

CONCESSION AGREEMENT

For

**Development, Construction, Operation and Maintenance of
an Integrated Municipal Solid Waste Management Project for
Bathinda Cluster in Punjab**

BETWEEN

MUNICIPAL CORPORATION OF BATHINDA

AND

M/s JITF URBAN WASTE MANAGEMENT (BATHINDA) LIMITED

AND

**M/s JITF URBAN INFRASTRUCTURE LIMITED &
M/s Ladurner Impainti S.r.l.**

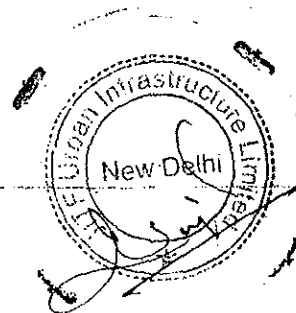
AND

DEPARTMENT OF LOCAL GOVERNMENT

Volume I of III

October 2011

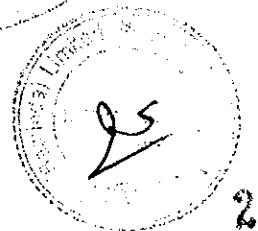
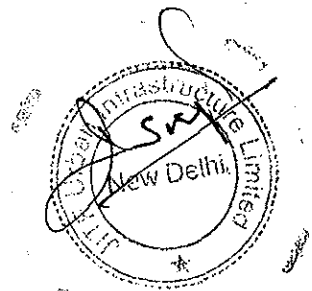
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Volume	Contents
Volume-I	Section1: Concession Agreement Section2: LOI issued to the Selected Bidder Section3: Annexure to the Concession Agreement
Volume-II	Technical Proposal submitted by the Selected Bidder
Volume-III	<u>Request for Proposal Documents / Bidding Documents</u> Section1: Instruction to Bidders & Proposal Formats Section2: Draft Concession Agreement & Annexure Section3: Draft Waste Offtake Agreement & Annexure Section 4: Draft Land Lease Agreement Section5: Addendum1 issued to the Bidders Section6: Detailed Project Report

Additional Volumes to be signed in the latter Stages	
Volume	Site (s) Lease Deed (To be Executed as per the signed Concession Agreement)
Volume	Waste Offtake Agreement with other Cluster ULBs (To be Executed as per the signed Concession Agreement)

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Volume	Contents
Volume-I	Section1: Concession Agreement Section2: LOI issued to the Selected Bidder Section3: Annexure to the Concession Agreement

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SECTION 1: Concession Agreement


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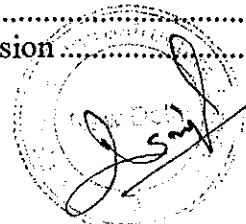


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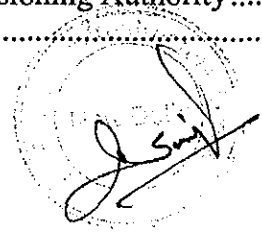



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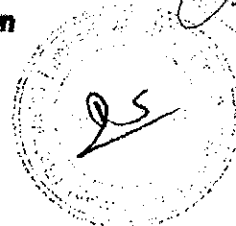
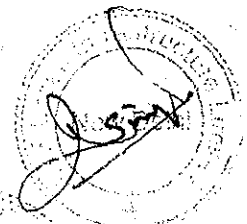

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CONCESSION AGREEMENT

THIS AGREEMENT made this 23rd day of November 2011 at Bathinda

BETWEEN

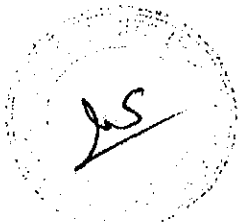
MUNICIPAL CORPORATION OF BATHINDA, a statutory body constituted under the Punjab Municipal Corporation Act of year 1976, and having its office at Near Railway Station, Bathinda represented by Commissioner, (hereinafter referred to as "Concessing Authority" which expression shall unless repugnant to the context thereof, include its successors and assigns) of the **FIRST PART**;

AND

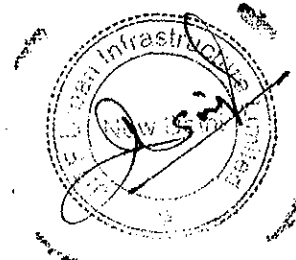
M/s JITF Urban Waste Management (Bathinda) Limited a company incorporated under the Companies Act, 1956, having its registered office at Jindal ITF Centre, 28, Shivaji Marg, New Delhi, 110015, India, represented by Mr. Rajneesh Singh duly authorized vide board resolution dated 28th September 2011 hereinafter referred to as the "Concessionaire" (which expression shall, unless repugnant to the context or meaning thereof, mean and include its, successors and assigns) of the **SECOND PART**;

AND

The Consortium of (i) M/s JITF Urban Infrastructure Limited, a company incorporated under the Companies Act, 1956, having its registered office at 28 Shivaji Marg, New Delhi 110015 (ii) of M/s Ladurner Impainti S.r.l. a company duly incorporated under laws of Italy, having, having its registered office at via Innsbruck 33, Bolzana-391100 hereinafter collectively referred to as the "Selected Bidder" (which expression shall, unless repugnant to the context or meaning thereof, mean and include its, successors and assigns) duly represented through M/s JITF Urban Infrastructure



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Ltd., the Lead Member of the consortium through its Authorized Signatory Mr. Rajneesh Singh duly authorized vide board resolution dated 28th September 2011 of the **THIRD PART**;

AND

DEPARTMENT OF LOCAL GOVERNMENT for and on behalf of the **GOVERNMENT OF PUNJAB** having its Office at Mini Secretariat, Sector 9, Chandigarh – 160017, represented by **Secretary**, (hereinafter referred to as the “**DoLG**” or “**Confirming Party**”, which expression shall mean and include its successors and assigns) of the **FOURTH PART**.

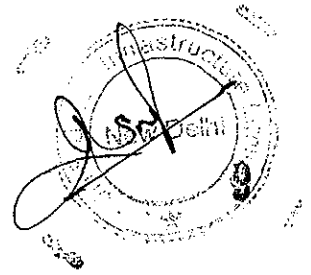
The Concessing Authority, the Concessionaire, the Selected Bidder and the Confirming Party are hereinafter referred to individually as the “**Party**” and collectively as the “**Parties**”.

WHEREAS

- A. Urban Local Bodies (“**ULBs**”) are responsible for providing municipal and allied civic services in their respective city/town, which encompasses the collection, transportation, processing and disposal of Municipal Solid Waste (“**MSW**”) generated in their respective city/town. Most of the ULBs currently dispose their MSW by open dumping, which is an unscientific way of disposal of waste.
- B. The Ministry of Environment and Forests (“**MoEF**”) under the aegis of Government of India (“**GoI**”), has formulated the Municipal Solid Wastes (Management and Handling) Rules 2000, which makes it mandatory for every civic body to implement a scientific solid waste management system through which MSW is duly processed and only that waste, which is not suitable for recycling or processing is to be disposed off in a Sanitary Landfill Site (“**SLF**”).
- C. The Concessing Authority along with the ULBs mentioned at **Annexure 1** (“**Cluster ULBs**”) is desirous of establishing a suitable mechanism on regional basis to scientifically manage the collection, transportation, processing and disposal of MSW generated from the residential and other areas of the entire “**Cluster**” (as defined in **Annexure 1**), with a view to meet environmental regulations and for improvement in public health and hygiene.
- D. Based on the mandate given by the DoLG, IL&FS Infrastructure Development Corporation Limited (“**IIDC**”) has been advising Government of Punjab (“**GoP**”) for development of MSW management projects on Public-Private-Partnership (“**PPP**”) model, covering all corporation towns and other 140 ULBs in Punjab, and for developing various projects on regional approach. The objective is to develop and implement a viable and environmentally sustainable MSW management system on Public Private Partnership (PPP) basis, to scientifically manage MSW and gainfully utilize it to produce compost, Refuse Derived Fuel (“**RDF**”) and/or power, and dispose-off the residual matter in an environmentally benign manner.
- E. For the aforesaid purpose, the DoLG, has conducted a competitive bidding process. Following the process of competitive bidding, after evaluating the Proposals submitted by Bidders in response to its request for proposal (RFP) dated May 23, 2011, the DoLG accepted the Proposal submitted by the Selected Bidder for developing and implementing the Project and communicated its acceptance to the Selected Bidder vide Letter of Intent dated July 28, 2011 (the “**Letter of Intent**” or “**LOI**”).
- F. The Selected Bidder has incorporated the Concessionaire under the Companies Act, 1956, as a Special Purpose Company (SPC), pursuant to the award of the Concession, to develop and implement the Project.




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- G. Following the issuance of the LOI, the Selected Bidder /Concessionaire within 3 (three) weeks of issuance of LOI , as a pre-condition to the execution of this Agreement, has made the payment of Project development Fee to IL&FS Infrastructure Development Corporation Ltd. and provided the Performance Security to the Concessioneing Authority. Following these payments, the Concessioneing Authority has agreed to award the implementation of the Project to the Concessionaire on the terms, conditions and covenants hereinafter set forth in this Agreement
- H. The Concessionaire is hereby required to enter into this Concession Agreement with the Concessioneing Authority and DoLG, being these presents to record the terms, conditions and covenants of the Concession.


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

Signature of CONCESSIONING AUTHORITY

 (Signature)

Commissioner
Municipal Corporation Bathinda
Bathinda

Signature of CONCESSIONAIRE

 (Signature)

(Authorised Signatory)
Jindal ITF Centre, 28, Shivaji Marg,
New Delhi, 110015




Signature of SELECTED BIDDER

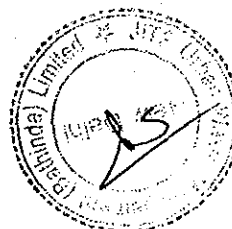
 (Signature)

(Authorised Signatory)
28, Shivaji Marg,
New Delhi, 110015



Signature of CONFIRMING PARTY:

A 
Secretary Local Govt.
Punjab (Signature)
Mini Secretariat,



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 ascribed to them hereunder:

1.1.1. **"Abandonment"** means the total cessation of activity in the Project by the Concessionaire and of its obligations under the Agreement for a:

- (i) continuous period of more than 15 (fifteen) days during the Construction Period, or
- (ii) cumulative period of more than 45 (forty-five) days during the Construction Period
- (iii) for a period defined in Annexure 6 read with Annexure 18 during the Operations Period

other than as a result of an event of Force Majeure or a Material Breach of its obligations by the Concessions Authority;

1.1.2. **"Access Road"** means the motorable approach road for access to the Site(s) from public road;

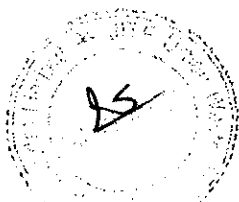
1.1.3. **"Acceptance of Concession"** shall have the meaning ascribed thereto in Article 2.1.5;

1.1.4. **"Accounting Year"** means the financial year commencing on 1st April in each year and ending on 31st March in the next year;

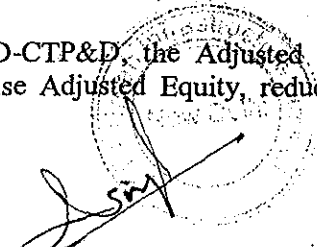
1.1.5. **"Additional Cost"** shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law;

1.1.6. **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:

- a. on or before COD-CTP&D, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- b. from COD-CTP&D and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD-CTP&D 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-CTP&D to the extent of variation in WPI occurring between COD-CTP&D and the Reference Date;
- c. after the 4th (fourth) anniversary of COD-CTP&D, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by



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0.33% (zero point three three percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD-CTP&D and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD-CTP&D and the Reference Date;

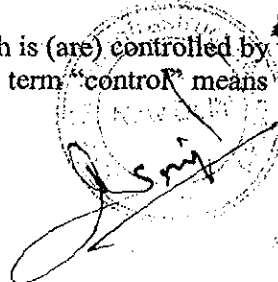
For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period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

provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

- 1.1.7. **"Affected Party"** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 8;
- 1.1.8. **"Agreement"** or **"Concession Agreement"** means this agreement executed between the Concessionaire, Selected Bidder, Concessioneing Authority and DoLG including its schedules and Annexures and includes any amendments made hereto in accordance with the provisions hereof;
- 1.1.9. **"Annexure"** shall mean any of the annexure, appendices, supplements or documents annexed to this Agreement and as amended from time to time;
- 1.1.10. **"Appellate Authority"** shall be as defined in Annexure 13;
- 1.1.11. **"Applicable Law"** shall mean all laws, acts, ordinances, rules, regulations, notification and guidelines in force and effect, including MSW (M&H) Rules 2000, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the period of subsistence of this Agreement and applicable to the Project;
- 1.1.12. **"Applicable Approvals"** or **"Applicable Permits"** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by either the Concessioneing Authority or by the Concessionaire in connection with the implementation of the Project. An indicative and partial list of such Applicable Approvals and responsibility thereof has been specified in Annexure 7. It is clarified that the Concessionaire shall be responsible for procuring all such Applicable Approvals at its cost and risk that may not listed in Annexure 7 and hence are not specifically assigned to the Concessioneing Authority;
- 1.1.13. **"Appointed Date"** shall mean the date of execution of the Concession Agreement.
- 1.1.14. **"Arbitration Act"** shall mean 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;
- 1.1.15. **"Associates"** shall mean any company (ies) which is (are) controlled by the company concerned. For the purpose of this definition, the term "control" means the power to



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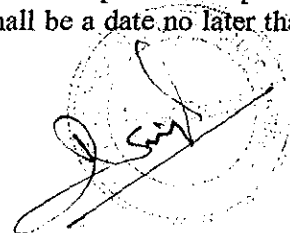
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direct the management or policies of such entity, directly or indirectly, through the ownership of shares or other securities, by contract or otherwise, provided that the direct or indirect ownership of fifty one per cent (51%) or more of its voting share capital is deemed to constitute control of such entity, and "controlling" and "controlled" shall be construed accordingly;

- 1.1.16. **"Base Tipping Fee(s)"** refers to the Tipping Fee(s) quoted by the Selected Bidder in its Financial Proposal, as set out in **Annexure 12**;
- 1.1.17. **"Bidder(s)"** shall have the same meaning as ascribed to it under the RFP issued by DoLG.
- 1.1.18. **"C&T" or "Collection and Transportation"** refers to primary collection and transportation of MSW from the MSW Supply Area to the Processing Facilities Site after COD P&D ;
- 1.1.19. **"CT&D" or "Collection Transportation and Dumping"** refers to primary Door to Door Collection of MSW from MSW Area, and its transportation and dumping, prior to COD-P&D, at the site(s) designated by the Concessioneing Authority for the purpose.
- 1.1.20. **"CT&D Period"** shall mean the period commencing from Compliance Date- CT&D till COD-P&D during which the Concessionaire is engaged in door to door collection of MSW from MSW Supply Area and its dumping at site(s) designated for this purpose by the Concessioneing Authority.
- 1.1.21. **"Concession Period" or "Term"** shall mean a period commencing from Appointed Date and extending till the Transfer Date, which shall, except for earlier termination of this Agreement, consist of a period of 25 years;
- 1.1.22. **"Construction & Demolition (C&D) Debris" or "Debris"** means solid waste resulting from construction, re-modeling, 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 are 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;
- 1.1.23. **"Change in Law"** shall have the meaning ascribed thereto in **Article 8.11**;
- 1.1.24. **"Cluster" or "Bathinda Cluster"** shall have the meaning as ascribed to it in **Annexure 1**;
- 1.1.25. **"COD"** shall refer to COD-P&D and/or COD-CTP&D, as the context may require.
- 1.1.26. **"COD-CTP&D"** shall mean the date on which the Independent Expert issues the Project Facilities Completion Certificate, which shall be a date no later than 15 days

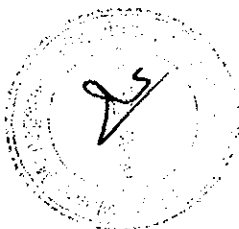


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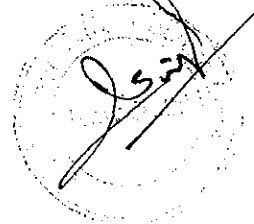


from COD-P&D and upon which the Concessionaire shall commence the commercial operation of Project Facilities with respect to all the ULBs.

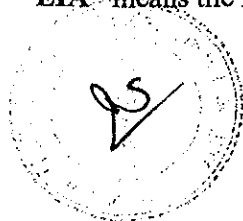
- 1.1.27. **"COD-P&D"** shall mean the date on which the Independent Expert issues the Processing & Disposal Facilities Completion Certificate, upon which the Concessionaire commences commercial operations of the Processing Facilities with respect to the MSW Area;
- 1.1.28. **"CTP&D"** or **"Collection, Transportation, Processing and Disposal"** refers to collection and transportation of MSW from Other Cluster ULBs to one of the Project Site(s), and its Processing and Disposal, as is more clearly defined in Scope of Works;
- 1.1.29. **"Compliance Date-CT&D"** shall be the date on which Concessionaire and Concessioneing Authority fulfill their Conditions Precedent for CT&D and upon which date Concessionaire is authorized to initiate the collection and transportation of MSW from MSW Area.
- 1.1.30. **"Compliance Date-P&D"** shall be the date on which Concessionaire and Concessioneing Authority fulfill their Conditions Precedent for P&D and upon which Concessionaire is authorized to commence the construction of the Processing Facilities.
- 1.1.31. **"Composting"** shall mean a controlled process involving microbial decomposition of organic matter;
- 1.1.32. **"Concession"** shall have the meaning as defined in Article 2.1;
- 1.1.33. **"Concessionaire Vehicles "** means the vehicles accepted and bought by the Concessionaire for utilization in the Project out of the vehicles made available on as-is-where-is basis by the Concessioneing Authority and at the rates as listed in Annexure 23 and procure from any other sources ;
- 1.1.34. **"Conditions Precedent(s)"** shall mean Conditions Precedent – CT&D or Conditions Precedent – P&D, as the context may require and as defined in Article 2.2.2 and Article 2.2.3;
- 1.1.35. **"Compliance Period"** shall mean Compliance Period – CT&D or Compliance Period- P&D, as the context may require and as defined in Articles 2.2.4 (a) and 2.2.4 (b)
- 1.1.36. **"Construction Period"** shall mean the period commencing from the Compliance Date P&D to date of issuance of Project Facilities Completion Certificate;
- 1.1.37. **"Construction Requirements"** shall have the meaning ascribed thereto in Annexure 3;
- 1.1.38. **"Construction Works"** shall mean the works and things necessary for achieving Construction Completion and for commencing commercial operations of the Project in accordance with the provisions of this Agreement;



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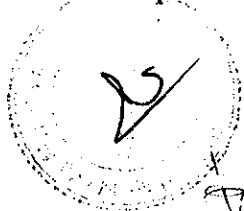
- 1.1.39. **"Contractor"** shall mean any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Construction Works and O&M Requirements;
- 1.1.40. **"CPCB"** shall mean the Central Pollution Control Board of Government of India
- 1.1.41. **"Daily Weight Sheet"** shall have the meaning given to the term in **Annexure 13**;
- 1.1.42. **"Dead Remains"** means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
- 1.1.43. **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
- a. the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Total Project Cost (the **"principal"**) but excluding any part of the principal that had fallen due for repayment six (6) months prior to the Transfer Date;
 - b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due three (3) months prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and
- 1.1.44. **"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;
- 1.1.45. **"Dispute"** shall have the meaning ascribed thereto in Article 11.1(a) hereof;
- 1.1.46. **"Dispute Resolution Procedure"** means the procedure for resolution of disputes set forth in Article 11;
- 1.1.47. **"Door to Door Collection"** means the collection of MSW from the Waste Generators at their doorstep.
- 1.1.48. **"Development Costs"** shall mean the aggregate of the amounts spent by the Concessionaire in undertaking activities in relation to the implementation of the Project till the Date(s) of Commissioning which amounts shall include but not be limited to: (a) expenditure incurred by IIDC and its Associates for and in relation to the Project which have been charged/assigned to the Concessionaire (b) expenditure incurred in relation to preparation of all reports, studies and other papers relating to the Project and the Project Facilities, (b) expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Approvals, (c) fees of all consultants (including IIDC), experts, accountants, lawyers, lenders and other independent persons hired in relation to the Project, (d) costs of maintaining offices of the Concessionaire that are attributable to the Project, (e) any payments made to Cluster ULBs or on behalf of Cluster ULBs in relation to the Concession or the Project and (f) costs of any Contractors appointed by the Concessionaire in relation to the implementation of the Project;
- 1.1.49. **"EIA"** means the Environment Impact Assessment for the Project.



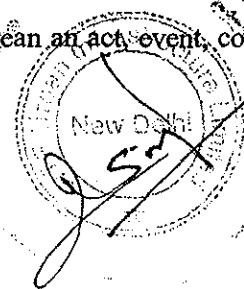
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- 1.1.50. "Emergency" shall mean conditions or situation that is likely to endanger the safety of the individuals on or about the Project Facilities or which poses an immediate threat of material damage to any of the Project Facilities;
- 1.1.51. "Encumbrances" 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;
- 1.1.52. "Engineered Sanitary Landfill Site" or "Sanitary Landfill Unit" or "Sanitary Landfill Site" means the engineered sanitary landfill site to be developed, constructed and operated by the Concessionaire at one of the Site(s), in conformance with the MSW Rules or any revision thereof, for disposal of Residual Inert Matter and Rejected Waste in accordance with the Scope of Works;
- 1.1.53. "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 or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, but does not include any grant from a Government Agency;
- 1.1.54. "Estimated Total Project Cost" shall be as given in Data Sheet placed at Annexure 8;
- 1.1.55. "Event of Default" shall have the meaning ascribed thereto in Article 9.1 ;
- 1.1.56. "Event of Default - Concessionaire" shall have the meaning ascribed thereto in Article 9B.1 (a) ;
- 1.1.57. "Event of Default - Concessioning Authority" shall have the meaning ascribed thereto in Article 9B.1 (b);
- 1.1.58. "Excluded Waste" means waste material of the nature that the Project Facilities are not designed or authorised to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste and (iii) Dead Remains;
- 1.1.59. "First Appellate Authority" shall be as defined in Annexure 13;
- 1.1.60. "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 Facilities or any part thereof in line with this Agreement, for securing the debt provided;
- 1.1.61. "Financial Proposal" refers to the final quotation of the Selected Bidder that shall be placed at Annexure 12;
- 1.1.62. "Financial Year" shall be same as Accounting Year;
- 1.1.63. "Force Majeure" or "Force Majeure Event" shall mean an act, event, condition or occurrence as specified in Article 8;



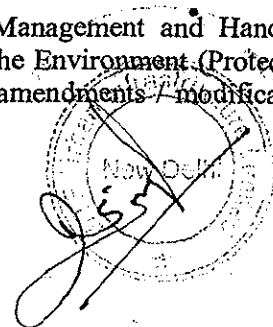
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- 1.1.64. "GoI" shall mean the Government of India;
- 1.1.65. "GoP" shall mean the Government of Punjab, and includes its successors and assigns;
- 1.1.66. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and 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 of facilities similar to the Project Facilities to be constructed, operated and maintained pursuant to the Project;
- 1.1.67. "Government Agency" shall mean GoI, GoP, DLG, Cluster 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 Facilities 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;
- 1.1.68. "Hazardous Waste" shall have the meaning as defined under the the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 and as amended thereto;
- 1.1.69. "Independent Expert" means any person, body or organization with requisite technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Concessioneing Authority at its own cost;
- 1.1.70. "Landfilling" means the disposal of the Residual Inert Matter and Rejected Wastes at the Engineered Sanitary Landfill Site in accordance with the terms of this Agreement including MSW Rules;
- 1.1.71. "Land ULBs" shall mean those ULBs in the Cluster, other than the Concessioneing Authority, that are responsible for providing land for the Site(s) for the Project components, as listed in Annexure 5 (A).
- 1.1.72. "Lenders" shall mean any person, financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided loans for financing any part of the Project as evidenced in Financing Documents;
- 1.1.73. "MNRE" means Ministry of New & Renewable Energy, GoI;
- 1.1.74. "MSW" or "Municipal Solid Waste" means solid waste generated by households, public services, agricultural activities, commercial establishments and industries located within the jurisdiction of Cluster ULBs, and shall include solid waste, and Organic Waste, but shall not include the Excluded Wastes;
- 1.1.75. "MSW Rules" means the Municipal Solid Wastes (Management and Handling) Rules, 2000 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;



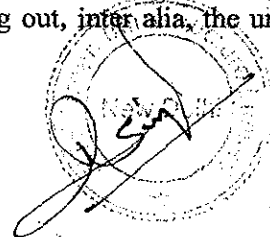
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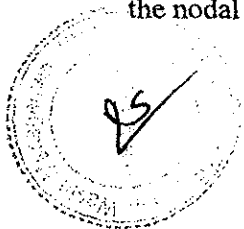
- 1.1.76. "MSW Supply Area" means the area presently under municipal boundaries of the Concessioneing Authority or any extension thereof during the Concession Period;
- 1.1.77. "Estimated MSW Quantity" means the estimated quantity of MSW that is expected to be generated from MSW Supply Area after Compliance Date-CT&D;
- 1.1.78. "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);
- 1.1.79. "Material Breach" shall mean 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;
- 1.1.80. "O&M Requirements" shall mean the requirements as to operation and maintenance of the Project Facilities set forth at Annexure 3;
- 1.1.81. "Operations Period" shall mean the period starting from COD-P&D till the date of expiry or earlier termination of the Concession Agreement
- 1.1.82. "Organic Waste" means such type of MSW that can be degraded by micro-organisms, but shall not include Excluded Wastes;
- 1.1.83. "Other Cluster ULBs" mean the Cluster ULBs except the Concessioneing Authority
- 1.1.84. "P&D" or "Processing & Disposal" refers to Processing & Disposal of MSW collected from MSW Supply Area, as is more clearly defined in Scope of Works;
- 1.1.85. "Performance Security" shall mean the 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 7.1 and of an amount indicated in the Data Sheet (Annexure 8) and in the format given at Annexure 9;
- 1.1.86. "Person" shall mean (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;
- 1.1.87. "Post Closure Activities" shall mean the activities to be undertaken by the Parties after closure of Sanitary Landfill Site;
- 1.1.88. "Post Closure Period" shall mean a period of twenty (20) years starting from the date of closure of the specific cell of the Sanitary Landfill Unit during which Post Closure Activities are to be undertaken.
- 1.1.89. "Power Plant" shall mean a power plant as may be developed in line with the policy of MNRE, GoI, as applicable from time to time;
- 1.1.90. "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;



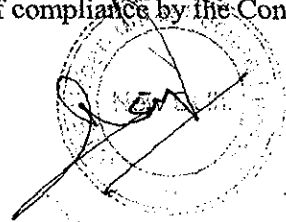
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- 1.1.91. "Processing Facilities" shall mean the infrastructure to be created for processing of MSW prior to its final disposal at Sanitary Landfill Site, as detailed in Annexure 2;
- 1.1.92. "Processing & Disposal Facilities" shall mean the Processing Facilities and Sanitary Landfill Unit;
- 1.1.93. "Processing and Disposal Facilities Completion Certificate" mean the certificate issued by the Independent Expert on completion of construction of Processing Facilities and Sanitary Landfill Unit in the form and manner as set forth at Annexure 11;
- 1.1.94. "Processing Facilities Site" shall mean total [15] acres (approx) of land made available to the Concessionaire by the Concessioneing Authority under Processing Facilities Site Lease Deed, for construction of the entire Project Facilities except for the Processing Facility, details of which are placed at Annexure 5 A
- 1.1.95. "Processing Facilities Site Lease Deed" the lease deed executed between Concessionaire and the Concessioneing Authority substantially in the form set out in Annexure 5B, pursuant to which the Concessioneing Authority shall lease to the Concessionaire, the Processing Facilities Site for a period co-terminus with Concession Period.
- 1.1.96. "Project Agreements" means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project Facilities, including without limitation the Waste Offtake Agreement(s), Project Site Lease Deeds and Processing Facilities Site Lease Deed;
- 1.1.97. "Project" means collection, transportation, processing and disposal of MSW for the Bathinda Cluster and for that purpose to design, develop, finance, construct, operate and maintain the Project Facilities, under and in accordance with the Scope of Works and Technical Specifications and other terms and provisions of the Concession Agreement and Waste Offtake Agreement(s);
- 1.1.98. "Project Assets" means all tangible and intangible assets, movable and immovable assets relating to the Project Facilities including, but not limited to, (a) rights over the Project Sites and Processing Facilities Site in the form of lease, sub-lease, Concession, right-of-way or otherwise, (b) tangible assets such as the Project Facilities, foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, kilometre stones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, equipment, technology at the Project Site/relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, User Fee etc.; (d) the Applicable Permits relating to the Project and (f) insurance;
- 1.1.99. "Project Development Fees" is as defined in Article 7.2;
- 1.1.100. "Project Engineer" shall be any Engineer of the level of Executive Engineer or above as may be nominated/appointed by the Concessioneing Authority, who shall be the nodal person for supervision and monitoring of compliance by the Concessionaire

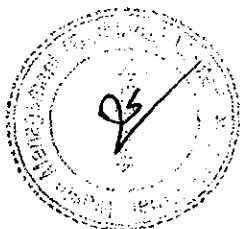


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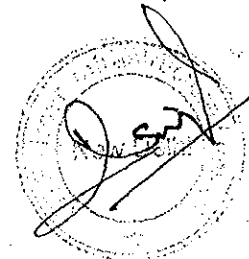


with respect to the Construction Requirements and O&M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in **Annexure 10**;

- 1.1.101. **"Project Report"** shall mean the indicative project report prepared for the Project and issued along with the RFP.
- 1.1.102. **"Project Facilities"** shall mean the physical infrastructure to be created by the Concessionaire to implement the Project as more particularly set out at **Annexure 2**;
- 1.1.103. **"Project Implementation Schedule"** is as set out at **Annexure 14**;
- 1.1.104. **"Project Facilities Completion Certificate"** shall mean the certificate issued by the Independent Expert on completion of construction of Project Facilities in the form and manner as set forth at **Annexure 11**;
- 1.1.105. **"Project Site(s)"** shall mean total 55.81 acre (approx) of land made available to the Concessionaire by the Land ULBs under Project Site Lease Deed(s), for construction of the entire Project Facilities except for the Processing Facility, details of which are placed at **Annexure 5** ;
- 1.1.106. **"Project Site Lease Deed(s)"** shall mean the lease deed(s) executed between Concessionaire and the Concessioneing Authority/Land ULB substantially in the form set out in **Annexure 5 B**, pursuant to which the Land ULBs shall lease to the Concessionaire, the Project Site for a period co-terminus with Concession Period.
- 1.1.107. **"Proposal"** shall have the same meaning as ascribed to it under the RFP issued by DoLG.
- 1.1.108. **"Proprietary Material"** shall have the same meaning as ascribed to it under Article 12.1;
- 1.1.109. **"Public Road"** means a state or national highway or a road falling under the purview of PWD(B&R), Mandi Board or a public authority other than the Municipal Corporation/ Urban Local Body concerned.
- 1.1.110. **"Refuse Derived Fuel" or "RDF"** means the solid fuel in the form of fluff or pellets/briquettes that is produced by separation and drying of combustible fractions of the MSW;
- 1.1.111. **"RDF Plant"** means the processing plant that will be constructed, operated and maintained as part of the processing facilities, for producing of RDF from MSW;
- 1.1.112. **"Residual Inert Matter"** means the inert matter left for final disposal in Sanitary Landfill Unit after processing of the MSW by one or more of the relevant Project Facilities;
- 1.1.113. **"Rupees or Rs"** refers to the lawful currency of the Republic of India;
- 1.1.114. **"Scope of Works"** is as defined in **Annexure 3**;



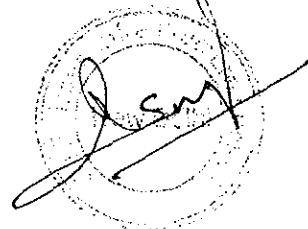
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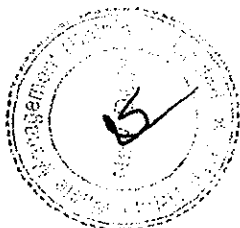
- 1.1.115. **"Scheduled Construction Completion Date"** means Scheduled Construction Completion Date – P&D or Scheduled Construction Completion Date – CTP&D, as the context may require as more particularly specified at **Annexure 14**;
- 1.1.116. **"Secondary Collection Points"** means an area mutually identified by the Concessioneing Authority and the Concessionaire to temporarily store the MSW collected by the Concessionaire from MSW Supply Area by way of door-to-door waste collection system, and MSW collected by the Concessioneing Authority by way of street sweeping and drain de-silting from MSW Supply Area;
- 1.1.117. **"Security Interest"** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;;
- 1.1.118. **"SPCB"** shall mean State Pollution Control Board particularly Punjab Pollution Control Board;
- 1.1.119. **"Substitution Agreement"** shall mean the agreement that may be executed between the Concessionaire, Concessioneing Authority and the Lenders, pursuant to which, in case of Default by the Concessionaire, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire's roles and responsibilities under this Agreement.;
- 1.1.120. **"Selected Bidder"** shall mean the consortium of M/s JITF Urban Infrastructure Ltd. and M/s Ladurner Impainti S.r.l.
- 1.1.121. **"Supplementary Fuel"** shall mean any fuel that can be used as a supplement to the MSW to enrich RDF in line with guidelines/policies of MNRE as issued from time to time;
- 1.1.122. **"Tax"** shall mean and includes all taxes, fees, cess, levies that may be payable by the Parties under Applicable Law(s);
- 1.1.123. **"Technical Specifications"** are as defined in **Annexure 3**;
- 1.1.124. **"Termination"** shall mean 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;
- 1.1.125. **"Termination Date"** shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect;
- 1.1.126. **"Termination Notice"** shall mean the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement;
- 1.1.127. **"Termination Payments"** means the payments payable pursuant to Article 8.8 and 9.2(f) of this Agreement;
- 1.1.128. **"Third Party"** means any Person other than the Parties to this Agreement;



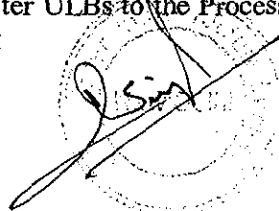
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- 1.1.129. **"Tipping Fee(s)"** shall refer to Tipping Fee- CT&D or Tipping Fee – C&T or Tipping Fee – P&D or Tipping Fee – CTP&D, as the context may require and as defined in Article 7;
- 1.1.130. **"Tipping Fee Index"** refers to the index of escalation/reduction in Tipping Fee (s) during the Concession Period, and shall be used to compute the percentage rate of variation in Tipping Fee from the Base Tipping Fee, to be calculated for every year of the Concession Period, as detailed in **Annexure 22**;
- 1.1.131. **"Tipping Fund" or "Tipping Fee Fund"** means a fund created by the Concessions Authority jointly with the Concessionaire in accordance with **Annexure 13**;
- 1.1.132. **"Total Project Cost"** means the lower of the following:
- (a) the capital cost of the Project as set forth in the Financing Documents; or
 - (b) Estimated Total Project Cost;
- 1.1.133. **"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice. In the event of Termination, Transfer Date shall be same as the Termination Date;
- 1.1.134. **"Transfer Station"** means the point(s) where MSW collected by the Concessionaire from Other Cluster ULBs would be stored to achieve economies of scale before further transportation to the Processing Facilities or Sanitary Landfill Unit, as applicable;
- 1.1.135. **"Tests"** shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and generally conform to the nature of construction and operation as per Good Industry Practice;
- 1.1.136. **"User Charges"** shall mean the fees chargeable from Waste Generators in line with the policy on Door-to-Door Collection of MSW, duly notified by the Concessions Authority, and placed at **Annexure 20**, for providing door-to-door MSW collection service to such Waste Generators;
- 1.1.137. **"ULB"** means Urban Local Body being a Municipal Corporation or a Municipal Council set up under the Punjab Municipal Corporation Act, 1976 or under the Punjab Municipal Act, 1911 ;
- 1.1.138. **"Vacant Possession"** means delivery to the Concessionaire of possession of the Site(s) free from all Encumbrances and the grant of all easementary rights and all other rights appurtenant thereto;
- 1.1.139. **"Waste Generators"** shall mean all residential, commercial and industrial establishments generating MSW and located within municipal boundaries of all Cluster ULBs ;
- 1.1.140. **"Waste Offtake Agreement(s)"** shall mean agreement(s) executed between the Concessionaire, Other Cluster ULBs and the Concessions Authority for the purpose of collection and transportation of MSW from Other Cluster ULBs to the Processing Facilities and/or Sanitary Landfill Unit as the case may be;



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1.1.141. "Weighbridge" means the electronic weighbridge capable of performing the operations specified in Annexure 3 of Scope of Work.

1.2. Interpretation

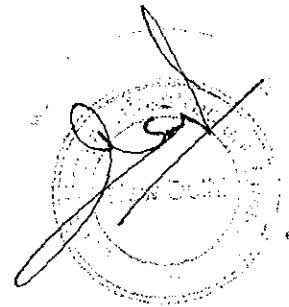
- (i) The words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement 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) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (iii) the words "include" and "including" are to be construed without limitation;
- (iv) 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;
- (v) the Schedules and Annexures to this Agreement form an integral part of this Agreement and shall be interpreted accordingly;
- (vi) 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 or dates;

1.3. Priority of Documents

The documents forming part of bidding process leading to this Agreement shall be interpreted in the following descending order of priority:

- (a) This Concession Agreement;
- (b) Waste Offtake Agreement(s);
- (c) Letter of Intent;
- (d) Written clarifications issued to the bidders;
- (e) Written addenda to the RFP;
- (f) RFP;
- (g) The Selected Bidder's Technical and Financial Proposal;
- (h) RFQ.

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ARTICLE 2

2. THE CONCESSION AND CONDITIONS PRECEDENT

2.1. THE CONCESSION

2.1.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, the Concessioning Authority hereby irrevocably grants to the Concessionaire, and the Concessionaire hereby accepts exclusive right and authority, during the Concession Period, 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.

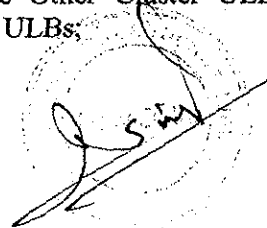
2.1.2 Rights Associated with the Grant of Concession

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

- a) to design, engineer, finance, procure, construct, install, commission, operate and maintain each of the Project Facilities either itself or through such Person as may be selected by it;
- b) upon achieving COD of Project Facilities, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- c) to obtain financing for the Project in the form of equity, debt and other sources, 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; and
- d) to assign its rights, title or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including its right to receive Tipping Fee (if the same is positive), in favour of Lenders for securing the financial assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the Lenders are made aware of the same by the Concessionaire
- e) Provided that the Concessioning Authority shall be informed by the Concessionaire as to the creation of any Security Interest in favour of the Lenders within a period of 14 (fourteen) days from the date such Security Interest comes into existence and provide to the Concessioning Authority within such time, notarized true copies of any and all documents/agreements relating thereto.
- f) to use, appropriate, process entire MSW from the MSW Supply Area and Cluster ULBs Area and dispose-off the Residual Inert Matter and Rejected Waste in Sanitary Landfill Unit(s);
- g) to execute Waste Offtake Agreement(s) with the Other Cluster ULBs for the treatment and disposal of MSW generated in Cluster ULBs;



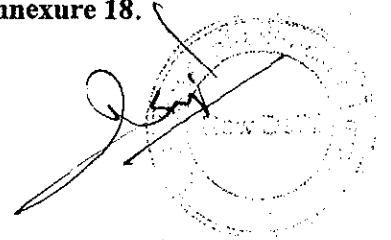
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- h) to exclusively collect User Charges from Waste Generators, and appropriate/retain and utilize the same at its own discretion;
- i) Transportation of horticulture and C&D waste in accordance with specific guidelines/policy of the Authority with regards to such waste and at the rates prescribed under such guidelines/policy.
- j) to store, use, appropriate, market and sell or dispose-off all the constituents / products / by-products from the MSW, including but not limited to recyclables, electricity, methane (biogas), RDF, Compost, Residual Inert Waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products;
- k) to apply for and receive the fiscal incentives and benefits (as provided under Article 7.10 (b)) accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative;
- l) to obtain the utilities required for enabling the construction of the Project Facilities, without any additional cost or charges, other than the applicable charges for the utilities;
- m) to exclusively hold, possess, control the Processing Facilities Site and Project Sites, in accordance with the terms of the Concession Agreement and Land Lease Agreement(s), for the purposes of the due implementation of this Project;
- n) to use the unutilised space available at the Project Facilities for display of advertisements under Applicable Laws against payment of applicable Taxes such as advertisement tax;
- o) to appropriate, possess and control and to further, at its sole discretion, utilize, renovate, modify, replace or demolish, free of any cost or charges or any liability for payment of compensation in respect thereof, all the buildings and structures and infrastructure that may be existing on Secondary Collection Points and Project Sites with reference to MSW management in MSW Supply Area;
- p) to develop the Project Facilities using such technology that it considers suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, MSW Rules and Good Industry Practices;
- q) to modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Facilities, Good Industry Practices and the requirements of the Project;
- r) to use, at such times as it may deem fit, any fuel as a supplement to the MSW to enrich the RDF (such fuel shall be referred to as "Supplementary Fuel"). If the Concessionaire wishes to set-up a Power Plant in line with this Agreement, such Supplementary Fuel shall not exceed the limits stipulated in MNRE Guidelines, as applicable from time to time;
- s) to suspend C&T of MSW, transportation of MSW from Transfer Stations, processing of MSW, and disposal of MSW, if required, for undertaking maintenance or repair of the Project Facilities subject to the provisions under Annexure 18.



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2.1.3 Concession Period

The Concession is granted to the Concessionaire for the Concession Period which shall terminate upon the expiry of the Concession due to efflux of time or upon earlier Termination of this Agreement as per terms of this Agreement.

2.1.4 Renewal of Concession

The Concessions Authority may agree to renew or extend the Concession after the expiry of the initial Concession Period, for another period equal to the initial Concession Period or such other period as may be mutually agreed to and on such terms and conditions as mutually agreed upon. However any such extension should also lead to an extension of Land Lease Agreement(s) and Waste Offtake Agreement(s) for an equal period. In case the parties are not able to mutually agree on common period for which the Concession needs to be extended, at least six months prior to the end of Concession Period, then the Concession shall not be extended further.

2.1.5 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 in accordance with the provisions hereof.

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