

Waste-to-Energy Services

SCHEDULE A

Term Sheet- Draft WASTE CONCESSION AGREEMENT & LAND LEASE AGREEMENT

Disclaimer

This term sheet is a tentative summary/outline of the major provisions of the Concession Agreement & the Lease Agreement. The Concession Agreement and the Lease Agreement shall be developed on the basis of these terms.

CONCESSION AGREEMENT DISPOSAL OF 70 TPD MSW WASTE BETWEEN New Delhi Municipal Corporation & G20 Environmental Solutions Group

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This Concession Agreement ("Concession Agreement") is made on this ___ day of ___, 2014 by and between:

Amongst;

The New Delhi Municipal Corporation ("NDMC"), having its Head office at Palika Kendra, Sansad Marg, New Delhi (hereafter referred to as NDMC which expression shall mean and include its successors and assigns) of the FIRST PART, through its duly authorized representative, who is duly authorized/empowered to sign and execute such documents/deeds.

AND

G20 Environmental solutions Group Pte Ltd ("G20ESG"), a company incorporated under provisions of Singapore having its registered office at Level 30, 6 Battery Road Singapore, (hereinafter referred to as "**Concessionaire**" which expression shall unless repugnant to the context include its successors and permitted assigns, of the other party.

WHEREAS:

- A. NDMC is the municipal corporation for New Delhi, and is responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Municipal Solid Waste generated in the city. NDMC, currently disposes the collected MSW WASTE at designated dumping site, which is, however, inadequate to handle the increasing quantity of MSW WASTE generated in the city.
- B. The NDMC desires to establish an initial 70 TPD MSW waste Treatment Plant ("**Plant**") on Build, Own, Operate and Transfer ("**BOOT**") basis for which they have received multiple participation offers.
- C. NDMC after evaluation has issued a LOI to the Concessionaire for entrusting the 70 TPDMSW WASTE processing plant on (not more than 1,000 square metres) acres of land at "Arjun Das Camp" ("**Project Site**") to the Concessionaire.

The Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

IT IS AGREED AS FOLLOWS:

Definitions

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

“Additional Costs” 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.

“Affected Party” shall have the meaning ascribed to the said term in Article 11.1;

“Agreement” or **“Concession Agreement”** shall mean this Concession Agreement;

“Applicable Laws” or **“Law”** shall mean all laws, acts, ordinance, rules, regulations, notification, guidelines or bye-laws in force and effect, including MSW WASTE Rules, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in [country] including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire;

“Applicable Permits” shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law;

“Appointed Date” shall mean the date of execution of this Agreement;

“BOOT Value” is equal to capital investments i.e. net of depreciation computed on ‘straight-line’ basis as per the rates specified in the Agreement & shall have the meaning ascribed to the said term in Article 11.4 (d) (ii);

“BOOT” shall have the meaning ascribed to the said term in Recital C;

“Commencement Date” shall have the meaning ascribed to the said term in Article 7.1.1;

“Concession” shall have the meaning ascribed to the said term in Article 4.1;

“Concessionaire Event of Default” shall have the meaning ascribed to the said term in Article 12.1.1;

“Concessionaire Preliminary Notice” shall have the meaning ascribed to the said term in Article 12.2.2(b);

“Concessionaire's Proposal to Rectify” shall have the meaning ascribed to the said term in Article 12.2.1 (b);

“Concession Period” shall have the meaning ascribed to the said term in Article 2.3.2 (ii);

“Contractor” shall mean any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Project;

“Construction Works” shall mean all works and things required to be constructed by the Concessionaire, pursuant for the purpose of commencement and operation of the Plant;

“Drawings” shall mean all of the drawings, designs, and documents pertaining to the Project in accordance with the Project Requirements;

“Effective Date” shall mean the last date for commencement of operations by the Concessionaire as defined in Article 7.1.1;

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, electricity, water and other utility charges and encroachments on the Project Facilities;

“Expiry Date” shall mean the date 20(twenty) years from the Commencement Date;

“Final Termination Notice” shall mean the termination notice issued in accordance with Article 12.3;

“Force Majeure Event” shall mean an act, event, condition or occurrence as specified in Article 11.1;

“Force Majeure Period” shall mean period during which the Force Majeure Event continues;

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“Government Agency” shall mean Government of India, Government of Delhi National Capital Region, NDMC 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;

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;

“Material Breach” shall mean a breach by either 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.

“Minimum Assured Waste Quantity” shall have the meaning as ascribed in Article 3.2.2;

“MSW WASTE”; means household municipal solid waste generated within the city and it doesn't include materials excluded under the terms and conditions of the Agreement.

“MSW Rules” means specific solid waste management laws of India, Delhi National Capital Region and/or NDMC & includes any statutory amendments/modifications thereto or reenactments thereof, for the time being in force.

“Parties” shall mean the parties to this Agreement and **“Party”** shall mean either of them, as the context may admit or require;

“Power Purchasing Agreement” means the associated agreement stipulating the arrangements for the supply of electricity generated by the Project to the NDMC and the purchase of that electricity by the NDMC required for the effective performance of this Agreement.

“Owner (and/or Lessor)” is the local government unit providing land for the project.

“Plant” shall have the meaning ascribed to the said term in Recital C;

“NDMC Event of Default” shall have the meaning ascribed to the said term in Article 12.1.2;

“NDMC Preliminary Notice” shall have the meaning ascribed to the said term in Article 12.2.1 (b);

“NDMC Proposal to Rectify” shall have the meaning ascribed to the said term in Article 12.2.2 (b);

“Preliminary Notice” shall have the meaning ascribed to the said terms in Article 12.2.1 (b) & 12.2.2(b);

“Project” shall mean design, financing, construction, operation and maintenance of the Plant in accordance with the provisions of this Agreement;

“Readiness Certificate” shall mean the certificate issued by the Concessionaire certifying, inter alia, that, the Concessionaire has constructed all the facilities within the Plant and obtained all the necessary approvals so as to enable receipt of MSW WASTE for processing.

“Receipt Point” shall mean the place of delivery within the Plant Site, specified in writing by the Concessionaire and marked out on a lay out plan by the Concessionaire, at which place NDMC shall be required to deliver the Assured MSW WASTE in accordance with the terms of this Agreement.

“Residual Inert Matter” shall mean the waste matter remained as residue after processing of the MSW WASTE at the Plant;

“Rejected Waste” shall mean such components of a consignment of Assured Waste Quality or the Minimum Assured Waste Quantity, as the case may be, as delivered by NDMC and received by the Concessionaire that is refused to be accepted by the Concessionaire as per the provisions of the Agreement.

“Scope of Work” shall have the meaning ascribed to the said term in Article 2.3.2;

“Tax” shall mean and includes all taxes, fees, cesses, levies that may be payable by the Concessionaire under Applicable Law;

“Tipping Fee” is the disposal fee usually charged for the delivery of waste to a waste disposal facility, noting that this fee is NOT charged by the Concessionaire under the terms of this Agreement.

“Termination Date” shall mean the date on which this Concession Agreement will be terminated in accordance with this Concession Agreement;

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“Termination Payment” shall mean the payment to be made by a Party to the other Party in case of termination of this Concession Agreement in terms hereof;

“Vacant Possession” means delivery to concessionaire, of possession of the lands constituting the Site and access road to the site free from all Encumbrances and the grant of all rights of access and use and all other rights appurtenant thereto.

“Weighbridge” means the electronic weighbridge capable of performing the operations in Article 7.2.3(a);

“Working Day” shall mean any day (other than Sunday or government holidays or any other declared holiday for NDMC) on which legal business of NDMC is conducted.

ARTICLE II OBLIGATIONS OF THE CONCESSIONAIRE

The NDMC has agreed to award the work of establishing an initial 70 TPD MSW WASTE processing plant to the Concessionaire. The Concessionaire shall carry out the required scope of work. In addition to and not in derogation of any of his other obligations under this agreement, the Concessionaire shall have the following obligations:-

2.1 Approvals

2.1.1 The Concessionaire shall be responsible for to design, construct, develop, establish, finance operate and maintain the Project as per the local, regional and national laws of the country.

2.1.2 The Concessionaire shall obtain necessary authorizations, and Consents/approvals from various departments as may be required for the Project. The NDMC shall issue recommendation letters as and when required without any financial burden to the NDMC.

2.1.3 The Concessionaire shall built and operate the Project at Arjun Das Camp where the required land is provided to Concessionaire for an initial 70 TPD project by the NDMC.

2.1.4 Environmental Clearance: The Concessionaire shall ensure that from the Commencement Date till the Concession Period or the Terminate Date, whichever is earlier, the processes employed in the construction, operation and maintenance of the Plant including post closure maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances or any other similarly empowered Government agency and for this purpose concessionaire shall carry out and fulfill the necessary requirements as stipulated and applicable and implement appropriate environment management plans in respect of the Plant. The NDMC shall issue recommendation letters as and when required without any financial burden to the NDMC.

2.2 General Obligations

2.2.1 The Concessionaire shall observe and comply with all its obligations set forth in this Concession Agreement and all the terms mentioned in the participation offer invited for the Project.

2.2.2 The scope of work ("**Scope of Work**") to be performed by the Concessionaire is as follows: -

(i) The Concessionaire shall be responsible for financing, designing, drawing, fabrication, supplying, providing, erecting, constructing, testing & commissioning of the Plant at the Project site on BOOT basis.

(ii) The Concessionaire shall own, operate and maintain the Plant for a period of 20(twenty) years ("**Concession Period**") from the Commencement Date.

(iii) The Concessionaire shall weigh the MSW WASTE received at the Project site and shall maintain daily records of the same.

(iv) The Concessionaire shall be responsible for setting up of all the units as required to operate this facility as per its own design and NDMC shall not be obligated to provide any financial or other such support.

(v) Prior to establishment of the Plant, the Concessionaire shall carry out a detailed study and analysis on the MSW WASTE generated/created within the NDMC limits and shall ensure that the Plant will be operated as per the features and characteristics of the MSW WASTE so generated/created within the NDMC limits.

(vi) The Concessionaire shall allow designated officers of the NDMC to visit the facility in line with the operating conditions of the Plant. The Concessionaire will advise and update the NDMC regarding the operation of the Plant and the Project.

2.2.3 The NDMC shall waive all and any of applicable NDMC charges towards the development of the project, etc.

2.2.4 The Concessionaire shall bear all the expenses, charges and deposits for the Electricity and Water Supply utilized during the operation of the Plant. The NDMC shall ensure the necessary supply as required from time to time of water and electricity is provided to the concessionaire. And Concessionaire shall have the option to make its own arrangements if it so desires.

2.2.5 The Concessionaire shall, at its own expenses, carry out all the necessary statutory and regulatory tests and submit the required reports to the relevant government bodies.

2.2.6 The Concessionaire shall ensure that the plant should run at a yearly average of no less than 80% of total plant capacity.

2.2.7 The Concessionaire shall ensure that the rejects/ash generated from the Plant and returned to the NDMC should not be in excess of the agreed amount of input waste quantity. This shall be set at a maximum of twenty percent (20%).

2.2.8 The NDMC, or its agents, shall remain responsible for the collection of waste and delivery of that waste to The Concessionaire's facility. These waste-to-energy facilities will process Municipal Solid Waste (MSW), which shall exclude Biomedical, Construction, Industrial, Market and Hazardous Waste. It must be noted that the inclusion of inert materials such as dirt and construction waste impacts on the performance of the waste-to-energy process. Therefore the MSW composition shall have clearly defined limits for agreed inert items such as dirt and construction debris. If the level of the agreed inert waste materials delivered exceeds the limits as agreed by The Parties in 2.2.7 then The Concessionaire shall be responsible at its own cost and expense, for the segregation the excess quantity of these inert materials and then return these agreed inert materials to the NDMC and the NDMC, (or its agents), must collect and remove these items from The Concessionaire's Facility.

2.2.9 The materials deemed unsuitable for processing by the Concessionaire under the terms of the Agreement, the Rejected Materials, shall be the responsibility of the NDMC, including transport and disposal from the Concessionaire premises. The Concessionaire shall be entitled to utilize the rejects/ash so generated from the Projects to its maximum capacity and the balance, if any, is to be handled and disposed by the NDMC. The Concessionaire shall identify only one location from where the NDMC shall collect and remove the Rejected Materials.

2.2.10 The stamp duty, registration charges and other costs pertaining to this Concession Agreement shall be borne by the Concessionaire.

2.2.11 The Concessionaire shall complete the erection, testing and commissioning of the Plant within 18 months from entering into this agreement.

2.2.12 The whole work shall be carried out in strict conformity with the provisions of good engineering practices and local standards. The Concessionaire shall ensure that the work is executed in the most proper and best workmanship during the BOOT period.

2.2.13 The Concessionaire shall, at its own cost and expense, hold and keep current insurance required for the normal course of business. For clarity, insurance is only for the space occupied by The Concessionaire, covering its equipment and activities within the designated space of the site.

2.2.14 The Concessionaire shall be responsible for the strict compliance of and shall ensure strict compliance by his sub-contractor employees and agents, all labours and other, of rules or regulations having the force of law affecting the relationship of employer and employee between the Concessionaire/sub-contractor and their respective employees.

2.2.15 The Concessionaire shall comply with all the rules and regulation of the local authorities for protection of health and sanitary arrangements of all those directly or indirectly employed on the work of this agreement. The Concessionaire shall adhere to safe working practices and guard against hazardous and unsafe working conditions and shall comply with standard safety rules.

2.2.16 It shall be the Concessionaire's responsibility to protect its employees and workers against accidents on work. The Concessionaire shall thereby indemnify the NDMC against any claim for damage to persons or property resulting from and in course of work undertaken by the Concessionaire, or its agents, associated with the performance of the Agreement.

2.2.17 The Concessionaire shall be solely responsible for the security of the Plant during the construction, Operation & Maintenance and the entire BOOT period.

2.2.18 The Concessionaire shall be responsible to obtain auxiliary fuel and other supplementary goods for running the Plant, which shall be informed in advance to NDMC.

2.2.19 If so specified, the Concessionaire shall, in terms with Article 10.2, transfer the possession of the entire project land Machinery to NDMC upon expiry of the Concession Period of 20 years.

2.2.20 The Concessionaire shall bear all the present Taxes, levies and duties arising out of this Concession Agreement. Any future additional taxes shall be settled by mutual agreement between both parties.

2.3.1 Repair and Maintenance Work of the plant: -Concessionaire shall design and plan and schedule the repair and maintenance works in a manner such as to ensure receipt of MSW WASTE at the plant at all times during the concession. Concessionaire shall provide NDMC advance notice of any planned repair or maintenance work of any of the project facilities provided however, no such notice would be required in the event of any unplanned repair or maintenance caused by an emergency or accident or any such unforeseeable event. Similarly, NDMC will

advise the Concessionaire of any events or issues of which they are aware, that might impact on the operations and/or repair and maintenance of the plant. The concessionaire shall endeavor to maintain the average annual MSW WASTE capacity i.e. 80% yearly average of installed plant capacity.

2.4.1 Environmental monitoring:- The Concessionaire shall submit an Environment Monitoring Plan and shall submit regular reports to the NDMC and relevant government bodies.

2.5.1 Web Site:- The Concessionaire shall maintain a web site that provides the relevant details of the plant and the process that it operates in such reasonable detail, under the Commercial-In-Confidence conditions etc, as would enable awareness about the Plant operations to any person accessing the web site.

2.6 No Breach of Obligations

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

- (i) Force Majeure Event;
- (ii) NDMC Event of Default;
- (iii) Compliance with the instructions of the NDMC 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;
- (iv) Closure of the Plant or part thereof with the approval of the NDMC.

ARTICLE III

OBLIGATIONS OF NDMC

The obligations of the Concessionaire to establish the Project and commence operation of the Plant are subject to NDMC fulfilling its obligations under this Concession Agreement as listed below under this Concession Agreement, -

3.1.1 Land Allotment land is to be made available to the Concessionaire for the Project, in line with their bid submission but the title to the land does not in any way transfer to The Concessionaire or provide collateral for the project. Upon the Site(s) being made available the Concessionaire shall, subject to the provisions of the Agreement, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Sites as may be necessary or appropriate to implement the Project and provide the Project Facilities in accordance with the provisions of this Agreement.

3.1.2 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 any third parties.

3.1.3 The NDMC, or its agents agree to comply with the access arrangements and operating conditions put in place by the Concessionaire for the safe and efficient operation of the Plant under the terms and conditions of the Agreement.

3.1.4 The land may not be included as capital contribution from any party associated with the Project.

3.1.5 The NDMC as the owner and lessor, shall remain responsible for the costs associated with the ownership of their asset, e.g, rates, insurance etc and is liable for any reasonable repairs, maintenance and other costs incurred during the normal course of business of the project.

3.1.6 The NDMC shall continue to ensure access to the site for the entire BOOT period, including rejection of zoning applications or development approvals that may hinder access.

3.1.7 The NDMC is be responsible for maintaining access roads and infrastructure, including maintenance and rebuilding of roads, bridges etc, to the required standard. Any roadworks or other activities that restrict access or impact on the delivery of waste will be compensated to the Concessionaire for the entire period of disruption; maintenance to existing haul route roads that lead to or will be used to access the Facility; construction and or maintenance for all required access routes to the Site and Facility and intersections with local roads designed to ensure that there are no interruptions or disruptions to the delivery of waste as per the requirements of the Agreements . Therefore; all roads to and at the site, must be designed and constructed such that the flow of traffic is uninterrupted under all weather conditions]; all roads to and at the site, must be designed to be structurally stable and such that the roads drain and have no ponding or surface washouts]; all local roads to and at the site, must be designed and constructed to be erosion resistant].

3.1.8 The NDMC remains directly responsible for ensuring that the land is adequately zoned for the permitted purpose covered by the Site Access and Waste Supply Agreements.

3.1.9 Each facility will have access to the required allotment of land at the agreed site.

3.1.10 The site will have access to basic utilities with connection to the national or local grid.

3.2.1 Peaceful Possession; - The NDMC hereby represents and warrants that: The MSW Processing Site and Landfill Site:

(a) Have been acquired through the due process of law; or

(b) Belongs to or has been leased to or is vested in the NDMC, and that the NDMC has full powers to hold, dispose of and deal with the same consistent, inter-alia, with the provisions of this Concession Agreement and that the Concessionaire shall, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected directly and/or indirectly thereby.

3.2.2 The Concessionaire shall, subject to complying with the terms and conditions of this Concession Agreement, remain in peaceful possession and enjoyment of the

MSW Processing and landfill Site during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the MSW Processing and landfill Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the MSW Processing Site or any part thereof, the NDMC shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any direct loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.2.3 The NDMC shall continue to ensure access to the site for the entire BOOT period, including rejection of zoning applications or development approvals that may hinder access

3.3 Ensure Availability of MSW WASTE

3.3.1 NDMC shall deliver to the Project site, an initial total of 70 tons per day of un-segregated (see below) household MSW free of non-household MSW including but not limited to direct construction & demolition building debris, street sweepings, slaughter house, market waste, hazardous waste, industrial waste, chemical, biomedical waste etc. (“Assured Waste Quantity”) to the Concessionaire at its cost and expense. For sake of clarification, the non-household MSW material will be removed (“segregated”) by the NDMC prior to delivery to the site. These “Rejected Materials” as non-household MSW are not covered by the terms of this Agreement.

3.3.2 The MSW composition shall therefore have clearly defined limits for agreed inert items. If the level of the agreed inert waste materials delivered exceeds the limits as agreed by The Parties, The Concessionaire shall be responsible at its own cost and expense, for the segregation the excess quantity of these inert materials and return to the NDMC (refer 3.3.3).

3.3.3 The Concessionaire shall then return these agreed inert materials to the NDMC and the NDMC, (or its agents), must accept and then remove these items from The Concessionaire’s facility, although it is noted that these volumes may be deployed in the remediation of a landfill site with the agreement of The Parties.

3.3.4 The Concessionaire may decline to accept Mixed Municipal Solid Waste in excess of 5% more than the daily Assured Waste Quantity on any given day at the Waste Processing Facilities, unless otherwise agreed by the Parties.

3.3.5 The Municipal Solid Waste will has a normal density range without compaction and higher density if good quality of compactor is used. While considering the weight of Waste Transported by the NDMC for the purpose delivery per tonne, the volume of the vehicle and density of Waste shall be taken into consideration to ensure that the required daily delivery takes place. This shall be on a case-by-case at the sole discretion of the Concessionaire as per the terms of the Agreement.

3.3.6 In case the Concessionaire certifies that Municipal Solid Waste is not fit for acceptance by the Concessionaire under any of the terms of the Agreement, the NDMC shall remove the same within 48 hours from the time of issue of such certificate, at the NDMC’s cost and risk.

3.3.7 NDMC shall be obliged to deliver a minimum 90% (ninety percent) of the Assured Waste Quantity as “Minimum Assured Waste Quantity”, of the total seventy tonnes/day of waste to the Concessionaire. This shall be calculated on an average basis, taking into consideration maintenance downtime for Concessionaire equipment.

3.3.8 In the event that the NDMC is unable to deliver the “Minimum Assured Waste quantity”, the Concessionaire shall make his own arrangements, either directly or through 3rd party, to bring MSW WASTE to site, and the cost of such waste collection & transport shall be drawn from the Waste Supply Guarantee provided by the NDMC.

3.3.9 The MSW delivered to the Concessionaire will be un-sorted household waste, that has not had recyclable materials removed, informally or formally, especially plastics and other high calorific materials required for the efficient operation of the waste-to-energy facility.

3.4 General NDMC Obligations

3.4.1 NDMC shall observe and comply with all its obligations set forth in this Concession Agreement and all participation required for the Project.

3.4.2 NDMC shall remain responsible for all waste collection, and delivery of the agreed volume and composition of waste to the Concessionaire at the site.

3.5.3 NDMC shall extend support to the Concessionaire for obtaining required licenses for the Project. The NDMC shall waive off all and any of applicable charges towards the operation of the Plant during the life of the Project.

3.4.4 Under the site access agreement the NDMC remains responsible for the provision of this water at the agreed site, with regular charges payable for such water supply borne by the Concessionaire. However, in case there is a shortfall or non availability of water then NDMC shall fulfill the entire shortfall as required from suitable source at NDMC costs.

3.4.5 The NDMC shall, as soon as possible and in an expeditious manner, sanction and approve all the plans and drawings submitted by the Concessionaire, including but not limited to building plan, specifications of civil work, specifications of civil and electrical work, etc.

3.4.6 NDMC including but not limited to certificates, confirmations as may be required by the Concessionaire for the purpose of claiming any exemptions or incentives from any Government authority, without any financial implications to the NDMC shall provide all necessary assistance to the Concessionaire.

3.5.7 The NDMC shall provide the Concessionaire with grid connectivity at the agreed site. The NDMC shall therefore exempt the Concessionaire from payment of any charges towards the grid connectivity with regard to cable laying, road cutting and other such charges.

3.4.8 The NDMC agrees to execute a Power Purchasing Agreement with the Concessionaire as a pre-requisite and a requirement for the full and complete performance of the Waste Concession Agreement.

3.4.9 The NDMC agrees that the absence of an agreed Power Purchasing Agreement between the Parties is considered a Material Adverse Effect under Section 11 of this Agreement.

3.5. Power Purchasing Agreement

3.5.1 The NDMC recognizes that this Waste Concession Agreement requires a complementary Power Purchasing Agreement.

3.5.2 A Power Purchasing Agreement between the Parties is required for the execution of this Agreement and the effective performance of the Project, as it specifies and regulates the supply and disbursement of the electricity generated by the project, and that the purchase of the electricity generated by the Project by the NDMC at the agreed rate indexed for the life of the Concession, is critical to the financial viability of the Project and thereby the achievement of the objectives set out in the Waste Concession and Site Access Agreements.

3.5.3 That the details of the supply of the electricity to NDMC and purchase of the electricity by the NDMC will be set out in the Power Purchasing Agreement.

3.5.4 NDMC agrees that any variation to the Power Purchasing Agreement, or vice versa, the Waste Concession Agreement, must be agreed between the parties as a condition of the performance of each agreement.

3.5.4 The NDMC undertakes to maintain a Power Purchasing Agreement with the Concessionaire, as a requirement of this Agreement.

4.1 Grant of Concession

ARTICLE IV CONCESSION

Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, NDMC hereby grants and authorizes the Concessionaire following rights, in addition to the right to finance, design, drawing, fabrication, supply, provide, erect, construct, test, commission, operate and maintain the Project and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement:-

(a) To receive at the Project Site, during each day of the Concession Period, Assured Waste Quantity from NDMC (which shall be delivered by NDMC at its own cost and expense) for the Project, to be transported and supplied by NDMC;

(b) To inspect the Assured Waste Quality delivered by the NDMC and identify Rejected Waste as per provisions of Article 7.2.3 in such manner as it deems fit, and refuse to accept the Rejected Waste; and

(c) To receive all fiscal incentives and benefits accruing in respect of or on account of the Project.

(d) To facilitate the movement of material; including building construction materials, plant and machinery, spares and consumables from the supply locations to the Project Site.

4.2.1 Concession Period

(a) The Concession hereby granted is for the period of 20 (Twenty) years commencing from the Commencement Date and ending on the Expiry Date (the "Concession Period") during which the Concessionaire is authorized to design, finance, construct, operate and maintain the Project in accordance with the provisions hereof. Provided that in the event of termination of this Concession

Agreement, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination Date.

(b) NDMC may agree to extend or renew the Concession after the expiry of the Concession Period for such period as may be mutually agreed to and on such terms and conditions as mutually agreed upon, subject to approval of competent authority of NDMC. However, any such extension shall be co- terminus with the lease agreement.

4.2.2 The NDMC may increase the Assured Waste Quantity with mutual acceptance from the Concessionaire. The Concessionaire shall then accept the additional MSW for Processing and Landfilling as per the terms and conditions of the Agreement.

4.2.3 In the event, such increase in Assured Waste Quantity necessitates an increase in the capacity in the Waste Processing Facilities, the Concessionaire shall, at its cost and expense, design, finance, procure, construct, operate, maintain and transfer such Waste Processing Facilities of suitable capacities either at the Proposed Site or such suitable sites provided by the NDMC to the Concessionaire.

4.2.4 Such sites and additional Waste Processing Facilities shall and continue to remain the properties of the NDMC.

4.3 Rights Associated with Grant of Concession

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

(a) to design, engineer, finance, procure, install, commission, operate and maintain the Plant either itself or through such Person as may be selected by it; overall responsibility for the entire project during the entire concession period is the responsibility of the Concessionaire.

(b) Upon commissioning of the Plant, to manage, operate and maintain the same either itself or through such Person as may be selected by it; overall O&M responsibility for the entire project during the entire concession period is the responsibility of the Concessionaire.

(c) to borrow or raise money or funding required for the due implementation of the Project and mortgage, charge or create lien, or encumbrance on the whole or part of the Plant; (Without mortgaging the Project Land)

(d) to use, appropriate, process MSW WASTE delivered by the NDMC to the Concessionaire;

(e) to store, use, appropriate, market, sell or dispose all the products obtained after processing and treatment of the MSW WASTE and to further retain and appropriate any revenues generated from the sale of such products

(f) To obtain the utilities required for enabling the construction of the Plant, with all costs.

(g) Exclusively hold, possess, and control the Project Site, in accordance with the terms and conditions of the lease agreement executed between the Concessionaire

and NDMC, for the purpose of the due implementation of this Project, in accordance with the terms of this Concession Agreement.

(h) The Concession and this Concession Agreement will be aligned with the Power Purchasing Agreement with NDMC (refer to NDMC/G20ESG Power Purchasing Agreement) required for the performance and execution of this Agreement.

4.4 Use of Suitable Technology

Without prejudice to the generality of the foregoing, the Concessionaire shall have the right to develop the Plant using such technology that it considers suitable and commercially viable for the purpose of implementing the Project, in accordance with the terms of this Concession Agreement. It is acknowledged that it is the intention of the Concessionaire to use the technology associated with the concept of an integrated waste processing plant and that the Concessionaire shall have the right to modify, adopt, upgrade or change the technology, from time to time, based on actual operations of the Plant and the requirements of the Project.

4.5 Acceptance of Concession In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration 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.

4.6 Concessionaire's Right to carry Project through SPV

The Concessionaire shall have the right to execute, construct, implement, erect, construct, operate, own and maintain the Project through a Special Purpose Vehicle ["SPV"] created by the Concessionaire.

4.7 Clean Development Mechanism (Carbon Credits)

The Concessionaire shall use its best endeavors to register the Plant for carbon credits. The Concessionaire shall have to share 50% of carbon credit income from the CDM with the NDMC, with the Concessionaire to apply for this project to seek carbon credit, with all the expenses associated with this process to be shared proportionate to the income generated from the carbon credits.

4.8 Financing Arrangements: - The Concessionaire shall be entitled to avail certain financing facility from banks or financial institutions both domestic and international ("Lender") for the purpose of the Project and accordingly the Concessionaire shall be entitled to create any sort of Encumbrance on the Plant and/or the project facilities, except the Project Land, in favour of the Lenders for availing the financing facility.

ARTICLE V PROJECT LAND

5.1 Handover of the Project Land

5.1.1 NDMC shall not hand over any land to concessionaire for execution of the project. The Concessionaire shall execute the project on land provided to it by the NDMC for the MSW WASTE disposal project. In the event, if the Project is not viable

on the Project Land on account of reasons beyond the control of either or the Parties, the NDMC shall allot an alternate land for the purposes of the Project.

5.2.1 Rights, Title and Use of the Project Land: - The Concessionaire shall have the right to the use the Project Land in accordance with the provisions of this Concession Agreement and for this purpose, it may regulate the entry into and use of the same by third parties. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Land save and except as set forth and permitted under this Agreement.

5.2.2 The Concessionaire shall not, without the prior written approval of the NDMC, use the Project Land for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

ARTICLE VI CONSTRUCTION WORKS

6.1 Construction Works

6.1.1 The Concessionaire shall adhere to the requirements of the Project and achieve the commencement of the operations of the Plant on or before the Effective Date.

6.1.2 The Concessionaire shall use the Site for the purpose of implementing the Project and develop cells in a phased manner as per the implementation schedule and in accordance with Good Industry Practice.

6.1.3 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the construction requirements of the Project.

6.1.4 The Concessionaire shall, before commencement of Construction Works;
(a) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to liaise with the NDMC and to be responsible for all necessary exchange of information required pursuant to this Concession Agreement;
(b) Construct, provide and maintain a reasonably furnished site office..

6.1.5 The Project shall be deemed to be complete and ready to commence operations when it has complied with all required approvals and permits and the requirements of the Agreement.

ARTICLE VII COMMENCEMENT OF OPERATIONS

7.1 Commencement Date

7.1.1 The Concessionaire shall commence operations of the project within a period of 18 months from date of signing of this Concession Agreement (“Effective Date”). Upon completion of construction and its readiness to commence the operations to process the MSW WASTE in accordance with this Concession Agreement, the Concessionaire shall advise the NDMC regarding the same by way of a written notice and shall intimate a date for commencement of operations (“Commencement Date”), which has to be scheduled within the 18 months period mentioned above.

7.1.2 The Effective Date will not be extended unless and until there are certain exceptional circumstances as decided by the NDMC in line with the authority of the NDMC and that the Concessionaire be advised of such proceedings and be provided with opportunity to comment before the decision of the NDMC is taken.

7.2 Operations and Maintenance

7.2.1 Delivery of MSW WASTE The NDMC shall supply the Assured Waste Quantity at the Receipt Point either by itself or through its nominated agencies at no cost to the Concessionaire.

7.2.2 Delivery of MSW WASTE after Commencement Date From the Commencement Date till the end of the Concession Period, the NDMC shall supply and make available to the Concessionaire each day, the Assured Waste Quantity, in accordance with this Agreement.

7.2.3 Measurement of MSW WASTE Delivered

(a) The Concessionaire shall cause a Weighbridge to be constructed at the Receipt Point:-

(i) weigh the MSW WASTE delivery trucks, take the dimensions of the delivery trucks, determine the weight of the consignment and determine the density of the consignment;

(ii) generate and maintain an electronic data base for each delivery and provide a print out of the specifications and details for each consignment, as stated in sub-clause (i) above (such print out is hereinafter referred to as "Daily Weight Sheet").

(iii) Additionally, the Concessionaire should provide weight receipt in duplicate to the driver of the truck.

(b) The Weighbridge shall be operated and maintained by the Concessionaire at no cost to the NDMC.

(c) Each consignment shall be first weighed at the Weighbridge. The NDMC or its transporters shall provide the weight and volume of each empty delivery trucks, in order to enable the due operation of the Weighbridge.

(d) The Weighbridge determines the density whereby it can be verified if the relevant consignment contains any Rejected Materials.

(e) . The Concessionaire shall at its own discretion refuse to accept any Rejected Materials and the NDMC shall ensure that no consignment contains Rejected Materials. The identification of Rejected Materials will result in the rejection of the delivery and the return of that delivery to the NDMC, with the total volume of the delivery to be deducted from the required daily volume. The removal of these items will be solely at the cost of the NDMC

(f) The quantity of the Rejected Waste identified during a period, shall be deducted from the Assured Waste Quantity being supplied by the NDMC while determining whether the NDMC has delivered the Minimum Assured Waste Quantity for such relevant period.

7.2.4 The Concessionaire shall operate and maintain the Plant in accordance with the recommendations of the Original Equipment Manufacturers and as per the Standard Industry Practice.

7.2.5 The Concessionaire may undertake operations and maintenance of the Plant by itself or through a Contractor possessing requisite technical, financial and

managerial expertise / capability; but in either case, the Concessionaire shall remain solely responsible to meet the Project requirements as per this Agreement.

7.2.6 The Concessionaire shall, during the Concession Period;

(i) have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project, to deal with the NDMC and to be responsible for all necessary exchange of information required pursuant to this Concession Agreement;

(ii) construct, provide and maintain a reasonably furnished site office accommodation at the Project Site;

(iii) For the purposes of determining that the Plant is being maintained in accordance with this Agreement, the Concessionaire shall with due diligence carry out all necessary and periodical Tests. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

7.2.7 The Concessionaire shall be entitled to utilize the rejects/ash so generated from the Projects to its maximum capacity and balance, if any, shall be disposed by the NDMC at its cost and expense. The Quantity of such ash should not be exceeding beyond 20%, noting that this does not include inappropriate materials, such as Construction Waste, Hazardous Waste and other such materials so specified in the Agreement.

ARTICLE VIII RIGHTS OF PARTIES

NDMC and the Concessionaire shall, in addition to other rights as mentioned in this Concession Agreement, have the following respective rights:

8.1.1 Right to Receive MSW WASTE The Concessionaire shall have the right to receive, inspect and weigh the MSW WASTE and segregate any Rejected Materials and process the MSW WASTE received from the NDMC at the Project Site.

8.1.2 The daily waste collected by NDMC shall be unsegregated, save for the rejected materials deemed unsuitable under the terms and conditions of the Agreement, and therefore be delivered to the Site without prior commercial separation of solid waste materials suitable for processing at the Plant for the purposes of the Project.

8.1.3 In addition, informal collection, such as “scavenging” or “rag picking” will cease at sites related to the Project, unless specifically permitted by the Concessionaire.

8.2 Right of disposal of Received Material The Concessionaire shall be entitled to sell or dispose, any materials delivered to the site; and any other by- products, recyclables derived, fuel and electricity generated or produced from the Plant arising out of processing of the MSW WASTE. The Concessionaire shall have the right to sell or dispose such products, at such price and to such persons and using such marketing and selling arrangements as it may deem appropriate.

8.3 Benefits of the Project to Accrue Directly to the Concessionaire The NDMC hereby agrees that if there is any financial or Income Tax benefits or otherwise in respect or on account of the Project they shall accrue directly and exclusively to the Concessionaire alone and the NDMC hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of the Concessionaire. The

NDMC agrees to facilitate the grant or receipt of all such benefits by the Concessionaire, whether on its own behalf or on behalf of the NDMC and for the purpose to give all recommendations, no-objections, authorizations etc

The Parties hereby agree that the Project is a waste management project and that all revenues including revenue from scrap sale are derived from the performance/execution of the waste management project.

8.4 Non-Interference by NDMC

(a) The NDMC covenants with the Concessionaire that the NDMC or any of its officials, officers, employees or workmen shall not, any time, during the Concession Period interfere or obstruct in the functioning, running and overall management of the Plant and in any matter in relation to or connected therewith.

(b) The NDMC shall have no right, title or interest to the technology that would be used by the Concessionaire in the development, operation and maintenance of the Plant. The NDMC agrees that any technology that may be employed by the Concessionaire in the development, operation and maintenance of the Plant would be proprietary technology obtained under specific license and the NDMC hereby undertakes that it shall not violate or cause a breach of the license agreements of the Concessionaire for such technology.

ARTICLE IX HANDOVER OF THE PLANT

9.1. Ownership during the Concession Period: Without prejudice and subject to the Concession and the Financing Documents, if any, the ownership of the Plant, including all improvements made therein by the Concessionaire and all immovable (Excluding Land) and movable assets including equipment and machinery and vehicles, during the term of the Concession Period shall at all times remain with the Concessionaire.

9.2 Concessionaire's Obligations

(i) The Concessionaire shall, on the date of expiry of the Concession Period or subject to Article 12.6.2 upon Termination of this Concession Agreement, hand back peaceful possession of the Plant free of cost and in normal operating condition.

(ii) At least 3 (three) months before the expiry of the Concession Period, a joint inspection of the Plant shall be undertaken by the NDMC and the Concessionaire. The Concessionaire shall promptly assist the NDMC in preparing the necessary documentation for the proper handing over of the Plant to the NDMC at least 2(two) months prior to the expiry of Concession Period.

(iii) The Concessionaire shall before handing over to the NDMC, attend to all maintenance works/replacement/refurbishment/reconditioning of broken down equipment.

(iv) In the event, NDMC does not wish to take over the Plant, and the Concessionaire does not wish to extend the contract period, the Concessionaire shall be under an obligation to dismantle and dispose the entire Plant, including all movables and embedded machineries forming part of the Plant, in the manner as it deems fit and bear all costs for the same. In case the Concessionaire is able to receive proceeds from the sale of the Plant, the Concessionaire shall be entitled to retain all the proceeds received to set off against its expenses.

ARTICLE X FORCE MAJEURE AND CHANGE IN LAW

10.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby (“Affected Party”) and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation and landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire;
- (d) acts of terrorism;
- (e) strikes, public agitations, labor disruptions or any other industrial disturbances;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to;
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project or any part thereof or of the Concessionaire’s or the Contractor’s rights in relation to the Project,
 - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in [country] made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - (iii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire’s breach or failure in complying with the requirements of the Project, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) early determination of this Concession Agreement by NDMC for reasons of national emergency or national security;
- (h) Any failure or delay of Concessionaire caused by any of the sub-articles (f) and (g) hereinabove, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
- (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionizing radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor

10.2 Notice of Force Majeure Event

(a) As soon as practicable and in any case within 7 (Seven) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:

- (i) the nature and extent of the Force Majeure Event;
- (ii) the estimated Force Majeure Period;

- (iii) the nature of and the extent to which, performance of any of its obligations under this Concession Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Concession Agreement.
- (b) As soon as practicable and in any case within 5 (five) days of notification by the Affected Party in accordance with the preceding article (a), the Parties shall meet, hold discussions in good faith and where necessary conduct physical inspection/survey of the Plant in order to:
- (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure Period and,
 - (iii) To formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding article (b) as also any information, details or document, which the other Party may reasonably require.

10.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Article 10.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Plant as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Concession Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Concession Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Concession Agreement;
- (f) Any insurance proceeds received shall be, subject to the provisions of Financing Documents, entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

(g) Neither Party hereto shall be liable in any manner whatsoever to the other party in respect of any loss, damage, cost, expenses, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

10.4 Termination due to Force Majeure Event

(a) Termination

(i) If a Force Majeure Event, excluding events described under Articles 10.1 (f), 10.1 (g) 11.0 (h) and 10.1(i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties may mutually decide to terminate this Concession Agreement or continue this Concession Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) days, be entitled to terminate this Concession Agreement.

(ii) Notwithstanding anything inconsistent contained in this Concession Agreement, if a Force Majeure Event is an event described under Articles 10.1(f), 10.1(h) or 11.0(i), and the same subsists for a period exceeding 365 (three hundred and sixty five) days, then either Party shall be entitled to terminate this Agreement.

(b) Termination Notice If either Party, having become entitled to do so, decides to terminate this Concession Agreement pursuant to the preceding article (a), it shall issue Termination Notice setting out;

(i) in sufficient detail the underlying Force Majeure Event;

(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.

(c) 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) the Termination Payment, if any, payable to NDMC in accordance with the following clause (d) is paid by the Concessionaire on the Termination Date and

(ii) The Plant is handed back to NDMC by the Concessionaire on the Termination Date free from all Encumbrances.

(d) Termination Arrangement Upon Termination of this Concession Agreement due to a Force Majeure Event, Termination Arrangements shall be made to the Concessionaire by NDMC in accordance with the following:

(i) If Termination is due to a Force Majeure Event, described under Articles 10.1(a), to 10.1(e), no Termination Payment shall be made by NDMC to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate;

(a) the proceeds of any amounts under insurance policies and

(b) retain the Plant, along with the entire project facilities except land, and shall be entitled to sell the Plant and/or the project facilities, in part or full, or use the same as it deems fit

(ii) If Termination is due to the occurrence of any other event described under Articles 10.1(f), 10.1(g) or 10.1(h), 10.1 (i) NDMC shall have the option to take back the Plant and pay to the Concessionaire Termination Payment equal to 100% of the BOOK value of the capital investments i.e.net of depreciation computed on straight line basis as per the rates specified in Company's Act ("BOOT Value") as on the Date of Termination Notice, made by the Concessionaire towards the Plant and as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose.

(iii) If NDMC does not opt to take back the plant and hence does not make the Termination Arrangement to the Concessionaire as per Clause 10.4(d) (ii), along with the Termination Notice, the Concessionaire shall be entitled to retain the Plant, along with the entire project facilities except land, and shall be entitled to sell the Plant and/or the project facilities, in part or full, or use the same as it deems fit.

10.5 Liability for other losses, damages etc. Save and except as expressly provided in this Article 10, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

10.6 Changes in Law 11.6.1 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 law including laws related to environment;
- (ii) The repeal, modification or re-enactment of any existing law;
- (iii) A change in the interpretation or application of a 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.

10.6.2 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 direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, NDMC shall subsequently reimburse to the Concessionaire such amount as required to compensate the Concessionaire.

10.6.3 Upon occurrence of a Change in Law, the Concessionaire may, notify NDMC of the following:

- (i) The nature and the impact of Change in Law on the Project;
- (ii) In sufficient detail, 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, minimizing the Additional Cost;
- (iv) The relief sought by the Concessionaire.

10.6.4 Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-clause, NDMC and the Concessionaire shall hold

discussions and take all such steps as may be necessary to quantify the quantum of the Additional Cost. This is to be decided within 90 (ninety) days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire subject to the NDMC following the due administrative procedure in terms of approvals for disbursement. The relief amount will take account of the lost revenue calculated on the revenue generated through the sale of electricity and other revenue streams generated by the Project to the benefit of the Concessionaire.

ARTICLE XI EVENTS OF DEFAULT AND TERMINATION

11.1 Events of Default

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

11.1.1 Concessionaire Event of Default

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 the Force Majeure Event or one or more reasons set out in Article 2.4;

(a) The Concessionaire has failed to adhere to the schedule for completing the construction of the Plant and such failure is likely to delay achievement of Effective Date beyond 90 days;

(b) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 90 (ninety) days;

(c) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;

(d) 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 NDMC, 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;

(e) The Concessionaire has abandoned the Project;

(f) The Concessionaire has unlawfully repudiated this Concession Agreement or has otherwise expressed an intention not to be bound by this Concession Agreement;

(g) The Concessionaire has failed to accept the waste supplied by NDMC in accordance with schedule herein, for a continuous period of Fifteen days for reasons attributed to unplanned Maintenance Shutdown as indicated by the Concessionaire in the O & M requirements to be submitted to NDMC]or an aggregate period of 20 days in any given month. In case of planned shutdown maintenance the operator and the NDMC shall take adequate measure to accommodate the planned shutdown for maintenance, including but not limited to the ongoing delivery of waste.

(h) The concessionaire is declared insolvent.

(i) Any other breach/ default affecting smooth functioning of the project.

11.1.2 NDMC Event of Default

(a) Any of the following events shall constitute an Event of Default by NDMC ("**NDMC Event of Default**") unless such event has occurred as a result of the Force Majeure Event:

(i) NDMC has failed to supply the Minimum Assured Waste Quantity for 15 days

(ii) NDMC is in Material Breach of any of its obligations under this Concession Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire;

(iii) NDMC has (a) having executed the lease agreement in breach of any of its obligations there under and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire,

(iv) NDMC has unlawfully repudiated this Concession Agreement or otherwise expressed its intention not to be bound by this Concession Agreement;

(v) NDMC has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Concession Agreement, and thereby caused or likely to cause Material Adverse Effect;

(vi) Any representation made or warranties given by the NDMC under this Agreement has been found to be false or misleading.

(vii) There is no longer an effective Power Purchasing Agreement in place between the Parties for the supply and purchase of the electricity as per the terms and conditions of this Agreement.

(b) If NDMC decides to terminate this Concession Agreement pursuant to preceding sub article (a), it shall in the first instance issue a preliminary notice ("NDMC Preliminary Notice") to the Concessionaire. Upon receipt the NDMC Preliminary Notice, the Concessionaire shall forward a copy of the same to the Lender.

(c) Within thirty (30) days of receipt of the NDMC Preliminary Notice, the Concessionaire, after written approval from the Lenders, shall submit to NDMC 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 days, NDMC shall be entitled to terminate this Agreement by issuing a Final Termination Notice in the manner prescribed under Article 11.2.2.

(d) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 90 (ninety) days to remedy/ cure the underlying Event of Default. The Concessionaire's Proposal to Rectify shall contain, amongst other things, right of the Lender to step-in, negotiate and resolve the issue with NDMC. Upon receipt of the Concessionaire's Proposal to Rectify, NDMC shall co-operate with the Lenders and shall attempt to mutually resolve the issue with the Lenders.

(e) If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, NDMC shall be entitled to terminate this Concession Agreement, by issue of Final Termination Notice in the manner prescribed under Article 11.2.2.

11.2.2 Termination for NDMC Event of Default

(a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of NDMC Event

of Default, [the Concessionaire shall be entitled to terminate this Concession Agreement by manner as set out under Article 12.2.2 (b) and Article 12.2.2(c).]

(b) If the Concessionaire decides to terminate this Concession Agreement pursuant to preceding sub-article (a) it shall in the first instance issue a preliminary notice ("Concessionaire Preliminary Notice") to NDMC. Within 30 days of receipt of Concessionaire Preliminary Notice, NDMC shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "NDMC Proposal to Rectify"). In case of non submission of NDMC Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Concession Agreement by issuing Final Termination Notice.

(c) If NDMC Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, NDMC shall have further period of 90 days to remedy/ cure the underlying Event of Default. If, however NDMC 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 a Final Termination Notice.

11.3 Final Termination Notice

If a Party having become entitled to do so decides to terminate this Concession Agreement pursuant to the preceding Article 11.2.1 or 11.2.2, it shall issue Final Termination Notice setting out:

- (a) in sufficient detail the underlying Event of Default;
- (b) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Final Termination Notice;
- (c) the estimated termination payment including the details of computation thereof as stipulated in this agreement and,
- (d) Any other relevant information.

11.4 Obligation of Parties Following issue of Final Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (a) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- (b) The termination payment payable by NDMC in accordance with the Article 12.6.2 is paid to the Concessionaire on the Termination Date and the Plant as on the Termination Date, is handed back to NDMC by the Concessionaire on the Termination Date free from any Encumbrance.

11.5 Withdrawal of Final Termination Notice Notwithstanding anything inconsistent contained in this Concession Agreement, if the Party who has been served with the Final Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Final 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 the Final Termination Notice.

11.6 Rights of Parties upon Termination

11.6.1 Rights of NDMC upon Termination

(a) Upon Termination of this Concession Agreement on account of Concessionaire Event of Default, the Concessionaire would not be entitled to any compensation from NDMC.

(b) Upon Termination of this Agreement for any reason whatsoever, NDMC shall, in the event that it opts to take over the project, including the plant and equipment, and subject to making payments to the Concessionaire under Article 11.4(d)ii or Article 12.6.2, as the case may be, have the power and authority to:

(i) Initially instruct the Concessionaire to remove plant and machinery and return vacant possession of land within 60 (sixty) days of such termination.

(ii) If the Concessionaire fails or is unable to comply with (i) then after a reasonable period the NDMC may eventually take possession and control of the Plant including all equipment, all or any tools and plants, material installed or stored; and

(c) Notwithstanding anything contained in this Concession Agreement, NDMC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization 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 Plant.

11.6.2 Rights of Concessionaire upon Termination

Upon Termination of this Agreement on account of NDMC Event of Default;

(i) NDMC shall, either;

(A) purchase the Plant notwithstanding the completion status of the Plant on an “as is where is basis” from the Concessionaire and the Concessionaire shall be entitled to receive from NDMC, termination payment equal to 100% of the BOOT value of the Plant means capital investment i.e. net of depreciation as on date (“Plant Cost”); and

The Concessionaire shall also be entitled to claim compensation, as may be mutually decided between NDMC and the Concessionaire, for losses related to project (“**Appropriate Compensation**”) as may arise directly or indirectly from NDMC Event of Default.

OR

B. In the event NDMC refuses or is unable to pay the Plant Cost as required, the Concessionaire shall retain the Plant; and The Concessionaire shall also be entitled to claim compensation, as may be mutually decided between NDMC and the Concessionaire, for losses related to project (“**Appropriate Compensation**”) as may arise directly or indirectly from NDMC Event of Default.

(iii) NDMC shall, within a period as mutually agreed upon for days from the date when the Appropriate Compensation is decided, pay the Appropriate Compensation to the Concessionaire.

(iv) Notwithstanding anything contained herein, NDMC shall not be entitled to take the Plant unless and until NDMC pays the Plant Cost.

11.7 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Concession Agreement, Termination pursuant to any of the provisions of this Concession Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money, 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 XII

DISPUTE RESOLUTION

12.1 Amicable Resolution

12.1.1 Unless prohibited by any applicable law in force all claims, disputes, difference, or questions of any nature arising between parties of this agreement, whether during or after the termination or expiry of this agreement shall be referred to Arbitration. Both the parties mutually agree and confirm that the arbitration proceedings shall be held in the NDMC city, at a mutually agreed venue, and shall be conducted in the English language.

12.1.2 **Insurance: - Concessionaire Obligation:** - Concessionaire shall at its cost and expense, obtain and maintain, during the term, all such insurances (in addition to those mandated by Applicable laws or required by the Lenders) as may be required as per Good industry practices. The insurance shall be comprehensive and shall cover damages caused by the project facilities to NDMC's property or damage to any third property/ person. The aforesaid insurance policies shall be in force by making timely payment of premiums & submitting the copies of the insurance policies to the NDMC every year. The Concessionaire shall indemnify & keep indemnified NDMC against all losses and claims for injuries or damaged to any person or property whatsoever which may arise out of or in consequence of the construction & maintains of the project facilities & against all claims, demands, proceedings, damages, costs, charges & expenses whatsoever respect of or in relation thereto. The Concessionaire shall cover all the personnel required to operate and maintain the project facilities with an insurance cover against accidents as required under MSW WASTE rules.

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

12.1.4 **Insurance proceeds :-** Subject to the provision of the financing documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by Concessionaire towards repair, renovation, restoration or reinstatement of the project facilities of any part thereof which may have been damaged or destroyed. Concessionaire may designate the lenders as the

loss payees under the insurance policies or assign the insurance policies in their favor as security for the financial assistance provided by them to the project.

ARTICLE XIII REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties of the Concessionaire The Concessionaire represents and warrants to NDMC 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 Concession 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 Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Concession 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;
- (g) No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.

13.2 Representations and Warranties of NDMC

NDMC represents and warrants to the Concessionaire that:

- (a) NDMC has full power and authority to grant the Concession;
- (b) NDMC has taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- (c) This Concession Agreement constitutes NDMC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) NDMC has all the valid rights and title to transfer the Project Land under the Lease Agreement to the Concessionaire free from all sorts of Encumbrances;
- (e) There are no suits or other legal proceedings pending or threatened against NDMC in respect of the Project

ARTICLE XIV MISCELLANEOUS

14.1 Governing Law and Jurisdiction

This Concession Agreement shall be governed by the laws of India. Courts at Delhi will have jurisdiction over all matters arising from this Concession Agreement.

14.2 Amendments: - This Concession Agreement together with the Schedules constitute a complete and exclusive set 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 both the parties hereto and evidenced in writing,.

14.3 Interest and Right of Set Off: - Any sum which becomes payable under any of the provisions of this Concession Agreement by one Party to the other Party shall, if the same be 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 prime lending rate of State Bank of India plus 2% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Concession 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 14.3 shall neither be deemed nor construed to authorize 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.

14.4 Waiver

14.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Concession 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 Concession Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

(c) Shall not affect the validity or enforceability of this Concession Agreement in any manner.

14.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Concession 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 Concession Agreement.

14.5 Survival Termination of this Agreement;

(a) shall not relieve the Concessionaire or NDMC of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and

(b) except as otherwise provided in any provision of this Concession 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.

14.6 **Notices** Unless otherwise stated, notices to be given under this Concession Agreement including but not limited to a notice of waiver of any term, breach of any term of this Concession Agreement and termination of this Concession 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 set forth below:

If to NDMC: New Delhi Municipal Corporation, Palika Kendra, Sansad Marg.
New Delhi – 110 102.

And If to the Concessionaire: Level 30, 6 Battery Road, Singapore, 049909.

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

(a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and, when transmitted properly addressed to such telex number or facsimile number.

14.7 Severability

If for any reason whatsoever any provision of this Concession 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 Concession Agreement or otherwise.

14.8 No Partnership

Nothing contained in this Concession Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither party shall have any authority to bind the other in any manner whatsoever.

14.9 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Concession Agreement shall be in writing and English language.

14.10 Exclusion of Implied Warranties etc.

This Concession 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.

14.11 Counterparts

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

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

Authorized Signatory

(Signature)

Name:

Designation: For NDMC

(Signature)

Name:

Designation:

In the presence of:

Name:

Designation:

In the presence of:

Name: Designation: