and having registered office at A-1 UPSIDC Industrial Area, Nandgaon Road, Kosi Kalan, Distt Mathura UP-281403 (hereinafter referred to as the “**Successful Bidder**”) has been identified as the Successful Bidder and has been issued the Letter of Award (No. D/EE (Engg Store)/2017-18/370 dated 01.03.2018) and Corrigendum in Letter of Award (Ref. No. D/EE (Engg Store)/2017-18/380 dated 08.03.2018) (“**LOA**”) by the **South Delhi Municipal Corporation** (Hereinafter referred to as “**SDMC**”), a statutory body constituted under the Delhi Municipal Act 1957 and having its office at Civic centre, Minto Road, New Delhi, Delhi 110002.

(B) In consonance with the requirement of the LOA, the Successful Bidder will acquire 100% (one hundred percent) shareholding of the Concessionaire “Tchkhand Waste to Electricity Project Limited” (Hereinafter referred to as “**Concessionaire**”).

(C) The LOA further requires the Successful Bidder to furnish to the SDMC having its principal office at Office of the Executive Engineer (Store) Room No. 16, Ambedkar Stadium, Delhi Gate, Delhi-110002 on behalf of the Concessionaire, a Performance Guarantee for a sum of Rs. 18,75,00,000/- (Rupees Eighteen Crore Seventy Five Lakh Only) (“**Guarantee Amount**”) as a security for the due and faithful performance of the obligations of the Concessionaire, under and in accordance with the terms and conditions of the Concession Agreement (the “**Agreement**”) to be executed between the Concessionaire and the SDMC for the development of the Project.

(D) We, Axis Bank Limited, a Company incorporated under the Companies Act, 1956 and carrying on its business under the Banking Regulation Act, 1949 and having Registered Office at Trishul, 3rd Floor, Opposite Samartheshwar Temple, Law Garden, Ellis Bridge Ahmedabad – 380 006 and having one of its branches at Red Capital Parsvnath Tower, 2<sup>nd</sup> Floor, Bhai Vcer singh Marg, New Delhi-110001 (Hereinafter referred to as “the Bank/ the Guarantor” which expression shall unless, repugnant to the context or meaning thereof, include its administrators, successors and assigns) have agreed to furnish this Bank Guarantee by way of Performance Bank Guarantee.



Concession Agreement for Tehkhand WtE Project



74

Page 74 of 140

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the SDMC upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse to SDMC, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount i.e. Rs. 18,75,00,000/- (Rupees Eighteen Crore Seventy Five Lakh only) as the SDMC shall claim, without the SDMC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein. Provided that in case of multiple demands, the liability of the Bank under this Guarantee shall automatically get reduced to the extent of part amount paid.
2. A letter from the SDMC, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SDMC shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations from the Effective Date until 1 (one) year of the Commercial Operation Date (COD) of the Plant in terms of the Agreement i.e. till 31<sup>st</sup> July, 2021 (Expiry Date) and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the SDMC and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the SDMC shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SDMC to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The SDMC shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SDMC against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the SDMC, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SDMC of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the SDMC or of any other matter or thing whatsoever towards the Concessionaire which under any law relating to sureties and guarantors would but for



this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank in respect of this guarantee hereby waives all of its rights of suretyship under any such law so long as your demand or claim remains owing and outstanding.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SDMC in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SDMC under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Guarantee shall come into force with effect from the Effective Date and shall cease to be effective following the expiry of a period of 1 (one) year from the COD of the Plant i.e. **31<sup>st</sup> July, 2021 (Expiry Date)**. A demand or claim in writing is to be made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee i.e., till **31<sup>st</sup> January, 2022(Claim Expiry Date)**. Consequently, any written demand or claim under this guarantee should be received by us on or before the said Claim Expiry date.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SDMC in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it is actually received and acknowledged by the bank before the close of business hours on or before Claim Expiry Date .

11. All terms used in capital letters but not defined herein shall have the meaning ascribed to it in the Concession Agreement.

Notwithstanding anything contained herein above;

- a) Our liability under this bank guarantee shall not exceed Rs. 18,75,00,000/- (Rs. Eighteen Crore Seventy Five Lakh only);
- b) This bank guarantee shall be valid up to 31<sup>st</sup> July, 2021 (Expiry Date); and
- c) We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only, if a written claim or demand is served on the bank on or before 31<sup>st</sup> January, 2022 (Claim Expiry Date); and



d) Thereafter the bank shall stand discharged from all its liability under this guarantee and all your rights under this guarantee shall stand extinguished, irrespective of the fact whether the guarantee in original is returned back to us or not.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)



A handwritten signature in blue ink, appearing to be a stylized "S" or "J" followed by a horizontal line.

**SCHEDULE VI**  
**LAND LEASE AGREEMENT**

*[This Lease Deed shall be required to be registered with the Registrar]*

**LAND LEASE AGREEMENT**

**BETWEEN**

**SOUTH DELHI MUNICIPAL CORPORATION**

**&**

**CONCESSIONAIRE**

**FOR**

**LEASE OF LAND AT TEHKHAND, OKHLA**



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

This LEASE DEED made on the ..... day of ..... in the year Two Thousand and Seventeen  
BETWEEN

**South Delhi Municipal Corporation**, a Statutory body constituted under Delhi Municipal Act, 1957 (hereinafter referred to as "**SDMC**" OR "**Lessor**" which expression shall, unless it be repugnant to the subject or context thereof, include its Successors and Assigns)

AND

**Concessionaire**, a company limited incorporated under the Companies Act, 1956 and having its registered office at .....

(Hereinafter referred to as "**Concessionaire**" OR "**Lessee**" which expression shall unless it be repugnant to the subject or context be deemed to include its Successors and permitted Assigns)

WHEREAS

- A. The Government of NCT of Delhi is desirous of improving its municipal solid waste management and disposal capabilities and Municipal Corporation of Delhi (SDMC) has in order to enable the due discharge of its functions under the Delhi Municipal Corporation Act, 1957 approved the establishment of an waste to energy processing plant by the Lessee at Tehkhand, Okhla ("**Project**").
- B. The SDMC has approached Delhi Development Authority, who allotted a piece and parcel of land in Tehkhand, Okhla to SDMC. The said land stand transferred in accordance with a duly registered Conveyance Deed (defined hereinafter). In terms of the Conveyance Deed, the SDMC has acquired right, title and interest in the said Lease Land and is absolutely and without any encumbrances transfer the right to lease of the said Lease Land.
- C. In order to implement the Project the Lessor has entered into a Concession Agreement ("**Concession Agreement**"), with SDMC on 10<sup>th</sup> May 2018 in terms of which it has granted concession to the Concessionaire to design, built, and operate a waste to energy plant at the Demised Premises (as defined hereinafter).
- D. In terms of the concession Agreement, it is the obligation of the SDMC to provide lease to the Leased Land to the Lessor for the purposes of implementing the Project and constructing, operating and maintaining the waste processing plant on the Demised Premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.



79

**NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:-**

1. The capitalized terms that are used but not defined in this Agreement shall have the same meaning as given to them in the Concession Agreement.
2. In consideration of the Lessee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the Lease rental stipulated in Clause 3 below; the Lessor hereby demise to the Lessee, all the land which is described, delineated and shown in the Schedule hereto (hereinafter "**Demised Premises**"), to hold the said Demised Premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its term or is not terminated earlier in accordance with the provisions thereof or is suspended in accordance with the provisions of Concession Agreement. The term of this Agreement shall be co-terminus with the Concession Agreement. This lease shall become effective from the day on which all the Applicable Approvals are obtained in accordance as set out in Condition Subsequent until Concession Agreement comes to an end on Expiry Date. The Lessor further hereby agrees and authorizes the Lessee to undertake the construction, operation and maintenance of the waste to energy Project and each of the Project Facilities on the Demised Premises, in accordance with the terms of the Concession Agreement with SDMC.
3. In consideration of the transfer of the Demised Premises under this Agreement to the Lessee, the Lessor shall be entitled to exercise all its rights as set out in the Conveyance Deed and to receive Land Lease Charges as advance rent for the financial year on or before the 10<sup>th</sup> day of the month of April of each year. Provided, however, the Land Lease Charges for the year in which CoD occurs shall be paid for balance year on pro rata basis in the month in which CoD occurs

The Land Lease Charges shall be at the rate of Rs. 25.00 lacs per annum per acre from the COD till the end of the 12th year after CoD and at the rate of Rs. 30.00 lacs per annum per acre for the period from 13th year to 25th year after CoD.

4. The Demised Premises are being vested with the Lessee, under this Agreement, free from any Encumbrances whether legal or physical in nature. At any time during the term of this Agreement if the Lessee discovers any Encumbrances upon or under the Demised Premises which materially adversely affect the rights in relation to the Demised Premises, it shall notify the Lessor, which shall, within twenty one (21) days from the receipt of the notice, either remove or cause to be removed such encumbrances at its own cost. In the event that the Lessor fails to remove such encumbrances within twenty one (21) days from the notice thereof, the Lessee may remove or cause to be removed such encumbrance and the costs and expenses or consequential liabilities incurred in respect thereof shall be reimbursed to the Lessee by the Lessor.



5. The Demised Premises are being vested with the Lessee, under this Agreement for the Project which SDMC is desirous of being constructed, operated and maintained on the Demised Premises for the purposes of enabling the processing the MSW in accordance with the Concession Agreement.. Furthermore, the Lessee expressly and unconditionally agrees and undertakes to the Lessor that it shall under no circumstances construct or allow to be constructed or cause to be constructed in the Demised Premises by itself or by representatives/workers/agents/contractors or any other person claiming under him to construct any residential units or dwellings and the same shall not be construed or interpreted as forming part of the Project facilities directly or indirectly. The Lessor hereby authorizes and consents to the receipt of consignments of MSW, the storage and processing of MSW.
6. The Lessor hereby authorizes the Lessee, to construct, erect, and own, operate and maintain any superstructure, facility or any movable or immovable structures constituting the Plant (including each of the Project Facilities) on the Demised Premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the Demised Premises as of the date of this Agreement. The Lessor hereby agrees and acknowledges that it shall not own or have any rights to any superstructure, facility or any immovable structures constituting the Project Facility that are constructed or erected or placed on the Demised Premises and further that the same shall be owned by the Lessee. The Lessor hereby agrees that the construction, operation and maintenance of the Project at the Demised Premises and the receipt storage and processing of MSW at the Demised Premises is being undertaken pursuant to the Concession Agreement granted by SDMC and for the purposes of enabling the SDMC to discharge its functions of managing, processing and disposing Municipal Waste.
7. The Lessee shall have the right to, without requiring any prior permission from the Lessor in this regard, transfer for use, assign or otherwise encumber the Demised Premises and any or all of its rights and interest in relation thereto or to otherwise create a security interest in favor of the Lenders over the Demised Premises for the purposes of enabling financing of the Project. *Provided, however*, the Lessor shall be informed as to the creation of any Encumbrance in favor of the Lenders in the Demised Premises, within a period of 14 days from the date such Encumbrance comes into existence.
8. The Lessee shall have the right to, without requiring any prior permission of the Lessor, vest with the Lenders, the power to take over the control, possession and all rights and interests in relation to the Demised Premises by appointing a person to replace the Lessee and undertake the construction, operation and maintenance of the Plant upon the occurrence of an event of default by the Lessee, as the case may be, under any of the Financing Documents. The Lessor shall novate this Agreement in favor of the time of such novation. The Lessor hereby agrees that the dues payable to the Lenders shall have priority over any amount payable to the Lessor under this Agreement.



A handwritten signature in blue ink, appearing to be "S".

9. The Lessor hereby covenants and assures the Lessee that:

- a) all the land comprising the Site is of non-agricultural status and is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Plant and the Project Facilities, and that it shall assist in obtaining any additional Applicable Approvals that may be required for the development, construction, operation and maintenance of the Project Facilities.
- b) The Site is free from any encroachment or Encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any authority, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto..
- c) Lessor is the owner of the lands constituting the Demised Premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the Demised Premises for the Project.
- d) It shall not demand or in any manner claim or seek to recover the rent prior to the Effective Date or the Concession Agreement or increase the rent due and payable by the Lessee under the provisions of this Agreement.
- e) It shall not interfere with or impede in any manner claim or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demised Premises and all rights in relation thereto, including the creation of security, interest in the Demised Premises its favor of the Lenders;
- f) It shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the Plant; (ii) the implementation of the Project by the Lessee and (iii) the possession, control and use, by the Lessee of the Demised Premises and the Plant;
- g) It shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Documents;
- h) There are no litigation, claim, demand or any proceedings, and
- i) The Lessee shall have complete, lawful and uninterrupted possession, control and use of the Demised Premises.

10. The Lessee hereby covenants with the Lessor as follows:

- a) That it shall implement the Project in accordance with the Concession Agreement with SDMC; and
- b) That it shall observe and perform all terms, covenants, conditions and stipulations of this Agreement.



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

11. Lessor has lawful title, possession and control of all the lands constituting the Demised Premises and has the requisite right and authority to Lease the same to Lessee for the Term for the purposes of the Project on the terms and conditions of this Agreement and further that Lessee shall have full, free and uninterrupted peaceful Vacant Possession, enjoyment/ occupation and use of the Demised Premises throughout the Term, without any obstruction interference or disturbance or claim whatsoever from the Lessor or from any person claiming through under or in trust for Lessor or from any third person whomsoever. Lessor shall keep Lessee fully indemnified and harmless against any claims or demands from any Person claiming right, title or interest to or in the Demised Premises or any part thereof or challenging the validity of the usage of the Demised Premises for the Project or challenging the validity of this Agreement, as also against any actions; proceeding, damages, losses and expenses caused to is a result or in consequence of any such claims or demands as aforesaid.

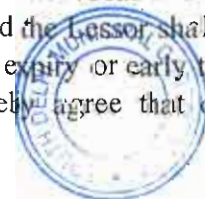
12. (a) Subject to Sub-Clause (b) and (c) below, no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part by any Party without the written consent of the other Party and in the event or any assignment the assignee shall assume the duties and liabilities of the assignor.

(b) It is hereby specifically agreed that the Lessee shall, in the event of forming, a limited company either as subsidiary company or jointly along with any other company or otherwise, be at liberty to assign and transfer the Project, the Demised Premises and this Agreement or the rights and benefits hereof or duties hereunder to such newly formed limited company or in favor of such subsidiary company of the Lessee or any of its holding company for the time being. The Lessee, shall, however, in such event obtain formal consent from the Lessor, winch consent shall not be withheld by Lessor. Any assignment by the Lessee shall be subject to the condition that the assignee shall assume the duties and liabilities of the Lessee.

(c) The Lessor hereby agrees that the Lessee shall not require any prior approval of the Lessor for creating any Encumbrance, right, title, or

(d) Lessor confirms that the Financing Agreements may include suitable rights in favor of the lenders for taking over the Demised Premises and the Project for management or for sale, in enforcement of their security upon the happening of an event of default thereunder on the part of the Lessee, *provided however*, the Demised Premises shall not be subject to sale.

13. The Lessor hereby assures and represents to the Lessee that the vesting of the Demised Premises under this Agreement shall be irrevocable for as long as the Concession Agreement SDMC remains in force and the Lessor shall not terminate or seek to terminate this Agreement except upon the expiry or early termination of the Concession Agreement SDMC. The Parties hereby agree that on the expiry or



A handwritten signature in blue ink.

termination of the Concession Agreement SDMC, the Demised Premises shall be handed back to the Lessor and that this Agreement shall terminate only on the handing over of the Project Facilities to the Lessor after receipt of dues (if any) from SDMC, and in accordance with the terms of the Concession Agreement with SDMC.

14. The Lessee also agrees that the demised Premises shall be used only for the purposes as defined in this Lease Agreement and any deviation there from without the prior written permission of the Lessor shall be deemed to be a breach of this Lease Agreement as well as the Concession Agreement dated .....signed between South Delhi Municipal Corporation (SDMC) and ..... (Concessionaire) and would entitle the Lessor to forthwith revoke this Lease Agreement and re- enter and re -possess the Demised Premises at the cost, risk and consequences of the Lessee.
15. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration to be conducted by one (1) arbitrator who shall be nominated by the Parties by mutual agreement. The venue of the arbitration shall be in New Delhi. The arbitration shall be held in accordance with and be governed by the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be law of Union of India.
16. The Lessor hereby recognizes that this is a commercial act being undertaken initiated to enforce any provisions of this Agreement.

IN WITNESS WHEREOF the Parties have affixed therein and sealed to this Leased Agreement the day and year first hereinabove written:

SIGNE SINGNED, SEALED AND DELIVERED IN THE NAME AND ON BEHALF OF THE LESSOR THROUGH:	
SIGNED, SEALED AND DELIVERED BY LESSEE THROUGH ITS AUTHORISED SIGNATORY IN PRESENCE OF:	

WITNESSES:



## SCHEDULE – VII

(See Clause 16)

### ESCROW AGREEMENT

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

#### AMONGST

- 1 ..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

And

- 2 ..... (name and particulars of Lenders’ Representative) and having its registered office at ..... acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

And

- 3 ..... (name and particulars of the Escrow Bank) and having its registered office at ..... (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

And

- 4 BSES Rajdhani Power Limited, Company registered under the Company's Act 1956, having its Registered- Office at (.....), hereinafter called 'Procurer1', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the second part;

And

- 5 BSES Yamuna Power Limited, Company registered under the Company's Act 1956, having its Registered- Office at (.....), hereinafter called 'Procurer2', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the third part;



A handwritten signature in blue ink, appearing to be a stylized 'J' or 'S' followed by a horizontal line.

And

- 6 Tata Power Delhi Distribution Limited, Company registered under the Company's Act 1956, having its Registered- Office at (\_\_\_\_\_), hereinafter called 'Procurer3', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the fourth part;

And

- 7 New Delhi Municipal Council, Company registered under the Company's Act 1956, having its Registered- Office at (\_\_\_\_\_), hereinafter called 'Procurer4', which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assignees as Party of the fourth part;

And

- 8 The ..... South Delhi Municipal Corporation Ltd represented by ..... and having its principal offices at ..... (hereinafter referred to as the "SDMC" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

**WHEREAS:**

- (A) The SDMC has entered into a Concession Agreement dated ..... with the Concessionaire (the "Concession Agreement") for processing 2000 TPD of Municipal Solid Waste to Energy Processing Facility in the State of ..... on design, build, finance, operate and transfer basis (the "DBFOT") and entered into Power Purchase Agreement with the Delhi Discoms (the "Power Purchase Agreement") for selling power generated from the Project ;
- (B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents;
- (C) Whereas the Procurer 1, Procurer 2, Procurer 3 and Procurer 4 (together referred to as the 'Procurers') have executed a Power Purchase Agreement with the Concessionaire and SDMC and has agreed to buy the electricity generated by the Power Plant at the Project Facility established in accordance with the provisions of the Concessions Agreement by the Concessionaire and the said Power Purchase Agreement makes it obligatory for the Procurers to enter into this Escrow Agreement to that it is obligatory upon the Procurers to deposit consideration payable towards generation of electricity by the Concessionaire through the said Power Plant at the Site into the Escrow Account established with the Escrow Bank;
- (D) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

Concession Agreement for Tehkhand WTE Project



86

A handwritten signature in blue ink, appearing to be a stylized 'S' or 'J'.

NOW IT IS HEREBY AGREED as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

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

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

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

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

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

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

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

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

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



A handwritten signature in blue ink.

## 1.2 Interpretation

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

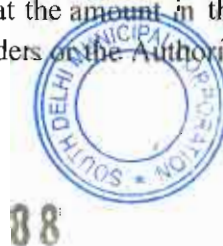
## 2 ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

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

### 2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the Authority with the Escrow



A handwritten signature in blue ink.

Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### **2.3 Establishment and operation of Escrow Account**

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

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

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

### **2.4 Escrow Bank's fee**

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

### **2.5 Rights of the Parties**

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

### **2.6 Substitution of the Concessionaire**

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



Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

### **3 DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1 Deposits by the Concessionaire**

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

- (a) all monies received in relation to the Project from any source, including the Lenders, lenders of Subordinated Debt, and the Authority;
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all payments by the Discoms, including Tariff;
- (d) any revenues, deposits or capital receipts, as the case may be, received for the Project;
- (d) any other revenues, deposits or capital receipts, as the case may be, from or in respect of the Plant; and
- (e) all proceeds received pursuant to any insurance claims.

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

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

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

- (a) Financial Assistance and any other monies disbursed by the Authority to the Concessionaire;
- (b) Termination Payments:

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Land Lease and Residual Inert Matter Handling Charges due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.



A handwritten signature in blue ink.

### 3.3 Deposits by Lenders

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Documents.

### 3.4 Deposits by Procurers

Procurer's agree that the they shall deposit the consideration payable to the Concessionaire in accordance with the Power Purchase Agreement to the Escrow Account established with the Escrow Bank as and when the said consideration becomes payable in accordance with the Power Purchase Agreement.

### 3.5 Interest on deposits

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

## 4 WITHDRAWALS FROM ESCROW ACCOUNT

### 4.1 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Plant;
- (b) all payments relating to construction of the Plant, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) all day to day operating expenses, subject to the ceiling, if any, set forth in the Financing Documents;



- (d) all day to day operating expenses and other costs and expenses incurred by the SDMC in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (e) any other amounts due and payable to the /SDMC, including Land Lease and Residual Inert Matter Handling Charges;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the SDMC as due and payable to it by the Concessionaire, pursuant to the provisions of the Concession Agreement;
- (h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Documents; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

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

#### 4.2 Withdrawals upon Termination

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

- a. all taxes due and payable by the Concessionaire for and in respect of the Plant;
- b. 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- c. outstanding Land Lease and Residual Inert Matter Handling charges from sale of electricity and payable to the Authority;
- d. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, and any claims in connection with or arising out of Termination;
- e. outstanding Debt Service including the balance of Debt Due;



- f. outstanding Subordinated Debt;
- g. incurred or accrued O&M Expenses;
- h. any other payments required to be made under the Concession Agreement;  
and
- i. balance, if any, in accordance with the instructions of the Concessionaire:

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

#### **4.3 Application of insufficient funds**

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

#### **4.4 Application of insurance proceeds**

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

#### **4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 17 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line.

## 5 OBLIGATIONS OF THE ESCROW BANK

### 5.1 Segregation of funds

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

### 5.2 Notification of balances

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

### 5.3 Communications and notices

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

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



A handwritten signature in blue ink.

#### 5.4 No set off

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

#### 5.5 Regulatory approvals

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

### 6 ESCROW DEFAULT

#### 6.1 Escrow Default

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

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

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



A handwritten signature in blue ink.

## **7 TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

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

### **7.2 Substitution of Escrow Bank**

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

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### **7.3 Closure of Escrow Account**

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

## **8 SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary escrow agreement**

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



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## 9 INDEMNITY

### 9.1 General indemnity

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

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

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

### 9.2 Notice and contest of claims

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



A handwritten signature in blue ink, appearing to be a stylized 'S' or 'A' followed by a horizontal line.

## **10 DISPUTE RESOLUTION**

### **10.1 Dispute resolution**

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which are not resolved amicably, shall be decided finally by reference to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time) read with UNICITRAL Rules of Arbitration (as amended from time to time) under the aegis of 1 (one) Arbitrator. The arbitrator shall be appointed by mutual consent of all the parties and failing which such appointment shall take place in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time). The seat of arbitration shall be New Delhi India. The language of arbitration shall be English. The governing law of arbitration shall be the law of Union of India.

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

## **11. MISCELLANEOUS PROVISIONS**

### **11.1 Governing law and jurisdiction**

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

### **11.2**

### **11.3 Priority of agreements**

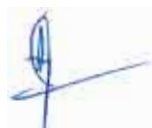
In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **11.4 Alteration of terms**

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

### **11.5 Waiver**

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



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

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

#### 11.6 No third party beneficiaries

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

#### 11.7 Survival

##### 11.7.1 Termination of this Agreement:

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

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

#### 11.8 Severability

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



*[Handwritten signature]*

nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

#### **11.9 Successors and assigns**

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

#### **11.10 Notices**

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

#### **11.11 Language**

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

#### **11.12 Authorised representatives**

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

#### **11.13 Original Document**

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



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

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

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

(Signature)

(Name)

(Designation)

(Address)

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
THE AUTHORITY:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

<sup>f</sup>To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.



9

## SCHEDULE VIII SUBSTITUTION AGREEMENT

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

### AMONGST

- 1 The ..... represented by ..... and having its principal offices at ..... (hereinafter referred to as the “SDMC” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 ..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and
- 3 (Name and particulars of Lenders’ Representative) and having its registered office at ....., acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

### WHEREAS:

- (A) The SDMC has entered into a concession agreement dated ..... with the Concessionaire (the “Concession Agreement”) for processing 2000 TPD of Municipal Solid Waste to Energy Processing Facility with a capacity of ..... MW Power Station in the State of ..... on design, build, finance, operate and transfer basis (the “DBFOT”).
- (B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (C) Lenders have requested the SDMC to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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



## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

**"Agreement"** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

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

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals;

**"Nominated Company"** means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**"Notice of Financial Default"** shall have the meaning ascribed thereto in Clause 3.2.1; and

**"Parties"** means the parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually.

### **1.2 Interpretation**

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

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

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

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

## **2 ASSIGNMENT**

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

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



A handwritten signature in blue ink.

### 3 ***SUBSTITUTION OF THE CONCESSIONAIRE***

#### 3.1 **Rights of substitution**

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The SDMC hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project Facilities as Concessionaire either individually or collectively.

#### 3.2 **Substitution upon occurrence of Financial Default**

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the SDMC for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Project shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

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

- 3.3.1 Upon occurrence of a Concessionaire Default, the Project shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Project within the period of 15 (fifteen) days specified in Clause 3.3.1 stating that it intends to substitute the



A handwritten signature in blue ink, consisting of a stylized 'J' followed by a horizontal line.

Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Project shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Project may terminate this Agreement in accordance with the provisions hereof; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

### 3.4 Procedure for substitution

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

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Project for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 upon selection of a Nominated Company, the Lenders' Representative shall request the SDMC to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Term as stipulated in the Concession Agreement; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the SDMC has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the SDMC, the Nominated Company shall be deemed to have been accepted. The SDMC shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the



A handwritten signature in blue ink.

Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

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

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

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

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

## **5 TERMINATION OF CONCESSION AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

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

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

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and



A handwritten signature in blue ink, consisting of a stylized 'f' shape.

eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### 5.3 Realisation of Debt Due

The SDMC and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

## 6 DURATION OF THE AGREEMENT

### 6.1 Duration of the Agreement

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

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

## 7 INDEMNITY

### 7.1 General indemnity

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

7.1.2 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event



that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which are not resolved amicably, shall be decided finally by reference to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time) read with UNICITRAL Rules of Arbitration (as amended from time to time) under the aegis of 1 (one) Arbitrator. The arbitrator shall be appointed by mutual consent of all the parties and failing which such appointment shall take place in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time). The seat of arbitration shall be New Delhi India. The language of arbitration shall be English. The governing law of arbitration shall be the law of Union of India.

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

## **9 MISCELLANEOUS PROVISIONS**

### **9.1 Governing law and jurisdiction**

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

### **9.3 Priority of agreements**

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

### **9.4 Alteration of terms**

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

### **9.5 Waiver**

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



A handwritten signature in blue ink.

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

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

#### 9.6 No third party beneficiaries

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

#### 9.7 Survival

##### 9.7.1 Termination of this Agreement:

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

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

#### 9.8 Severability

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

#### 9.9 Successors and assigns

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



#### 9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

#### 9.11 Language

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

#### 9.12 Authorised representatives

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

#### 9.13 Original Document

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



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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

(e-mail address)

In the presence of:

1.

2.

<sup>£</sup>To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.



## SCHEDULE IX

### FINANCIAL ASSISTANCE SECURITIZATION AGREEMENT

NO. SDMC(DEMS)CD/2017-18/21/[Insert Project ID] \_\_\_\_\_ DATE----

NAME OF CONCESSIONAIRE : \_\_\_\_\_

REGISTERED ADDRESS OF THE  
CONCESSIONAIRE : \_\_\_\_\_  
\_\_\_\_\_

PROJECT NAME /LOCATION : \_\_\_\_\_

PROJECT CAPACITY : \_\_\_\_\_MW

PROJECT ADDRESS : \_\_\_\_\_

FINANCIAL ASSISTANCE AMOUNT

Rs. 1,05,00,00,000/- (Rupees One Hundred  
and Five Crore)

South Delhi Municipal Corporation

Email: eep1mcd@gmail.com

Telephone: 011-23722787



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

## Table of Contents

ARTICLE 1: DEFINITION AND INTERPRETATION .....	116
ARTICLE 2: AGREEMENT AND TERMS OF FINANCIAL ASSISTANCE.....	120
ARTICLE 3: CREATION OF CHARGE TO SECURITIZE FINANCIAL ASSISTANCE.....	122
ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION.....	123
ARTICLE 5: INSPECTION OF SITE /WORKS AND PROGRESS REPORTING.....	126
ARTICLE 6: INSURANCE OF CHARGED PROPERTIES .....	127
ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC.....	128
ARTICLE 8: CONCESSIONAIRE'S WARRANTIES/ GUARANTEES .....	129
ARTICLE 9: WAIVER.....	130
ARTICLE 10: GOVERNING LAW AND DISPUTE RESOLUTION .....	131
ARTICLE 11 - SPECIAL CONDITIONS .....	133
ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT.....	134
SCHEDULE 1: FORMAT OF BANK GUARANTEE FOR FINANCIAL ASSISTANCE.....	135



A handwritten signature in blue ink.

## FINANCIAL ASSISTANCE SECURITIZATION AGREEMENT (FASA)

THIS FINANCIAL ASSISTANCE SECURITIZATION AGREEMENT is made and executed at New Delhi on \_\_\_\_ day of \_\_\_\_\_ 2017 between \_\_\_\_\_ Limited (CIN \_\_\_\_\_), a Company within the meaning of the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013, as applicable and having its Registered office at \_\_\_\_\_

\_\_\_\_\_, in the State of \_\_\_\_\_ hereinafter called the "Concessionaire" (which expression shall unless excluded by or repugnant to the context or meaning thereof) as the First Part

AND

South Delhi Municipal Corporation of Delhi, a statutory body constituted under the Delhi Municipal Act 1957 and having its office at Civic centre, JLN Marg, New Delhi 110002 and acting through its Executive Engineer (Store), (hereinafter referred to as "SDMC", which expression shall, unless repugnant to context or meaning thereof, mean and include its successors and assigns) as a Party of the Second Part.

The Concessionaire and SDMC are individually referred to as 'Party' and collectively referred to as 'Parties'.

### **Whereas:**

- A. SDMC is a statutory body constituted under the Delhi Municipal Corporation Act, 1957 and is responsible for providing municipal and civic services to the citizens of South and Western part of Delhi State, including collection, transportation and disposal of Municipal Solid Waste (MSW) generated within their jurisdiction.
- B. Government of India has formulated Municipal Solid Waste (Management and Handling) Rules 2016 ("**MSW Rules**"), which impose an obligation on SDMC to adopt suitable process for processing and disposal of MSW (as defined hereinafter). In furtherance of its functions and pursuant to the MSW Rules, SDMC desires to establish facilities to process, manage and dispose MSW (MSW);
- C. SDMC is desirous of augmenting its waste management capability and expanding its waste processing, management and disposal capabilities and has decided to set up MSW to Energy Processing and Engineered Sanitary Landfill Facility at Tehkhand, Okhla, New Delhi as per Solid Waste Management Rules, 2016 for 2000 TPD of MSW ("**Project**");
- D. Whereas, [Insert Name of the Concessionaire] has been designated as the agency for development of a waste to energy plant at Tehkhand, Okhla in accordance with the terms of the Concessions Agreement;



- F. Whereas the Concessionaire have also signed a Power Purchase Agreement (PPA) having effective date of [Insert Effective date of PPA] to supply power by Concessionaire to Procurers from the Project for a period of twenty five (25) years as per terms and conditions specified in the PPA; and
- G. Whereas pursuant to the execution of the Concessions Agreement and signing of PPA,SDMC agrees and undertakes to pay to the Concessionaire financial assistance of an amount of Rs. 105.00 Crore – (Rupees One Hundred & Five Crore) (hereinafter referred to as “**Financial Assistance**”) for the purpose of development of Project, during the period commencing from the construction of the Project till COD.

**NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS  
HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**



A handwritten signature in blue ink.

## ARTICLE 1: DEFINITION AND INTERPRETATION

### 1.1. Definitions:

In this Agreement unless the context otherwise requires:

- (a) "Agreement" or "Financial Assistance Securitization Agreement" or "FASA" means this particular Financial Assistance Securitization Agreement and includes all schedules and all amendments and documents supplemental or incidental to the Financial Assistance Securitization Agreement entered by SDMC with the Concessionaire for creation, perfection and enforcement (if any) of charges on the Power Project of the Concessionaire;
- (b) "Chartered Accountant" shall mean a person practicing in India or a firm whereof all the partners practicing in India as a Chartered Accountant(s) within the meaning of the Chartered Accountants Act 1949;
- (c) "Company Secretary" shall mean a person who is a member of the Institute of Company Secretaries of India either in whole time employment or in practice within the meaning of the Company Secretaries Act, 1980;
- (d) "Date of Commissioning" or "COD" shall mean "Date of Commissioning" or "COD" as defined in Concession Agreement;
- (e) "Delivery Point" means delivery point as defined in the Concession Agreement; and
- (f) "Financial Assistance" means the amount specified in clause 2.1 of this Agreement;
- (g) "Financial Assistance disbursement schedule" means the disbursement schedule of Financial Assistance Amount as provided in Clause 2.2 of the Agreement;
- (h) "Project" or "Power Project" shall mean the integrated MSW management and processing facility comprising the RDF Plant, facility for handling organic waste, the Power Plant to be designed, constructed, operated and maintained by Concessionaire in accordance with terms and provisions of Concession Agreement, and Land Lease Agreement;
- (i) "Project Assets" means all immovable and movable assets (constructed and intended to be constructed) created by the Concessionaire for the construction and operation of the Project (including supply of power under the PPA) within the Project premises and power evacuation system including transmission line



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

and metering system till the Delivery Point on which the charge of SDMC and / or (as applicable) Term Loan Lenders / Lending Institution (if any) shall be created by the Concessionaire, however, the Project Assets shall not include the Project Land admeasuring \_\_\_ acres provide to the Concessionaire by the SDMC.

- (j) "RfP" or "Request for Proposal" means the bidding document [Insert RfP No.] dated DD-MM-YYYY including its amendments, clarifications and addendum (if any) issued by the SDMC to prospective bidders;
- (k) "Term Loan Lender" or "Lending Institution" means banks, financial institution or any other financial institution who lends/ funds to the Concessionaire for execution and development of the Project; For avoidance of any doubt, banks, financial institution or any other financial institution who has lent only for working capital and not for the execution and development of the Project will not be termed as the "Term Loan Lender" or "Lending Institution" under this Agreement;

## 1.2. Interpretation:

Save where the contrary is indicated, any reference in this Agreement to

- (a) All the terms and expressions in capitalized form not defined herein in this Agreement shall have meaning as provided therein in the RfP documents, Concession Agreement and PPA.
- (b) This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented; and shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;
- (c) A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);
- (d) An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any Person or any other type of preferential arrangement (including, without limitation to title transfer and retention arrangements) having a similar effect;
- (e) "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money,



whether present or future, actual or contingent;

- (f) A "Person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;
- (g) "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;
- (h) The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (i) Words importing singular number shall be deemed to include plural number and vice versa.
- (j) A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;
- (l) A time of day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;
- (m) Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;
- (n) The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;
- (o) All interest, if applicable and payable under this Agreement, shall accrue from day to day and be calculated on the basis of a year of three hundred and sixty five (365) days;



A handwritten signature in blue ink.

- (p) The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;
- (q) The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (r) In case of inconsistencies between this Agreement and Concession Agreement, the clause(s) given in Concession Agreement shall prevail;
- (s) "Good title" means the Concessionaire is rightful owner and is in peaceful possession of the Land as per the SPPD agreement/ Land Lease Deed/ Agreement (as applicable) and the Concessionaire shall also have proper authority to work on land for the term of 25 years, by way of permitted instruments and requisite approval for the construction period also.
- (t) The capitalized words which are not defined herein but are defined in the Concessions Agreement or the PPA shall have the meaning ascribed to them in those documents. Further in case a term or a condition of this Agreement is in conflict with the terms and conditions set out in the Concessions Agreement, the terms of the Concessions Agreement shall prevail.



A handwritten signature in blue ink, appearing to be a stylized 'A' or '4' followed by a horizontal stroke.

## ARTICLE 2: AGREEMENT AND TERMS OF FINANCIAL ASSISTANCE

### 2.1 Amount and Disbursement of Financial Assistance:

- (a) The Concessionaire is eligible to receive Financial Assistance amounting to Rs. 105.00 Crore (Rupees One Hundred & Five Crore) subject to the compliance of terms and conditions as detailed in Article 2.2 hereinafter.

### 2.2 Conditions to be Fulfilled for Disbursement of Financial Assistance:

- (a) As per the terms and conditions of Concessions Agreement, RfP and this Agreement, the Financial Assistance shall be released through SDMC, subject to creation of the security by way of charge in favour of SDMC on the assets of the Project in terms of Article 3 hereof and extension of any other security stipulated by the Lender of the Project in relation to the Project, if any, to establish, operate, maintain, generate and sell power from the Project as per PPA,.

### (b) Financial Assistance Disbursement Procedure:

- i) The Concessionaire shall deliver to SDMC a request for Financial Assistance disbursement not less than (15) days from the proposed Financial Assistance disbursement date and confirming that all the conditions as set forth below for Financial Assistance disbursement has been fulfilled;
- ii) The Financial Assistance shall be disbursed in accordance with the following milestones:

S. No.	Milestone	Percentage of Grant to be released
1	Placement of order for Boiler, Turbo-generator and Air Pollution Control (APC) equipment accompanied with payment of advance.	25%
2	Erection of Boiler, Turbo-generator and Air Pollution Control (APC) etc. at Project Site	35%
3	Completion of successful trial operation for a continuous period of 72 hours for demonstrating compliance of installed capacity of the project to be witnessed by	30%



	representatives of SDMC and Delhi DISCOMs	
4	Achieving 100% Commercial Operation	10%

iii)

The above indicated Financial Assistance Amount for Milestone (1), (2) and (3) will be released subsequent to submission of bank guarantee as per Schedule-I of this Agreement of an amount equivalent to and having validity as detailed below and meeting other terms and conditions contained in this Agreement

Particulars	BG Amount	Validity
BG No.-1	25% of the Financial Assistance Amount	Scheduled CoD + 2 Years
BG No.-2	35% of the Financial Assistance Amount	Scheduled CoD + 2 Years
BG No.-3	30% of the Financial Assistance Amount	Scheduled CoD + 2 Years

The above Bank Guarantees will be initially valid for a period of two years after the Scheduled COD. The Concessionaire shall ensure that the validity of the Performance Guarantee is extended till two years after the COD.

The above Bank Guarantees will be returned by the SDMC sequentially with an interval of six months starting six months after CoD of the Plant.

- v) The Concessionaire shall furnish a "No Default Certificate" from its term loan lenders / lending institution (if applicable);
- vi) The Concessionaire shall provide a Certificate from Company Secretary; indicating share holding pattern of the Concessionaire to establish maintenance of the shareholding as per terms and conditions of Concession Agreement.



*[Handwritten signature]*

### ARTICLE 3: CREATION OF CHARGE TO SECURITIZE FINANCIAL ASSISTANCE

3.1 Concessionaire shall create a charge in favour of SDMC in following manner:-

- a) Term loan Lender or Lending Institution (if any) will have first charge on the Project Assets and the Concessionaire shall create charge according to the requirement laid down by term loan Lender or Lending Institution. The Concessionaire shall create second charge along with the first charge of term loan Lender or Lending Institution on the same Project Assets by way of mortgage and hypothecation in favour of SDMC to securitize the sanctioned Financial Assistance amount.
- b) In the absence of any charge in favour of term loan Lender or Lending Institution, SDMC will have the first charge on the Project Assets.
- c) Notwithstanding as provided in 3.1 (b) herein above, SDMC hereby undertake to cede its first charge and accept second charge over the Project Assets upon the Concessionaire availing finance from term loan Lender or Lending Institution (if any). SDMC shall have no-objection in creating first charge over the Project Assets in favour of term loan Lender or Lending Institution as per their requirement by the Concessionaire and for filling requisite Form for modification of charge with the Registrar of Companies (ROC).
- d) any other security as the term Lender(s) of the Project may stipulate;

3.2 The Concessionaire shall make out a good title to its immovable properties and comply with all such formalities as may be necessary or required for the said purposes. Concessionaire shall file all necessary documents and forms to register a charge for the movable and immovable properties, with the relevant Registrar of Companies, sub registrar or any other authority as per applicable regulation / law.



A handwritten signature in blue ink, possibly reading 'G'.

#### ARTICLE 4: EVENTS OF DEFAULT AND TERMINATION

##### 4.1 Event of Default: The following shall constitute an Event of Default:

- a) Breach of the terms of the Concession Agreement by the Concessionaire of which the notice is given by SDMC and the Concessionaire has not cured the said notified breach within the time provided in the Concession Agreement;
- b) Breach of the terms of the Power Purchase Agreement or any of the terms of the Lease Deed between SDMC and the Concessionaire and the Escrow Agreement;
- c) If the Project fails to generate any power continuously for a period of 4 months during any financial year of the term of the PPA;
- d) If the Project is dismantled and / or its major assets (the Project components such as Boiler, Turbo-generator and Air Pollution Control (APC) equipment etc.) are sold by Concessionaire during the term of the Concession Agreement except for replacement of any equipment including the major assets of the Project during the term of the Concession Agreement without diluting the charge of SDMC over such asset;
- e) If it is found at any stage that the Concessionaire has misrepresented the facts/information to meet the eligibility conditions stipulated in RFP document issued by SDMC;
- f) If the Concessionaire defaults any terms and conditions of Loan documents and the Lender takes any step for recovery, including for winding up of the Concessionaire;
- g) If (i) the Concessionaire becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of ten (10) days, or (ii) any winding up or bankruptcy or insolvency order is passed against the Concessionaire, or (iii) the Concessionaire goes into liquidation or dissolution or has a receiver or any similar officer appointed to manage its affairs pursuant to Law;
- h) Save and except permitted by SDMC for transfer of shareholding pattern, if Concessionaire fails to maintain its shareholding represented to SDMC at the time of signing of Concession Agreement up to a period of five (5) year after COD of the Project as per terms and conditions of Concession Agreement;
- i) If any attachment or distraint is levied on the mortgaged/charged property or any thereof and/or proceedings are taken or commenced for recovery of any dues from the Concessionaire; or
- j) If during subsistence of this Agreement, the Concessionaire fails to comply with the applicable law in relation to the Project provided that such non-compliance results in



*[Handwritten signature]*

revocation or reversal of any consent or approval obtained by the Concessionaire in relation to the Project.

#### 4.2 Remedies and Recovery of Financial Assistance in the Event of Default:

- a) In case of default or breach of any of the terms of this Agreement, SDMC will have a right to get refund of Financial Assistance from the Developer by encashing the Bank Guarantees submitted by Concessionaire under clause 2.2 above. Any Bank Guarantee encashed will be treated as Financial Assistance already recovered from the Concessionaire.
- b) Further, SDMC will also have a right to get refund of balance Financial Assistance from the Developer on pro-rata basis and if not paid by the developer, then a claim will be made on assets equal to the value of Financial Assistance, on pro-rata basis as specified hereunder:

Year of default (From COD)	SDMC's right to refund of Financial Assistance/ claim on assets (% of Financial Assistance paid)
Up to 5 years	100%
5-6 years	90%
6-7 years	80%
7-8 years	70%
8-9 years	60%
9-10 years	50%
10-11 years	40%
11-12 years	30%
12-13 years	25%
13-14 years	23%
14-15 years	21%
15-16 years	19%
16-17 years	17%
17-18 years	15%
18-19 years	13%
19-20 years	11%
20-21 years	9%
21-22 years	7%
22-23 years	5%
23-24 years	3%
24-25 years	1%

- c) In case the lending institution exercises its right to step in or take over the Project,



SDMC will also have right to step in along with the lending institution to reclaim Financial Assistance in accordance with sub-clause 4.2 (a) and (b) above or handover the Project to another party for operation of the Project, provided that any substitution of the Concessionaire under this Agreement can only be made with the condition that the substituted Concessionaire meets the eligibility requirements of Request for Proposal (RfP) issued by SDMC and accepts and honor all the terms and conditions of Concession Agreement and Financial Assistance Securitization Agreement signed by Concessionaire with SDMC.

#### 4.3 Consequences and Procedure for cases of Concessionaire Event of Default

- a) Upon the occurrence and continuation of any Concessionaire Event of Default under Clause 4.1 for a period of Thirty (30) days and provided such event of default has not been cured / remedied in accordance with this Agreement, SDMC shall have the right to deliver to the Concessionaire, with a copy to the representative of the lenders to the Concessionaire with whom the Concessionaire has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (SDMC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.
- b) Within a period of seven (7) days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the Concessionaire Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, SDMC may terminate this Agreement by giving a written Termination Notice of thirty (30) days to the Concessionaire.
- c) Subject to the terms of this Agreement, upon occurrence of a Concessionaire Event of Default under this Agreement, SDMC, by a written notice to the Concessionaire, will declare a percentage of the amount of the Financial Assistance released to the Concessionaire, depending on the year in which such Event of Default occurs after the COD, as detailed in Clause 4.2, and other monies to be payable by the Concessionaire and upon such declaration, the same shall become due and payable to SDMC by the Concessionaire with the period prescribed in the Notice which period shall in no event be less than thirty (30) days.
- d) Upon failure of the Concessionaire to pay the entire declared due amount, within the period prescribed by SDMC in its notice, SDMC shall enforce the charge created in terms of Article 3.0 hereof for the entire amount so declared (or the outstanding balance thereof). Notwithstanding anything to the contrary contained in the Agreement, remainder Financial Assistance amount, if any to be paid /released by SDMC shall automatically stand cancelled.



## ARTICLE 5: INSPECTION OF SITE /WORKS AND PROGRESS REPORTING

- 5.1 The Concessionaire shall ensure that the site engineers and his other employees, contractors and other agents engaged by it on the site provide free access to and all other assistance for the inspection of the sites and works by SDMC and/or its nominee(s)/Officers/ authorized 3<sup>rd</sup> party any time before and/or after the work is started during its execution and after the works are completed for the entire duration of the Concession Agreement. Conccssionaire shall furnish monthly progress report on all activities on mutually agreed format between the Concessionaire and SDMC during construction phase upto the commissioning and throughout the term of the Concession Agreement.



9

## ARTICLE 6: INSURANCE OF CHARGED PROPERTIES

- 6.1 The Concessionaire shall at its own expense keep the charged properties in good condition and shall take insurance policy covering all the insurable risks against any loss or damage by theft, fire, lightning, earthquake, explosion, riot, strike, civil commotion, tempest, flood, marine risk, erection risk, war risk etc. The Concessionaire shall deliver copy of the relevant policy of insurance to SDMC, and maintain such insurance throughout the term of the Agreement. The policy shall be taken with Agreed Banker's clause providing SDMC as a second charge holder. In the absence of any charge in favour of Term Loan Lending Institution, SDMC shall be the first charge holder for such policy.



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a horizontal line.

## ARTICLE 7: INSPECTION OF BOOKS OF ACCOUNTS ETC.

- 7.1) a) The Financial Assistance is supported by the Government of India through budgetary resources, and therefore Concessionaire shall maintain accounts and documents related to Financial Assistance in a manner which shall meet the requirements of guidelines/ instructions, if any, issued by the Government of India from time to time.
- b) SDMC shall have the right to appoint, whenever it considers necessary, any person, firm, Company or association of persons engaged in technical, management or any other consultancy business at its own cost to inspect and examine the working of the Concessionaire and its Project and to report to SDMC. SDMC shall also have the right to appoint, whenever it considers necessary, any Chartered Accountants/Cost Accountants as auditors to examine the Annual returns including balance sheets and Profit and Loss Statements pertaining to the Financial Assistance granted under this Agreement financial or cost accounting system and procedures adopted by the Concessionaire at Concessionaire's cost for its working or as concurrent or for conducting a special audit of the Concessionaire.
- c) The Concessionaire agrees and undertakes that it shall not sell, gift, lease, rent, transfer or dispose off in any other manner, the Project during the tenure of the Concession Agreement for which Financial Assistance is being granted except as permitted in the Concession Agreement.
- d) The Concessionaire will be required to submit a copy of the audited annual accounts along with copy of tax audit report and a copy of Income Tax return for the entire term of the PPA from Commercial Operation Date (COD).



## ARTICLE 8: CONCESSIONAIRE'S WARRANTIES/GUARANTEES

8.1 The Concessionaire hereby warrants and undertakes to SDMC as follows:-

**a) Title to the charged properties:**

The Concessionaire has good title free from any encumbrances to the properties to be charged in favor of SDMC save any charge created with Term Loan Lender for the Project. The Concessionaire shall all the time during the course of operation of the Project keep Project facility including equipment in good order and condition and faulty/defective equipment shall be replaced forthwith.

**b) Notice to SDMC on the happening of an Event of default**

If any event of default or any event which, after the notice or lapse of time or both would constitute an event of default shall have happened, the Concessionaire shall forth with give SDMC notice thereof in writing specifying such event of default, or such event.

**c) Expenses of Preservation of Assets of the CONCESSIONAIRE and of Collection:**

All costs and expenses incurred by SDMC after an Event of Default has occurred in connection with (i) preservation of the Concessionaire's Assets (whether now or hereafter Existing); or (ii) Collection of amounts due under this Agreement shall be added to the dues of SDMC and shall be paid by the Concessionaire or reimbursed by it as SDMC shall specify and in default of such payment/reimbursement interest shall be charged at the rate of 1.25% per month on the outstanding amount calculated on a day to day basis.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

## ARTICLE 9: WAIVER

### 9.1 Waiver not to impair the rights of SDMC:

- a) Any delay or omission in exercising any right, power, or remedy available to SDMC under the Agreement and any extension, accommodation, consent, compromise, release, or indulgence granted or shown by SDMC shall not impair such right, power or remedy nor shall be construed as a waiver of any of the SDMC's rights, powers or remedies hereunder.
- b) Waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party.



A handwritten signature in blue ink, appearing to be a stylized 'G' or similar character.

## ARTICLE 10: GOVERNING LAW AND DISPUTE RESOLUTION

### 10.1. Governing Law and Jurisdiction

10.1.1. This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

### 10.2. Dispute resolution

10.2.1. Any dispute, difference or controversy of whatever nature, howsoever, arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, in the first instance, be attempted to be resolved amicably, in accordance with the conciliation procedure set forth in Clause 10.2.3.

10.2.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

10.2.3. In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Commissioner of the SDMC and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 20.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.2.4.

10.2.4. In the event the Parties fail to resolve the Dispute amicably by conciliation, as provided in clause 10.2.3 shall be decided by reference to arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules made thereunder, in accordance with the process specified below

- (vi) In the event of a Dispute remaining unresolved as referred to in Clause 10.2.3, any Party to such Dispute may initiate arbitration by notifying the other Party.
- (vii) The Arbitration tribunal shall consist of 3 (three) arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected. In the event of any disagreement between the two arbitrators, the third arbitrator shall be appointed in accordance with the Indian Arbitration and Conciliation Act, 1996 and the Rules made thereunder.



- (viii) The place of arbitration shall be New Delhi, India. The language of the arbitration shall be English.
- (ix) The arbitration tribunal's award shall be substantiated in writing. The arbitration tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- (x) The award shall be enforceable in any court having jurisdiction, subject to the applicable Laws.



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

## ARTICLE 11 - SPECIAL CONDITIONS

11.1. The Financial Assistance to be disbursed shall also be subjected to the Concessionaire complying with the special conditions set out below:-

- a) This Agreement has been executed in duplicate and all executed counterparts shall be considered one and the same Agreement and each of them shall be deemed an original.
- b) The Concessionaire shall arrange to display a notice board at a prominent place at the Project site indicating that the Project has been financially supported by SDMC.

### 11.2. Force Majeure

The provisions concerning Force Majeure shall be read and part and parcel of this Agreement. In case SDMC invokes the clause relating to Force Majeure in the Concession Agreement, it would be deemed that the Force Majeure is invoked in this Agreement as well.



A handwritten signature in blue ink.

## ARTICLE 12 - EFFECTIVE DATE OF AGREEMENT

### 12.1 Agreement to become effective from the Date of Execution:

The Agreement shall become binding on the Concessionaire and SDMC on and from the date of the Agreement first above written. The term of this Agreement shall be co-terminus with the Concession Agreement.

IN WITNESS WHEREOF the parties hereto have placed their respective hands and seals hereto on the day and year first herein above mentioned.

#### SIGNED SEALED AND DELIVERED BY:

FOR MUNICIPAL CORPORATION OF DELHI

.....of SDMC duly authorized by the.....

Vide resolution No..... dated .....

(Signature)

#### FOR Concessionaire

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

(Signature)

IN PRESENCE OF.....

1. NAME:

ADDRESS:

(Signature)

2. NAME:

ADDRESS:

(Signature)



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

## SCHEDULE 1: FORMAT OF BANK GUARANTEE FOR FINANCIAL ASSISTANCE

(to be submitted separately for each Milestone)

The .....

Procurer

State of .....

### WHEREAS:

- (A) Following the Bidding Process for the development of the Project, [\*\*\*]<sup>⊗</sup> has been identified as the Successful Bidder and has been issued the Letter of Award dated [\*\*\*] ("LOA") by the SDMC;
- (B) In consonance with the requirement of the LOA, the Successful Bidder acquired 100% (one hundred percent) shareholding of the the Concessionaire {Insert the name of the SPV} <sup>∇</sup>("Concessionaire").
- (C) The Financial Assistance Securitization Agreement requires the Successful Bidder to furnish to the [\*\*\*]<sup>⊗</sup> having its principal offices at ..... ("SDMC") on behalf of the Concessionaire, a Bank Guarantee for a sum of Rs [\*\*\*] cr (Rupees [\*\*\*] Crores) ("**Guarantee Amount**") as a security for the Financial Assistance provided by SDMC to the Concessionaire, under and in accordance with the terms and conditions of the Financial Assistance Securitization Agreement (the "**Agreement**") to be executed between the Concessionaire and the SDMC.
- (D) We, ..... through our Branch at ..... (the "**Bank**") have agreed to furnish this Bank Guarantee.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the SDMC upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the

<sup>⊗</sup> Insert the name of the Selected Bidder

<sup>∇</sup> Insert the name of the Seller

<sup>€</sup> Insert the name of the Procurer



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

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



4

the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SDMC in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SDMC under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank Guarantee shall come into force with effect from the Effective Date and shall cease to be effective following the expiry of a period of 2 (two) years from the COD of the Plant ("Validity Period"). The Bank Guarantee shall be released by the SDMCs within 30 (thirty) days of the expiry of the Validity Period after adjusting the Liquidated Damages, if any, payable by the Concessionaire in accordance with the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SDMC in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SDMC that the envelope was so posted shall be conclusive.
11. All terms used in capital letters but not defined herein shall have the meaning ascribed to it in the Financial Assistance Securitization Agreement.

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



A handwritten signature in blue ink.

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)



A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

### Schedule X: Operation and Emission Standards

The incinerators shall meet the following operating and emission standards mentioned in SWM Rules, 2016 and EU Standards.

#### A. Operating Standards

- (1) Plant shall be operated (combustion chambers) with such temperature, retention time and turbulence, as to achieve total Organic Carbon (TOC) content in the slag and bottom ashes less than 3%, or their loss on ignition is less than 5% of the dry weight.
- (2) The CO<sub>2</sub> concentration in tail gas shall not be less than 7% and CO should not be more than 100 mg/Nm<sup>3</sup>.
- (3) If the concentration of toxic metals in incineration ash exceeds the limits specified in the hazardous & other wastes Rules 2016, as amended from time to time, the ash shall be sent to hazardous waste treatment, storage and disposal facility.

#### B. Emission Standards

The stack emission should be in certain limits as tabulated below, the design emission control system shall meet stringent European norms (EUROPEAN DIRECTIVE 2000/76/EC) and MoEF norms as given below:

Parameter	Type of measurement	Daily averages (where continuous measurement used) in mg/m <sup>3</sup>	Half hour averages (where continuous measurement used) in mg/m <sup>3</sup>
	C: continuous N: non-continuous	Limits in 2000/76/EC	Limits in 2000/76/EC
Particulate Matter	C	10 at STP	20 at STP
HCl	C	10 at STP	50 at NTP**
HF	C/N	1 at STP	4 at STP
SO <sub>2</sub>	C	50 at STP	200 at STP
NO <sub>x</sub>	C	200 at STP	400 at STP
VOC (as TOC)	C	10 at STP	20 at STP
CO	C	50 at STP	100 at STP
Hg and its components**	C/N	0.05 at NTP (Standard refers to sampling time anywhere between 30 minutes and 8 hours.)	n/a
Cd + Th + their components **	N	0.05 at NTP (Standard refers to sampling time anywhere between 30 minutes and 8 hours)	n/a
Sb + As + Pb + Cr + Co + Cu + Mn + Ni + V + their compounds**	N	0.5 at NTP (Standard refers to sampling time anywhere between 30 minutes and 8 hours.)	n/a



Handwritten signature or initials.

Total dioxins and furans**	N	0.1 at NTP*** (Standard refers to 6-8 hours sampling. Please refer guidelines for 17 concerned)	n/a
----------------------------	---	--	-----

Note:-

\*\* Values as per MoEF norms

\*\*\* Unit-ng TEQ/Nm<sup>3</sup>

**Remarks:**

- Emissions referring to dry gas at 11% O<sub>2</sub>
- Minimum stack height shall be 60 metres above ground
- Volatile organic compounds in ash shall not be more than 0.01%.

**Note:**

1. Suitably designed pollution control devices shall be installed or retrofitted with the incinerator to achieve the above emission limits, if necessary.
2. Wastes to be incinerated shall not be chemically treated with any chlorinated disinfectants
3. Chlorinated plastics shall not be incinerated.



*[Handwritten signature]*

**SOUTH DELHI MUNICIPAL CORPORATION**  
**OFFICE OF THE EXECUTIVE ENGINEER (STORE)**  
**ROOM NO. 16, AMBEDKAR STADIUM, DELHI GATE, DELHI-110002**  
**Phone-011-23722787 E-Mail: eep1mcd@gmail.com**

No. D/EE (Engg Store)/2017-18/370

Dated: 01.03.2018

To

**JITF Urban Infrastructure Limited**  
A-1, UPSIDC Industrial Area, Nandgaon Road,  
Kosi Kalan, Distt. Mathura (U.P.)-2 81403  
[info@jindalecopolis.com](mailto:info@jindalecopolis.com)

**LETTER OF AWARD**

**Subject:** Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla – **Letter of Award (LoA)**

Sir,

1. Please refer to:

- a. The Request for Proposal document (No. SDMC(DEMS)CD/2017-18/136) dated July 31, 2017 including Concessionaire Agreement (CA) & Power Purchase Agreement (PPA) issued by South Delhi Municipal Corporation (SDMC) regarding competitive bidding process for **Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi**, and as amended till the Bid Deadline including all correspondence / clarifications / amendments exchanged between JITF Urban Infrastructure Limited and SDMC in regard thereto (hereinafter collectively as mentioned above to as the "**Final RFP**");
- b. M/s. JITF Urban Infrastructure Limited's offer submitted on September 28, 2017 in response to the RFP dated July 31, 2017 as Qualification Application (Envelope 2A), Technical Proposal (Envelope 2B) and Financial Offer (Envelope 2C) pursuant to (1) above.
- c. Presentation made by M/s. JITF Urban Infrastructure Limited on October 9, 2017 in response to the RFP dated July 31, 2017 and clarifications on technical issues submitted by M/s. JITF Urban Infrastructure Limited on October 13, 2017.
- d. The response to RFP as in (a) above, the Presentation as in (c) above and submissions made by JITF Urban Infrastructure Limited on October 5, 2017 in response to the clarificatory letter issued by SDMC on October 4, 2017 hereinafter collectively referred to as the "**Bid**".



2. We are pleased to inform you that your proposal and offer received by way of the "Bid" has been accepted and **M/s. JITF Urban Infrastructure Limited is hereby declared as the Selected Bidder** as per clause 7.2.3 of the RfP for the above project and consequently, this Letter of Award (hereinafter referred to as the "LoA") is being issued.
3. This LoA is based on the RFP and is further contingent upon M/s. JITF Urban Infrastructure Limited satisfying the following conditions:
  - a. Acknowledging its issuance and unconditionally accepting its contents by procuring the signature of your authorized signatory on each page of the duplicate copy of this letter attached herewith at the place indicated for the same, and returning the same to SDMC within seven (7) days of the date of issuance of LoA.
  - b. Shall submit Construction Performance Security in the form of a bank guarantee in favour of the SDMC for a value of INR 18,75,00,000 (INR Eighteen Crores Seventy Five Lakh only) for the Project within 45 days of issuance of LOA and before signing the Concession Agreement (the "Performance Security") with a validity period of one (1) year beyond the Scheduled COD in accordance with the clause 4.22.4 of RFP.
  - c. Completion of various activities as stipulated in the RFP including in particular Clause 7.2.8 of the Final RFP, within the timelines as prescribed therein.
4. It may be noted that SDMC has the rights available to them under the **Final RfP**, including rights under clause 7.2.7 thereof, upon your failure to comply with the aforementioned conditions.
5. The issuance and contents of this LoA are based on the Bid submitted by M/s. JITF Urban Infrastructure Limited as per the **Final RFP** including the tariff and other details as contained therein. The Quoted Tariff and other details submitted by M/s. JITF Urban Infrastructure Limited in its Bid, as per **Appendix D1** and **Appendix C1** of the Final RFP are annexed herewith as **Schedule A** and incorporated herein by way of reference.
6. Further, please note that M/s. JITF Urban Infrastructure Limited's contractual relationship with the SDMC will be governed solely on the basis of the **Final RFP**.

Yours sincerely



(For South Delhi Municipal Corporation)

**Ex. Engineer-Store  
SDMC**

**Enclosures: Schedule A – Quoted tariff (Appendix D1) and other details (Appendix C1) submitted in the Bid.**

2



**Copy to :-**

1. Commissioner/SDMC
2. Addl. Commissioner/Engg
3. E-in-C/SDMC
4. Director (DEMS)
5. DC/Central Zone
6. SE (DEMS)
7. SE (QC)/SDMC
8. DOV/SDMC
9. EE/SLF
10. AE (Store)/AAO (Store)
11. Office Copy

Ex. Engineer Store  
SDMC



*[Handwritten signature]*

## Schedule A

### 1. Quoted Tariff as per Appendix D1 of the RFP

S. No.	Contract Year from CoD of the Power Station	Quoted Fixed charges (Rs./ kwh)
1.	COD of the Power Station (Year 2020 - 2021)	4.30
2.	Year 2021 - 2022	4.75
3.	Year 2022 - 2023	5.25
4.	Year 2023 - 2024	5.25
5.	Year 2024 - 2025	5.50
6.	Year 2025 - 2026	5.50
7.	Year 2026 - 2027	5.82
8.	Year 2027 - 2028	6.00
9.	Year 2028 - 2029	6.00
10.	Year 2029 - 2030	6.00
11.	Year 2030 - 2031	6.00
12.	Year 2031 - 2032	5.10
13.	Year 2032 - 2033	5.00
14.	Year 2033 - 2034	4.50
15.	Year 2034 - 2035	4.50
16.	Year 2035 - 2036	4.50
17.	Year 2036 - 2037	4.50
18.	Year 2037 - 2038	4.50
19.	Year 2038 - 2039	4.50
20.	Year 2039 - 2040	4.50
21.	Year 2040 - 2041	4.50
22.	Year 2041 - 2042	4.50
23.	Year 2042 - 2043	4.50
24.	Year 2043 - 2044	4.50
25.	Year 2044 - 2045	4.50

2. Details as per Appendix C1 – Technical Proposal of the RFP/presentation dated 09.10.2017

4




**SOUTH DELHI MUNICIPAL CORPORATION**  
**OFFICE OF THE EXECUTIVE ENGINEER (STORE)**  
**ROOM NO. 16, AMBEDKAR STADIUM, DELHI GATE, DELHI-110002**  
**Phone-011-23722787 E-Mail: eep1mcd@gmail.com**

No. D/EE (Engg Store)/2017-18/380

**Dated:** 08.03.2018

To

**JITF Urban Infrastructure Limited**  
A-1, UPSIDC Industrial Area, Nandgaon Road,  
Kosi Kalan, Distt. Mathura (U.P.)-2 81403  
[info@jindaleccopolis.com](mailto:info@jindaleccopolis.com)

**Subject:** Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at  
Tehkhand, Okhla – **Corrigendum in Letter of Award (LoA)**

Sir,

In reference to the Letter of Award for the subject work issued vide No. D/EE (Engg Store)/2017-18/380 Dated: 08.03.2018, the NIT No. may be read as SDMC(DEMS)CD/2017-18/135 in place of SDMC(DEMS)CD/2017-18/136 dated July 31, 2017.

This is for information, necessary action and record please.

Yours sincerely

(For South Delhi Municipal Corporation)  
**Ex. Engineer-Store**  
**SDMC**

*Received and accepted*  
*[Signature]*  
*12/3/17*



145

*[Signature]*

Ref.JUIL/SDMC/2017-18/180312-01

Date: 12/03/18

To,

Executive Engineer (Store)  
South Delhi Municipal Corporation  
Office of The Executive Engineer (Store)  
Room No 16, Ambedkar Stadium, Delhi Gate,  
Delhi -110002.  
Ph. 011-23722787  
Email: [eep1mcd@gmail.com](mailto:eep1mcd@gmail.com)

**Subject:** Acceptance of LoA for Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi.

**Ref:** a) Tender No SDMC(DEMS)CD/2017-18/135, Dated July 31 2017, Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi  
b) Letter of Award (LoA) Ref No- D/E(Engg. Store)/2017-18/370 dated 01.03.2018.  
c) Corrigendum in LoA, Ref No - D/E (Engg. Store)/2017-18/380 dated 08.03.2018.

Dear Sir,

This is reference to LoA & subsequent Corrigendum in LoA issued by SDMC, for Setting up of Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi; we here by confirm the acceptance of the LoA and Corrigendum of the said project.

This is for your information and kind reference.

Thanking You,

Yours faithfully,

For: JITF Urban Infrastructure Limited

Authorized Signatory



146



AXIS BANK LIMITED  
Credit Management Centre - NEW DELHI

Ref. No: 16090100007751  
Date: 27-03-2018

To,

SOUTH DELHI MUNICIPAL CORPORATION (SDMC)  
OFFICE OF THE EX. ENGINEER (STORE)  
ROOM NO. 16, AMBEDKAR STADIUM,  
DELHI GATE, DELHI, INDIA - 110002

Dear Sirs,

<b>BG No.</b>	: 16090100007751
<b>Date of issue</b>	: 27-03-2018
<b>Amount of BG</b>	: Rs. 18,75,00,000.00 (RUPEES EIGHTEEN CRORES SEVENTY FIVE LAKHS ONLY)
<b>Expiry Date</b>	: 31-07-2021
<b>Claim Expiry Date</b>	: 31-01-2022
<b>Name and Address of the Applicant</b>	: MS. JTF URBAN INFRASTRUCTURE LTD (FORMERLY JINDAL URBAN INFRASTRUCTURE LTD) : 28, NAJAFGARH ROAD

We forward herewith the above Inland Bank Guarantee in original issued by us in your favour.

2. The above Guarantee is issued subject to the condition that the Bank's liability is restricted to the amount mentioned above and in the said Guarantee. Our Guarantee shall remain in force till the expiry date. Unless a demand or claim under the guarantee is made on the Bank in writing and delivered to the bank on or before the Expiry date/Claim Expiry Date, the Bank shall be discharged from all liability under the said guarantee thereafter.

Please Note.

3. The beneficiary in their own interest should verify the genuineness of this guarantee from following office of the Bank in writing.

**AXIS BANK LIMITED**  
BG Confirmation Desk, Transaction Banking Operations  
5th floor, Gigaplex, Building No 1, Plot No I.T.5,  
MIDC, Airoli Knowledge Park, Airoli,  
Navi Mumbai 400708 (Tel/Fax: 022-71315803)

4. BG confirmation can also be sought by sending email to [ibg.confirmation@axisbank.com](mailto:ibg.confirmation@axisbank.com).

FOR AXIS BANK LIMITED

AUTHORISED SIGNATORY

NAME:

SS No.

ARUNA GUPTA  
Senior Manager

Encl: Bank Guarantee No. 16090100007751

FOR AXIS BANK LIMITED

AUTHORISED SIGNATORY

NAME:

SS No.

<http://nishchint.axisb.com:7001/leprint/bgcoveringResult.jsp>

3/27/2018

Registered Office: "TRISHUL", Opp. Samartheswar Temple, Near Law Garden, Fitebridge, Ahmedabad - 380006.

IBG



147





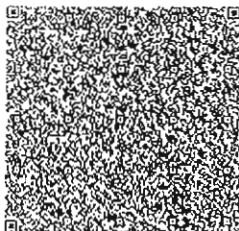
सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No. : IN-DL03895683862625Q  
 Certificate Issued Date : 23-Mar-2018 09:35 AM  
 Account Reference : IMPACC (IV)/ dl736003/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL73600311064819409925Q  
 Purchased by : AXIS BANK LTD  
 Description of Document : Article Bank Guarantee  
 Properly Description : Not Applicable  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : AXIS BANK LTD  
 Second Party : Not Applicable  
 Stamp Duty Paid By : AXIS BANK LTD  
 Stamp Duty Amount(Rs.) : 100  
 (One Hundred only)



Please write or type below this line  
 Bank Guarantee No. 16090100007751 Dated 27<sup>th</sup> March, 2018

To,  
 South Delhi Municipal Corporation (SDMC)  
 Office of the Ex. Engineer (Store)  
 Room No. 16, Ambedkar Stadium, Delhi Gate  
 Delhi, India - 110002

WHEREAS:

(A) Following the Bidding Process for the Selling up of the Municipal Solid Waste (MSW) to Energy Processing Facility at Tehkhand, Okhla, New Delhi, JTF Urban Infrastructure Limited, a company For AXIS BANK LTD.

Authorized Signatory  
 Parsipani Tower, Golf Mkt., N.D.-1

Page 1 of 4

Statutory Alert:

1. The authenticity of this Stamp Certificate should be verified at 'www.shredlamp.com'. Any other source renders it invalid.
2. The onus of checking the legitimacy is on the user of the certificate.
3. In case of any discrepancy please inform the Complaint Authority.



148

incorporated under companies Act 1956 and having registered office at A-1 UPSIDC Industrial Area, Noida Road, Kailash, Dilli Mathura UP 201403 (Hereinafter referred to as the "Successful Bidder") has been identified as the Successful Bidder and has been issued the Letter of Award (No. D/EE (Engg Store)/2017-18/370 dated 01.03.2018) and Corrigendum in Letter of Award (No. D/EE (Engg Store)/2017-18/380 dated 08.03.2018) ("LOA") by the South Delhi Municipal Corporation (Hereinafter referred to as "SDMC"), a statutory body constituted under the Delhi Municipal Act 1957 and having its office at Civic centre, Minto Road, New Delhi, Delhi 110002.

(B) In consonance with the requirement of the LOA, the Successful Bidder will acquire 100% (one hundred percent) shareholding of the Concessionaire "Tehkhand Waste to Electricity Project Limited" (Hereinafter referred to as "Concessionaire").

(C) The LOA further requires the Successful Bidder to furnish to the SDMC, having its principal office at Office of the Executive Engineer (Store) Room No. 16, Ambalika Stadium, Delhi Cantt., Delhi-110002 in favour of the Concessionaire, a Performance Guarantee for a sum of **Rs.18,75,00,000/- (Rupees Eighteen Crores Seventy Five Lakhs Only)** ("Guarantee Amount") as a security for the due and faithful performance of the obligations of the Concessionaire, under and in accordance with the terms and conditions of the Concession Agreement (the "Agreement") to be executed between the Concessionaire and the SDMC for the development of the Project.

(D) We, **Axis Bank Limited**, a company incorporated under the Companies Act, 1956 and carrying on the business of Banking under the banking regulation act, 1949 and having its registered office at **Axis Bank Limited**, Trishul, Opposite Samartheshwar Temple, Low Garden, Ellis Bridge Ahmedabad - 380006 Gujarat and branch office at **Axis Bank Limited**, 2nd Floor, Red Fort Capital, Parsvnath Tower, Bhairon Singh Marg, Gole Market, New Delhi - 110001 Delhi (Hereinafter referred to as "the Bank/ the Guarantor" which expression shall unless, repugnant to the context or meaning thereof, include its administrators, successors and assigns) have agreed to furnish this Bank Guarantee by way of Performance Bank Guarantee.

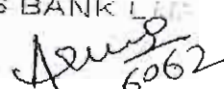
NOW THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the SDMC upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse to SDMC, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount i.e. **Rs.18,75,00,000/- (Rupees Eighteen Crores Seventy Five Lakhs Only)** as the SDMC shall claim, without the SDMC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein. Provided that in case of multiple demands, the liability of the Bank under this Guarantee shall automatically get reduced to the extent of part amount paid.

2. A letter from the SDMC, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SDMC shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations from the Effective Date until 1 (one) year of the Commercial Operation Date (COD) of the Plant in terms of the Agreement i.e. **31<sup>st</sup> July, 2021 (Expiry Date)** and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the SDMC and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the SDMC shall be entitled to act as if the Bank were the

Page 2 of 4

For AXIS BANK LTD.  
  
 Authorised Signatory,  
 Parsvnath Towers, Gole Mkt., N.D.-1





For SDMC BANK LTD.  
  
 Authorised Signatory,  
 Gole Mkt., N.D.-1



149



principal debtor and any change in the constitution of the Concessionaire and/or the Bank whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the SDMC to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The SDMC shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SDMC against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the SDMC, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SDMC of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the SDMC or of any other matter or thing whatsoever towards the Concessionaire which under any law relating to sureties and guarantees would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank in respect of this guarantee hereby waives all of its rights of suretyship under any such law so long as your demand or claim remains owing and outstanding.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SDMC in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SDMC under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Guarantee shall come into force with effect from the Effective Date and shall cease to be effective following the expiry of a period of 1 (one) year from the EOD of the Plant i.e., 31<sup>st</sup> July, 2021 (Expiry Date). A demand or claim in writing is to be made by the SDMC on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee i.e., till 31<sup>st</sup> January, 2022 (Claim Expiry Date). Consequently, any written demand or claim under this guarantee should be received by us on or before the said Claim Expiry date.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SDMC in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

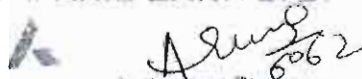
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it is actually received and acknowledged by the bank before the close of business hours on or before Claim Expiry Date.


11. All terms used in capital letters but not defined herein shall have the meaning ascribed to it in the Concession Agreement.

Notwithstanding anything contained herein above,

For AXIS BANK LTD.

Page 3 of 4

  
Authorized Signatory  
Perswath Towers, Gole Mkt., N.D.-1

  
Authorized Signatory  
Perswath Towers, Gole Mkt., N.D.-1







- a) Our liability under this bank guarantee shall not exceed Rs. 18,75,00,000/- (Rupees Eighteen Crores Seventy Five Lakhs Only);
- b) This bank guarantee shall be valid up to 31<sup>st</sup> July, 2021 (Expiry Date); and
- c) We are liable to pay the guaranteed amount or any part thereof under this bank guarantee only and only, if a written claim or demand is served on the bank on or before 31<sup>st</sup> January, 2022 (Claim Expiry Date); and
- d) Thereafter the bank shall stand discharged from all its liability under this guarantee and all your rights under this guarantee shall stand extinguished, irrespective of the fact whether the guarantee in original is returned back to us or not.

Date: 27<sup>th</sup> March, 2018

Place: New Delhi

Authorised Signatory  
662

Authorised Signatory

Authorised Signatory



Authorised Signatory