

## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচসি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, HC Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

SUDA-368/2019/4045

29.09.2020

From : Finance Officer, SUDA

To : The Branch Manager,  
Axis Bank Ltd.,  
Salt Lake, Sector-II Branch,  
BJ-110, Sector-II,  
Salt Lake City, Kolkata - 700 091.

Sub : Electronic Transfer of Fund debiting this office  
Current Account No.916010072244925.

A &amp; OE - Swachh Bharat Mission (SBM)

Sir,

You are requested to kindly arrange for electronic transfer of funds as per details given below debiting the amount from this office Savings Account No.916010072244925 lying with your branch in respect of Swachh Bharat Mission (SBM).

| Sl.   | Name of Payee     | Amount in Rs. | Bank Details  |
|---|-------------------|---------------|---|
| 01.   | Ernst & Young LLP | 3,06,729.00   | Standard Chartered Bank,<br>New Delhi, Narain Manzil, BK Road Br.,<br>A/C No.52205023904,<br>IFS Code.SCBL0036020 |
| (Rupees Three Lakh Six Thousand Seven Hundred Twenty Nine only) |                   |               |   |

(Petrus Anuranjan Soreng)  
Finance Officer  
SUDA



(Goutam Hore)  
Finance Officer  
SUDA

দূরভাষ: ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স: ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Invoice Number : IINL01DL011002  
Date : January 03, 2020  
Place of Supply : West Bengal

Client PAN : AAABS0934R

**Particulars**

Submission of Final RFP for Cluster 1  
IGST @18%

Amount(INR)

289,368.00

52,086.24

**Total**

(in words) : INR THREE HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED  
FIFTY-FOUR AND 24/100 Only

341,454.24

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

Please quote our Invoice Number when remitting funds.

Our GSTIN : 07AAEFE1763C1ZU

HSN Code : 9983

HSN Description : Other professional, technical and business services

Please quote our following PAN No. on the TDS Certificate to be issued by you.

PAN No : AAEFE1763C

Passed for Payment Rs. 341,454.24

Gross - Rs. 3,41,454.24  
TDS - Rs. 28,937.12  
IGST - Rs. 52,086.24  
Net - Rs. 3,06,729.24

(Rupee Three Lakh Forty  
One Thousand Four Hundred  
Fifty Four and 24/100 Only)  
Only to be debited towards... Ador SBM

Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

Digitally signed  
by ANKIT  
AGARWAL  
Date: 2020.01.03  
16:40:43 +05:30

Lake, Sector-II branch for onward transmission of payment.

24/06/2020 1:10 PM

NETAI GHORAI  
(CASHIER(ACCT)(SUDA))

**Note No. #13**

Fund released. Now file is returned for necessary action.

24/06/2020 4:58 PM

GOUTAM HORE  
(FO(ACCT)(SUDA))

**Note No. #14**

14/09/2020 6:34 PM

DIPAK NASKAR  
(TUO(ENGG)(SUDA))

**Note No. #15**

Further necessary action please.

15/09/2020 7:56 AM

SUBIR DAS  
(EE(ENGG)(SUDA))

**Note No. #16**

With reference to the invoice no IINL01DL011002 of Ernst & Young LLP India, It is to mention here with that 2nd call for the work 'Bio Remediation of Legacy Waste and setting up of waste processing facilities for Promodnagar & Kamarhati Cluster-I Project' has been invited through e-NIT No. SUDA -366/2019(pt-I)/10738 dated 13.06.2020.

Now, Ernst & Young LLP, the Transaction Advisor engaged for "Assisting West Bengal State government for Planning of Scientific SWM through Cluster Approach and Bid Process Management for Selection of Developers & Operators" has submitted request to release payment for 'Submission & Acceptance of Final RfP' vide their Letter No.-Nil Dt.22.06.2020.

In this context it is also to mention that payment upto the stage-4B i.e Acceptance of Draft RfP (vide Appendix-G of MoA) has already been released to Ernst & Young, after Authority has accorded approval on report of Draft RfP for Cluster-I project



submitted by Ernst&Young vide Memo.No.-SUDA-366/2019/10778 Dt.17.06.2020 (placed at CP-267 ).

Payment to Ernst & Young for 'Submission of Final RfP for selection of Agency' as mentioned in Payment Schedule - Stage-5A, Appendix-G of MoA, signed between SUDA and Ernst & Young, an amount of Rs 3,41,454.24 including GST, may be considered for released, if approved.

Submitted for kind perusal please.

15/09/2020 4:08 PM

SURYA KUMAR MISHRA  
(AE(ENGG)(SUDA))

**Note No. #17**

Payment proposal at above Note #16 may kindly be considered for released, if approved.

15/09/2020 5:12 PM

SUBIR DAS  
(EE(ENGG)(SUDA))

**Note No. #18**

Note#16 may kindly be perused. Payment proposal may kindly be considered for released to M/s Ernst&Young , if approved.

18/09/2020 4:19 PM

DIPAK NASKAR  
(Tuo(ENGG)(SUDA))

**Note No. #19**

FO to comment.

19/09/2020 5:32 PM

JOLY CHAUDHURI  
(AD DIR(SUDA))

**Note No. #20**

Please upload the invoice for the proposed release submitted by M/S Ernst & Young.

22/09/2020 3:58 PM

GOUTAM HORE  
(FO(ACCT)(SUDA))



**Note No. #21**

Invoice uploaded for further necessary action please

23/09/2020 2:49 PM

**SURYA KUMAR MISHRA**  
(AE(ENGG)(SUDA))

**Note No. #22**

Proposed release of fund in favour of M/S Ernst & Young relates to stage-5A of schedule of payment as per the Memorandum of Understanding. Stage 5-A is for release of 10% of total contract price, on submission of final RFP by the agency.

As the agency has already submitted the final RFP as per the payment schedule, proposed release amounting to Rs 3,41,454 , being 10% of the total contract value, may now be released.

24/09/2020 11:41 AM

**GOUTAM HORE**  
(FO(ACCT)(SUDA))

**Note No. #23**

Note#22.

We may now release payment as per stage 5A of the MoA which is 10% of the total contract price on submission of the final RfP. In the proposal under discussion, an amount of Rs.3,41,454 being 10% of the total contract value may be release in favour of Ernst & Young.

FO has recommended the payment.

26/09/2020 12:36 PM

**JOLY CHAUDHURI**  
(AD DIR(SUDA))

**Note No. #24**

Note above.

As E&Y has already submitted final RfP for Pramodnagar cluster(Cluster I)and as per agreement has covered this milestone,10% of the total contract value amounting Rs 3,41,454/- may be released in its favour from SBM capacity building component.

Engineering wing of SUDA is satisfied with the RfP.

Placed for kind approval.

26/09/2020 2:34 PM

SANTANU MUKHERJEE  
(DIR(SUDA))

**Note No. #25**

26/09/2020 2:57 PM

KHALIL AHMED  
(PRSECY(UDMA))

**Note No. #26**

26/09/2020 3:07 PM

SANTANU MUKHERJEE  
(DIR(SUDA))

**Note No. #27**

Please release fund immediately.

27/09/2020 2:40 PM

JOLY CHAUDHURI  
(AD DIR(SUDA))

**Note No. #28**

Please process.

28/09/2020 4:06 PM

GOUTAM HORE  
(FO(ACCT)(SUDA))

## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং .....SUDA - 366/2019/10778

তারিখ .....17.06.2020

To

Abhaya Krishna Agrawal,

Partner, Ernst &amp; Young LLP .

Email :- [Abhaya.Agarwal@nic.ey.com](mailto:Abhaya.Agarwal@nic.ey.com).**Subject : Approval of Draft TFR and RfP for Cluster - 1**

Dear Mr. Agrawal,

With respect to the Draft Feasibility Report and RfP have submitted by your office for Cluster - 1, the department accords approval on the report. You are now requested to initiate the remaining work at the earliest and ensure its submission as per timelines mentioned in Contract.

Approver's Name: Santanu Mukherjee

Designation : Director

Organization : State Urban Development Agency

Approver's Sign : 

Date : 17.06.2020





Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark 1  
IGI Airport Hospitality District  
Aerocity, New Delhi  
110 037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
Website: <http://www.ey.com>



June 11, 2020

To,

Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar, Kolkata-700106

**Subject: RFP for Integrated Solid Waste Management Project for Cluster -1**

**Ref: SUDA letter no. SUDA-366/2019/10714 dated June 10,2020**

Dear Sir,

This is with reference to above referred letter on the captioned subject project.

For point under Sr. No. 1 of the letter regarding inclusion of capex support for the bidder in a phased manner post commissioning of the units, we would like to mention that earlier, we have structured the RFP based on discussions for entire investment in the project to be made by private party and no capital support from SUDA/Govt. of West Bengal .

However as advised, we have undertaken scenario analysis for different capex support percentage options under the project and its impact on tipping fee per ton of MSW. Please find attached different scenario for capex support (50%, 60%, 65%, 70% and 75% of project cost) and impact on tipping fee that may be considered by SUDA under the project.

Further as discussed and advised by SUDA, following points has been addressed in the RFP:

1. Revision in Biomining fee from Rs. 750 per Ton to Rs. 778 Per Ton of legacy waste processed.
2. Tipping fee during O&M period shall be increased 3% after completion of every successive five (5) years during O&M period.
3. No fee payment for collection and transportation of waste during construction period. Bidder shall undertake such activities after commissioning of Processing Plant.
4. No dedicated project SPV shall be incorporate by the selected Bidder and Inclusion of other General Conditions of Contract in the RFP.

Please find attached revised RFP as per format provided by SUDA with inclusions of all above referred points, as mentioned in your above referred letter dated June 10, 2020.

Thanking You,

Yours faithfully,

Abhaya Krishna Agarwal  
Partner - Infrastructure and PPP, Government Strategy and Transaction  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);

Sri S. Misra, AE  
Pl. for

Sri S. Das, EE  
Pl. for

**Analysis for different scenario for Capex Support under Project and Impact on Tipping Fee**

1. Total Estimated Project Cost (Secondary collection and Transportation, Processing facility of designated capacity at Pramodnagar and Kamarahiti site and Sanitary Landfill site at identified site location): INR 113.14 Cr.
2. SUDA/Govt. of West Bengal to provide fixed lumpsum Capex support in phased manner during post construction period/operation period in four equal instalments as per below:

| S. No. | Payment Timelines  | %age of Capex Amount |
|--------|--|----------------------|
| 1      | After successful commissioning and acceptance given by Competent Authority                 | 25%                  |
| 2      | After 12 months from commencement of processing operations / COD/ start date of operations | 25%                  |
| 3      | After 24 months from commencement of processing operations / COD/ start date of operations | 25%                  |
| 4      | After 36 months from commencement of processing operations / COD/ start date of operations | 25%                  |

3. Different capex support options and respective estimated tipping fee:

| Capital Cost support from SUDA/Govt. of West Bengal (in percentage) | Capital Cost Support (in Crores) | Tipping fees (Rs. /Ton of MSW) |
|---|----------------------------------|--------------------------------|
| 0   | 0                                | 1,844                          |
| 50  | 56.57                            | 1,534                          |
| 60  | 67.88                            | 1,474                          |
| 65  | 73.54                            | 1,443                          |
| 70  | 79.2                             | 1,413                          |
| 75  | 84.85                            | 1,383                          |

*\*Increase in tipping fees has been considered as 3% per 5 years of the O&M period*



রাজ্য নগর উন্নয়ন সংস্থা

SUDA

STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019(Pt.)/11/061

তারিখ 26/06/2020

From : Director, SUDA

To  
Eastern Organic Fertilizer Pvt.Ltd  
10 Raja Santosh Road  
Kolkata 700 027

Sub: Request to submit rate for “Processing of Legacy Waste accumulated at Promodnagar-Rajibnagar Dumping Yard”


Sir,

This is to inform you that SUDA is going to engage an agency for “Processing of Legacy Waste accumulated at Promodnagar-Rajibnagar Dumping Yard” as an interim measure.

You are hereby requested to submit your rate within 29<sup>th</sup> of June, 2020 positively for processing of legacy waste at Dhapa Processing Plant Site by transporting waste from Promodnagar Dumping Yard following all the terms and conditions as laid down by KMC for processing of waste at Dhapa site.

It is to mention here with that the work should commence immediately after getting necessary approval from the competent authority.

Yours faithfully,

 26.06.2020  
Director, SUDA

Re  
Scanned  
26/06/2020



দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408



**SUDA**

# রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচসি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, HC Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

SUDA-366/2019/10714

10.06.2020

From : Director, SUDA

To : Vice President,  
Ernst & Young LLP.

Sub : Modification in the RfP for Promodnagar project (Cluster-I).

Sir,

The RfP submitted by your organisation has been examined and analysed in detail by the Engineering team of this office. The following issues need to be addressed and incorporated in the RfP from your end after due diligence.

- (1) Explore the infusion of the CAPEX support for the bidder in a phased manner post commissioning of the units.
- (2) Explore the possibility of the secondary transportation to be within the scope of the bidder.
- (3) The initial RfP was drafted as the QCBS model instead we may now consider a LCS model.
- (4) Inclusion of appropriate penal provision in the RfP.
- (5) Other minor issues as discussed with you.

Please examine the above issues and revert back with appropriate inclusions/ modifications in the final RFP.

Yours faithfully,

10.06.2020

Director, SUDA

Received for EY  
Harish Aggarwal  
10/6/2020

দূরভাষ: ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স: ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

**ATTENDANCE SHEET**  
Meeting with Ernst & Young

| Date: 24.08.2020 |                     | Time: 12.00 Noon onwards |                | Venue: Through VC at SUDA |                            |               |
|------------------|---------------------|--------------------------|----------------|---------------------------|----------------------------|---------------|
| SL. NO.          | Participant Name    | Organization             | Designation    | Mobile No.                | e-mail ID                  | Signature     |
| 1                | Hansh Agarwal       | EY                       | Associate      | 9007628170                |                            | H.A.          |
| 2                | Sushita Roy         | EY                       | Associate      | 9838003890                | sushita.roy@ey.com         | S. Roy        |
| 3                | Sudire Des          | SUDA                     | EE             |                           |                            | S. Des        |
| 4                | Susya Mishra        | SUDA                     | AE             | 9836723252                | susya2mishra1983@gmail.com | S. Mishra     |
| 5                | Sutirtha Chatterjee | SUDA                     | AE             | 9432803552                |                            | S. Chatterjee |
| 6                | Amitava Das         | SUDA                     | DD             |                           |                            |               |
| 7                | Jely Choudhury      | SUDA                     | Addl. Director |                           |                            |               |
| 8                | Santanu Mukherjee   | SUDA                     | Director       |                           |                            |               |
| 9                | Chaitali Mondal     | EY                       | Sr. Consultant | 9378351386                | Chaitali.Mondal@in.ey.com  | C. Mondal     |
| 10               |                     |                          |                |                           |                            |               |
| 11               |                     |                          |                |                           |                            |               |
| 12               |                     |                          |                |                           |                            |               |
| 13               |                     |                          |                |                           |                            |               |

সুডা

রাজ্য নগর উন্নয়ন সংস্থা

SUDA

STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
 “ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং

SUDA-366/2019/10994

19.06.2020

তারিখ

From : Finance Officer, SUDA

To : The Branch Manager,  
 Axis Bank Ltd.,  
 Salt Lake, Sector-II Branch,  
 BJ-110, Sector-II,  
 Salt Lake City, Kolkata - 700 091.

Sub : Electronic Transfer of Fund debiting this office  
 Current Account No.916010072244925.

A &amp; OE - Swachh Bharat Mission (SBM)

Sir,

You are requested to kindly arrange for electronic transfer of funds as per details given below debiting the amount from this office Savings Account No.916010072244925 lying with your branch in respect of Swachh Bharat Mission (SBM).

| Sl.   | Name of Payee     | Amount in Rs. | Bank Details  |
|---|-------------------|---------------|---|
| 01.   | Ernst & Young LLP | 6,13,460.00   | Standard Chartered Bank,<br>New Delhi, Narain Manzil, BK Road Br.,<br>A/C No.52205023904,<br>IFS Code.SCBL0036020 |
| (Rupees Six Lakh Thirteen Thousand Four Hundred Sixty only) |                   |               |   |

(Petrus Anuranjan Soreng)  
 Finance Officer  
 SUDA



(Goutam Hore)  
 Finance Officer  
 SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০  
 Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com  
 Account Section : 2358 6408





Ernst & Young LLP  
3rd & 6th Floor, Worldmark-1,  
IGI Airport Hospitality District,  
Aerocity,  
New Delhi - 110037, India.

Phone: (+91-11) - 6671 8000  
Fax: (+91-11) - 6671 9999

July 08, 2019

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
H-C Block  
Sector 3, Bidhannagar  
Kolkata, WB 700106

Dear Dr. Sujay Mitra :

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP .

Yours sincerely

For Ernst & Young LLP

Encl : As above

To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
H-C Block  
Sector 3, Bidhannagar  
Kolkata, WB 700106

Invoice Number : IINL01DL008682  
Date : July 08, 2019  
Place of Supply : West Bengal

Client PAN : AAABS0934R

**Particulars**

Amount(INR)

Submission and acceptance of Draft Feasibility Report by the TA (For  
Cluster No.1: DumDum, North Dum Dum, South Dum Dum, Baranagar,  
Kamarhati, NewBarrackpore)

~~1,44,684~~ 289,368.00

IGST @18%

26,043 52,086.24

Total

(in words) : INR THREE HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED  
FIFTY-FOUR AND 24/100 Only

1,70,727 341,454.24

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

Please quote our invoice Number when remitting funds.

Our GSTIN : 07AAEFE1763C1ZU

HSN Code : 9983

HSN Description : Other professional, technical and business services

Please quote our following PAN No. on the TDS Certificate to be issued by you.

PAN No : AAEFE1763C

Gross - Rs. 1,70,727/-  
TDS - Rs. 14,468/-  
IGST - Rs. 2,894/-

Net - Rs. 1,53,365/-

Only to be debited towards.....

SBA

12-08-2020

Passed for Payment Rs. 1,70,727/-

(Rupees One lakh seventy thousand seven hundred

twenty seven only)

Only to be debited towards Capacity

Building of 40E-SBM.

Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

Signature Not  
Verified

Digitally signed  
by ANKIT  
AGARWAL

Date: 2019.07.08  
22:07:50 -05:30

Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

Gross Amt. 1,70,727/-  
(-)(10%) TDS 14,468/-  
(-)(2%) IGST 2,894/-  
Net Amt. 1,53,365/-

26/09/19

This is a digitally signed invoice and does not require manual signature

Ernst & Young LLP, a Limited Liability Partnership with LLP Identity No. AAB-4343

A member firm of Ernst & Young Global Limited

Registered Office: 22 Camac Street, Block 'C', 3rd Floor, Kolkata - 700 016



Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

January 06, 2020

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar  
Kolkata-700106

SE/SWH  
PI.  
6  
7.1.2020  
AD (CM)  
baf  
stage-3

Subject: Invoice against Submission of Final feasibility report (For Cluster No.1: Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati, New Barrackpore)

Invoice Number: IINL01DL011005

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP.

Thanking you,  
Yours faithfully,

Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342

As/S. Anil  
12/1/20

EE/SUDA  
13.1.20



January 03, 2020

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Dear Dr. Sujay Mitra :

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Surbhi Gupta  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP .

Yours sincerely

For Ernst & Young LLP

Encl : As above

To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Invoice Number : IINL01DL011005  
Date : January 03, 2020  
Place of Supply : West Bengal

Client PAN : AAABS0934R

| Particulars  | Amount(INR) |
|--|-------------|
| Submission of Final Feasibility Report for Cluster 1                                     | 144,684.00  |
| IGST @18%  | 26,043.12   |
| <b>Total</b>   |             |
| (in words) : INR ONE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED TWENTY-SEVEN AND 12/100 Only | 170,727.12  |

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

Please quote our Invoice Number when remitting funds.

Our GSTIN : 07AAEFE1763C1ZU

HSN Code : 9983

HSN Description : Other professional, technical and business services

Please quote our following PAN No. on the TDS Certificate to be issued by you.

PAN No : AAEFE1763C

Gross - Rs. 1,70,727/-  
TDS - Rs. 14,468/- (one Lakh Seventy Thousand  
IGST - Rs. 2,824/- (Seven Hundred Twenty Seven  
Net - Rs. 1,53,365/- Only - Ad of S B M.  
Only to be debited towards...

*[Signature]*  
13-01-2020  
Finance Officer  
State Urban Development Agency  
Govt of West Bengal

Digitally signed  
by ANKIT  
AGARWAL  
Date: 2020.01.03  
17:08:47 +05:30





Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

January 06, 2020

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar  
Kolkata-700106

SE/SWM  
P1.  
7.1.2020.

AD/SM?  
ADP  
stage-4B.

Subject: Invoice against Acceptance of Draft RFP (For Cluster No.1: Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati, New Barrackpore)

Invoice Number: IINL01DL011003

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP.

Thanking you,  
Yours faithfully,

Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342

EE/SWM  
13.1.20



January 03, 2020

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Dear Dr. Sujay Mitra :

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Yours sincerely

For Ernst & Young LLP

Encl : As above

To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Invoice Number : IINL01DL011003 ✓  
Date : January 03, 2020  
Place of Supply : West Bengal

Client PAN : AAABS0934R

| Particulars   | Amount(INR)  |
|---|--------------|
| Acceptance of Draft RFP for cluster 1   | 289,368.00   |
| IGST @18%   | 52,086.24    |
| <b>Total</b>  |              |
| (in words) : INR THREE HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED FIFTY-FOUR AND 24/100 Only | 341,454.24 ✓ |

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

Please quote our Invoice Number when remitting funds.

Our GSTIN : 07AAEFE1763C1ZU

HSN Code : 9983

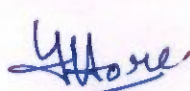
HSN Description : Other professional, technical and business services

Please quote our following PAN No. on the TDS Certificate to be issued by you.

PAN No : AAEFE1763C

Passed for Payment Rs. 341,454.24 ✓  
Gross - Rs. 341,454.24  
TDS - Rs. 28,936.72  
IGST - Rs. 5,787.30  
Net - Rs. 3,06,730.22  
Rupees: Three Lakh Forty one Thousand Four Hundred Fifty four and 24/100 only  
Amount to be debited towards: 341,454.24

Digitally signed  
by ANKIT  
AGARWAL  
Date: 2020.01.03  
16:40:43 +05:30

  
18-01-2020  
Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

This is a digitally signed invoice and does not require manual signature

Ernst & Young LLP, a Limited Liability Partnership with LLP Identity No. AAB-4343

A member firm of Ernst & Young Global Limited

Registered Office: 22 Camac Street, Block 'C', 3rd Floor, Kolkata - 700 016

## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019/10778

তারিখ 17.06.2020

To

Abhaya Krishna Agrawal,

Partner, Ernst &amp; Young LLP.

Email :- [Abhaya.Agarwal@nic.ey.com](mailto:Abhaya.Agarwal@nic.ey.com).**Subject : Approval of Draft TFR and RfP for Cluster - 1**

Dear Mr. Agrawal,

With respect to the Draft Feasibility Report and RfP have submitted by your office for Cluster - 1, the department accords approval on the report. You are now requested to initiate the remaining work at the earliest and ensure its submission as per timelines mentioned in Contract.

Approver's Name: Santanu Mukherjee

Designation : Director

Organization : State Urban Development Agency

Approver's Sign : 

Date : 17.06.2020



**Note No. #1**

Kindly refer **CP-93** may kindly be perused, wherein the proposal for release of payment of M/s Ernst & Young LLP entrusted as Transaction Advisor for Cluster I SWM project as duly authenticated by Executive Engineer, SWM, SUDA. On the basis of the recommendation, payment totaling to the tune of Rs. 6,82,910/- may kindly be released to M/s Ernst & Young LLP after acceptance of the

Technical Feasibility Report (TFR) and Request for Proposal (RfP) documents for Cluster I projects under SWM from the competent authority.

Technical Feasibility Report (TFR) and Request for Proposal (RfP) documents for Cluster I projects under SWM is also placed at **CP-106** & **CP-1** respectively for your kind perusal.

Submitted.

08/06/2020 4:22 PM

**DIPAK NASKAR**  
(TUO(ENGG)(SUDA))

**Note No. #2**

Please comment.

08/06/2020 11:06 PM

**SANTANU MUKHERJEE**  
(DIR(SUDA))

**Note No. #3**

As per the terms of payment schedule, payment of 5% is to be released on acceptance of draft feasibility report ( Stage 2B) and payment of 5% is to be released on acceptance of draft RFP ( Stage-4B).

As noted by EE SUDA in the note above, the payment may be released to M/S Ernst & Young, Transaction Adviser for cluster-1, after acceptance of the RFP and Draft Feasibility Report by the competent authority. Funds have already been released to the agency earlier, for submission of the aforementioned reports (Stages- 2A and 4A).

12/06/2020 7:32 PM

**GOUTAM HORE**  
(FO(ACCT)(SUDA))

**Note No. #4**

Please see and act accordingly.

13/06/2020 1:20 PM

**SANTANU MUKHERJEE**

(DIR(SUDA))

**Note No. #5**

Kindly refer note#3 above-

As desired, approval copy of draft TFR and RfP for Cluster-1 placed at CP-267 for your kind perusal.

Submitted.

17/06/2020 6:18 PM

DIPAK NASKAR  
(TUO(ENGG)(SUDA))

**Note No. #6**

Pl see CP side and comment.

18/06/2020 4:04 PM

SANTANU MUKHERJEE  
(DIR(SUDA))

**Note No. #7**

Approval copy of Draft TFR and Draft RFP is attached at CP-267 , as noted by EE-SUDA for the purpose of fulfillment of the conditions for payment of

- i. Stage 2B (Acceptance of Draft Feasibility report-5% ie. Rs 1,70,728) and
- ii. Stage-4B ( Acceptance of Draft RFP -10% ie. Rs 3,41,455)
- iii. Payment is also proposed at Note #1 for Stage-3 ( Submission of final feasibility report along with action plan – 5% ie. Rs 1,70,728 ).

The total proposed amount of Rs 6,82,910 for the above noted 3 stages, may be released for cluster - 1, in favour of M/S Ernst & Young.

18/06/2020 6:30 PM

GOUTAM HORE  
(FO(ACCT)(SUDA))

**Note No. #8**

Note above.

This is regarding the proposal for release of 5% of earmarked fund for submission and acceptance of Draft Feasibility Report (stage 2B), 5% payment of for Final Feasibility Report(stage 3) and payment of another 5% payment for acceptance of Draft RfP(stage 4B) for Pramodanagar Cluster(Cluster I) by

M/S Ernst & Young. The amount proposed to be released is Rs Rs 6,82,910/-  
Ernst & Young is pressing hard for early release as due to  
lockdown, payment could not be processed for long.  
Placed for kind approval of the payment.

18/06/2020 11:54 PM

SANTANU MUKHERJEE  
(DIR(SUDA))

**Note No. #9**

approved

19/06/2020 1:14 PM

KHALIL AHMED  
(PRSECY(UDMA))

**Note No. #10**

19/06/2020 1:45 PM

SANTANU MUKHERJEE  
(DIR(SUDA))

**Note No. #11**

Please process.

19/06/2020 1:54 PM

GOUTAM HORE  
(FO(ACCT)(SUDA))





Building a better  
working world

Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

June 22, 2020

To,

**Director**

State Urban Development Agency.

ILGUS Bhawan, HC Block,

Sector-III, Bidhannagar

Kolkata-700106

**Subject: Regarding submission and acceptance of final RFP for Cluster-I**

**Respected Sir,**

This has reference to your letter no SUDA-366/ 2019/10778.

We have received the approval of Final TFR and Draft RFP from your office vide above referred letter dated 17<sup>th</sup> June 2020.

We have submitted the final RFP for Cluster-I, earlier and hence, requesting you to please provide acceptance and approval for the final RFP for Cluster-I.

Thanking you,

Yours faithfully,

Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342



Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

January 06, 2020

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar  
Kolkata-700106

SE / SWH  
PI. b  
7.1.2020  
AD (SM)  
SAF  
stage-SA

Subject: Invoice against Submission of Final RFP (For Cluster No.1: Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati, New Barrackpore)

Invoice Number: IINL01DL011002

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP.

Thanking you,  
Yours faithfully,

Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342

S. Chatterjee for AE  
for n.a. pt. 15/1/20

EE / SWH  
13.1.20

January 03, 2020

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Dear Dr. Sujay Mitra :

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Surbhi Gupta  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP .

Yours sincerely

For Ernst & Young LLP

Encl : As above



**Minutes of the 1<sup>st</sup> meeting of the Project Evaluation cum Technical Committee under SWM Scheme held on 27<sup>th</sup> February, 2020 at 12:00noon.**

**Venue:** Chamber of Director, State Urban Development Department (SUDA).

**Participants:**

1. Director, SUDA, Govt. of West Bengal
2. Members of Technical Committee. (List attached as Annexure)
3. Officers of KMDA
4. Officials from KPMG & PWC (List attached as Annexure)

The meeting aimed a presentation by KPMG & PWC, the Transaction Advisors, on the project profile of Asansol Municipal Corporation, Durgapur Municipal Corporation, SWM cluster project 7 (Covering the municipal areas of Panihati, Titagarh, Khardah, Barrackpore, North Barrackpore, and Garulia) and Cluster 2 (Covering the municipal areas of Bidhannagar Municipal Corporation, 3nos boroughs of Kolkata Municipal Corporation, NKDA and NDITA) respectively with subsequent discussion for finalizing the project structure where decisions of concerned Technical Committee members were required.

Observations of the Technical Committee following the presentation made by the consultants of KPMG on Asansol Project and PWC on Pathuriaghata sub-project under SWM cluster - 2 with threadbare discussions on certain pros and cons of the proposed projects were as follows:

- In the proposed project under PPP model, the ULBs would be responsible for primary collection & secondary collection of waste (both dry and wet waste) from households in a segregated manner and transportation to Processing units. Final decisions in this regard would be taken in consultation with AMC.
- Private developer would be responsible for Build, Operate, and maintenance of processing units and dispose the inert materials to the Sanitary Landfill Sites.
- Technical Committee suggested to adopt MRF Facility in a centralize or Decentralized manner for AMC.
- Waste to Energy Plant considering Incineration for generation of power may not be feasible due to constraint regarding ambient air quality standard within AMC areas.

- In case of Jamuria the quantity of generation of dry waste should be rechecked.
- In case of Panihati Cluster the decentralized model may be adopted due to non-availability of land for development of centralized facility.
- In case of Cluster 2 the Pathuriaghata site has been considered for construction of MRF, Compost and C&D waste processing units in a decentralized manner. Separate RFPs should be floated for (a) MRF and Compost Plant, (b) C&D waste Processing Plant, and (c) Common facility service provider. PWC would re-submit the draft RFPs accordingly.
- The technical Committee has given appraisal towards final TFR for Cluster - 1 3 & 4, as submitted by F&Y LLP.

The Chief Engineer, S&SWM, W&S Sector, KMDA presented the draft Request for Proposal (RfP) before the Project Evaluation and Technical Committee to be floated for Bio-mining of Legacy Waste at different dump-sites across the State.

- The Committee suggested that only Legacy Waste should be taken into consideration and no Fresh Waste should be kept within the scope of execution.
- The Committee was apprised that for selection of bidders/concessioners the Quality and Cost Based Selection (QCBS) procedure with a minimum of 70% marks in technical eligibility and 60% weightage for technical bid and 40% weightage for financial bid, will be considered.
- Technical Committee thought it prudent to advise the tendering authority to verify the quantum of Legacy Waste at each and every sites (as per the list provided by SUDA) before issuance of LOA/LOI to selected bidder/bidders. This would help understanding the difference between estimated and actual quantity of wastes at the sites.

Meeting ended with thanks to and from the chair.

*ADP 2/3/20*  
Director

State Urban Development Agency

**Annexure-A (Put on tabular form)**

**List of Technical Committee Members Present in the Meeting**

|    |                         |         |                |
|----|-------------------------|---------|----------------|
| 1. | Debarati Datta Gupta    | SUDA    | Director       |
| 2. | Santanu Mukherjee       | SUDA    | Addl. Director |
| 3. | Prof. Arunava Majumder  | SWRE/JU | Professor      |
| 4. | Dr. Tapas Kumar Gupta   | WBPCB   | Chief Engineer |
| 5. | Sisir Kumar Baidya      | KMDA    | Chief Engineer |
| 6. | Kousik Das              | MED     | Secretary      |
| 7. | Subhasish Chattopadhyay | KMC     | DG (SWM)       |
| 8. | Dipak Naskar            | SUDA    | SE             |

**List of other Dignitaries Present in the Meeting**

|    |                     |      |                    |
|----|---------------------|------|--------------------|
| 1. | Subir Das           | SUDA | Executive Engineer |
| 2. | Sutirtha Chatterjee | SUDA | Assistant Engineer |
| 3. | Surya Kumar Mishra  | SUDA | Assistant Engineer |
| 4. | Rahul Mallick       | PWC  | Associate Director |
| 5. | Antara Ray          | PWC  | Associate Director |
| 6. | Pankaj Baksi        | KPMG | Assistant Manager  |
| 7. | Sumouleendra Ghosh  | KPMG | Director           |
| 8. | Gyan Mishra         | KPMG | Advisor            |





রাজ্য নগর উন্নয়ন সংস্থা

SUDA

STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

SUDA-366/2019/৭২০০

০৫.০২.২০২০

ক্রমিক নং .....

তারিখ .....

From : Director, SUDA

To : The Branch Manager,  
Axis Bank Ltd.,  
Salt Lake, Sector-II Branch,  
BJ-110, Sector-II  
Salt Lake City, Kolkata – 700 091.

**Sub : Electronic Transfer of Fund debiting this office  
Current Account No. 916010072244925.**

**Capacity Building & A & OE - Swachh Bharat Mission (SBM)**

Sir,

You are requested to kindly arrange for electronic transfer of fund as per details given below debiting the amount from this office Current Account No.916010072244925 lying with your branch in respect of Swachh Bharat Mission SBM).

| Sl. No.  | Name of Payee     | Amount in Rs. | Bank Details  |
|--|-------------------|---------------|---|
| 01.  | ERNST & YOUNG LLP | 1,53,365.00   | Standard Chartered Bank,<br>NEW DELHI - NARAIN MANZIL<br>BK ROAD Branch,<br>A/C No. 522-0-502390-4<br>IFS Code. SCBL0036020 |
| (Rupees One Lakh Fifty Three Thousand Three Hundred Sixty Five only) |                   |               |   |

Petrus Anuranjan Soreng  
Finance Officer, SUDA

Debarati Datta Gupta,  
Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408





Building a better  
working world



Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

January 06, 2020

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar  
Kolkata-700106

SEI/SWH  
Pl.  
7.1.2020

AD(SM)  
ADP

Stage-4A

Subject: Invoice against Submission of Draft RFP (For Cluster No.1: Dum Dum, North Dum  
Dum, South Dum Dum, Baranagar, Kamarhati, New Barrackpore)

Invoice Number: IINL01DL011004

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

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DLF Cybercity Phase II  
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Thanking you,  
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Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342

BEI/SWH  
13.1.20



January 03, 2020

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

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Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP .

Yours sincerely

For Ernst & Young LLP

Encl : As above



To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
HC BLOCK SECTOR 3  
Bidhannagar, North 24 Parganas  
Kolkata, WB 700106

Invoice Number : IINL01DL011004  
Date : January 03, 2020  
Place of Supply : West Bengal

Client PAN : AAABS0934R

| Particulars  | Amount(INR) |
|--|-------------|
| Submission of Draft RFP for cluster 1  | 144,684.22  |
| IGST @18%  | 26,043.16   |
| <b>Total</b>   |             |
| (in words) : INR ONE HUNDRED SEVENTY THOUSAND SEVEN HUNDRED TWENTY-SEVEN AND 38/100 Only | 170,727.38  |

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

Please quote our Invoice Number when remitting funds.

Our GSTIN : 07AAEFE1763C1ZU

HSN Code : 9983

HSN Description : Other professional, technical and business services

Please quote our following PAN No. on the TDS Certificate to be issued by you.

PAN No : AAEFE1763C

Passed for Payment Rs. 1,70,727/-  
(Rupees One lakh seventy  
thousand seven hundred  
twenty seven only. Capacity  
Only to be debited towards  
Building - SBM.

Gross Amt. 1,70,727/-  
(-) GST(2%) 2,894/-  
(-) TDS (15%) 14,468/-  
**Net Amt. 1,53,365/-**

*[Signature]*  
Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

Digitally signed  
by ANKIT  
AGARWAL  
Date: 2020.01.03  
16:40:43 +05:30

This is a digitally signed invoice and does not require manual signature

# STATE URBAN DEVELOPMENT AGENCY

## Swachh Bharat Mission (SBM)

Group Summary

1-Apr-2019 to 24-Jan-2020

Page 1

| Particulars   | Opening<br>Balance          | Transactions           |                        | Closing<br>Balance          |
|---|-----------------------------|------------------------|------------------------|-----------------------------|
|   |                             | Debit                  | Credit                 |                             |
| Capacity Bldg., Admn. & Office Expenditure - SBM    | 12,35,13,901.00 Cr          | 1,57,12,488.00         | 1,60,000.00            | 10,79,61,413.00 Cr          |
| Community Toilets - SBM                             | 21,18,46,081.00 Dr          | 15,63,39,469.00        |                        | 36,81,85,550.00 Dr          |
| Individual Household Latrines - SBM                 | 43,93,78,715.00 Cr          | 1,41,18,330.00         | 20,38,25,740.00        | 62,90,86,125.00 Cr          |
| Information, Education & Communication (IEC) - SBM  | 22,36,82,900.00 Cr          | 8,26,90,746.00         |                        | 14,09,92,154.00 Cr          |
| Interest on SBM                                     | 42,21,27,509.00 Cr          | 99,640.00              | 12,95,53,916.00        | 55,15,81,785.00 Cr          |
| Operation & Maintenance of Movable Compactors-SBM   | 32,85,44,834.00 Dr          | 6,15,00,691.00         |                        | 39,00,45,525.00 Dr          |
| Public Toilets - SBM                                | 15,30,60,980.00 Dr          | 1,78,07,620.00         |                        | 17,08,68,600.00 Dr          |
| Regional Monitoring Committee (EZ) on SWM Under SBM | 15,74,777.00 Dr             | 2,54,822.00            |                        | 18,29,599.00 Dr             |
| Solid Waste Management - SBM                        | 2,62,58,30,373.00 Cr        | 21,34,56,655.00        | 9,46,00,000.00         | 2,50,69,73,718.00 Cr        |
| <b>Grand Total</b>                                  | <b>3,13,95,06,726.00 Cr</b> | <b>56,19,80,461.00</b> | <b>42,81,39,656.00</b> | <b>3,00,56,65,921.00 Cr</b> |

To,  
Director  
State Urban Development Agency  
ILGUS Bhawan, HC block,  
Sector III, Bidhannagar  
Kolkata - 700106



26<sup>th</sup> December, 2019

**Subject: Cover letter for Submission of RFP (Cluster 1)**

Respected Madam,

As per the deliverables, we hereby submit the Request for Proposal for cluster 1 in hard copy and soft copy has been shared through mail for your kind perusal.  
Assuring you are best services.

Yours faithfully,



Abhay Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst & Young LLP, India.  
Email : [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com)  
Mob: +91 9871693342.

SEI/SUM  
PI. L  
7-1-2020-  
AD(SM)  
ADP

EE/SUM  
13.1.20

AB/S. Chatterjee / AB S. Agarwal  
for 10/1/2020



## **Request for Proposal (RFP) Document**

**RFP No. - \_\_\_\_\_**

**Selection of Concessionaire for Bio-remediation of Legacy Waste, setting up of Processing facility at Pramodnagar and Kamarhati and Sanitary Landfill at Identified Site, Secondary collection and Transportation, Processing and Disposal of Municipal Solid Waste for Dum Dum, South Dumdum, North Dumdum, Baranagar, Kamarhati and New Barrackpore Municipalities**

**State Urban Development Agency, West Bengal**



**December, 2019**



To,  
Director  
State Urban Development Agency  
ILGUS Bhawan, HC block,  
Sector III, Bidhannagar  
Kolkata - 700106



24<sup>th</sup> December, 2019

**Subject: Cover letter for Submission of TFR (Cluster 1)**

SESWM  
PI. 6  
7.1.2020  
A-D(CSM)  
ADJ  
EEISWM  
13.1.20

Respected Madam,

As per the deliverables, we hereby submit the Technical Feasibility Report for cluster 1 in hard copy and soft copy has been shared through mail for your kind perusal.  
Assuring you are best services.

Yours faithfully,

Abhay Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst & Young LLP, India.  
Email : [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com)  
Mob: +91 9871693342.

# **TECHNICAL FEASIBILITY REPORT**

Assisting the State Government for Planning of  
Scientific Solid Waste Management through Cluster  
Approach and Bid Process Management for selection  
of Developers & Operators

## **Cluster 1**

### **Submitted to**

State Urban Development Agency (SUDA)  
Urban Development & Municipal Affairs Department (UD&MA)  
Government of West Bengal

December 2019





## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
 “ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019/7923

তারিখ 13.12.2019

From : The Director, SUDA,

To : The Chairman/Chairperson

South Dum Dum Municipality/ Dum Dum Municipality/ Baranagar Municipality/  
 North Dum Dum Municipality.

Subject : Finalization of Technical Feasibility Report for the upcoming SWM project for  
 Cluster-1

Sir/Madam,

Perhaps you are aware, EY, the TA engaged by SUDA for assessing technical feasibility of the SWM cluster project where areas under your jurisdiction are covered, has submitted the draft TFR and RfP for this project. Now for finalization of the TFR and tender document, we seek your valued opinion and intervention into the matter so that an effective plan and execution of the proposed project on PPP model can be ascertained.

1. **Immediate drive for segregated waste collection:** This may be started initially in few wards on pilot basis with subsequent scaling up of the system in other areas. The project as envisaged would not be geared up unless source segregation of waste is ensured.
2. **Identification of transfer station:** The TA along with the respective ULB level officials has identified certain places for using these as transfer station or secondary collection points. Suitability of these places is required to be verified and confirmed from your end.
3. **Mode of transportation of waste:** Considering the existing conservancy set up including manpower and vehicle for disposal of municipal solid waste, an appropriate waste collection-transportation mechanism need to be adopted either by collecting and transporting both the dry waste and wet waste up to secondary collection point involving the municipal machinery or taking wet waste from household level to processing plant deploying conservancy worker and vehicle from the municipality while dry waste would be collected by the selected agency from generation point to end disposal/ processing point.

Since this is a cluster project, a consensus among participating ULBs on the above issues is required for proper implementation of the project.

As such, I would request you to kindly settle these issues at the earliest so that necessary inputs could be provided in the meeting likely to be convened within this month with all concerned for finalization of the project design.

Thanking You,

Yours faithfully

  
 Director, SUDA.

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019/791-4

তারিখ 13.12.2019

From : The Director, SUDA,

To : The Chairman/Chairperson  
Kamarhati Municipality / New Barrackpore MunicipalitySubject : Finalization of Technical Feasibility Report for the upcoming SWM project at  
Cluster-1

Sir/Madam,

Perhaps you are aware, EY, the TA engaged by SUDA for assessing technical feasibility of the SWM cluster project where areas under your jurisdiction are covered, has submitted the draft TFR and RfP for this project. Now for finalization of the TFR and tender document, we seek your valued opinion and intervention into the matter so that an effective plan and execution of the proposed project on PPP model can be ascertained.

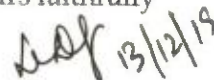
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Since this is a cluster project, a consensus among participating ULBs on the above issues is required for proper implementation of the project.

As such, I would request you to kindly settle these issues at the earliest so that necessary inputs could be provided in the meeting likely to be convened within this month with all concerned for finalization of the project design.

Thanking You,

Yours faithfully



Director, SUDA.

## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
 “ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019/8009(6)

তারিখ 17.12.2019

From : The Director, SUDA,

To : The Chairman/Chairperson  
 South Dum Dum Municipality/ Dum Dum Municipality/  
 North Dum Dum Municipality / Baranagar Municipality /  
 Kamarhati Municipality / New Barrackpore Municipality

Sub : Meeting on SWM cluster project I at Nagarayan, 6<sup>th</sup> Floor on 20.12.2019 at 12.00 Noon.

Ref : SUDA/366/2019/7923

Dated : 13.12.2019

Sir/Madam,

With reference to the above I am inviting you in the above meeting for sharing your valued opinion for implementation of the said project.

Principal Secretary, UD & MA Department. has kindly consented to remain present in this meeting.

Your presence in the meeting along with Executive Officer / Nodal Officer, SWM / Engineer of the municipality is earnestly requested.

Thanking You,

Yours faithfully

*[Signature]* 17/12/19  
 Director, SUDA.

SUDA - 366/2019/8009(6)/1(3)

17.12.2019

Copy forwarded for kind information to:

1. Chief Engineer, WBPCB - with a request to remain present in the said meeting.
2. Chief Engineer, S&SWM, W&S Sector, KMDA - with a request to remain present in the said meeting.
3. P.S. to the Principal Secretary, UD& MA Department, GoWB - with the request kindly to place it before the Principal Secretary.

*[Signature]* 17/12/19  
 Director, SUDA





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working world

Ernst & Young LLP  
3rd & 6th Floor, Worldmark - 1  
IGI Airport Hospitality District  
Aerocity, New Delhi - 110037  
India

Tel : +91 11 4731 8000  
ey.com

Ref no: EY/SUDA/19-20/014  
13<sup>th</sup> November, 2019

To,  
Director  
State Urban Development Agency  
ILGUS Bhawan, HC block,  
Sector III, Bidhannagar  
Kolkata - 700106

Subject: Key responsibilities of PMU for Cluster 1.

Respected Madam,

With reference to the meeting held on 27<sup>th</sup> September, 2019 with SUDA and M/s Fox and Mandal regarding Concession Agreement, EY had suggested and discussed the Scope of Work of the PMU. Due to revisions in the Scope of Work of the Concessionaire, EY would like to suggest incorporation of the points given below in the Concession Agreement of Cluster 1, if not already considered.

1. Monitor live GPS feed of movement of transportation vehicles for secondary and Tertiary transportation undertaken by the Concessionaire.
2. Monitor, supervise, and review Concessionaire's progress details/ activities. The Concessionaire shall submit monthly reports to ULB/PMU regarding progress of the Project.
3. Spot inspection of transportation of MSW from Secondary collection points to processing facility and also from processing facility to Sanitary landfill to comply with SWM rules, 2016.
4. Monitoring of live weighbridge feed along with CCTV footage.
5. Verification and certification of invoice/bills raised by the concessionaire for various outputs as per Concession agreement.
6. The PMU shall inspect and perform physical monitoring of legacy waste on the existing dumpsite through topographical surveys. Such tests/surveys should be performed every 3 months and put in form of a report of such inspection (the "Pre-COD Inspection Report – Bio remediation of legacy waste") attaching all analysis and results of the tests.

We understand that SUDA is under process of appointing a PMU for Solid Waste Management under Mission Nirmal Bangla. To achieve synchronization in the Scope of Work of the PMU and the project, EY suggests SUDA to consider the above given responsibilities accordingly while finalizing Scope of Work of the PMU.

We would like to thank you in advance for your continuous support.

Thanking You,

Yours faithfully,

Abhaya Krishna Agarwal

Partner - Infrastructure and PPP | Government and Transaction Advisory Services

Ernst & Young LLP, India.

Email: [Abhaya.Agarwal@in.ey.com](mailto:Abhaya.Agarwal@in.ey.com); Mob: +91 9871693342



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**Ernst & Young LLP**  
3rd & 6th Floor, Worldmark - 1  
IGI Airport Hospitality District  
Aerocity, New Delhi - 110037  
India

Tel : +91 11 4731 8000  
ey.com

Ref no: EY/SUDA/19-20/015

13<sup>th</sup> November, 2019

To,  
Director  
State Urban Development Agency  
ILGUS Bhawan, HC block,  
Sector III, Bidhannagar  
Kolkata - 700106

Subject: Revision in Scope of Work

Respected Madam,

With reference to the discussion and directions given by Principal Secretary regarding the Scope of Work of the concessionaire for Cluster 1 on 6<sup>th</sup> November, 2019, We hereby attach the revised scope of work in annexure. The highlighted sections of the annexure represent the additions made in the Scope of Work concerning Secondary Transportation of waste from Secondary collection points to the Processing facility and Sanitary Landfill facility at Naihati.

We would also like to suggest the incorporation of the same in the concession agreement.

Thanking You,

Yours faithfully,  
Abhaya Krishna Agarwal  
Partner - Infrastructure and PPP | Government and Transaction Advisory Services  
Ernst & Young LLP, India.  
Email: [Abhaya.Agarwal@in.ey.com](mailto:Abhaya.Agarwal@in.ey.com); Mob: +91 9871693342

## **SCOPE OF WORK**

### **A. Bioremediation**

1. Excavate the existing mixed dumped garbage and sieve the waste through mechanical sieving machines/ any other equipment at the cost of the Developer/Bidder.
2. The Developer shall take necessary steps and processes to minimize environmental pollution while carrying out remediation/ reclamation of legacy waste at both the Dumpsites. The Developer shall take all reasonable steps to ensure to undertake required efforts to mitigate the impact of odor and dust. Also, ensure treatment of leachate from legacy waste prior to its disposal. The developer shall mitigate menace caused by flies, rodents and bird and fire hazards in and around the Dumpsites during the period of reclamation.
3. The Bioremediation activity should be carried out in accordance with *Guidelines for Disposal of Legacy Waste (Old Municipal Solid Waste), 2019*.
4. Excavate and segregate garbage into as many kinds and categories as possible. Maximize the separation of recyclables viz. glass, metal etc. from the Pramod Nagar and Kamarhati Dumpsite. Maximize the separation of components for generation of Refuse Derived Fuel ("RDF") from the Dumpsite.
5. Set up an eco-friendly processing system in order to reduce the impact of the dumping site on the adjacent areas.
6. Set a soil (in accordance with IS: 2720) and ground water baseline (in accordance with IS: 10500) so that the same will be available to evaluate post Bio- Mining and Remediation/ Reclamation of both the dumpsites.
7. Monitor ground water quality (in accordance with CPCB norms), work zone air quality and ambient air quality monitoring within the site from NABL accredited laboratories/agencies and submit the report on quarterly basis.
8. Carry out leachate management of existing leachate (if any) at the site in accordance to the applicable rules and regulations.
9. The Developer shall target to generate compost from the biodegradable component of the Waste at the Pramod Nagar and Kamarhati dumpsites and also RDF from combustibles. Provide on-site storage facility for various fractions of processed waste and proper channelization further for sale or reuse to industry/vendors.
10. The Concessionaire shall take all Applicable Permits and approvals in sequence and comply with the CPCB and WBPCB norms therein from time to time.
11. The Developer shall make reasonable endeavours to maximize the utilization of the waste from both the dumpsites and for this purpose shall ensure that maximum waste is utilized / reused by the Developer, so as to produce products/outputs such as soil enricher/compost, recyclables, RDF and products from construction and demolition waste.
12. The Developer also needs to cater to the incoming fresh waste to these sites during the course of reclamation activity and shall ensure that waste (not older than 2 months) shall remain at site, at commencement of operations of processing plant.
13. While reclaiming and excavating MSW from the present open dumpsite following aspects must be handled carefully
  - a. Exposure to hazardous material, leachate, gases, odor etc.
  - b. Contaminated wastes that maybe uncovered during reclamation operations require special handling and disposal requirements
  - c. Precautions must be taken while excavating as it releases gases like methane, Sulphur dioxide and other gases which causes explosion and fire
14. The Developer shall explore the possibility of minimizing the disposal of inert/ processing rejects and maximize the usage of such inert waste including but not limited to making of curb side blocks, filling of low-lying areas, construction of roads etc. *To facilitate the disposal of rejects, SUDA has identified a low-lying land area in Panihati.* If opted, the developer needs to develop this low-lying area in Panihati with



- an impermeable liner system for disposal of rejects and perform proper compaction pre and post disposal, so that the site can be available for future use to put in new infrastructure.
15. Be responsible for development and maintenance of infrastructure, facilities and amenities for sieving the excavated garbage and storing the segregated materials etc. at their own risk and cost. Provide adequate number of processing machines for achieving its daily target of handling at least 750-1000 (one thousand) Metric Tons of Waste per day based on the estimated quantum of waste at both the dumpsites.
  16. Provide weighbridge to measure the quantity of waste subjected to Biomining at dumpsite and inert going out of the Dumpsite. The developer shall ensure that the weighbridge is installed from the start date of remediation activity.
  17. Deploy the necessary manpower, materials, equipment, tools to the site. The developer shall be responsible for construction of plants, sheds, support facilities for handling, separating, segregating and storing for the operation of the plant.
  18. Provide security arrangements for the planned project site, machineries, equipment etc. at the cost of the Developer / Developer.
  19. Legacy C&D waste if found during excavation, sorting/segregation and final disposal of such legacy C&D Waste shall be the sole responsibility of the Developer. The Developer shall be free to explore alternate uses for C&D waste as per the C&D Waste Rules, 2016. Further, if the said C&D Waste is found to be lying around the Pramod Nagar and Kamarhati dumpsites or found to be not properly disposed of, the Developer shall be liable to be penalized for the same in accordance with the terms of the Concession Agreement.
  20. Hazardous waste such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive waste, if found, during excavation, sorting or segregation shall be handled as per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

#### **B. Secondary transportation of waste to the processing facilities**

1. The Concessionaire shall transport MSW from Secondary Collection Points as per annexure....to the Processing Facilities i.e. Pramod nagar and Kamrahati on a daily basis. The Pramod Nagar processing site will cater for waste collected from Dum Dum, North Dum Dum, South Dum Dum and Baranagar Municipalities Secondary collection points, whereas the Kamarhati site will cater for waste collected from Kamarhati and New Barrackpore Municipalities secondary collection points.
2. The Concessionaire shall deploy adequate number of closed vehicles such as tipper trucks, compactors etc. to transport the MSW generated in the Project Area to the Processing Facility at its own cost.
3. The Concessionaire shall deploy vehicles, which can carry segregated waste as per applicable Law.
4. The vehicles deployed shall be roadworthy conforming to approval from the State Transport Authority.
5. The Concessionaire shall comply with all applicable Laws, including all rules and regulation prescribed in the regard, from time to time by any other statutory and Competent Authorities concerned, regarding fuel used or pollution control standards or any other applicable norm.
6. The Concessionaire shall at periodic intervals check their adequateness and their conformity with the manufacturer's specification for their maintenance and replacement.
7. The Concessionaire shall provide automatic position identification systems using Global Positioning System (GPS) technology which shall ensure automatic tracking and recording of vehicle identification and movement in all vehicles and provide a live GPS feed to PMU/Designated ULB.
8. The Concessionaire shall display Designated ULB (and social message given by Designated ULB) and logo of Swachh Bharat Abhiyaan of at least 12 inches X 12 inches size (font size of 6-9 inches) on the transportation vehicles and shall display any other form of advertisement on the transportation vehicles for any other advisories that would be undertaken, the Concessionaire shall abide by the Applicable Laws.
9. The drivers appointed/engaged by the Concessionaire shall have a valid driving license as desired for the specific vehicle complying with Motor Vehicle Act, 2019.
10. All vehicles shall have High Security Registration Plate as per Motor Vehicle Act, 2019.

11. All penalties, levies and fines levied in relation to the activities/ operations of the Concessionaire under the Project, shall be borne by the Concessionaire only without any liability of the Designated ULB/ Participating ULB/ SUDA.

### **C. Processing facility**

1. Designing, Constructing and Operating Municipal Solid Waste Processing facilities on Design, Build, Finance, Operate and Transfer (DBFOT) basis. The developer is permitted to process the incoming waste using any approved technology as per SWM rules, 2016. Whereas the following processing facilities are recommended as per the Technical feasibility report :
  - a. Processing Facility at Pramod Nagar - Compost plant and RDF plant of total capacity of at least 450 TPD and a Bio methanation plant of at least 100 TPD for the processing of waste (hereinafter collectively referred to as "Project Sites").
  - b. Processing Facility at Kamarhati - Compost plant, RDF plant of a total capacity of at least 180 TPD for the processing of waste (hereinafter collectively referred to as "Project Sites").
2. The scope shall be to design, build, testing, commissioning, operation, maintenance, of MSW Processing facility (Windrow Composting Technology with Pre-Sorting facility and RDF Generation & Bio-methanation plant) with subsequent expansion provisions during the Concession Period of 23 years.
3. The developer shall implement and operate the windrows composting process in compliance with SWM Rules, 2016 and CPHEEO 2016 MSWM Manual.
4. The Developer shall procure all necessary project assets (i.e. Plant and Equipment) including equipment, vehicles, machineries and others required for the successful execution of the treatment & disposal of Project and ensure their timely maintenance, replacement and capacity augmentation, as the case may be, during the entire duration of the Contract.
5. All the necessary regulatory approvals should be taken prior to the commencement of plant construction.
6. Access to the Project Site provided by SUDA shall have to be maintained by the Developer/Developer to have easy movement of vehicles and etc.
7. The Developer shall also set up a leachate treatment facility for both the plants in accordance of applicable rules and regulations.
8. Transportation of inert/residual processing waste from Processing Facilities to the Sanitary Landfill is to be done by the Developer from each site. The rejects should be minimized and restricted to 20% of the total incoming waste as per SWM Rules 2016.
9. Provide adequate lighting system for easy operations in the working area as well as to the access ways. Provide utilities such as drinking water facilities and sanitary facilities (preferably washing/bathing facilities for workers) and safety provisions including health inspections of workers at site shall be carried out.
10. Provide fire protection measures and safety equipment for all workers at the site.
11. Entrance into the Project Site from outside the Site shall be restricted to one point. However, emergency exits may be provided in accordance with the Building Bye laws.
12. Adequate measures to avoid trespassing shall be taken by the developer.
13. Ensure adequate power back-up for smooth operation of the machinery and equipment installed.

### **D. Sanitary landfill site**

1. The Developer shall Design, Construct and Operate a Sanitary Landfill Facility (SLF) of Designed Capacity at Naihati provided by SUDA. *The site for SLF will be handed over to the Developer within 9 (nine) months from LOA.* The Sanitary Landfill shall be setup in accordance with the requirement of SWM Rules, 2016 and CPHEEO Manual.
2. The SLF facility at Naihati is approximately at a distance of 30-35km from both the processing sites.

3. SLF shall comprise compacted earth bunds with impermeable liner systems comprising compacted clay liners, or geomembranes, or geosynthetic clay liners. The landfill cells will incorporate leachate collection systems comprising gravel and geotextile filter layers and pipe collection and transfer systems.
4. The Developer shall also set up a leachate treatment facility at the landfill site involving any suitable technology to meet the standards as per regulatory norms.
5. Transportation of inert/residual processing waste from Processing Facilities to the Sanitary Landfill is to be done by the Developer from each site. The rejects should be minimized and restricted to 20% of the total incoming waste as per SWM Rules 2016.
6. The Developer shall provide fencing along the perimeter of the Project Site and arrange adequate lighting system for easy operations in the working area as well as to the access ways.
7. Provide fire protection measures and safety equipment for all workers at the site. Entrance into the Project Site from outside the Site shall be restricted to one point. However, several emergency exits may be provided.
8. Adequate measures to avoid trespassing shall be taken by the SUDA. Ensure adequate power back-up for smooth operation of the machinery and equipment installed.
9. All the necessary regulatory approvals shall be taken prior to the commencement of SLF construction and operations.
10. The developer shall provide access to the ULB's to dispose of desilting and road sweeping waste in the SLF.
11. The Developer shall carry out scientific closure of the Dumpsite after the concession period before handing over the site.



## Minutes of the 4<sup>th</sup> Meeting of Task Force on SWM.

Date: 23 October, 2019.

Time: 1:30P.M.

Venue :- Chamber of Director SUDA

### List of Participants Present in the Meeting : Annexure - A

The meeting was chaired by the Director, SUDA. All the members & participants were welcomed.

Evaluation of the Technical Feasibility Report as submitted by the Transaction Advisor, E&Y for Cluster-1 was the only agenda point assigned for this meeting.

The soft copies of TFR had been shared with the members on e-mail. The hard copies were placed before the members for discussion. The members attended the meeting elaborately discussed on the various points regarding the Draft Technical Feasibility Report submitted by the Transaction Advisors for the Cluster. Their suggestions are as follows:

- For RDF facility, viability factor should be re-assessed taking into account the potential industries within the State or in adjoining State who would be able to consume the end product.
- Dry waste management facility to be taken into consideration.
- Detailed comprehensive transportation plan for each ULB within the cluster should be provided.
- Secondary collection point for each ULB should be identified and the probable location must be mentioned in the TFR.
- Cost involvement for the most feasible technology must be shown in details.
- Sample collection process adopted by the Transaction Advisor should be modified.
- Rectified Draft Feasibility report should be submitted within 2<sup>nd</sup> week of November, 2019.



Director, SUDA.

Annexure- A (Put on tabular form)

List of Participants Present in the Meeting

|   |                       |           |                        |
|---|-----------------------|-----------|------------------------|
| 1 | DebaratiDatta Gupta   | SUDA      | Director               |
| 2 | Santanu Mukherjee     | SUDA      | Addl. Mission Director |
| 3 | Dr.T.K.Gupta          | WBPCB     | Chief Engineer.        |
| 4 | Prof. ArunavaMajumder | SWRE/JU   | Professor Emirates     |
| 5 | Kalyan Roy Chowdhury  | MED       | Addl. Chief Engineer.  |
| 6 | Subir Das             | SUDA      | Executive Engineer.    |
| 7 | HimanshuChaturbedi    | E & Y LLP | Senior Manager         |

## Minutes of the 4<sup>th</sup> Meeting of Task Force on SWM.

Date: 23 October, 2019.

Time: 1:30 P.M.

Venue :- Chamber of Director SUDA

### List of Participants Present in the Meeting : Annexure - A

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Evaluation of the Technical Feasibility Report as submitted by the Transaction Advisor, E&Y for Cluster-1 was the only agenda point assigned for this meeting.

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| 4 | Prof. Arunava Majumder | SWRE/JU   | Professor Emirates     |
| 5 | Kalyan Roy Chowdhury   | MED       | ACE                    |
| 6 | Subir Das              | SUDA      | EE                     |
| 7 | Himanshu Chaturvedi    | E & Y LLP | Senior Manager         |



## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং .....

তারিখ .....

From : The Director, SUDA

To : Ernst and Young LLP,  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World mark - 1,  
IGI Airport Hospitality, Dist - Aero city, New Delhi - 110037.

Subject: Incorporation of all the explanation/clarification in draft Technical Feasibility Report for cluster no - 1.

Ref : 1. Query against Technical Feasibility Report for Cluster - 1. on 9<sup>th</sup> Sep, 2019.  
2. Minutes of 3<sup>rd</sup> Meeting of Task Force on SWM on 17<sup>th</sup> Sep, 2019.  
3. Clarifications for the queries on TFR and finalization of plant capacities for Cluster 1. Received mail on 01<sup>st</sup> Oct, 2019.

Sir / Madam,

In connection with the references you are hereby requested to incorporate all the explanation/clarification, data, report calculations in detail, etc in draft Technical Feasibility Report submitted earlier as discussed.

The clarification/explanation submitted via e-mail on 1<sup>st</sup> Oct, 2019 will not suffice to approve the draft Feasibility Report from this end. You are therefore requested to submit a fresh draft TFR consisting of detailed calculations of all the data provided and all references for supporting the data. You are also advised to provide the best suitable technologies feasible for the cluster concerned along with detailed cost involvement.

Your early submission in this regard is felt necessary keeping in mind the urgency of the project.

Yours faithfully

Director, SUDA



Sujay Mitra <sujay.mitra@gmail.com>

## Request for Information

1 message

**Dhriti Kharbanda** <Dhriti.Kharbanda@in.ey.com>

Mon, Oct 21, 2019 at 3:56 PM

To: suda <Debaratidattagupta@gmail.com>, "santanu.mkj@gmail.com" <santanu.mkj@gmail.com>, "sbm.wbsuda@gmail.com" <sbm.wbsuda@gmail.com>, "sujay.mitra@gmail.com" <sujay.mitra@gmail.com>, "subir.das65@gmail.com" <subir.das65@gmail.com>  
Cc: Himanshu Chaturvedi <Himanshu.Chaturvedi@in.ey.com>, Saurabh Sanjay Awatade <Saurabh.Awatade@in.ey.com>, Chaitali Mondal <Chaitali.Mondal@in.ey.com>, Sambit Roy <Sambit1.Roy@in.ey.com>

Dear Sir/Madam,

This is with reference to the discussion on 18<sup>th</sup> October, 2019 regarding additions to be made in the Technical feasibility report. We request SUDA to please provide us with the following information to cater to the collection and transportation components for the project:

### For Cluster 1,3,4 :

1. Ward maps of all the ULB's.
2. Existing collection and transportation route map (both primary i.e. door to door and secondary collection).
3. Road length and width (map).
4. Identified land parcels/available land parcels (approximately 1 acre/Transfer station is required) for Transfer stations if any to further do locational analysis for the identified sites.
5. Secondary collection points (Number, location and capacity).

Your kind co-operation is highly solicited.

Thanking you,

Wishes & Regards



**Dhriti Kharbanda** | Executive | Transaction Advisory Services

Ernst & Young LLP

3rd and 6th Floor, Worldmark-1, IGI Airport Hospitality District, Aerocity, New Delhi 110037, India

Office: +91 011 47318000 | Mobile: +91 9717101446 | [Dhriti.Kharbanda@in.ey.com](mailto:Dhriti.Kharbanda@in.ey.com)

Website: <http://www.ey.com>

to whom it is addressed and others authorized to receive it. It may contain confidential or legally privileged information. If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution or taking any action in reliance on the contents of this information is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by responding to this email and then delete it from your system. The firm is neither liable for the proper and complete transmission of the information contained in this communication nor for any delay in its receipt.



From : The Director, SUDA

To : Ernst and Young LLP ,  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World mark - 1,  
IGI Airport Hospitality, Dist - Aero city, New Delhi - 110037.

Subject : Incorporation of all the explanation/clarification in draft Technical Feasibility Report for cluster no - 3.

Ref : 1. Query against Technical Feasibility Report for Cluster - 1. on 11<sup>th</sup> Sep, 2019.  
2. Minutes of 3<sup>rd</sup> Meeting of Task Force on SWM on 17<sup>th</sup> Sep, 2019.

Sir / Madam,

In connection with the references you are hereby instructed to incorporate of all the explanation/clarification, data, report calculations in detail, etc in draft Technical Feasibility Report submitted earlier.

It is to inform you that the officials of this office has visited Gobardanga Municipality and found that there exist piece and parcel of land where processing plant can be installed and thus you are requested to taking to account of those lands and consider in the project for cluster - 3.

You are therefore requested to submit a fresh Draft TFR considering the land of Gobardanga Municipality for installation of processing plant. The Draft TFR should consist of Detailed Calculations of all the datas provided and all references for supporting the data. You are also advice to provide the best suitable technologies feasible for the cluster concerned along with detailed cost involvement.

Your early submission in this regard is felt necessary keeping in mind the urgency of the project.

Yours faithfully

Enclo: As stated

Director, SUDA

From : The Director, SUDA

To : Ernst and Young LLP,  
3rd & 6th Floor, World mark - 1,  
IGI Airport Hospitality, Dist - Aero city, New Delhi - 110037.

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2. Minutes of 3rd Meeting of Task Force on SWM on 17th Sep, 2019.  
3. Clarifications for the queries on TFR and finalization of plant capacities for Cluster 1. Received mail on 01st Oct, 2019.

Sir / Madam,

In connection with the references you are hereby ~~instructed~~ <sup>requested</sup> to incorporate ~~of~~ all the explanation/clarification, data, report calculations in detail, etc in draft Technical Feasibility Report submitted earlier, <sup>as discussed</sup>.

The clarification/explanation submitted via e-mail on 1st Oct, 2019 will not suffice to approve the draft Feasibility Report from this end. You are therefore requested to submit a fresh Draft TFR consisting ~~of~~ detailed calculations of all the data provided ~~and~~ all references for supporting the data. You are also advised to provide the best suitable technologies feasible for the cluster concerned along with detailed cost involvement.

Your early submission in this regard is felt necessary keeping in mind the urgency of the project.

Yours faithfully

Enclo: As stated

Director, SUDA

From : The Director, SUDA,  
To : The Administrator /Chairman/Chairperson  
Berhampur Municipality  
Subject : Compliance of the direction of the West Bengal State Level Monitoring  
Committee on SWM under Honourable NGT  
Ref letter No : 1. SUDA - 229/2018/5792 A Dated : 21/08/2019  
2. SUDA - 332/2019/5354 Dated : 09/08/2019  
3. SUDA - 229/2018/4837 Dated : 24/07/2019 ✓  
4. SUDA - 50/2016/4505 (42) Dated : 05/07/2019 ✓

Sir/Madam,

As per reports provided from your end regarding installation of screens on Nullah/Drains/Outfall discharging into the river GANGA the following observations are recorded.

- No of the Nullah/Drains/Outfall under your municipality :- 19 Nos
- No of the Nullah/Drains/Outfall where Screens to be installed :- 19 Nos

In this connection you are requested to submit an action taken report regarding installation of screens and also to share the actual position of the work done by other departments regarding the same on the drains under their control if any, positively by 22.10.2019 for submission of the same before to the West Bengal State Level Monitoring Committee on SWM under Honourable NGT.

Please treat this as extremely Urgent.

Yours faithfully

Director, SUDA

Memo No -

Date :

Copy Forwarded for kind information to

1. P.S. to Principal Secretary with a request to put up before his perusal please.

Director, SUDA



## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং .....

তারিখ .....

From : The Director, SUDA

To : Ernst and Young LLP,  
3rd & 6th Floor, World mark - 1,  
IGI Airport Hospitality, Dist - Aero city, New Delhi - 110037.

Subject: Incorporation of all the explanation/clarification in draft Technical Feasibility Report for cluster no - 3.

Ref : 1. Query against Technical Feasibility Report for Cluster -3. on 11<sup>th</sup> Sep, 2019.  
2. Minutes of 3rd Meeting of Task Force on SWM on 17<sup>th</sup> Sep, 2019.

Sir / Madam,

In connection with the references you are hereby requested to incorporate of all the explanation/clarification, data, report calculations in detail, etc in draft Technical Feasibility Report submitted earlier as discussed.

It is to inform you that the officials of this office has visited Gobardanga Municipality and found that there exist piece and parcel of lands where processing plant can be installed and thus you are requested to taking to account of those lands and consider in the project for cluster - 3.

You are therefore requested to submit a fresh Draft TFR considering the land of Gobardanga Municipality for installation of processing plant. The draft TFR should consist of detailed calculations of all the data provided and all references for supporting the data. You are also advised to provide the best suitable technology feasible for the cluster concerned along with detailed cost involvement.

Your early submission in this regard is felt necessary keeping in mind the urgency of the project.

Yours faithfully

Director, SUDA



Ernst & Young LLP Tel: +91 11 6671  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World 8000  
Mark 1, IGI Airport Fax: +91 11 6671  
Hospitality District 9999  
Aerocity, New Delhi ey.com  
110037, India

October 25, 2019

Reference Number: EY/SUDA/19-20/012

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar, Kolkata-700106

**Subject:** With respect to the Meeting with Technical Committee on 23<sup>rd</sup> October 2019

Respected Madam,

This is in reference to the meeting held on 23<sup>rd</sup> October 2019 with technical committee for TFR approval. As per the discussion, we shall consider the points mentioned by technical committee. An option of bringing in private player for collection of dry waste shall be considered. Also, with respect to the discussion you had with EY team on 18<sup>th</sup> October 2019, a mail has been sent to SUDA for the information required from ULBs. We have initiated the preparation of collection & transportation plan for all the ULBs. This is to inform you the same.

As discussed in the early stages of the project, it was suggested that municipalities will handle the collection and transportation responsibility. Hence only Gap analysis was performed, and vehicle requirement was calculated in Technical Feasibility Report. Considering above mentioned points, we shall submit the updated TFR in coming couple of weeks after the collection of data from ULBs. Request you to consider the same.

Yours faithfully,

Abhaya Krishna Agarwal

Partner – Infrastructure and PPP, Government & Transaction Advisory Services

Ernst and Young LLP, India,

Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);

Mobile: 9871 693 342



সুডা

রাজ্য নগর উন্নয়ন সংস্থা

SUDA

STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

SUDA-366/2019/৬৭০৭

26.09.2019

ক্রমিক নং .....

তারিখ ০৩.১০.২০১৭

From : Director, SUDA

To : The Branch Manager,  
Axis Bank Ltd.,  
Salt Lake, Sector-II Branch,  
BJ-110, Sector-II  
Salt Lake City, Kolkata – 700 091.

Sub : Electronic Transfer of Fund debiting this office  
Current Account No. 916010072244925.

Capacity Building &amp; A &amp; OE - Swachh Bharat Mission (SBM)

Sir,

You are requested to kindly arrange for electronic transfer of fund as per details given below debiting the amount from this office Current Account No.916010072244925 lying with your branch in respect of Swachh Bharat Mission (SBM).

| Sl. No.  | Name of Payee     | Amount in Rs. | Bank Details   |
|--|-------------------|---------------|--|
| 01.  | ERNST & YOUNG LLP | 1,53,365.00   | Standard Chartered Bank,<br>NEW DELHI - NARAIN MANZIL BK ROAD<br>Branch,<br>A/C No. 52205023904<br>IFS Code. SCBL0036020 |
| (Rupees One Lakh Fifty Three Thousand Three Hundred Sixty Five only) |                   |               |  |

Petrus Anuranjan Soreng  
Finance Officer, SUDA

Finance Officer  
State Urban Development Agency  
Govt. of West Bengal

Debarati Datta Gupta,  
Director, SUDA

Director  
State Urban Development Agency

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408





# রাজ্য নগর উন্নয়ন সংস্থা

SUDA

## STATE URBAN DEVELOPMENT AGENCY

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“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA-366/2019/6604

তারিখ 23.9.19

- To :
1. The Chief Legal Advisor, UD & MA Department, Govt. of West Bengal.
  2. The Financial Advisor & Special Secretary, UD & MA Department, Govt. of West Bengal
  3. The Joint Secretary (SM), UD & MA Department, Govt. of West Bengal  
and Addl. State Mission Director, SBM (U)/MNB (U)
  4. The Joint Secretary (ARM), UD & MA Department, Govt. of West Bengal
  5. The Secretary, Municipal Engineering Directorate, Govt. of West Bengal
  6. The Chief Engineer, Waste Management Cell, West Bengal Pollution Control Board
  7. The Chief Engineer-In-Charge, S&SWM, Water & Sanitation Sector, KMDA

Sub.: Meeting on Draft Concession Agreement & RFP for Cluster I on SWM – Regd.

Sir,

A meeting is scheduled to be held on 27<sup>th</sup> Sept.'2019 at 11.00 AM in the Conference Hall of Nagarayan, 5<sup>th</sup> Floor to discuss draft 'Concession Agreement' developed by FOX & MANDAL, and RFP prepared by Transaction Advisor M/s E&Y on the upcoming SWM project for Cluster-I at Pramodnagar.

You are thus requested kindly to make it convenient to remain present in the meeting on the appointed date, time and venue and share your valuable suggestion towards finalization of CA and RFP. Draft CA and RFP is sent to your e-mail for your kind reference please.

Yours faithfully,

*[Signature]* 23/9/19

Director, SUDA

Memo no - SUDA-366/2019/6604/1(3)

23.9.19

Copy forwarded for information to:

1. The PA to the Principal Secretary, UD & MA Deptt., Govt. of West Bengal with a request to bring it to the notice of the Principal Secretary,
2. Sri AMLAN GUHA, Senior Associate, Fox & Mandal with a request to remain present in the meeting.
3. Sri Abhaya Krishna Agarwal, Partner, Ernst & Young LLP with a request to remain present in the meeting.

*[Signature]*

*[Signature]* 23/9/19

Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

# রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

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তারিখ 23.09.2019

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and Addl. State Mission Director, SBM (U)/MNB (U)
  4. The Joint Secretary (ARM), UD & MA Department, Govt. of West Bengal
  5. The Secretary, Municipal Engineering Directorate, Govt. of West Bengal
  6. The Chief Engineer, Waste Management Cell, West Bengal Pollution Control Board
  7. The Chief Engineer-In-Charge, S&SWM, Water & Sanitation Sector, KMDA

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*sdt*

Director, SUDA

Memo no - SUDA-366/2019/6604/1(3)

23.9.19

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*sdt 23/9/19*  
Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

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“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং .....

তারিখ .....

- To : 1. The Chief Legal Advisor, UD & MA Department, Govt. of West Bengal.  
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 3. The Joint Secretary (SM), UD & MA Department, Govt. of West Bengal  
 and Addl. State Mission Director, SBM (U)/MNB (U)  
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 6. The Chief Engineer, Waste Management Cell, West Bengal Pollution Control Board  
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20/

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Memo no - SUDA-366/2019/6604/1(3)

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3. Sri Abhaya Krishna Agarwal, Partner, Ernst & Young LLP with a request to remain present in the meeting.

20/23/19

Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408





# রাজ্য নগর উন্নয়ন সংস্থা

SUDA

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং .....

তারিখ .....

- To : 1. The Chief Legal Advisor, UD & MA Department, Govt. of West Bengal.  
2. The Financial Advisor & Special Secretary, UD & MA Department, Govt. of West Bengal  
3. The Joint Secretary (SM), UD & MA Department, Govt. of West Bengal  
and Addl. State Mission Director, SBM (U)/MNB (U)  
4. The Joint Secretary (ARM), UD & MA Department, Govt. of West Bengal  
5. The Secretary, Municipal Engineering Directorate, Govt. of West Bengal  
6. The Chief Engineer, Waste Management Cell, West Bengal Pollution Control Board  
7. The Chief Engineer-In-Charge, S&SWM, Water & Sanitation Sector, KMDA

Sub.: Meeting on Draft Concession Agreement & RFP for Cluster I on SWM – Regd.

Sir,

A meeting is scheduled to be held on 27<sup>th</sup> Sept.'2019 at 11.00 AM in the Conference Hall of Nagarayan, 5<sup>th</sup> Floor to discuss draft 'Concession Agreement' developed by FOX & MANDAL, and RFP prepared by Transaction Advisor M/s E&Y on the upcoming SWM project for Cluster-I at Pramodnagar.

You are thus requested kindly to make it convenient to remain present in the meeting on the appointed date, time and venue and share your valuable suggestion towards finalization of CA and RFP. Draft CA and RFP is sent to your e-mail for your kind reference please.

Yours faithfully,

*sat*

Director, SUDA

Memo no - SUDA-366/2019/6604/1(3)

23.9.19

Copy forwarded for information to:

1. The PA to the Principal Secretary, UD & MA Deptt., Govt. of West Bengal with a request to bring it to the notice of the Principal Secretary,
2. Sri AMLAN GUHA, Senior Associate, Fox & Mandal with a request to remain present in the meeting.
3. Sri Abhaya Krishna Agarwal, Partner, Ernst & Young LLP with a request to remain present in the meeting.

*ADP 23/9/19*

Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

## Minutes of the 3<sup>rd</sup> Meeting of Task Force on SWM.

Date: 4 September, 2019

Time: 3:00 P.M

Venue: Chamber of Director SUDA

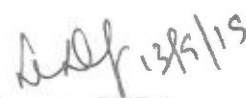
### List of Participants Present in the Meeting: Annexure-1

The meeting was chaired by the Director, SUDA. All the members & participants were welcomed.

Evaluation of the Technical Feasibility Report as submitted by the Transaction Advisors i.e. EY for Cluster-1, Cluster-3, Cluster-4 and PwC for Cluster-2, was the only agenda point assigned for this meeting.

The soft copies of TFR had been shared with the members on e-mail. The hard copies were placed before the members for discussion. The members attended the meeting elaborately discussed on the various points regarding the Draft Technical Feasibility Report submitted by the Transaction Advisors for Cluster - 1, Cluster - 2, Cluster - 3, Cluster - 4.

- The provision for processing of Construction and Demolition waste to be included in every Cluster as per Construction and Demolition Waste Rules – 2016.
- The scope of processing of waste generated at the end of Bulk Waste Generators as per SWM Rules-2016 to be included in the TFR.
- The design life of SLF should be for 20 years for every Cluster as per SWM Rules - 2016.
- Materials recovery Facility (MRF) to be included in every Cluster.
- It is to be mentioned for every cluster that only 20-25% of the total waste to be land filled.
- For RDF facility, cost of carriage of the end product, from the plant site to the end user must be taken into account. It is suggested to review the proposed RDF facility should be omitted from each cluster as no integrated cement plant is present in our state to consume the end product thus obtained from RDF facility.
- There should be a clear cut guideline regarding the transportation cost of the inert materials from the plant to the SLF site.
- Mass Burn Flameless Technology (MBFT) and Black Hole Technology should not be adopted as guided by Chief Engineer, W.B.P.C.B.
- Chief Engineer, W.B.P.C.B. opined that as for cluster 3 SLF and other facilities are planned to be developed on a common site, initiation of the project might be delayed as it takes a long time to process for Environmental Clearance (EC) certificate from respective Department. Further Gobordanga Municipality was advised to identify suitable land for setting up of de-centralised processing unit within the town.
- Cost for proper infrastructure development at proposed Site under Panihati Municipality or elsewhere for dumping / filling of residual inert matter obtained after processing of Legacy waste of Pramod - Nagar site to be included.
- Optimum use of existing infrastructure should be taken into consideration.
- The facilities provided as per sanctioned DPR should be considered.
- Location of the De-centralized system in case of Urban setup should be mentioned clearly.

  
Director, SUDA.

## Annexure-1 (Put on tabular form)

### List of Participants Present in the Meeting

|   |                        |                                    |
|---|------------------------|------------------------------------|
| 1 | Debarati Datta Gupta   | Director, S.U.D.A.                 |
| 2 | Santanu Mukherjee      | Addl. Director, S.U.D.A.           |
| 3 | Dr.T.K.Gupta           | Chief Engineer, W.B.P.C.B.         |
| 4 | Sisir Kumar Baidya     | Chief Engineer-In-Charge, K.M.D.A. |
| 5 | Kalyan Ray Chowdhury   | Addl. Chief Engineer, M.E.D.       |
| 6 | Prof. Arunava Majumder | Professor, S.W.R.E. / J.U.         |
| 7 | Bijoy Krishna Paul     | Executive Engineer, S.U.D.A.       |
| 8 | Subir Das              | Executive Engineer, S.U.D.A.       |

*sdg 13/5/19*  
Director, SUDA.





Building a better  
working world

Ernst & Young LLP

3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark 1,

IGI Airport Hospitality

District

Aerocity, New Delhi

110037, India

Tel: +91 11 6671 8000

Fax: +91 11 6671 9999

ey.com

July 18, 2019

To,

Director

State Urban Development Agency.

ILGUS Bhawan, HC Block,

Sector-III, Bidhannagar

Kolkata-700106

Subject: Invoice against Submission and acceptance of draft Technical Feasibility Report  
(For Cluster No.1: Dum Dum, North Dum Dum, South Dum Dum, Baranagar,  
Kamarhati, New Barrackpore)

Invoice Number: IINL01DL008682

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP.

Thanking you,

Yours faithfully,

Abhaya Krishna Agarwal

Partner – Infrastructure and PPP, Government & Transaction Advisory Services

Ernst and Young LLP, India,

Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);

Mobile: 9871 693 342



Ernst & Young LLP  
3<sup>rd</sup> & 6<sup>th</sup> Floor, World Mark  
1, IGI Airport Hospitality  
District  
Aerocity, New Delhi  
110037, India

Tel: +91 11 6671 8000  
Fax: +91 11 6671 9999  
ey.com

July 18, 2019

To,  
Director  
State Urban Development Agency.  
ILGUS Bhawan, HC Block,  
Sector-III, Bidhannagar  
Kolkata-700106

*Dr. S. Mitra*  
*P1. process.*  
*22-07-19*



*AD(GM)*  
*SD*  
*Received today.*  
*Sri. S. K. Mishra, AE*  
*Sri. S. Chatterjee, AE*  
*02/09/2019*

Subject: Invoice against Submission and acceptance of draft Technical Feasibility Report  
(For Cluster No.1: Dum Dum, North Dum Dum, South Dum Dum, Baranagar,  
Kamarhati, New Barrackpore)

Invoice Number: IINL01DL008682

Respected Madam,

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP.

Thanking you,  
Yours faithfully,

Abhaya Krishna Agarwal  
Partner – Infrastructure and PPP, Government & Transaction Advisory Services  
Ernst and Young LLP, India,  
Email: [abhaya.agarwal@in.ey.com](mailto:abhaya.agarwal@in.ey.com);  
Mobile: 9871 693 342

July 08, 2019

Dr. Sujay Mitra  
State Urban Development Agency  
ILGUS Bhavan  
H-C Block  
Sector 3, Bidhannagar  
Kolkata, WB 700106

Dear Dr. Sujay Mitra :

We are enclosing our invoice for professional services rendered by us. Our invoices are payable on presentation and we would greatly appreciate if payment could be made through RTGS/NEFT. Bank details for the same are mentioned on the invoice.

In case payment is being made by way of cheque or draft, you may send the same to the following address:

Bhawna Chopra  
Building No. 8, 1st Floor,  
Tower A, Sector 25 A,  
DLF Cybercity Phase II  
Gurgaon, Haryana -122002, India

Please mention our Invoice Number and the TDS deducted by you, (if any) along with the cheque or draft sent to us. The cheque or draft should be in favor of Ernst & Young LLP .

Yours sincerely

For Ernst & Young LLP

Encl : As above



To,

**Tax Invoice**

Original for recipient

State Urban Development Agency  
ILGUS Bhavan  
H-C Block  
Sector 3, Bidhannagar  
Kolkata, WB 700106

Invoice Number : IINL01DL008682  
Date : July 08, 2019  
Place of Supply : West Bengal

Client PAN : AAABS0934R

| Particulars  | Amount(INR) |
|--|-------------|
| Submission and acceptance of Draft Feasibility Report by the TA (For Cluster No.1: DumDum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati, NewBarrackpore) | 289,368.00  |
| IGST @18%  | 52,086.24   |
| <b>Total</b>   |             |
| (in words) : INR THREE HUNDRED FORTY-ONE THOUSAND FOUR HUNDRED FIFTY-FOUR AND 24/100 Only  | 341,454.24  |

**Our Banker's details for remitting funds:**

Bank Name : STANDARD CHARTERED BANK  
Narain Manzil 23 Barakhamba Road DL India 110001  
Current A/c No. : 522-0-502390-4  
Beneficiary : ERNST & YOUNG LLP  
SWIFT CODE : SCBLINBBDEL  
MICR : 110036002  
IFSC Code : SCBL0036020

**Please quote our Invoice Number when remitting funds.**

**Our GSTIN : 07AAEFE1763C1ZU**

**HSN Code : 9983**

**HSN Description : Other professional, technical and business services**

**Please quote our following PAN No. on the TDS Certificate to be issued by you.**

**PAN No : AAEFE1763C**

**Signature valid**

Digitally signed  
by ANKIT  
AGARWAL  
Date: 2019.07.08  
22:07:50 +05:30

This is a digitally signed invoice and does not require manual signature

Ernst & Young LLP, a Limited Liability Partnership with LLP Identity No. AAB-4343

A member firm of Ernst & Young Global Limited

Registered Office: 22 Camac Street, Block 'C', 3rd Floor, Kolkata - 700 016

**BARANAGAR MUNICIPALITY**

87, DESHBANDHU ROAD (East)  
KOLKATA - 700035

Memo No: H/106

Date: 06.08.19

To,  
The Director,  
State Urban Development Agency  
HB-305, AB Rd,  
HC Block, Sector III,  
Salt Lake City,  
Kolkata, 700106



Reference - Discussion in the meeting held on 01.08.2019 at UD&MA Dept. on Municipal Solid Waste Management in presence of Hon'ble Minister.

Subject - Regarding Nodal Agency/Nodal Municipality for implementation of S.W.M Project at Promadnagar in Baranagar Municipality.

Sir,

With reference to the above subject, this to draw your attention on 'Transaction advisor DPR'. It was discussed on the meeting that amongst the 7 participant Municipalities, the leading Municipality will be chosen as the 'Nodal Agency' for implementation of the project. This is the right place to mention that, Baranagar Municipality owing the said piece & parcel of the land proposed for the project.

Under these circumstances we like to put forward the proposal, instead of the leading Municipality, SUDA itself may be considered as automatic choice to be the "Nodal Agency" for implementation of project, because it would be easier for SUDA to monitor the total project thoroughly by deputing required number of Engineers for the purpose from their end with the help of all 7 Municipalities i.e participant in the project.

With thanks,

(APARNA MOULIK)

Chairman  
Chairman

Memo No. **BARANAGAR MUNICIPALITY**

Date:

Copy forwarded for information and taking necessary action to -

1. The Principal Secretary, UD&MA Department, Govt. of West Bengal, Nagarayan Bhavan.

(APARNA MOULIK)

Chairman  
Chairman

**BARANAGAR MUNICIPALITY**

AD(SM)  
2019

DD(AD)  
PI.  
8.8.19

**Proceedings of the 1<sup>st</sup> Meeting of Consultancy Tender Evaluation Committee (CTEC)  
on Solid Waste Management  
under Swachh Bharat Mission (U)/Mission Nirmal Bangla (U)**

|   |                         |   |
|---|-------------------------|---|
| <b>Date:</b> August 07, 2019  | <b>Time:</b> 12:00 Noon | <b>Venue:</b> Conference Hall<br>Nagarayan, 5 <sup>th</sup> Floor,<br>Salt Lake City, Kolkata – 700 064<br>UD & MA Department, Govt. of West Bengal |
| <b>Presided by:</b><br><b>Hon'ble Principal Secretary, Urban Development &amp; Municipal Affairs Department</b>   |                         |   |
| <b>Members present in the Meeting:</b> <ol style="list-style-type: none"> <li>1. Chief Legal Advisor, UD &amp; MA Department, Govt. of West Bengal</li> <li>2. Director, State Urban Development Agency (SUDA)</li> <li>3. Financial Advisor &amp; Special Secretary, UD &amp; MA Department, Govt. of West Bengal</li> <li>4. Joint Secretary (SM), UD &amp; MA Department, Govt. of West Bengal and Additional State Mission Director, SBM (U)/MNB (U)</li> <li>5. Joint Secretary (ARM), UD &amp; MA Department, Govt. of West Bengal</li> <li>6. Secretary, Municipal Engineering Directorate</li> <li>7. Chief Engineer-In-Charge, S&amp;SWM, Water &amp; Sanitation Sector, KMDA</li> </ol> |                         |   |

Hon'ble Principal Secretary, Urban Development & Municipal Affairs Department, Government of West Bengal chaired the meeting.


2. The meeting was held for evaluation of the **Request for Proposal (RfP)** document to be floated for selection of Developers for Bio-remediation of Legacy Waste and setting up of Processing and Disposal Facility of Municipal Solid Waste for Cluster – 1, i.e. Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati and New Barrackpore Municipality at Promodnagar, Ward No. 3 of South Dum Dum Municipality and evaluation of the **Concession Agreement** that will be made between the State Government and the 6 Urban Local Bodies, viz. Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati and New Barrackpore Municipality and the Bidder.
3. At the outset, the Director, SUDA, UD & MA Department explained the objective of the meeting and elaborated briefly about the respective project at Promodnagar.
4. The Transaction Advisor, Ernst & Young LLP made a powerpoint presentation on the clauses of **Request for Proposal (RfP)** document and as well as the **agreement** that will be made between the abovementioned six ULBs and the **Concession Agreement** which will be made between the State Government and the 6 Urban Local Bodies, viz. Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati and New Barrackpore Municipality and the Bidder. After threadbare discussion the following changes in the Clauses of the RfP and Agreements to be made, had been exercised:
  - i. At Clause No. 9.1.3 of the Concession Agreement, the yearly escalation of the tipping fee is required to change from 4% to 3%.



- ii. The capacity of the Biogas Plant at Promodnagar is to be changed from 50 TPD to 100 TPD and accordingly capacity of the Compost Plant is required to be change from 569 TPD to 525 TPD, wherever mentioned in the Concession Agreement.
- iii. Provision to be made for early achievement of **Commercial Operations Date** (COD) by offering incentives.
- iv. Land reclamation fee through Bio-remediation is to be fixed at Rs. 750.00/ton, which include the processing of incoming waste during the reclamation period.
- v. Earnest Money Deposit (EMD) is to be fixed at 2%, instead of 1%, as per Government norms.
- vi. Number of members of a Joint Venture/Consortium shall not exceed 3 (three).
- vii. The minimum net worth in the evaluation of the technical criteria shall be considered as the Average Net Worth of last 5 (five) financial years.
- viii. Evaluation of net worth to be marked only as 1 (one) component i.e. 30 marks for equal to or more than 22.5 Crores (Average Net worth).
- ix. Evaluation criteria of past projects to be considered as 1 (one) project of 60% of project capacity and 2 (two) projects having 40% of project capacity during the last 10 (ten) years preceding the Bid Due Date.
- x. Bidding variable to be changed to a single variable i.e. the bidder would quote the tipping fee only.
- xi. A fixed amount of mobilisation advance in the tune of 5% of the Project Cost, i.e. a maximum of Rs. 4,00,00,000.00 (Rupees Four Crore only) may be provided instead of linking it with the project cost percentage.
- xii. The Bank Guarantee (BG) should be payable at Kolkata.
- xiii. Generation of Invoice needs to be rectified highlighting that it should be generated every 5<sup>th</sup> of the month of following/succeeding month.
- xiv. Authority to be replaced by SUDA for payment clauses. All payments to be given by SUDA.
- xv. PMU shall be a centralised body to be formed by SUDA instead of cluster wise.
- xvi. Reclamation fees should be calculated for disbursement after deduction of mobilisation advance further to which the 10% will be held by SUDA as retention for each quarter.
- xvii. Disbursement of tipping fees shall be modified - 80% of the tipping fee as per the monthly running bill shall be given upfront and 20% shall be disbursed after verifying the generation of outputs such as compost/recyclables/biogas etc.
- xviii. Escrow account to be signed by concessionaire and SUDA.

- xix. Rejects from the legacy waste shall be minimized and this shouldn't exceed 50% of total weight of the legacy waste.
- xx. Lead ULB functions shall be defined. Out of the 4 ULB's catering to the Pramod Nagar plant, the lead ULB shall be the South Dum Dum Municipality, whereas amongst the 2 ULB's catering to the Kamarhati plant the lead ULB shall be the Kamarhati Municipality.

The meeting ended with vote of thanks to and from the chair.

  
~~Smt. Debarati Dutta Gupta, WBCS (Exec.)~~  
Director, State Urban Development Agency  
& State Mission Director, SBM (U)/MNB (U)  
UD & MA Department  
Government of West Bengal

# রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ  
 “ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক নং SUDA - 366/2019/ 5753

তারিখ 21/08/2019

From : Director, SUDA and State Mission Director, SBM (U)

To : 1. The Chief Executive Officer, KMDA  
 2. The Secretary, Municipal Engineering Directorate  
 3. The Chief Engineer-In-Charge, S&SWM, W&S Sector, KMDA

Sub.: One-Day Bidder's Conference with respect to implementation of Solid Waste Management Projects in West Bengal scheduled on 22<sup>nd</sup> August 2019 at 6<sup>th</sup> floor of Nagarayan, Salt Lake City, Kolkata from 12 noon – Regd.

Madam/Sir,

The State Urban Development Agency (SUDA), West Bengal is about to initiate bidding process for selection of concessionaires to undertake cluster based Solid Waste Management (SWM) projects in the State. SUDA has selected Ernst & Young as the Transaction Advisor (TA) to assist the State in project structuring and successful bidding. The draft RFPs have been submitted by the TA and are under consideration with the Department. Meanwhile, SUDA has decided to hold a bidder's meet, which will enable the State Government to formulate bidder friendly terms and conditions for effective implementation of SWM Projects in the State.

In this context, SUDA invites Developers/Companies/Firms working across India in the Solid Waste Management sector for a one day bidder's conference to be held on 22<sup>nd</sup> August 2019 at the Conference Hall at 6<sup>th</sup> floor of Nagarayan, DF-8, Sector-I, Salt Lake, Kolkata -700 064 from 12 noon. You are kindly requested to present in the above Conference and give your valuable input; and suggestions on the upcoming projects.

Thanking you.

Yours faithfully,

*[Signature]* 21/8/19  
 Director, SUDA

SUDA - 366/2019/ 5753/1(2)

21/08/2019

Copy forwarded for information to:

1. Jt. Secretary to the Govt. of West Bengal, UD & MA Dept. and Addl. Mission Director, SBM (U)
2. The PA to the Principal Secretary, UD & MA Dept., Govt. of West Bengal

Director, SUDA

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408



## রাজ্য নগর উন্নয়ন সংস্থা

## STATE URBAN DEVELOPMENT AGENCY

“ইলগাস ভবন”, এইচ-সি ব্লক, সেক্টর-৩, বিধাননগর, কলকাতা-৭০০ ১০৬, পশ্চিমবঙ্গ

“ILGUS BHAVAN”, H-C Block, Sector - III, Bidhannagar, Kolkata - 700 106, West Bengal

ক্রমিক সংখ্যা: DA-366/2019 (Pt.)/5305

তারিখ: 06.08.2019

To:

1. Chief Legal Advisor, UD & MA Department, GoWB
2. Financial Advisor & Special Secretary, UD & MA Department, GoWB
3. Joint Secretary (SM), UD & MA Department and Additional State Mission Director, MNB(U)
4. Joint Secretary (ARM), UD & MA Department, GoWB
5. Chief Engineer (TKG), West Bengal Pollution Control Board

**Sub: 1<sup>st</sup> meeting of Consultancy Tender Evaluation Committee on Solid Waste Management**

Sir,

This is to inform you that State Government has constituted a **Consultancy Tender Evaluation Committee on Solid Waste Management** comprising of the following members for scrutiny and evaluation of tender documents and agreement drafted by Transaction Advisors for SWM cluster projects to be developed under PPP model and tender document & legal document to be developed for all other SWM projects:

- Chief Legal Advisor, UD & MA Department, GoWB
- Director, State Urban Development Agency (SUDA)
- Financial Advisor & Special Secretary, UD & MA Department, GoWB
- Joint Secretary (SM), UD & MA Department and Additional State Mission Director, MNB(U)
- Joint Secretary (ARM), UD & MA Department, GoWB
- Secretary, MED
- Chief Engineer (TKG), West Bengal Pollution Control Board
- Chief Engineer-in-charge, S&SWM, W&S sector, KMDA

The 1<sup>st</sup> meeting of the committee has been scheduled on 07.08.2019 at 12 noon in the Conference Hall of 5<sup>th</sup> floor of Nagarayan, Bidhannagar.

You are requested kindly to make it convenient to attend the meeting on the above mentioned date, time and venue.

**Agenda of the Meeting:**

1. Evaluation of RfP document on selection of developers for Bio-remediation of legacy waste and setting up processing and disposal facility of municipal solid waste of promodnagar (copy enclosed)
2. Evaluation of document on Concessional Agreement between State Government & 6 ULBs with the bidder. (copy enclosed)
3. Miscellaneous

Yours faithfully



(Director)

দূরভাষ : ২৩৫৮ ৬৪০৩ / ৫৭৬৭, ফ্যাক্স : ২৩৫৮ ৫৮০০

Tel : 2358 6403/5767, Fax : 2358 5800, E-mail : wbsudadir@gmail.com

Account Section : 2358 6408

SUDA-366/2019 (Pt.)/5305/1(1)

Date. 06.08.2019

Copy forwarded for kind information to:

P.S. to the Principal Secretary, UD& MA Department, GoWB.- with request to place it before the Principal Secretary

*sd/ 6/8/19*  
(Director)

**Sub: Constitution of Consultancy Tender Evaluation Committee on Solid Waste Management.**

It may kindly be recall that the Transaction Advisor Ernst & Young has been appointed for planning of scientific solid waste management through Cluster approach and bid process management selection of O & M Agency/s for 6(six) ULBs of Promodnagar cluster – North Dum Dum, South Dum Dum, Dum Dum, Baranagar, New Barrackpore and Kamarhati.

The TA has submitted the following two documents:

1. RfP document on selection of developers for Bio-remediation of legacy waste and setting up processing and disposal facility of municipal solid waste of promodnagar (Flag-A)
2. Document on Concessional Agreement between State Government & 6 ULBs with the bidder. (Flag-B)

Now, for scrutiny and evaluation of tender documents and agreement drafted/ to be drafted by Transaction Advisors for SWM cluster projects to be developed under PPP model and tender document & legal document to be developed for all other SWM projects, a Consultancy Tender Evaluation Committee on Solid Waste Management may be constituted.

Placed for kind approval.

If approved, the committee may be constituted with the following members:

1. Chief Legal Advisor, UD & MA Department, GoWB
2. Director, State Urban Development Agency (SUDA)
3. Financial Advisor & Special Secretary, UD & MA Department, GoWB
4. Joint Secretary (SM), UD & MA Department and Additional State Mission Director, MNB(U)
5. Joint Secretary (ARM), UD & MA Department, GoWB
6. Chief Engineer (TKG), West Bengal Pollution Control Board
7. Secretary ME DE. S. Chief Engineer (SAM) KMDA.

If approved, the first meeting of the committee may be convened on 07.08.2019 at 12 Noon in the Conference Hall of 5<sup>th</sup> Floor of Nagarayan for Scrutiny and Evaluation of the above mentioned two documents prepared for Promodnagar cluster project by Ernst & Young.

If approved, a draft letter is placed for kind approval.

*Sujay Mitra* 6.8.19  
(Sujay Mitra)

Chief Manager – Planning & Monitoring

Addl. SMD, MNB(U)

Director

Proposal above may kindly be approved.

*[Signature]* 6.8.19.



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NOTE SHEET

SUDA

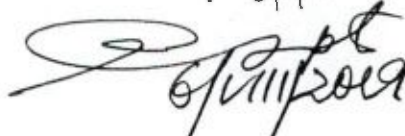
Proposal in prepage for formation of CTEC may kindly be approved.

The first meeting of CTEC may be convened on 7.8.19 at 12 noon, if approved.

Pr. Secretary  
UD & M&S&T.

Director, SUDA

sd/ 6/8/19

  
6/8/2019

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 606/2018

Compliance of Municipal Solid Waste Management Rules, 2016  
(State of West Bengal)

Date of hearing: 02.04.2019/

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

For Respondent (s):

Mr. Malay Kumar Dey, Chief Secretary, Government of West Bengal, Mr. Indavar Pandey, ACS, Government of West Bengal, Mr. Nayaran Swarup Nigam, Transport Secretary, Dr. Krishna Gupta, Resident Commissioner, Mr. Sanjay Bansal, CEO, KMDA, Mr. Niraj Singhal, Member, WBPCB, Dr. Kalyan Rudra, Chairman, WBPCB, Dr. Tapas Gupta, Chief Engineer, WBPCB  
Mr. Raja Chatterjee, Mr. Piyush Sachdev, Mr. Adeel Ahmed, Ms. Runamoni Bhuyan and Ms. Abhinandini Yadav, Advocates

**ORDER**

1. The issue for consideration is status of compliance of orders of this Tribunal on the subject of solid waste management and allied issues.

**I. PROCEEDINGS IN ALMITRA PATEL:**

2. The matter arose before this Tribunal on transfer of proceedings in Writ Petition No. 888/1996, *Almitra H. Patel Vs. Union of India & Ors.*, by the Hon'ble Supreme Court, vide order dated 02.09.2014.
3. We may note that the issue has been subject matter of consideration before the Hon'ble Supreme Court in several proceedings, including in *Municipal Council, Ratlam vs. Vardhichand*<sup>1</sup> and *B.L. Wadhera v. Union of India and Ors.*<sup>2</sup>. It has been categorically laid down that clean environment is fundamental right of citizens under Article 21 and it is for the local bodies as well as the State to ensure that public health is

<sup>1</sup> (1980) 4 SCC 162

<sup>2</sup> (1996) 2 SCC 594

preserved by taking all possible steps. For doing so, financial inability cannot be pleaded.

4. The Hon'ble Supreme Court had appointed Barman Committee which gave report on 06.01.1998 and it was duly accepted. The same led to draft for management of MSW Rules, 1999 which were replaced by 2000 Rules and are now succeeded by 2016 Rules. The Hon'ble Supreme Court gave directions for proper management of municipal solid waste, *inter-alia*, vide orders dated 24.08.2000, 04.10.2004, 15.05.2007 and 19.07.2010.
5. All the States were parties before the Hon'ble Supreme Court and draft action plans were prepared which were to be updated, as per revised Rules.
6. It has been observed by the Hon'ble Supreme Court in *Almitra H. Patel and Anr. v. Union of India and Ors.*<sup>3</sup> that the local authorities constituted for providing services to the citizens are lethargic and insufficient in their functioning which is impermissible. Non-accountability has led to lack of effort on the part of the employees. Domestic garbage and sewage along with poor drainage system in an unplanned manner contribute heavily to the problem of solid waste. The number of slums of multiplied significantly occupying large areas of public land. Promise of free land attracts more land grabbers. Instead of "slum clearance" there is "slum creation" in cities which is further aggravating the problem of domestic waste being strewn in the open. Accordingly, the Court directed that provisions pertaining to sanitation and public health under the DMC Act, 1957, the New Delhi Municipal Council Act, 1994 and Cantonments Act, 1994 be complied with, streets and public premises be cleaned daily, statutory authorities levy and recover charges from any person violating laws and ensure scientific disposal of waste, landfill sites be identified

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<sup>3</sup> (2000) 2 SCC 678



keeping in mind requirement of the city for next 20 years and environmental considerations, sites be identified for setting up of compost plants, steps be taken to prevent fresh encroachments and compliance report be submitted within eight weeks.

7. The Hon'ble Supreme Court again in *Almitra H. Patel and Anr. v. Union of India and Ors.*<sup>4</sup> while further reviewing the progress noted the following suggestions for consideration by the State Governments and Central Government and SPCBs/PCCs:-

"1. As a result of the Hon'ble Supreme Court's orders on 26.7.2004, in Maharashtra the number of authorizations granted for solid waste management (SWM) has increased from 32% to 98%, in Gujarat from 58% to 92% and in M.P. from NIL to 34%. No affidavits at all have been received from the 24 other States/UTs for which CPCB reported NIL or less than 3% authorisations in February 2004. All these States and their SPCBs can study and learn from Karnataka, Maharashtra and Gujarat's successes.

2. All States/UTs and their SPCBs/PCCs have totally ignored the improvement of existing open dumps, due by 31.12.2001, let alone identifying and monitoring the existing sites. Simple steps can be taken immediately at almost no cost by every single ULB to prevent monsoon water percolation through the heaps, which produces highly polluting black run-off(leachate). Waste heaps can be made convex to eliminate standing water, upslope diversion drains can prevent water inflow, downslope diversion drains can capture leachate for recirculation onto the heaps, and disused heaps can be given soil cover for vegetative healing.

3. Lack of funds is no excuse for inaction. Smaller towns in every State should go and learn from Suryapet in A.P. (population 103,000) and Namakkal in T.N. (population 53,000) which have both seen dustbin-free 'zero garbage towns' complying with the MSW Rules since 2003 with no financial input from the State or the Centre, just good management and a sense of commitment.

4. States seems to use the Rules as an excuse to milk funds from the Centre, by making that a precondition for action and inflating waste

<sup>4</sup> (2004) 13 SCC 538

processing costs 2-3 fold. The Supreme Court Committee recommended 1/3 contribution each from the city, State and Centre. Before seeking 70-80% Centre's contribution, every State should first ensure that each city first spends its own share to immediately make its wastes non-polluting by simple sanitizing/stabilizing, which is always the first step in composting viz. inoculate the waste with cow dung solution or bio culture and placing it in windrows (long heaps) which are turned at least once or twice over a period of 45 to 60 days.

5. Unless each State creates a focused 'solid waste management cell' and rewards its cities for good performance, both of which Maharashtra has done, compliance with the MSW Rules seems to be an illusion.

6. The admitted position is that the MSW Rules have not been complied with even after four years. None of the functionaries have bothered or discharged their duties to ensure compliance. Even existing dumps have not been improved. Thus, deeper thought and urgent and immediate action is necessary to ensure compliance in future."

8. After transfer of proceedings to this Tribunal on 02.09.2014, the matter was taken up from time to time and several directions were issued. Finally vide order dated 22.12.2016, after noticing that the SWM Rules, 2016 had been notified on 08.04.2016 which laid down elaborate mechanism to deal with the solid waste management, the Tribunal directed as follows:

- "1. Every State and Union Territory shall enforce and implement the Solid Waste Management Rules, 2016 in all respects and without any further delay.
2. The directions contained in this judgment shall apply to the entire country. All the State Governments and Union Territories shall be obliged to implement and enforce these directions without any alteration or reservation.
3. All the State Governments and Union Territories shall prepare an action plan in terms of the Rules of 2016 and the directions in this judgment, within four weeks from the date of pronouncement of the judgment. The action plan would relate to the management and disposal of waste in the entire State. The steps are required to be taken in a time

bound manner. Establishment and operationalization of the plants for processing and disposal of the waste and selection and specifications of landfill sites which have to be constructed, be prepared and maintained strictly in accordance with the Rules of 2016.

4. The period of six months specified under Rule 6(b), 18, 23 of the Rules of 2016 has already lapsed. All the stakeholders including the Central Government and respective State Governments/UTs have failed to take action in terms thereof within the stipulated period. By way of last opportunity, we direct that the period of six months shall be reckoned w.e.f. 1<sup>st</sup> January, 2017. There shall be no extension given to any stakeholders for compliance with these provisions any further.

The period of one year specified under Rule 11(f) 12(a), 15(e), 22(1) and 22(2) has lapsed. The concerned stakeholders have obviously not taken effective steps in discharging their statutory obligations under these provisions. Therefore, we direct that the said period of one year shall commence with effect from 1<sup>st</sup> July, 2017. For this also, no extension shall be provided.

Any State or Union Territory which now fails to comply with the statutory obligations as afore indicated shall be liable to be proceeded against in accordance with Section 15 of the Environment (Protection) Act, 1986. Besides that, it would also be liable to pay environmental compensation, as may be imposed by this Tribunal. In addition to this, the senior most officer in-charge in the State Government/Urban Local Body shall be liable to be personally proceeded against for violation of the Rules and orders passed by this Tribunal.

5. The Central Government, State Government, Local Authorities and citizens shall perform their respective obligations/duties as contemplated under the Rules of 2016, now, without any further delay or demur.
6. All the State Governments, its departments and local authorities shall operate in complete co-ordination and cooperation with each other and ensure that the solid waste generated in the State is managed, processed and disposed of strictly in accordance with the Rules of 2016.
7. Wherever a Waste to Energy plant is established for processing of the waste, it shall be ensured that there is mandatory and proper segregation prior to incineration relatable to the quantum of the waste.
8. It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The



*purpose of the buffer zone should be to segregate the plant by means of a green belt from surrounding areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory.*

*We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case to case basis.*

9. *We direct that the Committees constituted under Rule-5 would meet at least once in three months and not once in a year as stipulated under the Rules of 2016. The minutes of the meeting shall be placed in the public domain. Directions, on the basis of the minutes, shall be issued immediately after the meeting, to the concerned States, local bodies, departments and Project Proponents.*
10. *The State Government and the local authorities shall issue directives to all concerned, making it mandatory for the power generation and cement plants within its jurisdiction to buy and use RDF as fuel in their respective plants, wherever such plant is located within a 100 km radius of the facility.*

*In other words, it will be obligatory on the part of the State, local authorities to create a market for consumption of RDF. It is also for the reason that, even in Waste to Energy plants, Waste-RDF-Energy is a preferred choice.*
11. *In Waste to Energy plant by direct incineration, absolute segregation shall be mandatory and be part of the terms and conditions of the contract.*
12. *The tipping fee, wherever payable to the concessionaire/operator of the facility, will not only be relatable to the quantum of waste supplied to the concessionaire/operator but also to the efficient and regular functioning of the plant. Wherever, tipping fee is related to load of the waste, proper computerised weighing machines should be connected to the online system of the concerned departments and local authorities mandatorily.*
13. *Wherever, the waste is to be collected by the concessionaire/operator of the facility, there it shall be obligatory for him to segregate inert and C&D waste at source/collection point and then transport it in accordance with the Rules of 2016 to the identified sites.*
14. *The landfill sites shall be subjected to bio-stabilisation within six months from the date of*

*pronouncement of the order. The windrows should be turned at regular intervals. At the landfill sites, every effort should be made to prevent leachate and generation of Methane. The stabilized waste should be subjected to composting, which should then be utilized as compost, ready for use as organic manure.*

- 15. Landfills should preferably be used only for depositing of inert waste and rejects. However, if the authorities are compelled to use the landfill for good and valid reasons, then the waste (other than inert) to be deposited at such landfill sites be segregated and handled in terms of Direction 13.*
- 16. The deposited non-biodegradable and inert waste or such waste now brought to land fill sites should be definitely and scientifically segregated and to be used for filling up of appropriate areas and for construction of roads and embankments in all road projects all over the country. To this effect, there should be a specific stipulation in the contract awarding work to concessionaire/operator of the facility.*
- 17. The State Government, Local Authorities, Pollution Control Boards of the respective States, Pollution Control Committees of the UTs and the concerned departments would ensure that they open or cause to be opened in discharge of Extended Producer Responsibility, appropriate number of centers in every colony of every district in the State which would collect or require residents of the locality to deposit the domestic hazardous waste like fluorescent tubes, bulbs, batteries, electronic items, syringe, expired medicines and such other allied items. Hazardous waste, so collected by the centers should be either sent for recycling, wherever possible and the remnant thereof should be transported to the hazardous waste disposal facility.*
- 18. We direct MoEF&CC, and the State Governments to consider and pass appropriate directions in relation to ban on short life PVC and chlorinated plastics as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.*
- 19. The directions and orders passed in this judgment shall not affect any existing contracts, however, we still direct that the parties to the contract relating to management or disposal of waste should, by mutual consent, bring their performance, rights and liabilities in consonance with this judgment of the Tribunal and the Rules of 2016. However, to all the concessionaire/operators of facility even under process, this judgment and the Rules of 2016 shall completely and comprehensively apply.*

20. We specifically direct that there shall be complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning. Environmental compensation shall be recovered as arrears of land revenue by the competent authority in accordance with law.
21. All the local authorities, concessionaire, operator of the facility shall be obliged to display on their respective websites the data in relation to the functioning of the plant and its adherence to the prescribed parameters. This data shall be placed in the public domain and any person would be entitled to approach the authority, if the plant is not operating as per specified parameters.
22. We direct the CPCB and the respective State Boards to conduct survey and research by monitoring the incidents of such waste burning and to submit a report to the Tribunal as to what pollutants are emitted by such illegal and unauthorized burning of waste.
23. That the directions contained in the judgment of the Tribunal in the case of 'Kudrat Sandhu Vs. Govt. of NCT & Ors', O.A. No. 281 of 2016, shall *mutatis mutandis* apply to this judgment and consequently to all the stakeholders all over the country.
24. That any States/UTs, local authorities, concessionaires, facility operators, any stakeholders, generators of waste and any person who violates or fails to comply with the Rules of 2016 in the entire country and the directions contained in this judgment shall be liable for penal action in accordance with Section-15 of the Environment (Protection) Act, 1986 and shall also be liable to pay environmental compensation in terms of Sections 15 & 17 of the National Green Tribunal Act, 2010 to the extent determined by the Tribunal.
25. That the State Governments/UTs, public authorities, concessionaire/operators shall take all steps to create public awareness about the facilities available, processing of the waste, obligations of the public at large, public authorities, concessionaire and facility operators under the Rules and this judgment. They shall hold program for public awareness for that purpose at regular intervals. This program should be conducted in the local languages of the concerned States/UTs/Districts.



26. *We expect all the concerned authorities to take note of the fact that the Rules of 2016 recognize only a landfill site and not dumping site and to take appropriate actions in that behalf.*
27. *We further direct that the directions contained in this judgment and the obligations contained under the Rules of 2016 should be circulated and published in the local languages.*
28. *Every Advisory Committee in the State shall also act as a Monitoring Committee for proper implementation of these directions and the Rules of 2016.*
29. *Copy of this judgment be circulated to all the Chief Secretaries/Advisers of States/UTs by the Registry of the Tribunal. The said authorities are hereby directed to take immediate steps to comply with all the directions contained in this judgment and submit a report of compliance to the Tribunal within one month from the date they receive copy of this judgment."*

## **II. PREVIOUS PROCEEDINGS IN PRESENT MATTER:**

9. The Tribunal in a review meeting on the administrative side with the CPCB and municipal solid waste management experts, on 23.07.2018 considered the matter in the light of annual report prepared by the CPCB in April 2018 under Rule 24 of the MSW Rules and noticed serious deficiencies. Accordingly, it was decided to take up the issue of execution of judgment dated 22.12.2016 in *Mrs. Almitra H. Patel & Anr. Vs. Union of India & Ors (supra)*, by way of interaction with all the States/UTs through video conferencing. For this purpose, meetings were held on 02.08.2018, 07.08.2018, 08.08.2018, 13.08.2018 and 20.08.2018.
10. At the conclusion of the interaction, the Tribunal declared that the mandatory provision of the Rules and directions should be implemented in a time bound manner. Following specific steps were required to be taken:
  - i. Action plans were to be submitted by all the States to CPCB latest by 31.10.2018 and executed in the outer deadline of 31.12.2019 which should be overseen by the Principal Secretaries of Urban and Rural Development Departments of the States.

- ii. The States should have Monitoring Committees headed by the Secretary, Urban Development Department with the Secretary of Environment Department as Members and CPCB and State Pollution Control Boards (SPCBs) assisting the Committees.
- iii. They should have interaction with the local bodies once in two weeks.
- iv. Local bodies are to furnish their reports to State Committees twice a month.
- v. The State Committees may take a call on technical and policy issues.
- vi. Local bodies may have suitable nodal officers. Bigger local bodies may have their own Committees headed by Senior Officers.
- vii. Public involvement may be encouraged and status of the steps taken be put in public domain.
- viii. The State Level Committees are to give their reports to the Regional Monitoring Committees on monthly basis.<sup>5</sup>
- ix. Instead of every local body separately floating tenders, the standardized technical specifications be involved and adopted.<sup>6</sup>
- x. Best practices may be adopted, including setting up of Control Rooms where citizens can upload photos of garbage which may be looked into by the specified representatives of local bodies, at local level as well as State level.
- xi. It was directed that mechanism be evolved for citizens to receive and give information.
- xii. CCTV cameras be installed at dumping sites.
- xiii. GPS be installed in garbage collection vans. This may be monitored appropriately.<sup>7</sup>

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<sup>5</sup> Para 21

<sup>6</sup> Para 22

<sup>7</sup> Para 23

11. Performance audit was to be conducted for 500 ULBs with population of 1 lakh and above initially, as suggested by the MoHUA as follows:

|    | <b>Key Parameters/Indicators</b>   | <b>Description of Parameters/Indicators for physical evaluation</b>   |
|----|--|---|
| 1  | <b>Door to Door Collection</b>   | Door to door collection of segregated solid waste from all households including slums and informal settlements, commercial, institutional and other non-residential premises.<br>Transportation in covered vehicles to processing or disposal facilities  |
| 2  | <b>Source Segregation</b>  | Segregation of waste by households into Biodegradable, non-biodegradable, domestic hazardous.   |
| 3  | <b>Litter Bins &amp; Waste Storage Bins</b>  | <ul style="list-style-type: none"> <li>• Installation of Twin-bin/ segregated litter bins in commercial &amp; public areas at every 50-100 meters.</li> <li>• Installation of Waste storage bins in strategic locations across the city, as per requirement (Unless Binless)</li> <li>• Elimination of Garbage Vulnerable Points .</li> </ul> |
| 4  | <b>Transfer Stations</b>   | Installation of Transfer Stations instead of secondary storage bins in cities with population above 5 lakhs.  |
| 5  | <b>Separate transportation</b>   | <ul style="list-style-type: none"> <li>• Compartmentalization of vehicles for the collection of different fractions of waste.</li> <li>• Use of GPS in collection and transportation vehicles to be made mandatory at least in cities with population above 5 lakh along with the publication of route map.</li> </ul>                        |
| 6  | <b>Public Sweeping</b>   | <ul style="list-style-type: none"> <li>• All public and commercial areas to have twice daily sweeping, including night sweeping and residential areas to have daily sweeping.</li> </ul>  |
| 7  | <b>Waste Processing</b> <ul style="list-style-type: none"> <li>• Wet Waste</li> <li>• Dry Waste</li> <li>• MRF Facility</li> </ul> | <ul style="list-style-type: none"> <li>• Separate space for segregation, storage, decentralised processing of solid waste to be demarcated</li> <li>• Establishing systems for home/decentralised and centralised composting</li> <li>• Setting up of MRF Facilities.</li> </ul>  |
| 8  | <b>Scientific Landfill</b>   | <ul style="list-style-type: none"> <li>• Setting up common or regional sanitary landfills by all local bodies for the disposal of permitted waste under the rules</li> <li>• Systems for the treatment of legacy waste to be established.</li> </ul>  |
| 9  | <b>C&amp;D Waste</b>   | Ensure separate storage, collection and transportation of construction and demolition wastes.   |
| 10 | <b>Plastic Waste</b>   | Implementation of ban on plastics below <50 microns thickness and single use plastics.  |
| 11 | <b>Bulk Waste Generators (BWGs)</b>  | Bulk waste generators to set up decentralized waste processing facilities as per SWM Rules, 2016.   |



|    |   |   |
|----|---|---|
| 12 | <b>RDF</b>  | Mandatory arrangements have to be made by cement plants to collect and use RDF, from the RDF plants, located within 200 kms.  |
| 13 | <b>Preventing solid waste from entering into water bodies</b> | Installation of suitable mechanisms such as screen mesh, grill, nets, etc. in water bodies such as nallahs, drains, to arrest solid waste from entering into water bodies.  |
| 14 | <b>User Fees</b>  | Waste Generators paying user fee for solid waste management, as specified in the bye-laws of the local bodies.  |
| 15 | <b>Penalty provision</b>                                      | Prescribe criteria for levying of spot fine for persons who litters or fails to comply with the provisions of these rules and delegate powers to officers or local bodies to levy spot fines as per the byelaws framed. |
| 16 | <b>Notification of Bye Laws</b>                               | Frame bye-laws incorporating the provisions of MSW Rules, 2016 and ensuring timely implementation.  |
| 17 | <b>Citizen Grievance Redressal</b>                            | Resolution of complaints on Swachhata App within SLA.   |
| 18 | <b>Monitoring mechanism</b>                                   | States/ULBs to update month wise targets/action plans on the online MIS.  |

12. The Regional Committees were to be headed either by former High Court Judges or by Senior Retired Officers and Apex Committees by a former Supreme Court Judge.<sup>8</sup> Common problems faced and suggestions were to be noted in tabular chart.<sup>9</sup> The Committees were to function for a period of one year subject to further orders.<sup>10</sup>
13. The matter was again taken up on 16.01.2019 in light of reports received from some of the Committees, especially from the State of Uttar Pradesh.
14. It was noticed that timeline of two years had expired which was the period prescribed for steps 1 to 7 under Rule 22 and three years is to expire on 08.04.2019 which covers steps upto serial number 10. Since violation of Rules are statutory offences under the Environment (Protection) Act, 1986 and results in deterioration of environment, affecting the life of the citizens, it was noted that the authorities may be made accountable for their lapses and required to furnish performance

<sup>8</sup> Paras 18 and 20

<sup>9</sup> Para 14

<sup>10</sup> Para 18

guarantee for compliance or pay damages as had been directed in some of the cases.<sup>11</sup>

15. The Tribunal noted that solid waste management is of paramount importance for protection of environment, as the statistics paint a dismal picture of the environment in the country. The Tribunal had also referred to proceedings before it, relating to 351 polluted river stretches 102 non-attainment cities in terms of ambient air quality and 100 industrial clusters which are critically polluted as per data available with CPCB. The Tribunal had taken cognizance of such serious environmental issues and required the respective States to prepare time bound action plans and execute the same so as to restore water and air quality, as per prescribed norms.<sup>12</sup>
16. The Tribunal also noted that there was a need to conduct performance audit of statutory regulators so that they are manned by competent as well as credible persons and there is a regime of their accountability, as

<sup>11</sup> Para 20. Cases referred to in the said para are as follows:

- (a). All India Lokadhikar Sangathan vs. Govt of NCT Delhi & Anr, E.A No. 11/2017, Date of Order 16.10.2018;
- (b). Sobha Singh vs. State of Punjab & Ors. O.A. No. 916/2018, Date of Order 14.11.2018;
- (c). Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors. O.A No. 110 (THC)/2012, Date of Order 04.01.2019;
- (d). Ms. Ankita Sinha vs. State of Maharashtra & Ors. O.A. No. 510/2018, Date of Order 30.10.2018,
- (e). Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018, Date of Order 04.09.2018;
- (f). Court on its Own Motion vs. State of Karnataka, O.A. No. 125/2017, Date of Order 06.12.2018.

<sup>12</sup> Para 21. Cases referred to in the said para are as follows:

- O.A. No. 110 (THC)/2012-Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors.
- O.A. No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" dated 20.09.2018: wherein the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.
- Original Application No. 681/2018, News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018: wherein the Tribunal directed Action Plans to be prepared for the 102 non-attained cities to bring the standards of air quality within the prescribed norms.
- Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018: wherein the Tribunal directed preparation of time bound Action Plans to ensure that all industrial clusters comply with the parameters laid down in Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 dated 31.08.2018: wherein the Tribunal constituted Apex and Regional Monitoring Committees for effective implementation of MSW Rules, 2016.

observed by Hon'ble Supreme Court. Failure to do so would be disastrous for the health of the citizens and defeat the very purpose of regulatory regime manned to protect the environment. Accordingly it was held that the issues being interconnected, an integral approach was required in the matter for sustainable development. Coordination was required with different authorities of the State, which was not possible without involvement of the Chief Secretaries.<sup>13</sup>

17. The Tribunal also considered its experience of administrative interaction held on the subject on 04.12.2018 with the Committees appointed and found that the mechanism had not become as effective as expected.<sup>14</sup>
18. The Tribunal accordingly modified the mechanism of Committees. For the States, Member Secretaries of the SPCBs were made the Convener of the Committees. Secretaries of Urban Development, Local Bodies, Local Self-Government, Environment, Rural Development Health and representatives of CPCB, wherever CPCB office is existing were to be Members. The Committees were to work for six months or as may be considered necessary.<sup>15</sup>

<sup>13</sup> Paras 21 to 25. Cases referred to in the said paras are as follows:

- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors, O.A. No.95/2018.
- [https://niti.gov.in/writereaddata/files/new\\_initiatives/presentation-on-CWMI.pdf](https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf)- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-andenvironment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece>- Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbaiworse-than-beijing-who/story-m4JFT063r7x4Ti8ZbHF7mM.html>- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; [http://www.un.org/waterforlifedecade/pdf/global\\_drinking\\_water\\_quality\\_index.pdf](http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf)- WHO Water Quality Index .
- News Item published in 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15" O.A. No. 681/2018- <http://www.greentribunal.gov.in/DisplayFile.aspx>
- <https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022>.
- Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018 Order dated 04.09.2018
- Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Ors. O.A. No. 176/2015, order dated 3.1.2019
- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors O.A. No.95/2018, order dated 11.01.2019.

<sup>14</sup> Para 26.

<sup>15</sup> Para 28. Cases referred to in the said para are as follows:

- See order dated 198.9.2018 of this Tribunal in O.A No. 606/2018 to the effect that the non-official Chairperson will be paid consolidated amount equal to basic pay of the post held by the incumbent. A former Judge of Hon'ble Supreme Court will be entitled to Rs.



19. The Committees constituted under the Rules were to work in tandem with the Committees constituted by the Tribunal. The CPCB was to prepare Standard Operating Procedure (SOP) for implementation of Clause J for dealing with the legacy waste. The Collectors were to have monthly meetings, as per Rule 12 and submit reports to State Urban Development Departments, with a copy to State Level Committees.<sup>16</sup>
20. Every State was to constitute a Special Task Force (STF) in each District with four members – one each nominated by the District Magistrate, Superintendent of Police, Regional Officer of the SPCBs and the District Legal Services Authority (DLSA) for awareness by involving educational, religious and social organizations, including local Eco-clubs. This was also to apply with regard to awareness in respect of other connected issues i.e. polluted rivers, air pollution, etc. In this regard, reference was made to directions of the Hon'ble Supreme Court requiring such awareness programmes to be undertaken.<sup>17</sup>
21. The Tribunal also referred to its order dated 19.12.2018, in Original Application No. 673/2018, for laying down scale of compensation to be recovered from each State/UT in failing to carry out directions of this Tribunal on the issue of preparing action plans for river stretches.

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2.50 Lakhs per month. A former Judge of the High Court will be paid Rs. 2.25 Lakhs per month. On same pattern, remuneration may be fixed for any other retired Member.

- E.A. No.32/2016 order dated 15.11.2018- Clarifying that while the State may provide the logistics and other facilities, the financial aspects may be taken care of by the State Pollution Control Boards/Committees. The financial aspects will include the remuneration or other incidental expenses which may be increased with a view to effectively execute the directions of this Tribunal. Such expenses may include secretarial assistance, travel as well as cost incurred for any technical assistance.
- Apart from remuneration, all actual expenses incurred in taking assistance for secretarial working will be reimbursed by concerned PCB as already directed vide order dated 17.12.2018 E.A. No.32/2016, Amresh Singh v. Union of India & Ors.

<sup>16</sup> Para 32.

<sup>17</sup> Paras 35 and 36. Cases referred to in the said paras are as follows:

- O.A. No. 138/2016 order dated 27.08.2018
- O.A.No. 673/2018, order dated 20.09.2018
- Suo Moto Application No. 290/2017, order dated 24.10.2018
- O.A. No. 200/2014 order dated 29.11.2018
- (2004)1 SCC 571
- (2005)5 SCC 733

Similar pattern was proposed in case of failing to carry out directions in the present case.<sup>18</sup>

22. The Chief Secretaries of all the States and UTs were required to appear in person and be ready on the following specific points:

- a. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas.*
- b. Status of functioning of Committees constituted by this order.*
- c. Status of the Action Plan in compliance vide order dated 20.09.2018 in the News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (Original Application No. 673/2018).*
- d. Status of functioning of Committees constituted in News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018.*
- e. Status of Action Plan with regard to identification of polluted industrial clusters in O.A. No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018.*
- f. Status of the work in compliance of the directions passed in O.A. No. 173 of 2018, Sudarsan Das v. State of West Bengal & Ors. Order dated 04.09.2018.*
- g. Total amount collected from erring industries on the basis of 'Polluter Pays' principle, 'Precautionary principle' and details of utilization of funds collected.*
- h. Status of the identification and development of Model Cities and Towns in the State in the first phase which can be replicated later for other cities and towns of the State."*

<sup>18</sup> Para 38. Cases referred to in the said para are as follows:

- Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors O.A. No. 110(THC)/2012.
- News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (O.A. No. 673/2018) vide order dated 19.12.2018- wherein this Tribunal held that compensation for damage to the environment will be payable by each of the States/ UTs at the rate of Rs. One Crore per month for each of the Priority- I and Priority- II stretches, Rs. 50 lacs per month for stretches in Priority- III and Rs. 25 lacs per month each for Priority- IV and Priority- V stretches.

23. It was also directed that they may not nominate other officer for appearance before this Tribunal. However, they may seek change of date, with advance intimation.<sup>19</sup>
24. Further direction was for the State to display on their respective websites the progress made on the above issues.<sup>20</sup> Under Rule 14, the CPCB was directed to coordinate with the Committees.<sup>21</sup>
25. Accordingly, Chief Secretaries/Advisor of Himachal Pradesh, Haryana, Punjab, Delhi, Bihar, Odisha and Chandigarh have already appeared before this Tribunal on 05.03.2019, 06.03.2019, 07.03.2019, 11.03.2019, 15.03.2019, 26.03.2019 and 26.03.2019 respectively and their reports were duly considered. Directions have been given for further course of action and they have been directed to appear in person again with status of compliance and progress after six months. This has become necessary to ensure that environment protection and restoration is given highest priority in view of serious challenge posed by deteriorated environment and large scale violations which are not satisfactorily dealt with by the administrative machinery of the Government. The Tribunal hopes and expects that continued involvement of Chief Secretaries/Advisor will result in improvement of the situation and lead to better protection of quality of air, water and environment and help public health.

### **III. PRESENT PROCEEDINGS:**

26. In pursuance of above, Shri Malay Kumar Dey, Chief Secretary, State of West Bengal is present in person.
27. An action taken report has been furnished vide e-mail dated 01.04.2019 on behalf of the State of West Bengal indicating status of compliance of order dated 16.01.2019. The compliance report indicates some of the

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<sup>19</sup> Paras 40 and 41

<sup>20</sup> Para 42

<sup>21</sup> Para 45



steps taken for solid waste management. Status of compliance of Plastic Waste Management Rules, 2016, Bio-medical Waste Management Rules, 2016, polluted river stretches, polluted industrial clusters, air polluted cities and illegal mining have also been mentioned.

28. From perusal of the compliance report and after hearing submissions of the State, we find that steps required to be taken under Rule 22 of the Solid Waste Management Rules, 2016 have not yet been completed. It is not clear whether the local bodies have submitted their annual reports to the State Pollution Control Board (SPCB) under Rule 24 and whether SPCB has submitted consolidated annual report to the Central Pollution Control Board (CPCB) under the said Rules. We have also found the steps taken for plastic waste management and bio-medical waste management to be inadequate.
29. From the compliance report furnished by the Chief Secretary, huge gap is noticed in the steps taken and the steps required to be taken in terms of the Rules and for ensuring sustainable development. Unless such steps are taken, the unsatisfactory state of environment in the country in general and in the State in particular may not improve.
30. As per one of the report in public domain, West Bengal treats only 49 per cent of the waste water before dumping it in the Ganga. The inefficiency of sewage treatment plants (STPs) in West Bengal are not effective. The State generates 1,311 million litres a day (mld) of waste water. While the 34 STPs in state have a total installed capacity of 457 mld, their actual utilisation is only 214 mld, which is only 49 per cent. Of 1,311 mld of waste water, 47 per cent is generated by Kolkata alone.<sup>22</sup> Arsenic toxicity in groundwater affecting major parts of the Bengal Basin covering

<sup>22</sup> <https://www.downtoearth.org.in/news/west-bengal-discharges-over-50-waste-water-untreated-into-ganga-42970>

Bangladesh and southern West Bengal.<sup>23</sup> It was found that out of the 341 blocks in West Bengal, ground water in 81 blocks was contaminated with arsenic and in 49 blocks with fluoride.<sup>24</sup> Some of contamination may possibly be geogenic.

31. Studies show that Bengal has the highest air pollution-related deaths among states in the mid socio-demographic index (SDI).<sup>25</sup> The ambient air quality monitoring has shown 61 per cent increase in particulate matter in just four years (2010 to 2013). The levels exceed standards by 2.7 times. NO<sub>2</sub> levels exceed by close to two times.<sup>26</sup>
32. It is reported that large tractors, diggers and trucks can be seen lined along many of the rivers in West Bengal. Indiscriminate sand mining has devastating effect on the environment. Its impacts can reduce river water flow.<sup>27</sup> Illegal lifting of sand from Subarnarekha river bed near Jaleswar town has emerged as a major cause of concern for the locals. Sand mafia from West Bengal are engaged in lifting sand from the river bed even as the local administration remains a mute spectator.<sup>28</sup>
33. About 90 per cent of the municipal solid waste generated in Bengal every day is dumped in the open in violation of statutory pollution laws, raising the stink of alleged collusion with recycling rackets that have found a fortune in rubbish. West Bengal Pollution Control Board's Annual Report 2016-17 states that of the 14,000 tonnes of waste that needs to be

<sup>23</sup> <https://crimsonpublishers.com/aaoa/pdf/AAOA.000550.pdf>

<sup>24</sup> <https://www.thehindu.com/news/cities/kolkata/water-in-38-per-cent-blocks-in-west-bengal-contaminated/article6920814.ece>

<sup>25</sup> [http://timesofindia.indiatimes.com/articleshow/67950344.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpps](http://timesofindia.indiatimes.com/articleshow/67950344.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps)

<sup>26</sup> <https://www.cseindia.org/kolkata-residents-breathe-in-air-which-has-3-5-times-higher-pollution-levels-than-the-ambient-level-that-is-already-several-times-higher-than-the-permissible-limit-action-must-gather-momentum-says-cses-kolkata-study-6250>

<sup>27</sup> <https://thewire.in/environment/sand-mining-reforms-west-bengal>

<sup>28</sup> <http://www.newindianexpress.com/states/odisha/2018/nov/20/collector-orders-to-check-illegal-sand-mining-1900653.html>

disposed of daily, 830 tonnes are composted. Scientifically designed landfills like the one in Kamarhati take in 515 tonnes of residual waste.

34. These facts have been brought to the notice of the Chief Secretary so that the same can be verified and necessary action considered.
35. On behalf of CPCB, following data has been furnished in respect of State of West Bengal. The same is reportedly based on report furnished by the PPCB under Rule 24(3) of the SMW Rules or other corresponding provisions:-

| S. No. | RULES                              | DATA   |
|--------|------------------------------------|--|
| 1.     | <b>Solid Waste Management</b>      | <ul style="list-style-type: none"> <li>• No. of Local Bodies :125</li> <li>• Waste generation :14000 TDP</li> <li>• Collection :11900</li> <li>• Treated :830</li> <li>• Legacy Dumpsites :98</li> </ul>   |
| 2.     | <b>Plastic waste management</b>    | <ul style="list-style-type: none"> <li>• Waste generation : Not provided</li> <li>• No. of registered recycling units : 71</li> </ul>  |
| 3.     | <b>Biomedical waste management</b> | <ul style="list-style-type: none"> <li>• No of Hospitals : 6405</li> <li>• Authorization granted: 5676</li> <li>• Waste generation : 29773.84</li> </ul>   |
| 4.     | <b>No. of CBWTF</b>                | • 6( operational) 2( under construction)   |
| 5.     | <b>Polluted river stretches</b>    | <p><b>P-I:</b> 1 Haroa Bridge to Malancha Burning Ghat</p> <p><b>P-II:</b> 1 Siliguri to Binaguri (Action Plan endorsed by CPCB)</p> <p><b>P-III:</b> 3 Santipur town to Majhdia Tarapith to Sadhak Bamdeb Ghat Tribeni to diamond Harbour</p> <p><b>P-IV:</b> 4 Durgachakm to Dishergarh Laal Dighi to Krishna Nagar Midnapore to Ramgarh Madhupur to Gobindapur</p> <p><b>PV :</b> 8 Kulti to Asansol Bitala to Alipurdwara Jalpaiguri to Thakurer Kamat Suri to Durgapur Kolaghat to Benapur Ghatal to Nischind pur Siliguri to Nishchind pur Siliguri to Paharpur<br/>Total : 17</p> |
| 6.     | <b>Air Quality Management</b>      | Non-attainment Cities : Kolkata (Action Plan prepared and endorsed by  |



|    |                                       |   |
|----|---------------------------------------|---|
|    |                                       | CPCB)   |
| 7. | <b>Industrially polluted clusters</b> | Clusters : Howrah, Haldia, Assansole<br>(Action plan are to be prepared by CEPI)  |
| 8. | <b>ETPs, CETPs and STPs</b>           | <b>ETPs</b><br>No. of industries which require ETP : 33<br>No. of industries having functional ETP: 33<br>No. of industries complying : 29<br>No. of industries non-complying : 4<br><br><b>CETPs</b><br>No. of CETPs : 1<br>No. of CETPs complying : 1<br>No. of under construction/proposed CETPs : 1<br><br><b>STPs</b><br>No. of STPs : 44<br>No. of STPs complying : 0<br>No. of STPs non-complying: 44<br>No. of under construction/proposed STPs : 4 |

36. Some of the serious challenges to the protection of environment in the State of West Bengal have been considered by this Tribunal in its orders.<sup>29</sup>
37. Needless to say that improvement in this respect is not only inalienable duty of the State, but is also necessary for sustainable development which is essential for the health and well-being of citizens as well as for intergenerational equity. These principles require that all human activities should be conducted in such a way that the rights of future generations to access clean air and potable water are not taken away. At

<sup>29</sup>(a). Orders dated 04.09.2018 and 10.01.2018 in Sudarsan Das vs. State of West Bengal, O.A. No. 173/2018.  
(b). Order dated 19.12.2018 in News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB, O.A. No. 673/2018.  
(c). Order dated 27.11.2018, Subhas Datta vs. State of West Bengal & Ors., O.A. No. 33/2014(EZ)  
(d). Order dated 20.11.2018 in Tribunal on its own Motion vs. Union of India, O.A. No.471/2018 (Earlier O.A. No. 15/2014)  
(e). Order dated 22.01.2019 in Ambarnath Sengupta vs. State of West Bengal & Ors., O.A. No. 24/2018 (EZ)  
(f). Order dated 18.09.2018, Suman Sen vs. The West Bengal Pollution Control Board & Ors., O.A. No. 341/2018  
(g). Order dated 08.10.2018 in News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15", O.A. No. 681/2018.  
(h). Order dated 13.12.2018 in News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels", O.A. No. 1038/2018.

the cost of repetition, it may be mentioned that water is being polluted because of discharge of untreated sewage and effluents. Air pollution is result of failure to manage solid waste and to prevent other causes leading to air pollution. There are also other issues like deterioration in groundwater level, damage to forests and wild life, unscientific and uncontrolled sand mining etc. Unsatisfactory implementation of law is clear from the fact that in spite of severe damage, there is no report of any convictions being recorded against the polluters, nor adequate compensation has been recovered for damage caused to the environment. Steps for community involvement are not adequate. There is reluctance even to declare some major cities as fully compliant with the environment norms. The authorities have not been able to evolve simplified and standard procedure for preparing project reports and giving of contracts. There is no satisfactory plan for reuse of the treated water or use of treated sewage or waste and for segregation and collection of solid waste, for managing the legacy waste or other wastes, etc.

38. The presence of Chief Secretary before this Tribunal was directed with an expectation that there will be realization of seriousness at the highest level which may percolate in the administration. This may require effective institutional monitoring mechanism and training of all the authorities charged with the duty of overseeing protection of environment and effective schemes for community involvement at every level.

#### **IV. DIRECTIONS:**

39. In view of above, after discussion with the Chief Secretary, following further directions are issued:
- i. Steps for compliance of Rules 22 and 24 of SWM Rules be now taken within six weeks to the extent not yet taken. Similar

steps be taken with regard to Bio-Medical Waste Management Rules and Plastic Waste Management Rules.

ii. Atleast three major cities and as many major towns as possible in the State and atleast three Panchayats in every District may be notified on the website within two weeks from today as model cities/towns/villages which will be made fully compliant within next six months. ✓

iii. The remaining cities, towns and Village Panchayats of the State may be made fully compliant in respect of environmental norms within one year.

iv. A quarterly report be furnished by the Chief Secretary, every three months. First such report shall be furnished by July 10, 2019.

v. The Chief Secretary may personally monitor the progress, atleast once in a month, with all the District Magistrates.

vi. The District Magistrates or other Officers may be imparted requisite training.

vii. The District Magistrates may monitor the status of compliance of environmental norms, atleast once in two weeks.

viii. Performance audit of functioning of all regulatory bodies may be got conducted and remedial measures be taken, within six months.

ix. The Chief Secretary may remain present in person before the Tribunal with the status of compliance in respect of various issues mentioned in para 20 as well as any other issues discussed in the above order on 11.10.2019.

40. It is made clear that Chief Secretary may not delegate the above function and the requirement of appearance before this Tribunal to anyone else.



However, it will be open to him to change the date, by advance intimation by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com) to adjust their convenience.

41. The issue of recovery of damages from the States for their failure to comply with the environmental norms, including the statutory rules and orders of this Tribunal, will be considered will be considered later. The Tribunal may also consider the requirement of performance guarantee of a particular amount in case progress achieved is not found to be satisfactory.
42. Accordingly, vide order dated 05.03.2019 in the present matter (dealing with State of Himachal Pradesh) it has been directed that the Apex Committee is to conclude its proceedings by 30.04.2019 and furnish its final report. Thereafter, monitoring at apex level can be done by MoEF&CC and CPCB in terms of Rules 5 and 14 of the SWM Rules respectively and direction of this Tribunal vide order dated 22.12.2016 [Para 43(9)].
43. Any other Committee or regulatory body will work in tandem with the above mechanism.

Put up the report which may be received on 15.07.2019.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 2, 2019  
Original Application No. 606/2018

**CONCESSION AGREEMENT**

**BETWEEN**

**The Governor of State of West Bengal,  
Represented by the Director,  
State Urban Development Agency, West Bengal**

**AND**

**Dum Dum Municipality,  
Acting through its authorised Officer on its behalf**

**AND**

**North Dum Dum Municipality,  
Acting through its authorised Officer on its behalf**

**AND**

**South Dum Dum Municipality,  
Acting through its authorised Officer on its behalf**

**AND**

**Baranagar Municipality, ✓  
Acting through its authorised Officer on its behalf**

**AND**

**Kamarhati Municipality,  
Acting through its authorised Officer on its behalf**

**AND**

**New Barrackpore Municipality,  
Acting through its authorised Officer on its behalf**

**AND**

**CONCESSIONAIRE**

**For**

**Selection of Developer for Bio-remediation of Legacy Waste and  
Setting up Processing and Disposal facility of Municipal Solid Waste  
(Cluster 1 - Dum Dum, South Dum Dum, North Dum Dum, Baranagar,  
Kamarhati and New Barrackpore, West Bengal)**

## **TABLE OF CONTENTS**

|           |  |           |
|-----------|--|-----------|
| <b>1.</b> | <b>DEFINITIONS AND INTERPRETATION</b>                          | <b>9</b>  |
| 1.1.      | Definitions  | 9         |
| 1.2.      | Interpretation   | 18        |
| 1.3.      | Measurements and arithmetic conventions                        | 20        |
| 1.4.      | Priority of agreements, Articles and Annexes                   | 20        |
| <b>2.</b> | <b>THE CONCESSION AND CONDITIONS PRECEDENT</b>                 | <b>21</b> |
| 2.1.      | Grant of Concession  | 21        |
| 2.2.      | Rights Associated with the Grant of Concession                 | 21        |
| 2.3.      | Concession Period  | 22        |
| 2.4.      | Renewal of Concession  | 22        |
| 2.5.      | Acceptance of Concession                                       | 22        |
| 2.6.      | Conditions Precedent   | 22        |
| 2.7.      | Remediation of Legacy Waste by the Concessionaire prior to COD | 25        |
| <b>3.</b> | <b>SITE(S)</b>   | <b>26</b> |
| 3.1.      | Handover of sites  | 26        |
| 3.2.      | Rights, Title and Use of the Sites:-                           | 26        |
| 3.3.      | Peaceful Possession: -   | 27        |
| 3.4.      | Applicable Approvals   | 27        |
| <b>4.</b> | <b>INDEPENDENT EXPERT / PROJECT MANAGEMENT UNIT</b>            | <b>28</b> |
| 4.1.      | Composition  | 28        |
| 4.2.      | Duties and functions   | 28        |
| 4.3.      | Remuneration   | 28        |
| 4.4.      | Replacement  | 28        |
| 4.5.      | Tenure   | 28        |



|           |   |           |
|-----------|---|-----------|
| <b>5.</b> | <b>THE CONCESSIONAIRE'S OBLIGATIONS</b>                 | <b>29</b> |
| 5.1.      | Performance Security                                    | 29        |
| 5.2.      | General Obligations                                     | 30        |
| 5.3.      | No Breach of Obligations                                | 31        |
| 5.4.      | Damages   | 31        |
| 5.5.      | Obligations of the Selected Bidder                      | 32        |
| 5.6.      | Concessionaire's Representative                         | 32        |
| 5.7.      | Sole purpose of the Concessionaire                      | 32        |
| 5.8.      | Employment of trained personal                          | 33        |
| 5.9.      | Obligations relating to Project Agreements              | 33        |
| 5.10.     | Equity Lock-in requirements                             | 33        |
| <b>6.</b> | <b>FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT</b>     | <b>35</b> |
| 6.1.      | General Obligations                                     | 35        |
| 6.2.      | Termination due to failure to achieve Financial closure | 35        |
| 6.3.      | Substitution Agreement                                  | 35        |
| <b>7.</b> | <b>DESIGNATED AND PARTICIPATING ULB'S OBLIGATIONS</b>   | <b>36</b> |
| 7.1.      | Specific Obligations                                    | 36        |
| 7.2.      | The Participating ULBs shall                            | 37        |
| <b>8.</b> | <b>MONITORING AND INSPECTION</b>                        | <b>38</b> |
| 8.1.      | During Pre-COD Period                                   | 38        |
| 8.2.      | Post COD Period   | 39        |
| <b>9.</b> | <b>PAYMENTS</b>   | <b>41</b> |
| 9.1       | Tipping Fee   | 41        |
| 9.1       | Mobilization Advance                                    | 41        |
| 9.3       | Payment mechanism                                       | 42        |

|  |           |
|--|-----------|
| <b>10. ESCROW ACCOUNT</b>                              | <b>43</b> |
| 10.1. Escrow Account                                   | 43        |
| 10.2. Deposits into Escrow Account                     | 43        |
| <b>11. FORCE MAJEURE AND CHANGE IN LAW</b>             | <b>45</b> |
| 11.1. Force Majeure                                    | 45        |
| 11.2. Non-Political Event                              | 45        |
| 11.3. Indirect Political Event                         | 46        |
| 11.4. Political Event                                  | 46        |
| 11.5. Duty to report Force Majeure Event               | 47        |
| 11.6. Effect of Force Majeure Event on the Concession  | 47        |
| 11.7. Allocation of costs arising out of Force Majeure | 48        |
| 11.7. Termination Notice for Force Majeure Event       | 48        |
| 11.8. Termination Payment for Force Majeure Event      | 49        |
| 11.9. Dispute resolution                               | 49        |
| 11.10. Excuse from performance of obligations          | 49        |
| <b>11A. SUSPENSION OF CONCESSIONAIRE'S RIGHTS</b>      | <b>52</b> |
| <b>11B. CHANGE IN LAW</b>                              | <b>52</b> |
| <b>12. EVENTS OF DEFAULT AND TERMINATION</b>           | <b>54</b> |
| 12.1. Events of Default                                | 54        |
| 12.2. Concessionaire Event of Default                  | 54        |
| 12.3. ULB Event of Default                             | 55        |
| 12.4. Termination due to Event of Default              | 55        |
| 12.5. Rights of Participating ULBs on Termination      | 58        |
| 12.6. Accrued Rights of Parties                        | 59        |
| <b>13. SUBSTITUTION OF THE CONCESSIONAIRE</b>          | <b>60</b> |
| 13.1. Substitution by Lenders' Representative          | 60        |

|           |  |           |
|-----------|--|-----------|
| 13.2.     | Substitution by Designated ULB                                       | 60        |
| 13.3.     | Substitution Process   | 60        |
| 13.4.     | Consequences of Substitution   | 60        |
| <b>14</b> | <b>HANDOVER OF PROJECT</b>   | <b>61</b> |
| 14.1      | Ownership during the Term of Agreement                               | 61        |
| 14.2      | Condition Survey   | 61        |
| 14.3      | Concessionaire's Obligations upon Termination                        | 61        |
| 14.4      | Divestment Certificate   | 62        |
| <b>15</b> | <b>DISPUTE RESOLUTION</b>  | <b>64</b> |
| 15.1      | Amicable Resolution  | 64        |
| 15.2      | Arbitration  | 64        |
| 15.3      | Performance during Dispute   | 64        |
| <b>16</b> | <b>INSURANCE</b>   | <b>65</b> |
| 16.1      | Insurance Cover  | 65        |
| 16.2      | Insurance Companies and Costs  | 65        |
| 16.3      | Evidence of Insurance Cover  | 65        |
| 16.4      | Application of Insurance Proceeds                                    | 66        |
| 16.5      | Validity of the Insurance Cover                                      | 66        |
| <b>17</b> | <b>INTELLECTUAL PROPERTY AND CONFIDENTIALITY</b>                     | <b>67</b> |
| 17.1      | Proprietary Material   | 67        |
| 17.2      | Confidentiality  | 67        |
| 17.3      | Survival   | 68        |
| <b>18</b> | <b>REPRESENTATIONS AND WARRANTIES</b>                                | <b>69</b> |
| 18.1      | Representations and Warranties of the Parties                        | 69        |
| 18.2      | Representations and Warranties of the Concessionaire                 | 69        |
| 18.3      | Representations and Warranties of Designated ULB/ Participating ULBs | 70        |



|           |  |           |
|-----------|--|-----------|
| 18.4      | Disclosure   | 70        |
| 18.5      | Disclaimer   | 71        |
| 18.6      | Obligation to Notify Change                                      | 71        |
| <b>19</b> | <b>MISCELLANEOUS</b>   | <b>72</b> |
| 19.1      | Assignment and Charges   | 72        |
| 19.2      | Interest and Right of Set Off                                    | 72        |
| 19.3      | Governing Law and Jurisdiction                                   | 72        |
| 19.4      | Waiver   | 72        |
| 19.5      | Survival   | 73        |
| 19.6      | Amendments   | 73        |
| 19.7      | Notices  | 73        |
| 19.8      | Severability   | 74        |
| 19.9      | No Partnership   | 74        |
| 19.10     | Language   | 74        |
| 19.11     | Exclusion of Implied Warranties etc.                             | 74        |
| 19.12     | Counterparts   | 74        |
| 19.13     | Liability for Review   | 74        |
| 19.14     | Unforeseen Event   | 75        |
| 19.15     | Liability and Indemnification                                    | 75        |
|           | ANNEXURE 1: SCOPE OF SERVICES                                    | 76        |
|           | ANNEXURE 3: FINANCIAL BID  | 78        |
|           | ANNEXURE 4: FORMAT FOR DAILY WEIGHT SHEET                        | 84        |
|           | ANNEXURE 5: OPERATIONAL ACCEPTANCE CERTIFICATE                   | 85        |
|           | ANNEXURE 6: FORMAT OF THE PERFORMANCE SECURITY OR BANK GUARANTEE | 86        |
|           | ANNEXURE 7: SCOPE OF WORK OF PMU                                 | 87        |
|           | ANNEXURE 8: SUBSTITUTION AGREEMENT                               | 90        |
|           | ANNEXURE 9: ESCROW AGREEMENT                                     | 92        |
|           | ANNEXURE 10: LAND LEASE AGREEMENT                                | 101       |
|           |  | 114       |

## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (hereinafter referred to as the "Agreement") made this \_\_\_ day of \_\_\_\_\_ 2019 at [•]

### BETWEEN

"The Governor of State of West Bengal, represented by the **Director/ Chief Engineer of State Urban Development Agency**, having its principal office at Bidhannagar, (hereinafter referred to as "**Department**" "**Authority**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, administrators and assigns)"

#### AND

**Dum Dum Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Participating ULB 1**", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

**North Dum Dum Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Participating ULB 2**" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

**South Dum Dum Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Designated ULB**" or "**Participating ULB 3**" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

**Baranagar Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Participating ULB 4**" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

**Kamarhati Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Participating ULB 5**" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

**New Barrackpore Municipality**, established under the provisions of the \_\_\_\_\_, acting through its \_\_\_\_\_, (hereinafter referred to as "**Participating ULB 6**" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

#### AND

\_\_\_\_\_, a special purpose vehicle incorporated<sup>1</sup> by the selected bidder under provisions of the Companies Act, 2013, having its registered office at \_\_\_\_\_, acting through its \_\_\_\_\_ (hereinafter referred to as "**Concessionaire**" which expression shall unless repugnant to the context include its successors and permitted assigns).

#### AND

M/s \_\_\_\_\_, the selected bidder, [company] registered under the Companies Act, 1956/ 2013 having its registered office at \_\_\_\_\_, in its capacity as the **Confirming Party** to this Agreement (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through Mr. \_\_\_\_\_, the Authorized Person, authorized vide Board Resolution dated \_\_\_\_\_;

The aforesaid entities mentioned in array of parties shall individually be referred to as "Party" and collectively referred to as "Parties".

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

## WHEREAS

- A. The State Urban Development Agency, West Bengal, , a entity under Department of Municipal Affairs, State of West Bengal, is engaged in the development of cluster based solid waste management projects in the State of West Bengal. The Department is desirous of implementing such cluster based solid waste management project by seeking private sector participation on Public Private Partnership (“PPP”) mode by inviting Bids for setting up of a solid waste management facility for Cluster 1 – West Bengal;
- B. Cluster 1 – West Bengal comprises of Urban Local Bodies of Dum Dum, North Dum Dum, South Dum Dum, Baranagar, Kamarhati and New Barrackpore (collectively referred to as “Participating ULBs”);
- C. The Participating ULBs have entered into an Inter-ULB agreement dated ..... for management of MSW generated within their municipal areas whereby the Designated ULB has been empowered to discharge the obligations set out herein on behalf of the Participating ULBs in addition to itself.
- D. The Participating ULBs have nominated \_\_\_\_\_ Municipality as their lead member (hereinafter referred to as (“Designated ULB”) and authorized the Designated ULB to discharge obligations set out herein on behalf of all the Participating ULBs.
- E. The Designated ULB on behalf of itself and the other Participating ULBs desires to develop processing and disposal facility through private participation on Design, Build, Finance, Operate and Transfer (DBFOT) basis for the development, operation, maintenance and management of the Project Assets, Facilities and resources required for the management of Municipal Solid Waste (“MSW”) within the jurisdiction of all the Participating ULBs.
- F. The Department had invited competitive request for Bids from eligible Bidders for implementing the Project and in response there to received Bids from Bidders including the Selected Bidder for implementing the Project.
- G. The Department, after evaluating the aforesaid Bids, accepted the Proposal submitted by the Selected Bidder and issued Letter of Award (LoA) No. \_\_\_\_\_ dated \_\_\_\_\_ to it for developing the Project. The LoA has been duly accepted by the Selected Bidder vide its letter no. \_\_\_\_\_ dated \_\_\_\_\_.
- H. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and has requested the Department and Participating ULBs to accept the Concessionaire as the entity which shall undertake and perform the obligations under the Concession Agreement for implementing the Project; and
- I. The Department and all the Participating ULBs have accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.



NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

---

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- 1.1.1. **"Abandonment"** means an action on the part of the Concessionaire with the intent to not discharge its balance obligations related to the Project under the Agreement for a:
- (i) continuous period of more than 15 (fifteen) days during the Concession Period, or
  - (ii) cumulative period of more than 45 (forty-five) days during the Concession Period other than because of an event of Force Majeure or a Material Breach of its obligations by the Designated ULB and/or any Participating ULB;
- 1.1.2. **"Access Road"** means the motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire;
- 1.1.3. **"Acceptance of Concession"** shall have the meaning assigned thereto in **Article 2.5**;
- 1.1.4. **"Accounting Year" or "Financial Year"** shall mean the 12 month continuous period year commencing on 1st April in each calendar year and ending on 31st March in the immediately subsequent calendar year; provided that the Accounting Year can be changed subject to approval of the central government as per applicable laws.
- 1.1.5. **"Additional Cost"** means the additional capital expenditure and/or the additional operating costs or both, as the case may be, which the Concessionaire is required to incur, post the Appointed Date, on account of Change in Law subject to the terms hereof;
- 1.1.6. **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, 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 in accordance with the Agreement, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Compliance Date 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 Price index occurring between COD and the Reference Date;

- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.46% (zero-point four six percent) 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 Price Index occurring between COD and the Reference Date;

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

“Price Index” for the purposes of this definition and RFP overall shall mean: weighted average of variations in WPI [70% weightage] and CPI [30% weightage]

- 1.1.7. **“Affected Party”** means the Party claiming to be affected by a Force Majeure Event in accordance with **Article 11.1**;
- 1.1.8. **“Agreement”** or **“Concession Agreement”** means this agreement executed between the Department, the Concessionaire, the Participating ULBs and the Selected Bidder (as Confirming Party) including its schedules and Annexes and includes any amendments made thereto in accordance with the provisions hereof;
- 1.1.9. **“Annexes”** means any of the annexes, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.10. **“Applicable Law”** means all laws, acts, ordinances, rules, regulations, notifications and guidelines in force and effect, including inter-alia the Solid Waste Management Rules, 2016, and shall also include judgments, decrees, injunctions, writs or orders of Supreme Court of India or High Court of Kolkata, as the case may be, in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith; For avoidance of doubt, Applicable Laws shall include the Guidelines for direct sale of city compost by compost manufacturers, as notified by Ministry of Chemical and Fertilizers, Government of India;
- 1.1.11. **“Applicable Approvals”** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, including any environment clearances, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project;
- 1.1.12. **“Appointed Date”** means the date of signing of this Concession Agreement;
- 1.1.13. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 of India and shall include any amendment to or any re-enactment thereof as in force from time to time;
- 1.1.14. **“Associate”** or **“Affiliate”** means, in relation to either Party, a person who is under significant influence of such Party (as used in this definition, the expression “significant influence” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the total share capital of such person, and with respect to a person which is not a company or



corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

- 1.1.15. **"Bio-Medical Waste"** shall have the same meaning as defined under Bio-Medical Waste (Management and Handling) Rules, 1998 , as amended from time to time;
- 1.1.16. **"Bio- remediation"** means the excavation of old dumped waste and make windrow of legacy waste thereafter stabilization of the waste through bio-remediation i.e. exposure of all the waste to air along with use of composting bio-cultures, i.e. screening of the stabilized waste to recover all valuable resources (like organic fines, bricks, stones, plastics, metals, clothes, rags etc.) followed by its sustainable management through recycling, co-processing, road making etc. valuable resources (like organic fines, bricks, stones, plastics, metals, clothes, rags etc.).
- 1.1.17. **"Construction & Demolition (C&D) Debris "or "Debris "**means solid waste resulting from construction, re-modelling, repair, renovation or demolition of Structures or from land clearing activities. **"Structures"** for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. **"Debris"** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures;
- 1.1.18. **"Change in Law"** shall have the meaning assigned thereto in **Article 11.B;**
- 1.1.19. **"Commencement Date"** shall have the meaning as assigned to it in **Article 2.7**
- 1.1.20. **"Compliance Date(s)"** means the later of the date by which the Condition Precedent of the Concessionaire and the Participating ULBs under **Article 2.6** are achieved or waived;
- 1.1.21. **"Composting"** means a controlled process involving microbial decomposition of organic matter;
- 1.1.22. **"Concession"** shall have the meaning as assigned thereto in **Article 2.1;**
- 1.1.23. **"Concessionaire Event of Default"** shall have the meaning assigned thereto in **Article 12.2;**
- 1.1.24. **"Conditions Precedent(s)"** means Conditions Precedent as specified in **Article 2.6;**
- 1.1.25. **"Compliance Period"** shall have the meaning assigned thereto in **Article 2.6.3;**
- 1.1.26. **"Commercial Operations Date" or "COD"** means the date when the Concessionaire begins commercial operations of the Processing Facility pursuant to issuance of Operational Acceptance Certificate by the Project Management Unit; and which shall be achieved within a maximum period of from the Compliance Date;
- 1.1.27. **"Contractor" or "Sub-Contractor"** means any Person with whom the Concessionaire has entered into/ may enter into any material contract in relation to the Project;



- 1.1.28. **"CPCB"** means the Central Pollution Control Board of the Government of India
- 1.1.29. **"Daily Weight Sheet"** shall have the meaning assigned thereto in **Annexure 4**;
- 1.1.30. **"Dead Remains"** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.31. **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- (a) the principal amount of the debt provided by Senior Lenders under the Financing Agreements for financing the Total Project Cost (the **"principal"**) but excluding any part of the principal that had fallen due for repayment prior to the Transfer Date;
  - (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Department's Default; and
  - (c) any Subordinated Debt disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity; its shall to the extent not converted until date of termination, be deemed to be Debt Due for the purposes of this Agreement. For the Purposes of this Agreement, the term **"Subordinated Debt"** shall mean the debt provided by lenders other than Senior Lenders or the Concessionaire's shareholders for meeting the Total Project Cost and shall be subordinate to the financial assistance provided by Senior Lenders.
- 1.1.32. **"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Agreements;
- 1.1.33. **"Dispute"** shall have the meaning assigned thereto in **Article 15.1(a)** hereof;
- 1.1.34. **"Dispute Resolution Procedure"** means the procedure for resolution of disputes as set forth in Article 15;
- 1.1.35. **"EIA"** means the Environment Impact Assessment for the Project;
- 1.1.36. **"E-Waste"** shall have the same meaning as defined under E-Waste(Management) Rules, 2016 , as amended from time to time;
- 1.1.37. **"Emergency"** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to the Project;
- 1.1.38. **"Encumbrances"** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site;

- 1.1.39. **"Equity"** means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Concessionaire, but does not include any grant from any Government Agency including Designated ULB;
- 1.1.40. **"Event of Default"** shall have the meaning assigned thereto in **Article 12**;
- 1.1.41. **"Escrow Account"** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
- 1.1.42. **"Escrow Bank"** shall have the meaning as set forth in **Annexure9**;
- 1.1.43. **"Escrow Agreement"** shall have the meaning as set forth in **Annexure 9**;
- 1.1.44. **"Escrow Default"** shall have the meaning as set forth in **Article 6.1.1 of Annexure 9**;
- 1.1.45. **"Estimated Project Cost"** shall be as given in Technical Feasibility Report annexed as **Annexure –I** with the RFP Document;
- 1.1.46. **"Excluded Waste"** means waste material of the nature that the Project is not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste (iii) Dead Remains, (iv) E-Waste and (v) Construction and Demolition (C&D) Debris;
- 1.1.47. **"Financing Agreements" or "Financing Documents"** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Total Project Cost;
- 1.1.48. **"Financial Default"** means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of 3 (three) months;
- 1.1.49. **"Financial Bid"** means the final quotation of the Selected Bidder in response to the RFP document, which has been accepted by the Department and the Participating ULBs, annexed hereto as **Annexure3**;
- 1.1.50. **"Force Majeure" or "Force Majeure Event"** means an act, event, condition or occurrence as specified in **Article 11**;
- 1.1.51. **"GoI"** means the Government of India;
- 1.1.52. **"GoWB"** means the Government of West Bengal;
- 1.1.53. **"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an

experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them or facilities similar to the Project Facilities;

- 1.1.54. **"Government Agency"** means GoI, GoWB, Participating ULBs or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;
- 1.1.55. **"Hand Over of Project"** shall have the meaning assigned thereto in **Article 14**;
- 1.1.56. **"Hazardous Waste"** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto;
- 1.1.57. **"Independent Expert"** refers to a person/ firm/ entity appointed by the Designated ULB to monitor the activities of the Concessionaire and shall be a member of the PMU;
- 1.1.58. **"Land Lease Agreement(s)"** means the Agreement(s) under which, the Site(s) shall be leased to the Concessionaire for use thereof solely for setting up the Project for the duration of the Concession Period in the format attached as **Annexure 10**;
- 1.1.59. **"LOA"** shall mean the Letter of Award bearing no [■] dated [■], issued by the Department/Designated ULB to the Selected Bidder for developing the Project in terms of this Agreement;
- 1.1.60. **"MNRE"** means Ministry of New & Renewable Energy, GoI;
- 1.1.61. **"MSW"** means municipal solid waste generated by households, public utility services, agricultural farms/ lands, poultry & dairy farms, commercial establishments and industries located within the jurisdiction of Participating ULBs, including but not limited to Organic Waste;
- 1.1.62. **"Material Adverse Effect"** means a material adverse effect of any act or event on the ability of any Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to any or all Party(ies);
- 1.1.63. **"Material Breach"** means a breach by any Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- 1.1.64. **"Nominated Company"** means the entity that is selected either by the Senior Lenders or by Participating ULBs, for substituting the Concessionaire, upon occurrence of Concessionaire's Event of Default or Financial Default, as the case may be, subject to and in accordance with the provisions of the Agreement and the Substitution Agreement;
- 1.1.65. **"Operational Acceptance Certificate(s)"** shall refer to the Certificate to be issued by the PMU as set out in **Annexure 5**, upon successful commissioning and functioning of the Processing Facility;



- 1.1.66. **"O&M Expenses"** means the expenses incurred in the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement. For the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the O&M Expenses.
- 1.1.67. **"Organic Waste"** means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.68. **"Participating ULBs"** means the under-mentioned urban local bodies (ULBs):
- (a) Dum Dum Municipality, (**"Participating ULB1"**)
  - (b) North Dum Dum Municipality (**"Participating ULB2"**)
  - (c) South Dum Dum Municipality (**"Participating ULB3"**)
  - (d) Baranagar Municipality (**"Participating ULB4"**)
  - (e) Kamarhati Municipality (**"Participating ULB5"**)
  - (f) New Barrackpore Municipality (**"Participating ULB6"**)
- 1.1.69. **"P&D"** refers to processing & disposal of MSW collected from Project Area, as is more clearly defined in **Annexure 1**;
- 1.1.70. **"Performance Security"** means the unconditional and irrevocable bank guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Selected Bidder (or the Concessionaire), in accordance with **Article 5.1** in the format given at **Annexure 6**;
- 1.1.71. **"Person"** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity;
- 1.1.72. **"Post-COD Period"** means the period starting on and from the COD and ending on the Transfer Date;
- 1.1.73. **"Pre-COD Period"** means the period commencing from the Compliance Date and extending up to the COD;
- 1.1.74. **"Preliminary Notice"** means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default;
- 1.1.75. **"Processing"** means the treatment of waste by the Concessionaire at Pramod Nagar and Kamarhati project sites for processing of the legacy waste by Bio remediation.
- 1.1.76. **"Project"** shall mean Bio-remediation and complete reclamation of whole of the existing dumpsites at the Project Site(s) and discharging other obligations stipulated in the Scope of Services more specifically set out in **Annexure 1**;
- 1.1.77. **"Project Agreements"** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the design, construction, operation and maintenance of the Project, including without limitation the Land Lease Agreement(s).
- 1.1.78. **"Project Area"** means the area presently under municipal boundaries of the Participating ULBs or any extension thereof, during the Concession Period;

- 1.1.79. **"Project Assets"** means all physical and other assets relating to and forming part of the Project including (a) rights over the Sites in the form of lease and/ or license rights (as applicable), right of way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, grievance redressal centre, Processing Facility, electrical systems, communication systems, transport vehicles and administrative office; (c) Project Facilities situated on the Sites; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Approvals and authorisations relating to or in respect of the Project;
- 1.1.80. **"Project Facilities"** means all the amenities and facilities required as basic and support infrastructure for implementing the Project and includes transportation vehicles, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets;
- 1.1.81. **"PMU"** means Project Management Unit set up by the Participating ULBs as specified in **Article 4.1** to monitor and supervise the activities of the Concessionaire;
- 1.1.82. **"Proprietary Material"** shall be as defined in **Article 17.1**;
- 1.1.83. **"RDF"** means the Refuse Derived Fuel which is solid fuel in the form of fluff or pellets/briquettes that is produced by separation and drying of combustible fractions of the MSW;
- 1.1.84. **"Reclamation fee"** means the fee quoted for per ton of waste remediated through Bio remediation activity;
- 1.1.85. **"Residual Inert Matter"** means the inert matter left for final disposal in Engineered Sanitary Landfill Site after processing of the MSW by one or more of the relevant Project;
- 1.1.86. **"Residual Solid Waste"** means and includes the waste and rejects from the MSW which are not suitable for recycling or further processing;
- 1.1.87. **"Rupees" or "Rs"** refers to the lawful currency of the Republic of India;
- 1.1.88. **"Sanitary Landfill Site" or "SLFs" or "Engineered Sanitary Landfill Site"** means the engineered landfill site to be developed, constructed and operated by the Concessionaire at the allocated site i.e. in conformance with the terms of this Agreement, where the Concessionaire conducts a final and safe disposal of Residual Inert Matter, Residual Solid Waste and inert waste, which is designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement;
- 1.1.89. **"SBM Guidelines"** means the guidelines issued by the Ministry of Urban Development, Government of India in December 2014 titled "Guidelines for Swachh Bharat Mission"
- 1.1.90. **"Share Transfer Agreement"** means the agreement to be entered into between the shareholders of the Concessionaire (in case the Successful Bidder is a consortium) for



transfer of equity shareholding of the Concessionaire to the members of the consortium formed by the Successful Bidder;

- 1.1.91. **"Senior Lenders"** means any financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing the Total Project Cost as evidenced in Financing Documents;
- 1.1.92. **"Scheduled Completion Date"** shall have the meaning ascribed to it in Clause 1.2 of Annexure 1;
- 1.1.93. **"Site(s)"/ "Project Site"** means the identified dumpsites located at Pramod Nagar and Kamarhati Sites, and the SLF Site, in respect of which the Concessionaire shall be granted Lease hold rights under the Land Lease Agreement(s), for implementing the Project in accordance with terms herein; provided, however, that the lease and possession of land area comprising the SLF Site shall be limited to the land parcels as would be required for development of Processing Facilities, namely, the land parcels at Pramod Nagar and Kamarhati, and thereafter as and when the possession of aforesaid relevant land area (is made available to Concessionaire in tranches, the lease in respect of such handed over land parcels shall be deemed to be granted and such land shall be deemed to form part of Site.
- 1.1.94. **"SPCB"** means State Pollution Control Board in the state of West Bengal;
- 1.1.95. **"Substitution Agreement"** is an agreement that may be executed between the Concessionaire, Participating ULBs and the Lenders in the form set out in **Annexure 8**, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement;
- 1.1.96. **"Selected Bidder"** means the Person selected by the Participating Bidders through a competitive bidding process for implementing the Project;
- 1.1.97. **"SWM Rules"** means the Solid Waste Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments/ modifications thereto or re-enactments thereof, from time to time;
- 1.1.98. **"SLF Site"** shall mean the land areas as identified and allocated by the Department for disposal of inerts after processing; and such site shall be allocated within a radius of 25 Kms from the Pramod Nagar Site.
- 1.1.99. **"Tax"** means and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.100. **"Term"** or **"Concession Period"** means the time period of 18 (eighteen) years commencing from the Compliance Date and shall include additional time period(s) as extended under the terms of this Agreement;
- 1.1.101. **"Termination"** means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- 1.1.102. **"Termination Date"** means the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;



- 1.1.103. **"Termination Notice"** means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.104. **"Termination Payments"** means the payments payable pursuant to Article 11.8 and 12.4 of this Agreement;
- 1.1.105. **"Tipping Fee"** shall mean the fees payable as defined in Article 9.1;
- 1.1.106. **"Third Party"** means any Person other than the Parties to this Agreement;
- 1.1.107. **"Total Project Cost"** means the lowest of the following:
- i. The estimated cost of the Project, as specified in the RFP, namely, INR [\*\*\*\*\*]; or
  - ii. Project Cost as set forth in the Financing Documents executed with Senior Lenders; or
  - iii. Actual capital cost of the Project, upon completion of construction of the Project as certified by the Statutory Auditor of the Concessionaire.
- 1.1.108. **"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated early by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.109. **"Tests"** means the tests to be carried out by the Concessionaire at its cost, in the presence of PMU as may be required for getting Statutory clearances / Approval or asked by PMU in respect of the Processing Facility and SLF to ensure that the same conforms to the requirements as per Good Industry Practice and Applicable Law or Applicable Approvals;
- 1.1.110. **"ULB Event of Default"** shall have the meaning assigned thereto in Article 12.3;
- 1.1.111. **"Vacant Possession"** means delivery of possession of the Site(s) free from all Encumbrances to the Concessionaire and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement;
- 1.1.112. **"Weighbridge"** means the electronic weighbridge capable of performing the operations to meet the Concessionaire obligations as specified in Article 5.

## 1.2. Interpretation

### 1.2.1 In this Agreement, unless the context otherwise requires:

- (i) the words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (ii) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such

amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

- (iii) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
  - (iv) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
  - (v) the words "include" and "including" are to be construed without limitation;
  - (vi) the headings of the Articles in this Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;
  - (vii) the Annexes and Recitals to this Agreement form an integral part of this Agreement and will be in force and effect as though they were expressly set out in the body of the Agreement;
  - (viii) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates;
  - (ix) references to Recitals, Articles, Clauses or Annexes in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses and Annexes of to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Annexure in which such reference appears;
  - (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
  - (xi) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Designated ULB and/ or the Participating ULBs and/or the PMU shall be provided free of cost and in three copies, and if the Designated ULB and/ or the Participating ULBs and/or the PMUs required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

### **1.3. Measurements and arithmetic conventions**

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

### **1.4. Priority of agreements, Articles and Annexes**

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

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

1.4.2 Subject to the provisions of Article1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between 2 (two) or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Agreement and the Annexes, the Articles shall prevail;
- (c) between any two Annexes, the Annexure relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.



## **ARTICLE 2**

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### **2. THE CONCESSION AND CONDITIONS PRECEDENT**

#### **2.1. Grant of Concession**

Subject to and in accordance with the terms and conditions set out in this Agreement, the Concessioning Authority / Participating ULB's hereby irrevocably grants to the Concessionaire, and the Concessionaire hereby accepts exclusive right and authority, during the Term, to investigate, study, design, engineer, procure, finance, construct, install, commission, operate and maintain the Project and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements granted under this Agreement.

#### **2.2. Rights Associated with the Grant of Concession**

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

- (a) to design, engineer, finance, procure, construct, install, commission, operate and maintain the Project. ;
- (b) upon achieving COD of Processing Facilities, forming part of the Project, to manage, operate and maintain the same.;
- (c) to obtain financing for the Project in the form of equity or debt, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project. Provided that the Concessionaire shall not be entitled to creation of any security interest in favour of the Senior Lenders, save and except as expressly permitted under the terms hereof. Provided further, that nothing contained herein or elsewhere under shall (i) absolve the Concessionaire from its responsibilities, obligations and liabilities in connection with any sub contract and/or performance/discharge of any of its obligations, responsibilities under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to the Designated ULB.
- (d) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- (e) to obtain the utilities required for enabling the construction, operation and maintenance of the Project, by fulfilling eligibility conditions (if any) and paying the applicable charges for the utilities;
- (f) to exclusively hold, possess, control the Site(s), in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;
- (g) to appropriate, possess, control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation

in respect thereof, all the buildings and structures and infrastructure that may be existing on Sites with reference to MSW management in Project Area;

- (h) to develop the Project using such technology to establish a waste to compost and RDF facility having capacity of at least 569 (five hundred and sixty nine) TPD; and a Bio methanation plant of at least 50 TPD capacity at Pramod Nagar Site as well as a waste to compost and RDF facility of 155 TPD at Kamarhati Site; such technology should be suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, SWM Rules and Good Industry Practices; and
- (i) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the processing Facility, Good Industry Practices and the requirements of the Project except in respect of the building by laws.

### **2.3. Concession Period**

The concession period shall be for a period of 18 (eighteen) years from the Compliance Date (the "**Concession Period**") during which the Concessionaire is authorised to implement the Project on DBFOT basis including management of all facilities and resources required for management of Municipal Solid Waste in accordance with the provisions hereof:

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

### **2.4. Renewal of Concession**

The Participating ULBs, may in its sole discretion, in the event the Concessionaire does not commit any Event of Default during the last 5 (five) years of the Concession Period, agree to extend the Concession after the expiry of the Term on mutually agreed terms which are not less favourable than similar concessions then being ordinarily awarded. Provided that any such extension shall also lead to an extension of Land Lease Agreement(s) for an equal period so as to make the Land Lease Agreement co-terminus with extended Concession Period.

### **2.5. Acceptance of Concession**

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

### **2.6. Conditions Precedent**

Save and except as may otherwise be expressly provided in this Agreement, the obligations of a Party under this Agreement except under this Article 2.6 shall be subject to the satisfaction in full of the conditions precedents relating to the other Party as set out herein (the "**Conditions Precedent**"). The obligations of a Party under this Article 2.6 shall be effective from the date of execution of this Agreement.

#### **2.6.1. Conditions Precedent for Participating ULBs**

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



- (a) finalised and allocated Project Sites. Site for Landfill shall be allocated by the Participating ULB's within a time period of 9 (nine) months from the date of signing of Agreement.
- (b) allocated/ demarcated site for dumping of MSW till the time processing and disposal facilities are established as a part of the Project on an 'as is where is basis';
- (c) Handover existing infrastructure/assets (if any) to the concessionaire.
- (d) executed and procured execution of Substitution Agreement;
- (e) facilitated and ensured that Land Lease Agreement(s) are executed for all Site(s) and vacant and unencumbered possession of all the Site(s) is handed over to the Concessionaire on or before Compliance Date.
- (f) facilitated the Concessionaire in terms of support and participation by its representatives or sending follow-up letters to the Competent Authority for obtaining of all Applicable Approvals, if requested by the Concessionaire; provided Concessionaire fulfils all eligibility conditions and submits all required details in relation to the same;
- (g) executed of Inter-ULB Agreement between the Participating ULBs in connection with the Project and;

#### 2.6.2. Conditions Precedent for Concessionaire

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

- (a) provided a certified true copy of its constituent documents;
- (b) achieved Financial Closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate and ready access to the funds there under;
- (c) provided the Designated ULB notarised true copies of its board resolution authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- (d) executed and procured execution of Escrow Agreement in terms of Article 10
- (e) executed and procured execution of Substitution Agreement;
- (f) confirmed that all the representations and warranties of the Concessionaire/Selected Bidder set forth in the bid, and in this Agreement, are true and correct.
- (g) executed the Land Lease Agreement(s) and taken over vacant and unencumbered possession of all the Site(s) from the Participating ULBs.
- (h) obtained at its cost the Applicable Approvals that are required to commence the Construction Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Approvals are in full force and effect.
- (i) submitted operational plan for bio- remediation, processing and disposal of MSW; and
- (j) Furnished the Performance Security in accordance with terms hereof.

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

#### 2.6.3. Satisfaction of Conditions Precedent

- a. Each Party shall make all reasonable endeavours at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 270 days from the Appointed Date (the "**Compliance Period**") unless extended by the Authority in writing.
- b. The later of the date within such time when the Participating ULBs and the Concessionaire fulfils its Conditions Precedent (unless the Participating ULBs waives one or more of the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence ("**Compliance Date**").



#### 2.6.4. Non-Compliance with Conditions Precedent

##### A. Damages for Delay by the Concessionaire

- (a) In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 2.6.2 within on or before the Compliance Date, and; (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 2.6.1 or other breach of this Agreement by the Designated ULB/ Participating ULB or due to Force Majeure, the Concessionaire shall pay to the Participating ULB Damages in an amount calculated at the rate of [0.1% (zero point one per cent)] of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of [20% (twenty per cent)] of the Performance Security ("**Long Stop Date**" for fulfilment of the Concessionaire's condition precedent).
- (b) In the event the Conditions Precedent for Concessionaire have not been satisfied on or before the Long Stop Date for Concessionaire's condition precedent as aforesaid, and the Participating ULBs does not waive, fully or partially, such conditions precedents relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Designated ULB/Participating ULBs shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it. However, regardless of anything contrary contained herein instead of terminating this Agreement, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent beyond the Long Sop Date for Concessionaire, if practicable solely in the interest of the Project.
- (c) In the event termination occurs by reason of non-fulfilment of the conditions precedent by the Concessionaire on or before the Compliance Date, the Designated ULB shall be entitled to forfeit and encash the Bid Security, and in case the Performance Security has been furnished to replace the Bid Security, then equivalent amount from the Performance Security.
- (d) In the event the Conditions Precedent for Participating ULBs have not been satisfied on or before the Compliance Date, and the same is not attributable to Concessionaire's default or Force Majeure, then the Concessionaire shall have the option to either: (i) waive such condition precedent or extend the time period for satisfaction of the Conditions Precedent for Participating ULBs; or terminate this Agreement.
- (e) In the event this Agreement is terminated on account of the non-fulfilment of the Participating ULBs' Conditions Precedent, the Designated ULB/ Participating ULBs shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of the Participating ULBs on the Concessionaire.
- (f) Regardless of anything contrary contained herein, instead of terminating this Agreement as provided in this Article 2.6, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent for:
  - i. the Concessionaire beyond the Long Stop Date for Concessionaire's conditions precedent as stipulated in Article 2.6.4 (a); and
  - ii. for Participating ULBs beyond the timeframe mentioned in Article 2.6.4 (d)

In the event of such extension in time for fulfilling Conditions Precedent, the Parties shall in good faith and on best effort basis make endeavour to complete

their respective Condition Precedent to the extent not affected by Force Majeure or other Party's non-fulfilment .

## **2.7. Remediation of Legacy Waste by the Concessionaire prior to COD**

**2.7.1** The reclamation of the Site by way of Bio- Remediation shall commence from the Compliance Date]<sup>2</sup> (the "**Commencement Date**").

**2.7.2** The Participating ULBs shall ensure and procure that the MSW of their respective Project Area is collected and transported to the processing Site.

**2.7.3** From the start date of reclamation of legacy waste as aforesaid, the Concessionaire shall also install an electronic weigh bridge at the Processing Facility as per the specifications specified in this regard in this Agreement, or get approval from the Designated ULB for using nearest installed Weighbridge to measure the weight of the MSW transported for the measurement of MSW. The Weighbridge installed by the Concessionaire or being used of a third party during initial phase of operation or in the case of breakdown or maintenance shall be calibrated as per applicable BIS / IS standard. The calibration report will be submitted to Designated ULB/ PMU. The Concessionaire shall also install CCTV cameras above the Weighbridge.

**2.7.4** For measurement of MSW, Weighbridge shall be installed at the entrance of the Landfill Site in terms of this Agreement. The Weighbridge shall be operated and maintained by the Concessionaire but the same shall be subject to inspection by the authorized representatives of the Designated ULB and PMU;

**2.7.5** Tipping Fee payment to the Concessionaire will be made as per the measurement at the processing Weighbridge located at the entry of the Processing Facility and as verified by the PMU/Designated ULB; by way of credit to the Escrow Account. ;

**2.7.6** Each consignment to the Sanitary Landfill Site/ Processing Facility site shall be screened and weighed at the Weighbridge. Concessionaire shall also keep a record of weight and volume of each empty delivery truck, in order to determine the net weight of the consignment. The Designated ULB shall have an option to depute a responsible person from the Designated ULB to monitor the operations of the weighbridge; such representative shall provide details of the same to the PMU and Designated ULB on a weekly basis;

**2.7.8** The Weighbridges installed at the Project Facility shall be monitored and inspected regularly by PMU and/ or Designated ULB to ensure due calibration and accuracy and any errors shall be rectified immediately.

## **2.8. Achievement of COD**

For the avoidance of doubt, the Concessionaire shall be required to complete the reclamation of the Project Sites and achieve the COD of the Processing Facility within 3 years from the Compliance Date; Provided, however, that in case the COD is not achieved within the scheduled time period, then Concessionaire shall be liable to pay liquidated damages at the rate of 0.2 % of the Performance Security per day, subject to maximum of 20% of the Performance Security; the breach whereof shall entitle the Authority to terminate the Agreement in accordance with terms hereof.

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<sup>2</sup> To be retained only if there is no legacy waste at the Project Site

## **ARTICLE 3**

### **3. SITE(S)**

#### **3.1. Handover of sites**

- (a) Designated ULB shall co-ordinate with the Participating ULBs and ensure that they shall within 30 (thirty) days from the Appointed Date, handover the Site under their respective jurisdiction for Bio-remediation and Processing Facility to the Concessionaire on as-is-where-is basis, free from Encumbrance, for the purpose of implementing the Project.
- (b) Upon the Sites being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 3, have the right to enter upon, occupy and use the same or to make it as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement. However, prior to the grant of leasehold rights in respect of the Sites in accordance with terms hereof, the Concessionaire shall have the right to enter the Sites solely to carry out any survey or investigation for the purposes of Project development.
- (c) Annual advance lease rental of the Project Sites computed at the rate of [\*\*\*\*\*] per square metre per annum to be paid by the Concessionaire to the Participating ULBs for each year of the Concession Period as consideration under the Land Lease Agreement for grant of leasehold rights in respect of the Site(s) to be utilised for setting up the Processing Facility.
- (d) The term of the such Land Lease Agreement shall be co-terminus with the Concession Period, and accordingly upon expiry of this Agreement due to efflux of time or due to early termination, the term of the Land Lease Agreement shall also end simultaneously and the Concessionaire shall be obligated to hand over possession of the Sites together with the Project Facilities in good working condition in accordance with the terms of this Agreement and Land Lease Agreements.

#### **3.2. Rights, Title and Use of the Sites:-**

- (a) The Concessionaire shall have the right to the use of the Sites in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties post the Compliance Date.
- (b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project and Project Facilities, including the Sites, save and except as set forth and permitted under this Agreement.
- (c) The Concessionaire shall not, without the prior written approval of the Participating ULBs, use the Sites for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (d) The Concessionaire shall allow free access to the Sites to the members of the Project Management Unit, any authorized officer of the Participating ULBs and/ or the Department for inspection of the Sites and the works being undertaken by the Concessionaire.
- (e) The Concessionaire shall allow access to and use of the Sites for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as the Designated ULB or any of the Participating ULBs may specify.



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

### **3.3. Peaceful Possession: -**

The Participating ULBs hereby warrants that:

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

### **3.4. Applicable Approvals**

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

## **ARTICLE 4**

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### **4. INDEPENDENT EXPERT / PROJECT MANAGEMENT UNIT**

#### **4.1. Composition**

The Designated ULBs shall appoint the Project Management Unit (PMU) comprising of an Independent Expert, who may be an officer in the grade of an Executive Engineer or an external expert with at least 10 (ten) years of experience in Solid Waste Management with engineering degree/ masters in environment/ civil engineering, and 1 (one) representative each nominated by each of the Participating ULBs. Such representative of Participating ULB shall be an officer of grade of Executive Officer/ Municipal Engineer or above. The Independent Expert shall head the PMU.

#### **4.2. Duties and functions**

The PMU shall have the overall responsibility of monitoring and supervision of the Project. The detailed terms and conditions for appointment of Project Management Unit and its rights, responsibilities and scope of services are specified in **Annexure 7**.

#### **4.3. Remuneration**

The remuneration, cost and expenses of the PMU, including inter-alia the Independent Expert shall be borne by the Designated ULB; and Concessionaire shall reimburse half of such cost to the Authority.

#### **4.4. Replacement**

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

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

#### **4.5. Tenure**

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

## ARTICLE 5

### 5. THE CONCESSIONAIRE'S OBLIGATIONS

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

#### 5.1. Performance Security

- (a) The Concessionaire shall, for the due and punctual performance of its obligations hereunder in relation to the Project, furnish on or prior to the Compliance Date, an unconditional and irrevocable bank guarantee to secure its performance obligations, from a scheduled commercial bank acceptable to Designated ULB, in favour of the "Chairman, \_\_\_ Municipality", in the form as set out in **Annexure 6, ("Performance Security")** for a sum equivalent to 10% (ten percent) of the Estimated Project Cost, and shall be procured to be valid in accordance with terms hereof until expiry of six months from the end of Concession Period. Provided however, that the value of the Performance Security shall be reduced to 5% of the Estimated Project Cost, post the achievement of the COD. For this purpose, upon achievement of the COD, the Concessionaire shall furnish a fresh unconditional and irrevocable bank guarantee of value of 5% of the Estimated Project Cost which shall then be the Performance Security to secure operation and maintenance obligations. Upon submission of this aforementioned bank guarantee, the Designated ULB shall release and return the earlier bank guarantee of value of 10% of the Estimated Project Cost.
- (b) The Performance Security shall be kept valid and in force for the entire duration of the Concession Period, through periodical renewals, at least one month prior to the expiry of the subsisting Performance Security. In the event the Concessionaire fails to provide the renewed/ extended/ enhanced performance security at least 1 (one) month prior to the expiry of the subsisting Performance Security, so as to maintain the Performance Security valid throughout the term of the Agreement, the Designated ULB shall have the right to forfeit and appropriate the subsisting Performance Security. Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute Concessionaire Event of Default in terms hereof.
- (c) In the event, the Concessionaire is in default or breach of the due, faithful and punctual performance of its obligations under this Agreement, in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Designated ULB for or against the Concessionaire under this Agreement or against the Designated ULB in respect of this Agreement, the Designated ULB shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Performance Security as damages for such default, or loss suffered due to non-completion of services within the time period specified herein, or in respect of any dues, demands, Damages or claims against the Concessionaire.
- (d) The decision of the Designated ULB as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Participating ULBs under this Concession Agreement is required to be provided in connection with any demand made by the Participating ULBs to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.
- (e) In the event of encashment of the Performance Security by the Designated ULB, in full or part, the Concessionaire shall, within 15 (fifteen) days of receipt of the encashment notice from Designated ULB provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's



failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle the Designated ULB to terminate this Concession Agreement in accordance with the provisions hereof.

- (f) Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to the Designated ULB's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

## **5.2. General Obligations**

The Concessionaire shall:

- (a) perform and fulfill all of the Concessionaire's obligations with respect to the Project set out under this Agreement and Schedule 1 hereto;
- (b) obtain all Applicable Approvals as required by or under the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law (including without limitation all public and labor related laws and health, safety, and sanitation laws, as then in force) governing the operations of Project at all times during the Concession Period;
- (d) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (e) have the right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- (f) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep the Participating ULBs indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall Designated ULB and/or any of the Participating ULBs be treated as the employers of the Concessionaire, in this regard;
- (g) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (h) ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (i) upon receipt of a request thereof, afford access to the Project to the authorised representatives of Designated ULB for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- (j) bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;

- (k) ensure that the Project is operational on all calendar days of the year;
- (l) be responsible for the conduct of its staff employed for this Project while on duty;
- (m) to operate, maintain, repair and renovate the Project Assets and Project Facilities, in accordance with, *inter alia*, the Applicable Laws, Applicable Approvals and the requirements;
- (n) procure, acquire and put into place at its own cost and expenses all the Project Assets and Project Facilities required by the Concessionaire to implement the Project during the Pre-COD Period to achieve COD within the time stipulated in this Agreement;
- (o) promptly rectify and remedy any defects or deficiencies, if any pointed out by the PMU/ Participating ULBs in the Inspection Report and furnish a report within the stipulated time period in respect thereof to the PMU/ Participating ULBs;
- (p) comply with all the performance parameters as specified in Service Level Benchmarks, set forth in Annexure 2;
- (q) carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
- (r) pay all Taxes, duties and outgoings, including utility charges relating to the Project; and
- (s) transfer the Project to the Designated ULB/ Participating ULBs upon expiry or early Termination of this Agreement, in accordance with the provisions thereof;
- (t) be responsible and indemnify the Participating ULBs for any accident due to negligence or otherwise in the performance of the project; and
- (u) submit compliance as required to environmental agency and shall provide all information related to project as would be required by Participating ULBs pursuant to any RTI query or any issue raised in State Assembly/ Parliament.

### **5.3. No Breach of Obligations**

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

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

### **5.4. Damages**

- (i) In case the Concessionaire fails to fulfill its obligations (except achievement of COD) during the operations phase of the Project, damages for non-fulfillment shall be imposed according to provisions of Annexure 2. It is hereby clarified and understood between the Parties that in the event in any quarter, the aggregate Liquidated damages levied in terms hereof on the Concessionaire by Designated ULB exceeds Rs. [10% of Performance Security] in any quarter, the same shall be deemed as Concessionaire Event of Default and shall make the Agreement liable for termination.

- (ii) Post COD, the Concessionaire shall not suspend Processing and Disposal (P&D) of MSW, as the case may be, from MSW Supply Area for more than 2 (two) consecutive days at any time during the Concession Period. If operations are suspended for 3rd (third) consecutive day, damages shall be applicable as per Annexure-2, and suspension of operations on 4<sup>th</sup>(fourth) consecutive day shall result in Concessionaire's Event of Default.

#### **5.5. Obligations of the Selected Bidder**

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

- (a) arranging the financing for the Project, including mobilization of debt and Equity;
- (b) facilitate procurement of Applicable Approvals for commencing and implementing the Project;
- (c) facilitate award of Project Agreements in respect of engineering, procurement, construction and operation and maintenance of the Project;
- (d) ensure timely implementation of the Project in accordance with the provisions of this Agreement, as per the standard specifications, the Applicable Laws, the terms of the Applicable Approvals and Good Industry Practice
- (e) compliance with and implementation of the environment management plan;
- (f) compliance with the provisions of this Agreement relating to liability and indemnification; and
- (g) facilitate implementation of measures for safety, security and protection of the works, property, life and materials at the Project Site and the environment.
- (h) Allow and provide access to the ULB's to dispose off the silt and road sweeping waste into the Sanitary Landfill at no additional cost/fees.

#### **5.6. Concessionaire's Representative**

The Concessionaire shall deploy a representative on its behalf to be designated as the Project Manager who shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in charge to ensure implementation of the Project in accordance with the provisions hereof. The Project Manager shall closely co-ordinate with the Project Management Unit/Participating ULBs and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out by the Project Management Unit during routine inspections and project review meetings and submit action take report to the Project Management Unit/ Participating ULBs within a period no later than 7 (seven) days from the date of conveying of such defect/ shortcoming. The Project Manager or its nominee shall make themselves available for meetings as and when called upon by the Project Management Unit/ /Participating ULBs.

#### **5.7. Sole purpose of the Concessionaire**

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



#### **5.8. Employment of trained personal**

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

#### **5.9. Obligations relating to Project Agreements**

- (a) It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- (b) The Concessionaire shall submit to PMU/ Designated ULB the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and PMU/ Designated ULB shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to PMU/ Designated ULB a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of PMU/ Designated ULB to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by PMU/ Designated ULB. No review and / or observation of PMU / Designated ULB and / or its failure to review and / or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall PMU / Designated ULB be liable for the same in any manner whatsoever.
- (c) The Concessionaire shall ensure that each of the Project Agreements contains provisions that entitle the Designated ULB to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination. For the avoidance of doubt, it is expressly agreed that in the event the Designated ULB does not exercise such rights of substitution within a period not exceeding 30 (thirty) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Designated ULB and the covenant shall expressly provide for such eventuality.
- (d) The Concessionaire expressly agrees to include the covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Designated ULB an acknowledgment and undertaking, in a form acceptable to the Designated ULB, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Designated ULB in the event of Termination.

#### **5.10. Equity Lock-in requirements**

The Concessionaire acknowledges that:

- 5.10.1.** The Selected Bidder shall collectively hold at least 100% (one hundred percent) shareholding in the paid-up equity capital of the Concessionaire until date of execution of the Agreement; and thereafter until expiry of 3 (three) years from COD shall hold at least 51% (fifty one percent) shareholding in the paid up equity capital and voting powers of the Concessionaire during the remaining Concession Period.

- 5.10.2. Provided that in case the Selected Bidder is a Consortium of entities, then besides the consortium collectively fulfilling the aforesaid collective shareholding requirement, the lead member (the **"Lead Member"**) of such Consortium, shall have an equity share holding of at least 26% ( twenty six ) of the paid-up equity capital and voting shares of the concessionaire until expiry of 3 (three) years from COD.. All other members of the Consortium, apart from the Lead Member, whose experience was used to fulfill the qualification shall each hold 26% [twenty six percent] of the paid up and subscribed equity and voting powers of the Concessionaire.
- 5.10.3. Any violation/ modification in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire's Event of Default.

#### **5.11 Remediation Plan**

- 5.11.1 The Parties hereby agree that the Concessionaire shall ensure that the legacy waste recovered from the Project Site shall be processed through Bio -Remediation at the Project Site prior to achievement of the COD.
- 5.13.2 The Concessionaire shall be obligated to submit a remediation plan simultaneous the Compliance Date. Upon the completion of each quarter thereafter, the Concessionaire shall be obligated to submit the quarterly progress report. Such quarterly remediation report shall assess the quantity of legacy waste remediated from the Project Site in each such quarter and shall also set out the daily target in respect of amount of legacy waste to be remediated per day. The Concessionaire shall be obligated to maintain daily records for the amount of legacy waste, it has been able to remediate per day during each quarter.

The Concessionaire shall be obligated to pay any or all penalties, fines, if any, which may be levied by the appropriate Government Instrumentality for not clearing and reclaiming the Project Site in accordance and compliance with Applicable Laws as well as the

- 5.13.3 In this regard, it is clearly understood and recorded between the Parties that the obligations contained in this Clause 5.13 is an essential condition of the Agreement, which the Concessionaire shall comply with and adhere to as per the Applicable Laws, and terms of this Agreement.

## **ARTICLE 6**

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### **6. FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT**

#### **6.1. General Obligations**

- 6.1.1.** The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the development of the Project at its cost and shall enter into Financing Agreements with the Senior Lenders for the same.
- 6.1.2.** The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within Long Stop Date for Concessionaire's condition precedents as provision of Article 2.6.4.
- 6.1.3.** The Concessionaire shall, upon occurrence of Financial Closure, notify the Designated ULB forthwith, and shall have provided to the Designated ULB, at least 2 (two) days prior to Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

#### **6.2. Termination due to failure to achieve Financial closure**

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial closure does not occur, for any reason whatsoever, within the period set forth in Article 2.6 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. However, instead of terminating this Agreement as provided in this Article 6.2, the Parties may by mutual agreement extend the time for fulfilling the Conditions Precedent beyond the Long Stop Date. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the financial closure, the provisions of this Article 6.2 shall not apply.

#### **6.3. Substitution Agreement**

- 6.3.1.** This Agreement shall not be assigned by the Concessionaire in any manner or through any device or arrangement, directly or indirectly. Provided, however, subject to the provisions of this Agreement, Senior Lenders may be given the right of substitution in accordance with terms hereof and under the Substitution Agreement executed as a condition precedent in the form annexed hereto as **Annexure 8**.
- 6.3.2.** The Senior Lenders may exercise the rights to replace the Concessionaire with a Nominated Company as per terms provided in the Substitution Agreement, provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement.

Provided that in the event the Senior Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement, Designated ULB may in its sole discretion either decide to find a substitute entity itself or shall proceed to terminate the Agreement.



## ARTICLE 7

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### 7. DESIGNATED AND PARTICIPATING ULB'S OBLIGATIONS

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

#### 7.1. Specific Obligations

The Designated ULB shall:

- (a) identify and earmark / allocate parcel(s) of land within the Project Area for the purpose of setting up of Processing Facility and Sanitary Landfill for scientific management of MSW. Identify and earmark parcel of land to dispose the rejects after successful land reclamation at project sites.
- (b) facilitate in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from Designated ULB and/ or the Participating ULB under this Agreement, in connection with implementation of the Project and the performance of its obligations;
- (c) appoint Independent Expert to form part of the PMU who shall monitor, supervise, and review Concessionaire's progress details/ activities. The Concessionaire shall submit monthly reports to Designated ULB and PMU regarding progress of the Project. Designated ULB shall validate the data provided by the Concessionaire in monthly progress reports after seeking comments of the PMU;
- (d) on its behalf and on behalf of the Participating ULBs handover the existing infrastructure of Processing & Disposal assets, deployed and used at Project Site, on as is where is basis to the Concessionaire, within 30 (thirty) days of the date of signing of Concession Agreement;
- (e) make timely payments as prescribed in Article 9;
- (f) make available one water and electricity connection each at Project Site(s).
- (g) shall, along with Participating ULBs, provide land for the parking and workshop to Concessionaire;
- (h) The intimation letter of additional land shall be given by the Concessionaire at least 2 (two) years prior to the exhaustion of exiting land provided for SLF. Provide additional land for development of additional SLFs as close as possible to the existing SLFs, if during the Concession Period, the available Site for Sanitary Landfill Facility falls short of the actual landfill requirements;
- (i) arrange alternative site, in case Participating ULB/Designated ULB fails to acquire or handover the Sanitary Landfill Site as per the terms of this Agreement due to any reason whatsoever; and
- (j) The Designated ULBs shall meet and defray any cost or penalty levied upon the Concessionaire pursuant to any judgement or order of any court of competent jurisdiction or statutory authority, in connection with any damages resulting from legacy waste, which is not directly attributable to Concessionaire's non observance/non-performance of its Bio Remediation or any other obligation hereunder.

## **7.2. The Participating ULBs shall**

- (a) observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;
- (b) undertake to pay the Concessionaire their proportionate share of Payments due under Article 9 of this Agreement;
- (c) identify and earmark / allocate parcel(s) of land within the Project Area for the purpose of setting up of Processing Facility and Sanitary Landfill for MSW management;
- (d) have right over assets and technology in case of Termination or expiration of Concession Period, whichever is earlier;
- (e) facilitate in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations.; and
- (f) agree with the Concessionaire that any of its officers, employees or workmen shall not, at any time, during the Concession Period interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.

## **7.3. Department's Obligations**

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

- (a) The Department shall, where appropriate, coordinate with the Concessionaire in securing Applicable Approvals.
- (b) The Department shall coordinate with the other Participating ULBs in securing timely payments to the Concessionaire.

## ARTICLE 8

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### 8. MONITORING AND INSPECTION

#### 8.1. During Pre-COD Period

##### 8.1.1. Monthly Progress Reports

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

##### 8.1.2. Inspection

During the Pre-COD Period, the PMU/ Designated ULB shall inspect or cause to be inspect the Bio-remediation activity, Processing Facility development activities, Project Assets and Project Facilities at least once a month or at such shorter intervals as may be considered essential by the PMU and make report of such inspection (the "**Pre-COD Inspection Report**") stating in reasonable detail the delay or deficiencies, if any, with particular reference to the scope of the Project, specifications, Good Industry Practices, Applicable Law & Approvals.

Also the PMU/Designated ULB shall inspect and perform physical monitoring of legacy waste on the existing dumpsite through topographical surveys. Such tests/surveys should be performed every 3 months and put in form of a report of such inspection (the "**Pre-COD Inspection Report – Bio remediation of legacy waste**") attaching all analysis and results of the tests.

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

##### 8.1.3. Tests

For determining that the Remediation works [through Bio-remediation], Processing Facility, Project Assets and Project Facilities conform to the specifications and requirements of this Agreement, the PMU/ Designated ULB shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the PMU/ Designated ULB from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the PMU/ Designated ULB and furnish the results thereof to the PMU/ Designated ULB. For the avoidance of doubt, the costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire.

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



Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the PMU/ Designated ULB forthwith.

## **8.2. Post COD Period**

### **8.2.1. Monthly Status Reports**

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

### **8.2.2. Inspection**

The PMU/ Designated ULB shall inspect or cause to be inspected the execution of the Project at least once a month. It shall make a report of such inspection (the "**Post COD Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with reference to the maintenance requirements, maintenance manual<sup>3</sup>, performance parameters or requirements as set forth in this Agreement including Schedules/ Annexes, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post COD Inspection Report. Such inspection or submission of Post COD Inspection Report by the PMU/ Designated ULB shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

### **8.2.3. Remedial measures**

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

In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the PMU/ Designated ULB shall be entitled to recover Damages from the Concessionaire at the rate of 0.1 % of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the PMU/ Designated ULB, subject to maximum of 5% of the Performance Security, where after this Agreement shall become liable for termination on account of Concessionaire Event of Default

### **8.2.4. Designated ULB's/ Participating ULBs right to take Remedial measures**

- 8.2.4.1 In the event the Concessionaire does not maintain and/ or repair the Processing Facility/ Project Facilities/ Project Assets or any part thereof in conformity with the maintenance requirements, maintenance manual or performance parameters requirements or requirements

<sup>3</sup>Maintenance manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

as set forth in this Agreement including Schedules/ Annexes, and fails to commence remedial works within 15 (fifteen) days of receipt of Post COD Inspection Report or notice in this behalf from the PMU or the Designated ULB, as the case may be, the Designated ULB shall, without prejudice to its right under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire by way of debit from the Escrow Account. In addition to recovery of the aforesaid cost, an additional sum equal to 10% (ten percent) of such cost shall be paid by the Concessionaire as aforesaid debit from Escrow Account to the Designated ULB as Damages; and Concessionaire shall promptly issue such direction to the Escrow Bank [as required] to facilitate such payment.

- 8.2.4.2 The Designated ULB shall have the right, and the Concessionaire hereby expressly grants to the Designated ULB the right, to recover the costs and Damages specified in Article 8.2.4.1 directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Designated ULB under this Article 8.2.4.2. Any demand from Designated ULB stating that a specified amount is payable shall be final, binding and conclusive qua the Concessionaire and Escrow Bank and Escrow Bank shall pay and Concessionaire shall cause the Escrow Bank to pay such amount without any demur, delay, cavil or protest on receiving a demand for such costs and Damages.

## ARTICLE 9

### 9. PAYMENTS

#### 9.1 Tipping Fee

- 9.1.1 Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement; the Designated ULB shall :- (1) prior to the COD, pay to the Concessionaire reclamation fee ("Reclamation Fee") of INR [\*\*\*\*] for per ton of waste reclaimed and verified by PMU/Designated ULB; and (ii) pay to the Concessionaire in accordance with terms hereof, the tipping fee ("**Tipping Fee**") equivalent to INR (Rs.[■]/-) per ton of waste processed at the Processing plants located at respective Project Site(s), inerts transported to the disposal site for disposal by the Concessionaire, and the offtake of the resulting compost. For the avoidance of doubt, notwithstanding anything contained in this Agreement, and for the purpose of this Clause 9, at all time prior to the achievement of COD, the Concessionaire shall raise the bill/invoice for Reclamation Fee for the preceding month and submit the same to the Designated ULB.
- 9.1.2 With effect from COD and thereafter during the remaining term of Concession i.e. the Post-COD Period, the Concessionaire shall be entitled to receive the payment of Tipping Fee for undertaking the P&D, namely, INR [\*\*\*] Per ton of MSW processed and disposed, i.e when such MSW is actually processed at Processing Facility and finally disposed of.
- 9.1.3 The Tipping Fee payable in respect of the MSW processed and disposed during the Post-COD Period, shall be escalated at the end of every Financial Year after achievement of COD, at the rate of 4% (four percent) per annum over the last paid rate; provided however that for the purpose of this clause the first Financial Year post COD shall be deemed to be the period starting from COD until 31<sup>st</sup> March following subsequent to COD; and accordingly escalation at the aforesaid rate of 4% shall be computed proportionately. For the avoidance of doubt, the Reclamation Fee payable during the Pre-COD Period is not liable for escalation.
- 9.1.4 Irrespective of anything to the contrary contained herein, it is clarified and clearly understood and recorded between the Parties hereto that the Tipping Fee amount shall be paid on the basis of actual MSW processing carried out by the Concessionaire and as verified by the PMU/ Designated ULB. The Concessionaire shall raise monthly invoice and attach daily weight sheet of the electronic Weighbridge installed at the entrance of the Sanitary Landfill/ Processing Facility site, duly verified and approved by the PMU/ Designated ULB.

#### 9.2 Mobilization Advance

- 9.2.1 The Concessionaire shall be entitled to receive as per terms hereof a mobilization advance amount equivalent to 5% of the estimated total cost of Bio-remediation (the "**Mobilization Advance**") as arrived at by Authority, upon the Concessionaire providing a confirmation that the necessary personnel of the Concessionaire have been mobilized and deployed to commence the setting up of the Processing Facility. For the avoidance of doubt, the Mobilization Advance shall not be disbursed without the Concessionaire providing the aforesaid confirmation and complying with the Advance Guarantee requirement as set out in terms below.
- 9.2.2 The Concessionaire shall mandatorily furnish to the Authority simultaneous with or before the disbursement of the advance, an unconditional and irrevocable bank guarantee from a scheduled commercial bank for an amount equivalent to the quantum of 110% of the Mobilization Advance, in the form set out at Annexure [\*\*] ("**Advance Guarantee**"). All costs associated with obtaining, providing and maintaining the relevant Advance Guarantee shall be borne solely



by the Concessionaire. It is clarified that the Mobilization Advance shall be released by the Authority within 10 (ten) days of the submission of the Advance Guarantee. The Advance Guarantee shall remain in force and effect till the earlier of : (a) achievement of the COD, and; (b) recovery of the advance amount by way of deductions/adjustment of twelve monthly equated amount from the monthly Reclamation Fee, and the balance if any shall be set off from the thirteenth month Reclamation Fee. .

### **9.3 Payment mechanism**

- 9.3.1 The Concessionaire shall raise invoice by 5<sup>th</sup> day of a Month, in relation to payment of Reclamation Fee and/or Tipping Fee for the preceding month and attach daily weights sheets of the electronic Weighbridge. The invoice thus raised shall, subject to due performance by the Concessionaire and other terms and conditions of this Agreement, be approved by the Authority by 15<sup>th</sup> of the month and submitted to the Authority for release of payment.
- 9.3.2 The Authority shall, subject to due performance of obligations by the Concessionaire, pay 90% (ninety percent) of the bill amount of Reclamation Fee, to the Concessionaire by the end of the month in which the bill has been raised. The remaining 10% (ten percent) of the bill amount shall be paid by the Authority after assuring the progress through topographical surveys of the legacy waste dumpsite after every 3 (three) months.
- 9.3.3 The Authority shall, subject to due performance of obligations by the Concessionaire, pay 70% (seventy percent) of the billed Tipping Fee amount for P&D, to the Concessionaire by the end of the month in which the bill has been raised. The remaining 30% (ten percent) of the bill amount shall be paid by the Authority after verification of the sale/offtake of produced compost against the MSW processed, subject to deductions as applicable.
- 9.3.4 Designated ULB shall, subject to terms of this Agreement, pay the Reclamation Fee and/or Tipping Fee by way of credit of the relevant amount in the Escrow Account. Further, subject to due performance of obligations by the Concessionaire, the Designated ULB shall, by way of additional security for payment, deposit and maintain at all times, an amount equivalent to fee corresponding to next 2(two) months estimated payment in the Escrow Account.

## ARTICLE 10

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### 10. ESCROW ACCOUNT

#### 10.1. Escrow Account

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

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

#### 10.2. Deposits into Escrow Account

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

- a) all funds constituting the financial package disbursed by Senior Lenders in terms of the Financing Agreements;
- b) all revenues from or in respect of the Project including insurance claims;
- c) all payments made by the Designated ULB on account of the Reclamation Fee and Tipping Fee.

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

The Designated ULB shall at all times and in any month of the Concession, ensure that in the Reserve Sub-Account ("**Reserve Fund**") under the Escrow Account, an amount equivalent to immediately next two months Reclamation Fee and/or Tipping Fee payable to Concessionaire in accordance with terms hereof, is deposited and maintained. The Parties agree that so long as the Concessionaire performs its obligations hereunder and Designated ULB does not notify the Escrow Bank in respect of any non-performance or breach of obligation by Concessionaire directing Escrow bank to stop any appropriation from Reserve Fund; in case of any delay by Designated ULB in payment of due and undisputed amount to Concessionaire subject to and in accordance with terms hereof; the Concessionaire shall be entitled to tap the Reserve Fund to withdraw the amount due, which would be deposited and applied as per the application order agreed herein. In case of such tapping, the Designated ULB shall forthwith top up and maintain the required reserve in the Reserve Fund.

#### 10.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;

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

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

#### **10.4 Withdrawals upon Termination**

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due;
- (c) all payments and Damages certified by the Designated ULB as due and payable to it by the Concessionaire;
- (d) retention and payments relating to the liability for defects and deficiencies;
- (e) operation and maintenance expenses; and
- (f) balance, if any, in accordance with the instructions of the Concessionaire:

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

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



## ARTICLE 11

### 11. FORCE MAJEURE AND CHANGE IN LAW

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

#### 11.1. Force Majeure

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

#### 11.2 Non-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 Project development/implementation for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year not being an Indirect Political Event set forth in Article 11.3;
- (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 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 Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Designated ULB;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

### **11.3 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 collection of fee or consideration by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Designated ULB to permit the Concessionaire to continue the discharge of its obligations hereunder, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

### **11.4 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 11B and its effect, in financial terms, exceeds the sum specified in Article 11B.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition

relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

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

#### **11.5 Duty to report Force Majeure Event**

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

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

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

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

#### **11.6 Effect of Force Majeure Event on the Concession**

11.6.1 Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the period set forth for achieving affected Conditions Precedent inter alia including Financial Closure shall be extended by a period equal in length to the duration of the time affected by Force Majeure Event.

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



- (a) *Pre-COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; and*
- (b) *Whereupon the Concessionaire is unable to earn Tipping Fee and/or Reclamation Fees, despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of said fees on account thereof.*

#### **11.7 Allocation of costs arising out of Force Majeure**

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

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

- (a) upon occurrence of a Non-Political Event, the Parties shall subject to Insurance Cover bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (c) 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 Designated ULB to the Concessionaire; and
- (d) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Designated ULB to the Concessionaire.

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

11.6.5 Save and except as expressly provided in this Article 11, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

#### **11.7 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 11, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days to make a representation, and may after the expiry of such

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

#### **11.8 Termination Payment for Force Majeure Event**

11.8.1 If Termination is on account of a Non-Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire of an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

11.8.2 If Termination is on account of an Indirect Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire of an amount equal to:

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

11.8.3 If Termination is on account of a Political Event, the Designated ULB shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 12.4(f) as if it were a Designated ULB Default.

#### **11.9 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

#### **11.10 Excuse from performance of obligations**

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

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

## **ARTICLE 11A**

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### **11A SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

#### **11A.1 Suspension upon Concessionaire Default**

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

#### **11A.2 Designated ULB to act on behalf of Concessionaire**

11A.2.1 During the period of Suspension, the Designated ULB shall, on behalf of the Concessionaire, collect all fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Designated ULB shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for discharging the Concessionaire's obligations.

11A.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Designated ULB for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Designated ULB for all costs incurred during such period.

#### **11A.3 Revocation of Suspension**

11A.3.1 In the event that the Designated ULB shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Designated ULB may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

11A.3.2 Upon the Concessionaire having cured the Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Designated ULB shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### **11A.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under from the Lender's Representative, the Designated ULB shall withhold Termination for a period not exceeding



180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 11A.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

#### **11A.5 Termination**

11A.5.1 At any time during the period of Suspension under this Article 11A, the Concessionaire may by notice require the Designated ULB to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 11A.4, the Designated ULB shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 11A.

11A.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 11A.1, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Designated ULB upon occurrence of a Concessionaire Default.

## ARTICLE 11B

### 11B. CHANGE IN LAW

#### 11.B.1 Increase/Decrease in the costs

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

Provided that Change in Law shall not include:

- (i) Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
  - (ii) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge (including interalia, bye laws, directions, orders, regulations to be issued under the SWM Rules); and
  - (iii) Any change in the rates of the direct taxes which have a direct effect on the Project.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden ("**Additional Cost**"), the aggregate financial effect of which exceeds Rs. 1,00,00,000/- (Rupees One Crore only) in any Accounting Year, the Concessionaire may so notify the Designated ULB and provide the information's as provided in Article (c) below and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. The said remedial measures would be discussed and consequences arising therefrom shall be dealt with as per terms of Article (d) below.
- (c) Upon occurrence of a Change in Law, the Concessionaire shall promptly, notify Designated ULB and the PMU of the following:
- (i) The nature and the impact of Change in Law on the Project;
  - (ii) the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law;
  - (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost; and
  - (iv) The relief sought by the Concessionaire.
- (d) Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached in respect of aforesaid remedial measure to cure the adverse effect of Change in Law within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Designated ULB to pay an amount equivalent to the

Additional Cost as determined/certified by PMU based on the facts and circumstances and verification of information submitted by the Concessionaire. For the avoidance of doubt, it is agreed that this Article 11B.1 shall be restricted to Changes in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement

- 11.B.2. If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after tax return or other financial gains, the aggregate effect of which exceeds INR One Crore in any Accounting Year, then the process and consequences set out aforesaid at 11.B.2 shall mutatis mutandis apply, and in terms thereof Concessionaire will have to share the financial gain so as to put it in the same financial position that it would have enjoyed had there been no Change in Law.



## ARTICLE 12

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### 12. EVENTS OF DEFAULT AND TERMINATION

#### 12.1. Events of Default

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

#### 12.2. Concessionaire Event of Default

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

- (i) The Concessionaire has failed to Reclaim the legacy waster and/or process the MSW at the Processing Facility/ies for a continuous period of 3(three) days or an aggregate period of 7 (seven)days in any Month. This period shall be exclusive of the maintenance schedule of the Processing Facility.
- (ii) The Concessionaire is in Material Breach of any of its obligations under this Agreement in respect of which a specified time period has not been specified in this Agreement and the same has not been remedied for more than 30 (thirty) days.
- (iii) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading.
- (iv) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire.
- (v) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Designated ULB, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.
- (vi) Abandonment of the Project by the Concessionaire.
- (vii) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- (viii) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days.
- (ix) The Concessionaire fails to obtain and maintain a valid Performance Bank Guarantee for the requisite amounts in terms of this Agreement.
- (x) The Concessionaire has failed to make any payments due to the reason attributed to the Designated ULB/ Participating ULBs more than 60 (sixty) days have elapsed since such payment default.

- (xi) In case of any failure to achieve COD within 30 (thirty) days of the Scheduled Construction Completion Date and after levying the liquidated Damages subject to a maximum of 90 (ninety) days, the event shall amount to Concessionaire Event of Default. Provided however, if the delay to achieve COD is due to any Force Majeure event or delay on the part of the any Government authority to grant the requisite approvals within time or due to delay on the part of PMU in issuing Operational Acceptance Certificate, no such liquidated Damages shall be levied.
- (xii) The Concessionaire is in breach of the equity lock-in requirements as elucidated in Article 5.11.
- (xiii) In the event in any quarter the aggregate liquidated Damages levied by the Designated ULB on account of non-performance exceeds 10% of the Performance Security, then the same shall be construed as Concessionaire Event of Default.

### **12.3. ULB Event of Default**

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

- (i) Designated ULB has failed to make any payments including payment of Tipping Fee and/or Reclamation Fee due to the Concessionaire and more than 90 (ninety) days have elapsed since such default;
- (ii) Any of the Participating ULBs is in Material Breach of any of its obligations under this Agreement and have failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire;
- (iii) Any of the Participating ULBs have unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) Any of the Participating ULBs have unreasonably withheld or delayed grant of any approval or permission within its respective jurisdictions and such delay and withholding is not attributable to Concessionaire or Force Majeure which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect; and
- (v) Any representations made or warranties given by the Participating ULBs under this Agreement have been found to be false or misleading.

### **12.4. Termination due to Event of Default**

#### **(a) Termination for Concessionaire Event of Default**

- (i) Without prejudice to any other right or remedy which Designated ULB may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, Designated ULB shall, be entitled to terminate this Agreement in the manner as set out under Article 12.4(a)(ii) and Article 12.4(a)(iii).

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 12.2, Designated ULB may terminate this Agreement by issue of Termination Notice in the manner set out under Article 12.4(c) after giving the Concessionaire an opportunity of hearing.

- (ii) If the Designated ULB decides to terminate this Agreement pursuant to preceding sub-Article (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to Designated ULB in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, Designated ULB shall be entitled to terminate this Agreement by issuing Termination Notice, and the Performance Security of the Concessionaire shall get forfeited.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, Designated ULB shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

**(b) Termination for ULB Event of Default**

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Participating ULBs Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article (i) it shall in the first instance issue Preliminary Notice to all the Participating ULBs including the Designated ULB. Within 30 (thirty) days of receipt of Preliminary Notice, the Designated ULB on behalf of defaulting Participating ULB(s) shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "**Participating ULB Proposal to Rectify**"). In case of non - submission of Participating ULB Proposal to rectify (by the Designated ULB on behalf of the defaulting ULB) within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If Participating ULB Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, such Participating ULB(s) shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however such Participating ULB fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.



**(c) Termination Notice**

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding sub Article (a) or (b) above, 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 (sixty) days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

**(d) Obligation of Parties**

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

- (i) until Termination is final the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;
- (ii) the Termination Payment, if any, payable by Designated ULB in accordance with the following sub - Article (f) is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and
- (iii) the Project is handed back to the Designated ULB and all the Participating ULBs, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to Designated ULB.

**(e) 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.

**(f) Termination Payment for ULB Event of Default**

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

An amount equal to Debt Due, and, 150% (one hundred and fifty percent) of the Adjusted Equity, LESS Insurance Cover;

**(g) Termination Payment for Concessionaire Event of Default**

- (i) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire upto expenditure of 40% of the Total Project Cost, and if the expenditure on Project exceeds the said threshold, then the Concessionaire shall be entitled to receive 90% of the outstanding Debt Due (LESS Insurance Cover) component of such excess expenditure beyond 40% of the Total Project Cost. Additionally, the Designated ULB shall be entitled to forfeit the Performance Security of the Concessionaire.

- (ii) Upon Termination of this Agreement on account of Concessionaire Event of Default after COD, the Designated ULB shall be entitled to forfeit the Performance Security of the Concessionaire and pay Termination Payment to the Concessionaire as specified below:

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

#### **12.5. Rights of Participating ULBs on Termination**

- (a) Upon Termination of this Agreement for any reason whatsoever, Designated ULB shall upon making the Termination Payment, if any, to the Concessionaire, along with other Participating ULBs have the power and authority to:
  - (i) enter upon and take possession and control of the Project Facilities and Project Assets forthwith;
  - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facilities and Project Assets.
- (b) Notwithstanding anything contained in this Agreement, Participating ULBs shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facilities and Project Assets by the Concessionaire to Participating ULBs, shall be free from any such obligation/ fee/ penalties/ taxes.
- (c) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Designated ULB with the necessary particulars, and in the event of any delay, the Designated ULB shall pay interest at a rate equal to 3% (three per cent) above the Bank Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by the Designated ULB upon actual or constructive transfer of the Project Assets by the Concessionaire to the Participating ULBs clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.
- (d) The Concessionaire expressly agrees that Termination Payment under this Article 12.5 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- (e) The Designated ULB and the Concessionaire hereby unconditionally acknowledge and agree that, regardless of anything to the contrary set out herein, and without prejudice to their any other right or remedy, the Designated ULB shall be entitled to pay the Termination Payment [ in whole or in part, to the extent required] to the Lenders' Representative to set off their Debt Due including for procuring discharge/release of the any charge/Hypothecation created by Concessionaire on the moveable project assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from the Designated ULB, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of

the Debt Due as aforesaid, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement; and Concessionaire hereby irrevocably agree that such payment by Designated ULB shall be full and final settlement of Proportionate claim of Termination Payment to the Concessionaire under this Agreement.

**12.6. Accrued Rights of Parties**

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



## **ARTICLE 13**

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### **13. SUBSTITUTION OF THE CONCESSIONAIRE**

#### **13.1. Substitution by Lenders' Representative**

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

#### **13.2. Substitution by Designated ULB**

In the event that no company is nominated by the Lender's Representative to act as the Nominated Company or the company nominated by the Lenders' Representative in terms of Article 13.1 is not acceptable to Designated ULB, Designated ULB may either substitute the Concessionaire with its own Nominated Company in accordance with the Substitution Agreement, or terminate the Agreement.

#### **13.3. Substitution Process**

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

#### **13.4. Consequences of Substitution**

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

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

## ARTICLE 14

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### 14 HANDOVER OF PROJECT

#### 14.1 Ownership during the Term of Agreement

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

#### 14.2 Condition Survey

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

#### 14.3 Concessionaire's Obligations upon Termination

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

- (a) The Concessionaire shall subject to the provisions of this Agreement:
  - (i) hand over to the Designated ULB or its nominated agency free of cost the vacant and peaceful possession of the Project;
  - (ii) hand over/ transfer to the Designated ULB and the Participating ULBs all its rights, titles and interest in or over the assets comprised in the Project and the Project Assets in their respective jurisdictions (including movable assets which the Designated ULB and the Participating ULBs agrees to take over) which are required to be transferred to the Designated ULB and the Participating ULBs in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;

- (iii) hand over to the Designated ULB on behalf of itself and all Participating ULBs all documents, Proprietary Material, including as built designs, drawings, data, engineering, manuals and records relating to the Project Assets and Project.

It is clarified that only the assets of the Concessionaire shall be taken over and no liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Concessionaire shall be taken over by the Designated ULB and/ or the Participating ULBs. The Concessionaire's employees shall be the Concessionaire's/Successful Bidder's responsibility even after the expiry of the Concession Period;

- (iv) transfer or cause to be transferred/assigned to the Designated ULB and/ or the Participating ULBs any Project Agreements which are (a) valid and subsisting, (b) capable of being transferred to the Designated ULB and/ or the Participating ULBs and (c) those the Designated ULB and/ or the Participating ULBs have chosen to take over, and cancel or cause to be cancelled entirely at its cost such Project Agreements not transferred to the Designated ULB and/ or the Participating ULBs;
  - (v) at its cost, transfer to all the Participating ULBs all such Applicable Approvals which they may require and which can be legally transferred; and
  - (vi) at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Designated ULB and/ or the Participating ULBs. In the event the Concessionaire fails to remove such objects within the stipulated time, the Designated ULB on behalf of itself and/ or the Participating ULBs may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- (b) All proceeds of insurance claims shall be deposited in the Escrow Account and the Concessionaire or Persons claiming through or under it shall have no claim thereon or rights thereto unless and until all dues of/damages payable to the Designated ULB and/ or the Participating ULBs or any Government Agency or in respect of the Project have been cleared and no amounts payable/refundable to either of them by the Concessionaire pursuant to this Agreement are outstanding.
  - (c) The Concessionaire and the Persons claiming through or under it shall forthwith vacate the Site without any delay or demur.
  - (d) The Designated ULB on behalf of itself and other Participating ULBs shall be entitled to encash any subsisting Performance Security/bank guarantee(s) provided by the Concessionaire or the Selected Bidder, if the Termination is on account of Concessionaire Event of Default.

#### **14.4 Divestment Certificate**

- (a) On the Termination Date or the date of expiry of the Concession, the PMU shall verify, in the presence of the Concessionaire or of a representative of the Concessionaire, compliance by the Concessionaire with the requirements of this Agreement, as the case may be. In the event the PMU notifies the Concessionaire of shortcomings, if any, in the Concessionaire's compliance with such requirements, the Concessionaire shall forthwith cure the same.



- (b) Upon Termination (due to Force Majeure Event or Event of Default) or expiry of the Concession Period by efflux of time, the divestment by the Concessionaire of all rights, title and interest in the Project and the Project Assets and the Project Facilities shall be deemed to be complete on the Termination Date or the date of expiry of the Concession, as the case may be, but no later than 30 (thirty) days thereafter, by when all the requirements of this Agreement shall be fulfilled. The Designated ULB shall upon fulfilment of the requirements of this Agreement issue a certificate (the **"Divestment Certificate"**), with a copy thereof endorsed to the other Participating ULBs, which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project and the Project Assets and the Project Facilities and the vesting thereof in the Participating ULBs pursuant hereto.

## **ARTICLE 15**

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### **15 DISPUTE RESOLUTION**

#### **15.1 Amicable Resolution**

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the PMU (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **Article (b)** below.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- (c) Either Party may require such Dispute to be referred to the Commissioner/Competent Authority, Designated ULB (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of **Article 15.2** below.

#### **15.2 Arbitration**

##### **(i) Procedure**

Subject to the provisions of **Article 15.1**, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration by a Sole Arbitrator to be appointed by the Designated ULB. Such arbitration shall be held in accordance with the provisions of the Arbitration Act. The expenses of arbitration shall be borne equally by both the Parties.

##### **(ii) Place of Arbitration**

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

##### **(iii) Language**

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

##### **(iv) Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time, subject to the rights of the aggrieved parties to secure relief from any higher forum.

#### **15.3 Performance during Dispute**

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

## **ARTICLE 16**

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### **16 INSURANCE**

#### **16.1 Insurance Cover**

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

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

#### **16.2 Insurance Companies and Costs**

- a. The Concessionaire shall insure all insurable Project Assets comprised in the Project.
- b. All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Designated ULB and the Participating ULBs, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- c. The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the Designated ULB and/ or Participating ULBs, and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

#### **16.3 Evidence of Insurance Cover**

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



#### **16.4 Application of Insurance Proceeds**

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

#### **16.5 Validity of the Insurance Cover**

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

## ARTICLE 17

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### 17 INTELLECTUAL PROPERTY AND CONFIDENTIALITY

#### 17.1 Proprietary Material

- (a) The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project/ Project Assets, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire.
- (b) The Concessionaire, as beneficial owner, hereby grants to the Designated ULB/ Participating ULBs a perpetual non-exclusive license to use such Proprietary Material in connection with the Project. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically gets extended to the Designated ULB and the Participating ULBs for Project purpose only, and not for Third Party use or transfer, upon the Termination or expiration of this Agreement or the discharge by the Concessionaire of its duties hereunder.
- (c) Nothing in this Article 17.1 shall be construed to grant the Designated ULB and/ or the Participating ULBs or Persons claiming through or under it any right or licence with respect to such Proprietary Material, save and except as otherwise expressly herein.

#### 17.2 Confidentiality

- (a) The Designated ULB and/ or the Participating ULBs shall not at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project, the Concessionaire and the Designated ULB and the Participating ULBs (including any information concerning the contents of this Agreement) except to its directors, officials, employees, Contractors, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.
- (b) The Designated ULB and the Participating ULBs shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.
- (c) The Concessionaire shall ensure that all its directors, employees, Subcontractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non-disclosure agreements reasonably required by the Designated ULB and/ or the Participating ULBs, which have been duly approved by the Designated ULB, with respect to the Project.
- (d) The aforesaid provisions shall not apply to the following information:

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

### **17.3 Survival**

The Concessionaire, the Designated ULB and/ or the Participating ULBs accept and confirm that the provisions of this Article 17 shall survive the expiration or any earlier termination of this Agreement.



## **ARTICLE 18**

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### **18 REPRESENTATIONS AND WARRANTIES**

#### **18.1 Representations and Warranties of the Parties**

Each Party represents and warrants to the others that:

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

#### **18.2 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Designated ULB that:

- (a) the Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;
- (b) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (c) there are no actions, suits, proceedings or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute the Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;

- (e) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (f) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Designated ULB or to any Government Authority in relation to Applicable Approvals contain or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (g) its shareholding pattern is in compliance with the requirements of this Agreement;
- (h) it has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (i) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (j) all its rights and interests in the Project shall pass to and vest in the Participating ULBs on the Transfer Date free and clear of all liens, claims and Encumbrances.

### **18.3 Representations and Warranties of Designated ULB/ Participating ULBs**

The Designated ULB and/or the Participating ULBs represent and warrant to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of all Participating ULBs.
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.
- (c) it has the financial standing and capacity to perform its obligations under this Agreement.
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e) all information provided by the Designated ULB in the bid documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects.

### **18.4 Disclosure**

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

### **18.5 Disclaimer**

- (a) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Project, the legal framework and the technical and financial aspects of the Project, the Technical Specifications, all the information and documents provided by the Designated ULB or any Government Authority, the market and demand conditions, information relating to Participating ULBs; the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
- (b) The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 18.5(a) above and hereby confirms that the Designated ULB, any Government Authority and their consultants and advisors shall not be liable for the same in any manner whatsoever to the Concessionaire or Persons claiming through or under the Concessionaire.
- (c) The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by the Designated ULB, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
- (d) The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.

### **18.6 Obligation to Notify Change**

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



## **ARTICLE 19**

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### **19 MISCELLANEOUS**

#### **19.1 Assignment and Charges**

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Designated ULB.
- (b) Restraint set forth in Articles (a) shall not apply to:
  - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
  - (ii) mortgage/ pledge/hypothecation of assets/goods other than Project Assets and their related documents of title, arising or created in the ordinary course of business, and as security only for indebtedness to the Senior Lenders
- (c) The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Site(s).

#### **19.2 Interest and Right of Set Off**

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

Provided the stipulation regarding interest for delayed payments contained in this Article 19.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

#### **19.3 Governing Law and Jurisdiction**

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

#### **19.4 Waiver**

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

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

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

#### **19.5 Survival**

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

#### **19.6 Amendments**

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

#### **19.7 Notices**

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

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

To the Concessionaire  
ULB/Participating

To the Designated  
ULB

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

To the Department

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Participating ULB 2

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\_\_\_\_\_  
\_\_\_\_\_

### **19.8 Severability**

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

### **19.9 No Partnership**

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

### **19.10 Language**

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

### **19.11 Exclusion of Implied Warranties etc.**

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

### **19.12 Counterparts**

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

### **19.13 Liability for Review**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment, certification, verification or approval by the Designated ULB and/ or Participating ULBs or PMU or any Government Authority of any Project Agreement, design, detailed engineering, or document, accounts, invoice etc. submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and
- (b) the Designated ULB and/ or Participating ULBs, its advisors or the Government Authorities shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in sub-article (a) above.



#### 19.14 Unforeseen Event

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

#### 19.15 Liability and Indemnification

- (a) The Concessionaire shall indemnify, defend and hold harmless (the "**Indemnifying Party**") the Designated ULB and/ or Participating ULBs (the "**Indemnified Parties**") during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgements, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorneys' fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc., as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party's representations and warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Approvals or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it ; or (iv) as provided elsewhere herein.
- (b) The Concessionaire shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold harmless the Designated ULB and/ or Participating ULBs and its advisors in this behalf.
- (c) The Designated ULB and/ or Participating ULBs shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project for any reason whatsoever.
- (d) The Concessionaire shall keep the Designated ULB and/ or Participating ULBs indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Site(s) or in the employment of labour and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination or expiration of this Agreement by efflux of time or otherwise.
- (e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the Transfer Date.

- (f) It is clarified that any penalty/cost/damages levied by any competent Government Instrumentality that results from breach of any Applicable Laws pertaining to the environment, and which does not involve any non-observance of such applicable environmental laws or any default of the Concessionaire whatsoever, shall be fully borne by the Authority.

The legacy waste at the existing Site shall be delineated by the Authority prior to the handover of the Site to the Concessionaire.

- (g) The provisions of this Article 19 shall survive the expiration or prior termination of this Agreement.

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

|  |  |
|--|--|
| <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For DESIGNATED ULB/PARTICIPATING ULB 1</b><br/>           _____ of Designated ULB,<br/>           duly authorized by the _____</p> <p>(Signature &amp; Stamp)</p> | <p>SIGNED, SEALED AND DELIVERED BY:<br/> <b>For CONCESSIONAIRE</b><br/>           Director of Concessionaire, duly authorized<br/>           by the resolution of the Board of Directors<br/>           passed at its meeting held on<br/>           _____</p> <p>(Signature &amp; Seal)</p> |
| <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For PARTICIPATING ULB 2</b><br/>           _____ of Participating ULB2,<br/>           duly authorized by the _____</p> <p>(Signature &amp; Stamp)</p>            | <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For PARTICIPATING ULB 3</b><br/>           _____ of Participating<br/>           ULB3, duly authorized by the<br/>           _____</p> <p>(Signature &amp; Stamp)</p>   |
| <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For PARTICIPATING ULB 4</b><br/>           _____ of Participating ULB4,<br/>           duly authorized by the _____</p> <p>(Signature &amp; Stamp)</p>            | <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For PARTICIPATING ULB 5</b><br/>           _____ of Participating<br/>           ULB4, duly authorized by the<br/>           _____</p> <p>(Signature &amp; Stamp)</p>   |
| <p>SIGNED, STAMPED AND DELIVERED BY:<br/> <b>For Selected Bidder</b> _____<br/>           duly authorized by the _____</p>   | <p>SIGNED, SEALED AND DELIVERED BY:<br/> <b>For DEPARTMENT</b><br/>           _____ of Department, duly authorized<br/>           by the _____</p>   |

|                           |                           |
|---------------------------|---------------------------|
| (Signature & Stamp)       | (Signature & Seal)        |
| IN PRESENCE OF            |                           |
| Sign:<br>Name:<br>Address | Sign:<br>Name:<br>Address |
| Sign:<br>Name:<br>Address | Sign:<br>Name:<br>Address |



## ANNEXURE 1: SCOPE OF SERVICES

### A. **BIOREMEDIATION**

1. Excavate the existing mixed compacted garbage and sieve the waste through mechanical sieving machines/ any other equipment at the cost of the Developer/Developer.
2. The Developer shall take necessary steps and processes to minimize environmental pollution while carrying out remediation/ reclamation of legacy waste at both the Dumpsites. The Developer shall take all reasonable steps to ensure that there is control of odor, dust and treatment generated leachate, flies, rodents and bird menace and fire hazards in and around the Dumpsites during the period of reclamation.
3. The Bioremediation activity should be carried out in accordance with *Guidelines for Disposal of Legacy Waste (Old Municipal Solid Waste), 2019*.
4. Set up mechanical segregation or processing system flexible enough and convenient for segregation of dumped material;
5. Set up an eco-friendly and non-polluting processing system in order to reduce the impact of the dumping site on the adjacent areas.
6. Set a soil and ground water baseline so that the same will be available to evaluate post Bio-Mining and Remediation/ Reclamation of both the dumpsites.
7. Monitor ground water quality, work zone air quality and ambient air quality monitoring within the site from authorized laboratories/agencies and submit the report on quarterly basis.
8. Carry out leachate management of existing leachate (if any) at the site in accordance to the applicable rules and regulations.
9. Segregate the excavated garbage into as many kinds and categories as possible. Maximize the separation of recyclables viz. glass, metal etc. from the Pramod Nagar and Kamarhati Dumpsite. Maximize the separation of components for generation of Refuse Derived Fuel ("RDF") from the Dumpsite.
10. Deal with pre-processing outputs such as RDF. Target to generate compost from the biodegradable component of the Waste at the Pramod Nagar and Kamarhati dumpsites. Provide on-site storage facility for various fractions of processed waste and proper channelization further for sale or reuse to industry/vendors.
11. The Concessionaire shall take all Applicable Permits and approvals in sequence and comply with the provisions therein from time to time.
12. The Developer shall make reasonable endeavors to maximize the utilization of the waste from both the dumpsites and for this purpose shall ensure that maximum waste is utilized / reused by the Developer, so as to produce products/outputs such as soil enricher/compost, recyclables, RDF and products from construction and demolition waste.
13. The Developer also needs to cater to the incoming fresh waste to these sites during the course of reclamation activity and shall ensure that waste (older than 2 months) shall remain at site, at commencement of operations of processing plant.

14. While reclaiming and excavating MSW from the present open dumpsite following aspects must be handled carefully
15. Exposure to hazardous material, leachate, gases, odor etc.
16. Contaminated wastes that maybe uncovered during reclamation operations require special handling and disposal requirements
17. Precautions must be taken while excavating as it releases gases like methane, Sulphur dioxide and other gases which causes explosion and fire
18. The Developer shall explore the possibility of minimizing the disposal of inert/ processing rejects and maximize the usage of such inert waste including but not limited to making of curb side blocks, filling of low-lying areas, construction of roads etc. To facilitate the disposal of rejects, SUDA has identified a low-lying land area in Panihati. If opted, the developer needs to develop this low-lying area in Panihati by disposal of rejects and perform proper compaction, so that the site can be available for future use to put in new infrastructure.
19. Be responsible for creation and maintenance of infrastructure, facilities and amenities for sieving the excavated garbage and storing the segregated materials etc. at their own risk and cost. Provide adequate number of processing machines for achieving its daily target of handling at least 1000 (one thousand) Metric Tons of Waste per day based on the estimated quantum of waste at both the dumpsites;
20. Provide weighbridge to measure the quantity of various components of waste at dumpsite, processed in terms of sorting and segregated materials, RDF, compost material, and inerts going out of the Dumpsite. The developer shall ensure that the weighbridge is installed from the start date of remediation activity.
21. Deploy the necessary manpower, materials, equipment, tools and construction of plants and sheds and creation of facilities for handling, separating, segregating and storing for the operation of the plant.
22. Provide security arrangements for the planned project site, machineries, equipment etc. at the cost of the Developer / Developer.
23. Legacy C&D waste if found during excavation, sorting/segregation and final disposal of such legacy C&D Waste shall be the sole responsibility of the Developer. The Developer shall be free to explore alternate uses for C&D waste as per the C&D Waste Rules, 2016. Further, if the said C&D Waste is found to be lying around the Pramod Nagar and Kamarhati dumpsites or found to be not properly disposed of, the Developer shall be liable to be penalized for the same in accordance with the terms of the Concession Agreement.
24. Hazardous waste such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive waste, if found, during excavation, sorting or segregation shall be handled as per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

## **B. PROCESSING FACILITY**

1. Designing, Constructing and Operating the following Municipal Solid Waste Processing facilities on Design, Build, Finance, Operate and Transfer (DBFOT) basis

- a. Processing Facility at Pramod Nagar - Compost plant and RDF plant of total capacity of at least 569 TPD and a Bio methanation plant of at least 50 TPD for the processing of waste (hereinafter collectively referred to as "Project Sites").
  - b. Processing Facility at Kamarhati - Compost plant, RDF plant of a total capacity of at least 155TPD for the processing of waste (hereinafter collectively referred to as "Project Sites").
2. The scope shall be to design, build, testing, commissioning, operation, maintenance, of a mixed waste MSW Processing facility (Windrow Composting Technology with Pre-Sorting facility and RDF Generation & Bio-methanation plant) with subsequent expansion provisions during the Concession Period of 18 years.
3. The developer shall implement and operate the windrows composting process in compliance with SWM Rules, 2016 and CPHEEO 2016 MSWM Manual.
4. The Developer shall procure all necessary project assets (i.e. Plant and Equipment) including equipment, vehicles, machineries and others required for the successful execution of the treatment & disposal of Project and ensure their timely maintenance, replacement and capacity augmentation, as the case may be, during the entire duration of the Contract.
5. All the necessary regulatory approvals should be taken prior to the commencement of plant construction.
6. Access to the Project Site provided by SUDA shall have to be maintained by the Developer/Developer to have easy movement of vehicles and etc. from outside.
7. The Developer shall also set up a leachate treatment facility for both the plants in accordance of applicable rules and regulations.
8. Transportation of inert/residual processing waste from Processing Facilities to the Sanitary Landfill is to be done by the Developer from each site. The rejects should be minimized and restricted to 20% of the total incoming waste as per SWM Rules 2016.
9. Provide adequate lighting system for easy operations in the working area as well as to the access ways. Provide utilities such as drinking water facilities and sanitary facilities (preferably washing/bathing facilities for workers) and safety provisions including health inspections of workers at site shall be carried out.
10. Provide fire protection measures and safety equipment for all workers at the site.
11. Entrance into the Project Site from outside the Site shall be restricted to one point. However, several emergency exits may be provided.
12. Adequate measures to avoid trespassing shall be taken by the SUDA.
13. Ensure adequate power back-up for smooth operation of the machinery and equipment installed.

### **C. SANITARY LANDFILL SITE**

1. The Developer shall Design, Construct and Operate a Sanitary Landfill Facility (SLF) of Designed Capacity at site provided by SUDA. *The site for SLF to be finalized by SUDA and handed over to the Developer within 6-9 months from LOA.* The Sanitary Landfill shall be setup in accordance with the requirement of SWM Rules, 2016 and CPHEEO Manual.



2. SLF shall comprise compacted earth bunds with impermeable liner systems comprising compacted clay liners, or geomembranes, or geosynthetic clay liners. The landfill cells will incorporate leachate collection systems comprising gravel and geotextile filter layers and pipe collection and transfer systems.
3. The Developer shall also set up a leachate treatment facility for both the plants involving any suitable technology to meet the standards as per regulatory norms.
4. Transportation of inert/residual processing waste from Processing Facilities to the Sanitary Landfill is to be done by the Developer from each site.
5. The Developer shall provide fencing along the perimeter of the Project Site and arrange adequate lighting system for easy operations in the working area as well as to the access ways.
6. Provide fire protection measures and safety equipment for all workers at the site. Entrance into the Project Site from outside the Site shall be restricted to one point. However, several emergency exits may be provided.
7. Adequate measures to avoid trespassing shall be taken by the SUDA. Ensure adequate power back-up for smooth operation of the machinery and equipment installed.
8. All the necessary regulatory approvals shall be taken prior to the commencement of SLF construction and operations.
9. The Developer shall carry out scientific closure of the Dumpsite after the concession period before handing over the site.

## ANNEXURE 2: SERVICE LEVEL BENCHMARKS

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

| S.no. | Indicator  | Unit | Definition  | Benchmark value | Proposed Timeline  |
|-------|--|------|---|-----------------|--|
| 1.    | Extent of scientific disposal of waste at landfill sites | %    | The amount of waste that is disposed in landfills that have been designed, built, operated and maintained as per standards laid down by Central government. This extent of compliance should be expressed as a percentage of the total quantum of waste disposed at landfill sites, including open dump sites | 100%            | Six months from the date of setup of the Sanitary Landfill |

### Damages

| S.No.                    | Default  | Monitoring Mechanism                              | Cure Period  | Damages  |
|--------------------------|--|---|--|--|
| <b>Waste processing</b>  |  |   |  |  |
| 1.                       | Weighbridge is non-operational at Processing facility/ landfill due to breakdown for a consecutive period of 2 days. | Daily check by PMU                                | From a list of three weighbridges, located near the project / processing site provided by Designated ULB from where the concessionaire can weigh the MSW at its own cost | Rs. 5000 per day after 2 days  |
| <b>Sanitary Landfill</b> |  |   |  |  |
| 2.                       | Inert/ Residual waste greater than 20% sent to landfill  | Weighment slips/ Daily reports/ Inspection by PMU | -  | for every ton of increase, an amount equivalent to 2.5 times of average monthly per ton tipping fee payment made on Processing & Disposal head over immediately preceding three months. In the event tipping fee is zero, penalty shall be imposed |

|                          |   |                                    |  |   |
|--------------------------|---|------------------------------------|--|---|
|                          |   |                                    |  | at the rate of Rs<br>1000/ ton.   |
| <b>Bio - remediation</b> |   |                                    |  |   |
| 3.                       | Extent of waste<br>remediated per day<br>at the project site<br>1000TPD till the<br>completion of<br>reclamation of entire<br>project | Weightment slips/<br>Daily reports |  | For each instance<br>of default - Rs.<br>10,000 penalty<br>shall be imposed.<br>Or for each ton of<br>shortfall - Rs<br>500/ton penalty<br>shall be imposed |

Notwithstanding anything to the contrary contained herein, in the event in any quarter the aggregate liquidated damages levied by the Designated ULB on account of non-performance exceeds 10% of the Performance Security, then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination..



**ANNEXURE 3: FINANCIAL BID**  
(as submitted by Selected Bidder)

#### ANNEXURE 4: FORMAT FOR DAILY WEIGHT SHEET

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

**ANNEXURE 5: OPERATIONAL ACCEPTANCE CERTIFICATE**

**Format as decided by PMU/Designated ULB**



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

Bank Guarantee No. [ \_\_\_\_ ]

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

**IN FAVOUR OF:**

\_\_\_\_\_ with its principal office at [insert address], (hereinafter referred to as "**Designated ULB**" or "**Beneficiary**", which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

**WHEREAS:**

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

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

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

and faithful performance of its obligations any time during the term of the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Designated ULB and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. *In order to give effect to this Guarantee, the Designated ULB (acting on behalf of itself and the Participating ULBs) shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.*
4. *It shall not be necessary, and the Bank hereby waives any necessity, for the Designated ULB to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.*
5. *The Designated ULB shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, 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 Designated ULB against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Designated ULB, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Designated ULB of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Designated ULB or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.*
6. *This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Designated ULB in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.*
7. *Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of the term of the Agreement in accordance with the provisions thereof or unless a demand or claim in writing is made by the Designated ULB on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Designated ULB under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.*
8. *The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Designated ULB in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.*
9. *Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the*

*envelope containing the notice was posted and a certificate signed by an officer of the Designated ULB that the envelope was so posted shall be conclusive.*

10. *This Guarantee shall come into force with immediate effect and shall remain in force and effect during the term of the Agreement or until it is released earlier by the Designated ULB pursuant to the provisions of the Agreement.*

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

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

**NOTES:**

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



## **ANNEXURE 7: SCOPE OF WORK OF PMU**

### **1. Role of the PMU**

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

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

### **2. Structure & Scope of Services**

(a) PMU shall be headed by an Independent Expert having the following qualifications:

- i. A person having at least 10 (ten) years of experience in the Solid Waste management sector from private sector with educational background of Environmental Engineering/ Environmental Sciences/ Public Health/ Civil Engineering
- ii. An officer of the grade of Executive Engineer from government services
- iii. Salary / Wages of such Independent Expert will be borne by Designated ULB.

(b) PMU shall also comprise of nominated members of the Participating ULBs. Such members should be officers of rank of executive officer or above.

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

#### **2.1 Design and Planning**

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

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

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

- (a) Ensure compliance by the Concessionaire with the provisions of this Agreement and Applicable Laws;
- (b) act on the Designated ULBs' behalf as the Designated ULBs' representative regarding

- all contact with the Concessionaire unless expressly indicated otherwise;
- (c) perform physical progress monitoring of Bio-remediation activity by daily and monthly visit photographs and topographical tests of the legacy waste to monitor the quantity of legacy waste processed through Bio-remediation.
- (d) review of all Tests
- (e) interpret the requirements of the contract and make decisions regarding performance of the Concessionaire. The PMU shall inform and advise Designated ULB, in a timely manner all matters relating to the execution, progress, and completeness of the Project; and
- (f) reject work which fails to comply with the specifications and requirements of the Agreement. Whenever considered necessary or advisable to ensure correction of defective work, the PMU may require inspection or testing of such work, whether or not such work be then fabricated, installed, or completed;

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

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

## ANNEXURE 8: SUBSTITUTION AGREEMENT

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

### AMONGST

1. \_\_\_\_\_ (hereinafter referred to as the "Designated ULB" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) on behalf of itself and all the Participating ULBs;
2. The Government of West Bengal acting through Director/ Chief Engineer of Directorate of Urban Local Bodies, West Bengal established under the provisions of \_\_\_\_\_, acting through its \_\_\_\_\_ herein referred to as "Department", which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and administrators
3. [\*\*\*\*\*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);
4. \*\*\*\*\*[NAME AND PARTICULARS OF Lenders' Representative] and having its registered office at \*\*\*\*\*, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or 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 Designated ULB, Participating ULBs, and the Department have entered into a Concession Agreement dated \*\*\*with the Concessionaire (the "Concession Agreement") on design, build, finance, operate and transfer basis (DBFOT) (hereinafter referred to as the "Project"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Designated ULB to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Substitute Entity in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering, financing, construction, operation and maintenance, the Designated ULB has agreed and undertaken to transfer and assign the Concession to a Substitute Entity in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.



NOW IT IS HEREBY AGREED as follows:

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

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

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

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

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

**"Notice of Financial Default"** shall have the meaning assigned thereto in Article 3.2.1; and

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

**"Participating ULBs"** means the following Urban Local Bodies (ULBs) :

.....  
.....

### **1.2 Interpretation**

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

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

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

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

## **2 ASSIGNMENTS**

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

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of

this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

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

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

- 3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Substitute Entity under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Designated ULB and Department hereby agree to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Substitute Entity selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

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

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

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

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

substitute the Concessionaire by a Substitute Entity, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Substitute Entity in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Designated ULB shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Designated ULB shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

### **3.4 Procedure for substitution**

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

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

3.4.3 Upon selection of a Substitute Entity, the Lenders' Representative shall request the Designated ULB to:

- (a) accede to transfer to the Substitute Entity 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 Substitute Entity, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Substitute Entity on the same terms as are contained in this Agreement.

3.4.4 If the Designated ULB has any objection to the transfer of Concession in favour of the Substitute Entity 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 Designated ULB, the Substitute Entity shall be deemed to have been accepted. The Designated ULB thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Substitute Entity; provided that in the event of such objection by the Designated ULB, the Lenders' Representative may propose another Substitute Entity whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Substitute Entity in place of the Concessionaire.

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

The decision of the Lenders' Representative and the Designated ULB in selection of the Substitute Entity shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Designated ULB taken pursuant to this Agreement including the



transfer/assignment of the Concession in favour of the Substitute Entity. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Designated ULB and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Designated ULB or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **4 PROJECT AGREEMENTS**

##### **4.1 Substitution of Substitute Entity in Project Agreements**

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

#### **5 TERMINATION OF CONCESSION AGREEMENT**

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

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Designated ULB to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Designated ULB shall undertake Termination under and in accordance with the provisions of Article 12 of the Concession Agreement.

##### **5.2 Termination when no Substitute Entity is selected**

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

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

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

#### **6 DURATION OF THE AGREEMENT**

##### **6.1 Duration of the Agreement**

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

- (a) Termination of the Agreement; or

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

## **7 INDEMNITY**

### **7.1 General indemnity**

- 7.1.1 The Concessionaire will indemnify, defend and hold the Designated ULB, Participating ULBs, Department and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### **7.2 Notice and contest of claims**

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

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

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

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

### **9.2 Waiver of sovereign immunity**

The Designated ULB unconditionally and irrevocably:

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

### **9.3 Priority of agreements**

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

### **9.4 Alteration of terms**

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

### **9.5 Waiver**

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

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

#### **9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other**



indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

**9.6 No third party beneficiaries**

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

**9.7 Survival**

**9.7.1 Termination of this Agreement:**

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

**9.8 Severability**

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

**9.9 Successors and assigns**

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

**9.10 Notices**

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

**9.11 Language**

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

**9.12 Authorised representatives**

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

**9.13 Original Document**

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

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

**SIGNED, SEALED AND DELIVERED**

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
CONCESSIONAIRE by:

For and on behalf of  
DESIGNATED ULB OF [\*\*\*] by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
SENIOR LENDERS by the Lenders'  
Representative:

**SIGNED, SEALED AND DELIVERED**

For and on behalf of  
DEPARTMENT

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

In the presence of:

- 1.
- 2.

## ANNEXURE 9: ESCROW AGREEMENT

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

### AMONGST

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

### WHEREAS:

- (A) The Designated ULB and the Participating ULBs have entered into a Concession Agreement dated ..... with the Concessionaire (the “**Concession Agreement**”) for undertaking the ..... Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annexure-A to form part of this Agreement Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

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



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

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

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

**"Escrow Default"** shall have the meaning as ascribed thereto in Article 6.1;

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

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

**"Participating ULBs"** means the following Urban Local Bodies (ULBs):

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

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

**"Sub-Accounts"** means the respective sub-accounts of the Escrow Account, into which the monies specified in Article 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).

## **1.2 Interpretation**

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

## **2 ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Designated ULB, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Designated ULB, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Designated ULB, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

## **2.2 Acceptance of Escrow Bank**

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

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

2.3.1 The Concessionaire shall open and establish the Escrow Account with the..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

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

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

## **2.4 Escrow Bank's Fee**

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

## **2.5 Rights of the Parties**

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

## **2.6 Substitution of the Concessionaire**

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

## **3 DEPOSITS INTO ESCROW ACCOUNT**

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

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

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

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

### **3.2 Deposits by the Designated ULB**

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

- (a) Payments (under Article 9 of the Concession Agreement) and other monies disbursed by the Designated ULB to the Concessionaire
- (b) all fee collected by the Designated ULB in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments

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

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

### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled



to appropriate there from the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

#### **4 WITHDRAWALS FROM ESCROW ACCOUNT**

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

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

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

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

##### **4.2 Withdrawals upon Termination**

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

- (c) all payments and Damages certified by the Designated ULBas due and payable to it by the Concessionaire;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies;
- (e) operation and maintenance expense
- (f) balance, if any, in accordance with the instructions of the Concessionaire;

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

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

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

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

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

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

Notwithstanding anything to the contrary contained in this Agreement, the Designated ULB may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 11A of the Concession Agreement. Any instructions given by the Designated ULB to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Designated ULB hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5 OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

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

#### **5.2 Notification of balances**

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