

Volume III

DRAFT CONCESSION AGREEMENT

Between

South Delhi Municipal Corporation (“SDMC”)

Acting through its Commissioner

AND

_____ (“Successful Bidder”)

AND

_____ (“Concessionaire”)

For

**Collection and Transportation of Municipal Solid Waste, Street Sweeping Waste, Drain Silt, Green Waste
and Construction and Demolition Waste in the South/Central/ West/ Najafgarh Zone**

of

South Delhi Municipal Corporation

on

Public Private Partnership (PPP) Basis

..... **2014**

(On Stamp Paper)

(DRAFT) CONCESSION AGREEMENT

This CONCESSION AGREEMENT made this__ [insert date] day of_____ [insert month] 2014 at the office of **South Delhi Municipal Corporation** Zonal Office Building, Green Park, **New Delhi 110 016, India**

BETWEEN

South Delhi Municipal Corporation (SDMC) acting through its Executive Engineer, EMS (SZ) Mr..... (hereinafter referred to as **“SDMC”**, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the **ONE PART**

AND

M/s _____ the **“Successful Bidder”** [Lead Partner] having Registered Office at _____ through its Director Mr. _____ (hereinafter referred to as **“Successful Bidder”**, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the **SECOND PART**

AND

M/s _____ incorporated by the Successful Bidder as **“Special Purpose Vehicle”** for undertaking the Project as stipulated in the RFP, having its registered office at _____, through its Director Mr. _____ (herein after referred to as **“Concessionaire”**), which expression shall unless repugnant to the context include the successors and permitted assigns, of the **THIRD PART**.

WHEREAS

- A. The Ministry of Environment and Forest (MoEF), Government of India (GoI), has formulated the Municipal Solid Waste (Management and Handling) Rules, 2000 (“MSW Rules”), which makes it mandatory for every municipal authority to implement a scientific solid waste management system.
- B. The South Delhi Municipal Corporation (SDMC) is responsible for providing municipal and civic services in the Central Zone/South Zone/West Zone/Najafgarh Zone (delete whichever is not applicable) falling under SDMC.
- C. SDMC is desirous of implementing collection, and transportation of conforming waste (the **“Project”**) for the Area covered under its jurisdiction through private participation on Design, Build, Finance, Operate, Maintain and Transfer (DBFOT) basis.
- D. SDMC floated global tender and invited proposals for each of the Four Zones, through a competitive bid process from eligible parties for implementing the Project. In response thereto, SDMC received proposals from several parties including the Successful Bidder for implementing the Project for.....Zone.
- E. Successful Bidder acknowledges that Bid was made in accordance with RFP, PIM and Draft Concession Agreement published as part of Tender documents and further agrees to abide by the terms and conditions of Tender Documents.

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- F. Concessionaire recognizes that the services asked for under this Agreement fall under Essential Services as defined in the Haryana Essential Services Maintenance Act, 1974 extended to National Capital Territory of Delhi.
- G. Pursuant thereto, after evaluating the aforesaid proposals and negotiations, SDMC accepted the proposal submitted by the Successful Bidder and issued Letter of Acceptance No. _____ dated -- -----to the Successful Bidder requesting the Successful Bidder to execute the Concession Agreement, which the Successful Bidder has acknowledged by its Letter No. _____ dated _____.
- H. Successful Bidder _____ has incorporated M/s _____ as Special Purpose Vehicle for undertaking the Project as stipulated in the RFP.
- I. Successful Bidder hereby agrees to serve as guarantor towards the role and responsibilities cast upon the Concessionaire under the Concession Agreement.
- J. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

DEFINITIONS AND INTERPRETATION	ARTICLE 1
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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. **“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.
2. **“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 14.1.
3. **“Agreement”** shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.
4. **“Applicable Law”** shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or 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 as applicable in India.
5. **“Applicable Permits”** shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.
6. **“Appointed Date”** shall mean the date of this Agreement.

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7. **“Arbitration Act”** shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.
 8. **“Authorized Representative”** means, in respect of a Party, any person designated (whether by same or as the holder of a specified position or office) as such by such Party by notice in writing given to the other Party including, in the case of a person designated by name, a specimen signature of that person certified by the Party issuing the notice;
 9. **“Bid Security”** shall mean security offered at the time of submission of Bid as defined in Clause 2.1.20 of RFP as part of the bid documents.
 10. **“Mobilization Period”** Starts with issue of LAO/LOA and ends at Completion Certificate. It indicates the time given for putting all manpower, vehicle, equipment and machinery in place to commence the operation. The date of commencement falls at the end of this period.
 11. **“Change in Law”** shall have the meaning ascribed thereto in Article 14.9.
 12. **“COD”** or **“Commercial Operations Date”** shall mean the date on which SDMC has issued the Completion Certificate for the Project Facilities, in accordance with the provisions of this Agreement. This date shall not be beyond 180 days from the date of acceptance of LOA and
 13. **“Completion Certificate”** shall mean the certificate issued by SDMC certifying, that:
 - i. The Concessionaire has set up the Project Facilities in accordance with the Concession Agreement, PIM, IOP (Initial Implementation and Operational Plan), MIOP (Micro Implementation and Operational Plan) and R&M Plan; and
 - ii. The Concessionaire has obtained all approvals necessary for commercial operations of the Project Facilities.
 14. **“Concession”** shall have the meaning ascribed thereto in Article 2 of this Agreement.
 15. **“Concession Period”** shall have the meaning ascribed thereto in Article 2.6
 16. **“Concessions Authority”** or **“Contracting Authority”** or **“SDMC”** or **“Authority”** shall mean South Delhi Municipal Corporation.
 17. **“Conforming Waste”** shall mean:
 1. Municipal Solid Waste (MSW).
 2. Street Sweeping Waste.
 3. Drain Silt.
 4. Green Waste.
 5. Construction and Demolition Waste.
 6. Small Dead Animals
 7. And any other type of Solid Waste mutually agreed by Parties to be Confirming Waste from time to time.
 18. **“Consortium”** of parties who submitted bid as consortium.
 19. **“Construction and Demolition Waste”** shall include debris, construction and demolition debris and mud earth.

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20. **“Effective Date”** means the date of ‘Letter of Acceptance’;
 21. **“Emergency”** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.
 22. **“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, cesses, electricity, water and other utility charges and encroachments on the Project Facility .
 23. **“Environmental Laws”** means all Laws pertaining to the protection of natural resources, the environment, the health and safety of the public, according to Environment (Protection) Act, 1986, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, and other related laws, Guidelines and any other central, state or local law, regulation, rule, ordinance or order from government for waste handling and management.
 24. **“Financial Year”** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.
 25. **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 14.1.
 26. **“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.
 27. **“Government Agency”** shall mean Government of India and State Government of Delhi, 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 Secondary Collection Points and Workshops 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.
 28. **“Hazardous Waste”** shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989 and as amended thereto.
 29. **“Landfill Facility”** shall mean the Engineered Sanitary Landfill and/or all other related facilities located thereon, and any other offsite facilities identified /created for the Project.
 30. **“Lead Consortium Member/ Lead Member (LCM)”** shall be that Consortium Member vested with the prime responsibility of developing and operating the project. The Lead Member shall necessarily make the minimum equity contribution of 51% in the project. The LCM is jointly and severally responsible for performance of the contractual obligation of this agreement.
 31. **“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire /

or SDMC to exercise any of its rights or 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.

32. **“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.
33. **“MSW Rules”** shall mean the Municipal Solid Wastes (Management and Handling) Rules, 2000 and includes any amendments thereto or any rule(s) formulated by the Authorities in substitution or suppression of these rules.
34. **“Municipal Solid Waste” or “MSW”** shall have the meaning ascribed to it in the MSW Rules.
35. **“Non-Conforming Waste”** means any MSW which is not a Conforming Waste as set forth in the Article 9.10.
36. **“IIOP, MIOP and R&M Plan”** given by the Concessionaire following Good Industry Practice duly approved by the Authority as set forth in Schedule 4.
37. **“Operations Period”** shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.
38. **“Parties”** shall mean the parties to this Agreement and “Party” shall mean either of them, as the context may admit or require.
39. **“Performance Security”** shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Article 9.2.
40. **“Person”** shall mean (unless otherwise specified or required by the context), any individual, company, Council, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.
41. **“Preliminary Notice”** shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
42. **“Project”** shall mean designing, financing, procurement, construction, operation and maintenance of Project Facilities for collection, Storage, segregation, transportation of Conforming Waste in Concession area in accordance with the provisions of this Agreement.
43. **“Project Agreements”** shall mean collectively this Agreement and other supporting documents linked to this agreement in connection with the Project.
44. **“Project Assets”** shall include:
 - a. Project Assets- Fixed
 - b. Project Assets- Movable
45. **“Project Assets- Fixed”** shall mean all the fixed assets including fixed/ static compactor transfer station and fixed bins procured by the Concessionaire and used during the Concession Period for the Project.
46. **“Project Assets- Movable”** shall mean all the movable assets including Project Equipment, Waste

Collection Assets, Waste Storage Assets, Waste Transportation Assets, Mobile Transfer Stations and Project Vehicles procured by the Concessionaire and used during the Concession Period for the Project.

47. **“Project Facility”** shall mean collectively the Project Assets, Secondary Collection Points, Workshops and Parking lots.
48. **“Project Monitoring Consultant”** means the third party Project Monitoring Consultant appointed by the Contracting Authority for monitoring the execution of project by the Concessionaire.
49. **“Rupees” or “Rs.”** refers to the lawful currency of the Republic of India.
50. **“Secondary Collection Points”** shall mean and include earmarked dhalaos/ open sites and other places as identified from time to time for the storage of waste.
51. **“Concession Area”** means the areas falling under the respective Zone (South/West/Central/Najafgarh) within territorial jurisdiction of South Delhi Municipal Corporation.
52. **“Tax”** shall mean and include all taxes, fees, cesses, levies that may be payable by the concessionaire under the applicable law whether the responsibility to pay or responsibility to ensure the payment lies with the concessionaire or SDMC.
53. **“Termination”** shall mean early termination of the Concession, 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.
54. **“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs.
55. **“Termination Notice”** shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.
56. **“Tipping Fee”** shall mean the amount payable by SDMC to the Concessionaire in accordance with Article 13 of the Concession Agreement.
57. **“Trespasser”** means any person present on the Sites and not entitled to be on the Sites;
58. **“User Charges”** shall mean charges or fees as determined by the SDMC from time to time from identified persons/group of beneficiaries and generators of waste.
59. **“Workshop”** shall mean the place where all the repair & maintenance including servicing shall be undertaken for all the Project Assets.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- a) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b) References to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law as applicable in India;

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- c) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, councils, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
 - d) The headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
 - e) The words "include" and "including" are to be construed without limitation;
 - f) Any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
 - g) 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;
 - h) Any reference to any period of time shall mean a reference according to Indian Standard Time (IST).
 - i) The Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
 - j) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
 - k) References to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
 - l) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party;
 - m) References to "Construction" includes investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto

CONCESSION	ARTICLE 2
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2.1 Scope of Project

Scope of Work and how it is expected to be executed has been defined and elaborated in this Project Information Memorandum (**PIM**). Bidders shall adhere to PIM for accomplishing Scope of Work, methodology prescribed for carrying out the work, procurement and deployment of equipment and vehicles prescribed, quality and quantum of manpower to be deployed while executing the work assigned, establish monitoring system, fulfill reporting requirements and implement awareness campaign to achieve desired outcome of the Project.

Project scope is Collection, and Transportation of Municipal Solid Waste, Street Sweeping Waste, Drain Silt, Green Waste and Construction & Demolition Waste and any other solid waste specified by SDMC from time to time (Conforming Waste) as per 'Scope of Work' and procedures laid down in the PIM.

2.2 There are 5 (five) major identifiable components in the 'Scope of Work':

- i. Collection and transportation of Municipal solid waste (MSW) and street sweeping waste.
- ii. Collection and transportation of drain silt
- iii. Collection and transportation of green waste
- iv. Collection and transportation of 'construction and demolition' waste,
- v. Implementing IEC for better sanitation and waste management

The Concessionaire shall execute project based on the guidelines established in the **PIM** for effective implementation of the system in close coordination with SDMC and Project Consultants namely Project IT Consultants, Project Monitoring Consultants and Project IEC Consultants appointed by SDMC for monitoring, reporting and advising SDMC and Concessionaire. Roles and responsibilities of all stakeholders have been defined in tender documents.

2.3 PIM is integral part of the Concession Agreement and the Concessionaire shall adhere to the PIM for accomplishing 'Scope of Project and the methodology prescribed for carrying out the work; procurement and deployment of equipment and vehicles prescribed; quality and quantum of manpower to be deployed while executing the work assigned and to fulfill monitoring and reporting requirements.

2.4 Provision for the identification of Zero Waste Area:

Whenever SDMC identifies any area as Zero waste area by setting up local processing plant/s, the concessionaire will have the responsibility to transport the waste, after primary collection, to the designated local processing site and limit the secondary collection & transportation to collection & transportation of residual waste only from that local processing site to the disposal site. This may lead to reduce in requirement of primary or/and secondary collection & transportation vehicles (and other infrastructure) as may assessed to be servicing the said area on account of such change.

2.5 Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessions Authority hereby grants and authorizes the Concessionaire to carryout Scope of Project as defined in Article 2.1 and to exercise and/or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement, (the "**Concession**").

2.6 Concession Period

The Concession hereby granted is for a period of 7(Seven Years) from the Appointed Date inclusive of the implementation Period. (Hereafter referred as "**Concession Period**"). Provided in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.7 Acceptance of Concession

In consideration of SDMC agreeing to permit the Concessionaire to receive tipping fee, charges, reimbursements and any other amounts; rights, privileges and benefits conferred upon by the Concessions Authority 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.

2.8 Extension of Concession Period

The SDMC shall have the right to extend the Concession Period su-moto for a further period of not exceeding more than one year and the Concessionaire shall be obliged to continue to perform their duties and discharge their obligations as per this Agreement to the entire extended period of concession.

COMMENCEMENT	ARTICLE 3
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3.1 Conditions Precedent

All rights and obligations of the Parties to this Agreement shall be conditional upon the fulfillment of the conditions precedent set out below.

3.1.1 The Contracting Authority shall within 180 days from the Effective Date satisfy the following conditions precedent:

- a. Allow collection of Conforming Solid Waste, from all and every category of generator including but not limited to household, commercial establishments, road side, open area and dumpsites
- b. Provide necessary access and rights-of-use of the Primary, Secondary Collection Points, Landfill Sites, Dump Yards, Processing Plants, Waste to Energy Plants or any other such locations as indicated from time to time to the Concessionaire
- c. Provide list of Landfill Sites, Dump Yards, Processing Plants, and Waste to Energy Plants where waste is to be transported.
- d. Ensure that all the existing contracts entered into by the Contracting Authority in relation to the collection, storage, transportation, or disposal of Waste in the Service Zone are terminated or transferred.
- e. Proper calibration of the weighbridge at the Site(s) and ensure that such weighbridge is operational.
- f. Appoint a Project Monitoring Consultant for monitoring the execution of the project as per terms of the Concession Agreement. The costs and expenses of the Project Monitoring Consultant shall be borne by the SDMC in accordance with Article 8.6.
- g. Appoint IT Consultant for developing Monitoring and MIS software as per needs of the Project. The costs and expenses of the IT Consultant shall be borne by the SDMC in accordance with Article 8.12.
- h. Appoint IEC Consultant for developing IEC material as per needs of the Project. The costs and expenses of IEC Consultant shall be borne by the SDMC in accordance with Article 8.18.

3.1.2 The Concessionaire shall within 15 Days from the Effective Date satisfy the following conditions precedent:

- a) The Concessionaire shall have executed a Performance Security (Security Deposit) in the form of irrevocable Bank Guarantee from a Nationalized Bank for a sum of Indian Rupees 1 Crore (Rupees One Crore) as prescribed in Schedule 7.
- b) Deliver to the Contracting Authority by the Concessionaire's legal adviser of a legal opinion, confirming, inter alia, that the Concessionaire is duly incorporated and existing under the Laws of India and that the Concessionaire is duly authorized to execute this Agreement.
- c) Provide a copy of its constituent documents and evidence of its shareholding structure duly notarized.
- d) Ensure that all the Approvals to be procured by the Concessionaire in accordance with Schedule 3 have been procured and that all conditions required for such Approvals to be applicable are fulfilled.
- e) Submit Micro Implementation & Operational Plan as per Article 9.6
- f) Commit to operate the project through the Concession Period with a documented environmental, health and safety, and social management systems in compliance to the requirements of policy and regulatory framework.

3.1.3 The Concessionaire shall within 180 Days from the Effective Date ensure commencement of Commercial Operations:

- a) Make necessary procurements

- b) Employ manpower required
- c) Takeover project sites and facilities from SDMC

3.2 Satisfaction of Conditions Precedent, Commercial Operation Date and Concession Rights

- 3.2.1 the Concessionaire and the Contracting Authority shall use their best efforts and endeavors to procure the satisfaction of the conditions precedent specified in Article 3.1 as soon as practicable and in any event no later than 180 days of the Effective Date.
- 3.2.2 If the conditions precedent specified in Article 3.1, are not fulfilled or waived by mutual agreement of the Parties within ninety days after the Effective Date, each Party shall have the right to terminate this Agreement immediately and neither Party hereto shall be liable to the other for any damages or losses in respect thereof, except that if a Party has purposefully failed to fulfill any of these conditions, such Party shall thus be liable to the other Party for any damages or losses incurred by it in respect thereof.
- 3.2.3 Within seven (7) Business Days of the satisfaction of all the conditions precedent specified in Article 3.1 and the Contracting Authority shall issue the Completion Certificate to the Concessionaire. The date of issue of the Completion Certificate shall be the **“Commercial Operation Date”**.

3.3 Termination Prior to Commercial Operation Date

In the event that the Commercial Operation Date cannot be achieved due to the Concessionaire's lack of efforts, negligence or default, the Contracting Authority shall be entitled to forfeit the Performance Security and the provisions of Article 15 regarding compensation upon termination shall not be applicable.

FINANCING	ARTICLE 4
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4.1 Financing

- a) The Concessionaire shall be solely responsible for financing the Project or for procuring any financing which might be necessary in connection with the performance of his obligations under this Agreement.
- b) SDMC shall not be liable or responsible for arranging any finances or for repayment of loans or advances taken.
- c) The Concessionaire shall not assign in favor of any person, this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of SDMC.
- d) No fixed or movable assets owned by SDMC or any Government agency shall be allowed to be mortgaged or kept on lien by the Concessionaire.
- e) The Concessionaire shall neither create nor permit to subsist any encumbrance over the project facilities, except with prior consent in writing of SDMC.
- f) SDMC may on written request allow hypothecation of movable assets procured by the Concessionaire as security for loan taken for such movable assets from the Banks/financial institutions. Lender shall have first right on the assets financed, provided in case of termination of the Concessionaire, lender Bank/financial institutions on written intimation from SDMC may allow substitution of Concessionaire by another entity having relevant expertise.

5.1 Secondary Collection Points and Workshops

- a) SDMC shall handover Secondary Collection Points, Workshop Sites and Parking lots in respective Concession area on as-is-where-is basis, free of charge for the use by Concessionaire for the purpose of the Project during the Concession period.
- b) Secondary Collection Points include:
 - i. Dhalaos
 - ii. Collection Points
 - iii. Street Corner Bins
- c) Upon the Secondary Collection Points being handed over pursuant to the preceding Article 5.1(a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, renovate, modify, and use the same and to make at its own cost, charges and expenses such investigation, development and improvements in the Secondary Collection Points and Workshops as are prescribed in the PIM to implement the Project in accordance with the provisions of this Agreement.
- d) Upon the Workshops and parking lots being handed over pursuant to the preceding Article 5.1(a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, renovate, modify, and use the same and to make at its own cost, charges and expenses such investigation, development and improvements in the Workshops and parking lots as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- e) At the time of delivery, the Parties shall sign minutes to account for the handover of the Secondary Collection Points, Workshop Sites and Parking lots from the Contracting Authority to the Concessionaire (hereinafter the **"Handover Minutes"**).
- f) Without limitation to any other provision of this Agreement, the Concessionaire shall be deemed to have, and represents and warrants that: (i) it has inspected and examined to its satisfaction existing Project Facilities (ii) it has satisfied itself as to the general condition of the existing Project facilities and (iii) it has generally obtained for itself all necessary information as to: the risks, contingencies and all other circumstances which is necessary or which may influence or affect its ability to perform its obligations under this Agreement and any other factors which would have affected its decision to enter into this Agreement or the terms on which it would have done so.
- g) The Contracting Authority hereby grants to the Concessionaire a license to use and operate the Site(s) free and clear of all claims and of all and any protesters and trespassers for the purpose of carrying out the Scope of Project as per the Concession Agreement in accordance with this Agreement and at its own risk and responsibility.
- h) After handing over of the Sites to the Concessionaire, the Contracting Authority shall not be responsible for the presence on or around or entry onto or around the Sites or any other interference with or affecting the Sites or within the vicinity of the Sites by or caused by any Protestor or Trespasser, nor for any act, omission or default of any such person. The presence on or around or entry onto or around the Sites or any other interference with or affecting the Sites or within the vicinity of the Sites by or caused by any Protestor or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of any obligation or warranty of the Contracting Authority under this Agreement.

5.2 Maintenance of the Sites, Facility(ies) and Waste Collection Assets

- a) The Concessionaire shall maintain, in accordance with the Law, all Waste Collection, and Transportation Assets including Equipment, Vehicles, Secondary Collection Points, Dhalaos/Transfer Stations, Street Corner Bins, Open Sites, and Roads by whatever name called as per Standard Operating Procedures/Operation Performance Standards, and subject to normal wear and tear in good working

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- order and general condition.
- b) All costs and expenses related to the maintenance, repair, refurbishing or replacement of the Project facilities, Waste Collection Assets, Waste Storage Assets and Waste Transportation Assets shall be the exclusive responsibility of the Concessionaire. However, if Dhalao is shifted as per the SDMC directions after due approval of DC of respective zone, cost of shifting/ relocation and modification shall be borne by SDMC based on the estimate prepared as per CPWD manual.
 - c) Bidder shall not deploy any vehicle which is more than 2 year old as on the date of commencement of the Concession Agreement. Concessionaire shall also ensure that at no point of time any vehicle which is more than 7 year old is deployed. All project assets must be in the name of the SPV. Physical audit shall be conducted by SDMC and/ or PMC every three months to ensure compliance.

5.3 Rights, Title and Use of the Secondary Collection Points and Workshops

- a) The Concessionaire shall have the right to the use of Secondary Collection Points and Workshops in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- b) All the Project Facility(ies) developed thereon belongs to SDMC and shall continue to be the property of SDMC.
- c) The Concessionaire shall not part with or create any encumbrance on the whole or any part of the Secondary Collection Points and Workshops, save and except as set forth and permitted under this Agreement.
- d) The Concessionaire shall not without the prior written approval of SDMC use the Project Facility(ies) for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- e) The Concessionaire shall allow access to and use of the Secondary Collection Points and Workshops for laying/ installing/ maintaining public utility items such as electric lines or for such other public purposes as SDMC may specify.
Provided that such access or use shall not result in a Material Adverse Effect and that SDMC shall, in the event of any physical damage to the Project Facility(ies)/ on account thereof, ensure that the Project Facility(ies) is/ are promptly restored. Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.
- f) Concessionaire shall not be allowed to use any facility for advertising. Advertising if any will be undertaken by SDMC as and when required for the betterment of the project.

5.4 Expiry of the Concession Period

Upon expiry of the Concession Period or in case of early termination of the Agreement, all Concessionaires' rights and title to the Secondary Collection Points and Workshop Sites shall stand transferred to the Contracting Authority and Concessionaire will have to restore the dhalaos in the previous conditions as set forth in Article 16. No assets fixed to the Secondary Collection Points shall be allowed to be removed or taken away.

Only movable assets procured by the Concessionaire at its own cost shall be allowed to be taken away by the contractor. Rest of the assets shall stand transferred to the SDMC.

5.5 Peaceful Possession

SDMC, as Concessions Authority, hereby warrants that:

- a. The Secondary Collection Points, Workshops and parking lots together with the necessary right of way/ way-leaves:
 - i. Has been acquired through the due process of law.

- ii. Belongs to and is vested in SDMC and that SDMC has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of these sites have no liability regarding any rent, lease or compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
 - iii. SDMC indemnify the Concessionaire on account of any claim against the concessionaire by third party claiming right or title to the Secondary Collection Points, Workshops and parking lots.
- b. The Concessionaire shall, subject to complying with the terms and conditions of this agreement, remain in peaceful possession and enjoyment of the Project Facilities during the concession period. In the event the Concessionaire is obstructed by any person claiming any right, title or interest in or over the Project Facilities or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any person claiming to have any interest in/ charge on the project facilities or any part thereof, SDMC shall if called upon by the Concessionaire, defend such claims and proceeding and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of claim or right, title, interest or charge.
- c. Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of their obligations hereunder, the Concessionaire shall not be deemed to be in breach of its obligations nor shall it incur/suffer any liability thereof Provided that, the permission to use the project facilities, shall be exercised without any environmental threat to persons living hereby and it shall be ensured that no damage or loss or annoyance is caused to any one by the mode of operation or use of the project facilities. The project facilities shall be returned to the SDMC on completion of concession period or on termination of contract by either party in good operable condition without any charge or encumbrance.

PROJECT MONITORING COMMITTEE	ARTICLE 6
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6.1 Project Monitoring Committee

SDMC shall form a dedicated team of SDMC officials comprising respective Executive Engineers of the zones for the Concession area who will be headed by Zonal Officer of the respective zones who are competent to act as Project Monitoring & Review Committee.

6.2 Role of the Project Monitoring Committee

1. The Project Monitoring Committee is expected to play a positive and independent role in discharging its functions for facilitating the smooth implementation and operation of the Project Facilities.
2. Monitor and where required by the Agreement, approve activities associated with the commissioning, operation and maintenance of the project facilities to ensure compliance by the Concessionaire with the commissioning and day to day implementation requirements;
3. Prepare report on various physical, technical and financial aspects of the project based on inspections;
4. Approve Micro Implementation and Operational Plan (MIOP) and issue Completion Certificate.
5. Approve R&M plan
6. Review matters relating to safety and environment management measures adopted by the Concessionaire for the project.

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7. In situation where Concessionaire is unable to carry out the work due to unforeseen circumstances not in control of the Concessionaire and disabling the Concessionaire to operate the vehicles on a particular day, the Committee shall take appropriate action to compensate the Concessionaire.

6.3 Role of the Expert Project Review Committee

Since there are a number of initiatives proposed to be implemented for the collection, carriage and management of the solid waste being implemented for the first time there can be a need for need based review of the implementation of project and may require certain amendments to the existing provisions and policies to make the system successful. A water tight and rigid contract for such projects may lead to instances of non-resolution of issues and disputes due to which the project may suffer. Hence, to make the system slightly flexible an expert review committee under the chairmanship of Commissioner is proposed having representation of the Addl. Commissioner concerned, Head of Department, Chief Accountant, Dy. Commissioner of the Zone, Chief Engineer concerned and a representative from Consultant and concessionaire. The scope of such expert review committee would be to suggest need for suitable amendments in the contract/policy for approval of the Standing Committee.

ENVIRONMENTAL LIABILITIES AND CULTURAL HERITAGE	ARTICLE 7
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7.1 Environmental Liabilities

- (i) The Concessionaire shall be liable for the following environmental liabilities at the Secondary Collection Points and Workshops:
- a) Contamination of the groundwater and air
 - b) Contamination of the surrounding surface water
 - c) Contamination of soil
 - d) Damage to the vegetation and
 - e) Noise Pollution.
- (ii) The Concessionaire shall indemnify and hold harmless SDMC, its Consultants and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the Project, failure to follow law of land and any activity incidental thereto.

7.2 Cultural heritage, fossils and antiquities

All fossils, coins, articles of value or antiquities and other remains or objects representing cultural heritage of India and having geological or archaeological interest which are discovered by the Concessionaire on the Sites are or will become, upon discovery, the property of the Contracting Authority.

Upon the discovery of any such item while performing this Agreement, the Concessionaire must immediately inform the Contracting Authority of such discovery and take all steps not to disturb or alter the aforesaid items.

The Contracting Authority shall within ten (10) Business Days issue an instruction to the Concessionaire in compliance with any applicable Laws specifying what action it requires the Concessionaire to take in relation to such discovery. The Concessionaire shall perform such actions as required and temporarily cease any work in so far as the carrying out of such work could be reasonably anticipated to endanger the object or prevent or impede or frustrate its excavation and conservation.

A. Project Monitoring Consultant

- 8.1 The Contracting Authority shall appoint a Project Monitoring Consultant (the "**Project Monitoring Consultant**" or **PMC**) through an independent bidding process.
- 8.2 The Contracting Authority shall enter into a contract with the Project Monitoring Consultant and define its scope of work.
- 8.3 The Scope of work of the Project Monitoring Consultant shall be annexed as **Schedule 5A** of the Concession Agreement.
- 8.4 Scope of Work for PMC may undergo modifications from time to time. .
- 8.5 Role and function of the PMC shall be binding on the Concessionaire at all times.
- 8.6 Project Monitoring Consultant's expenses shall be borne by the Contracting Authority.

B. Project IT Consultant.

- 8.7 The Contracting Authority shall appoint a Project Monitoring Consultant (the "**Project IT Consultant**" or **PITC**) through an independent bidding process.
- 8.8 The Contracting Authority shall enter into a contract with the **Project IT Consultant** and define its scope of work.
- 8.9 The Scope of work of the **Project IT Consultant** shall be annexed as **Schedule 5B** of the Concession Agreement.
- 8.10 Scope of Work for PITC may undergo modifications from time to time. .
- 8.11 Role and function of the PITC shall be binding on the Concessionaire at all times.
- 8.12 **Project IT Consultant's** expenses shall be borne by the Contracting Authority.

C. Project IEC Consultant

- 8.13 The Contracting Authority shall appoint a Project Monitoring Consultant (the "**Project IEC Consultant**" or **PIECC**) through an independent bidding process.
- 8.14 The Contracting Authority shall enter into a contract with the **Project IEC Consultant** and define its scope of work.
- 8.15 The Scope of work of the **Project IEC Consultant** shall be annexed as **Schedule 5C** of the Concession Agreement.
- 8.16 Scope of Work for PIECC may undergo modifications from time to time. .
- 8.17 Role and function of the PIECC shall be binding on the Concessionaire at all times.
- 8.18 **Project IEC Consultant's** expenses shall be borne by the Contracting Authority.

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

9.1 Sub-Contracting Not Allowed

The Bidder, if awarded the contract, shall not in any circumstance concede, transfer, sublet, sub-

contract, share, part-share the rights and obligation under this contract or any part thereof to the third parties by way of written or oral contract.

9.2 Performance Security

- a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to SDMC, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled Indian bank acceptable to SDMC, in the form as set forth in Schedule 7, ("Performance Security") for a sum of Rs. 1 Crore (Rupees One Crore only). Till such time the Concessionaire provides to Concessions Authority the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Security, in the form of a bank guarantee shall be valid for an initial period of 36 (thirty six) months and shall be renewed 3 (three) Months prior to its expiry, for an additional term of 48 (forty Eight) months/balance concession period. It is clarified that the Concessionaire shall be liable to restore the Performance Security to the full amount in case of part encashment of the same by the Concessions Authority during the course of Concession due to any reason whatsoever. This shall be done within 30 (thirty) Days of any such part/full encashment. Failure of the Concessionaire to provide a valid Performance Security and/or restore and maintain the Performance Security in accordance with this Article shall entitle the Concessions Authority to forthwith terminate this Agreement and also to forfeit the Bid Security and take appropriate legal action.
- b) The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date. Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to SDMC's right to receive amounts, if any, due from the Concessionaire under this Agreement be duly discharged and released to the Concessionaire.

9.3 Financial Closure

- a) The Concessionaire shall at their own cost; expenses and risk make such financing arrangements as would be necessary to implement the project and to meet all of their obligations under this Agreement in a timely manner.

9.4 Drawings

- i The Concessionaire shall, subject to the Construction Requirements, follow drawings provided by SDMC and the same shall be subject to review by Project Monitoring Consultant and SDMC.
- ii Notwithstanding any review or failure to review by or the comments/ observations of the Project Monitoring Consultant or SDMC, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirements/standard code of practice/technical guidelines as may be applicable, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- iii The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from SDMC.

9.5 Project Implementation

The Concessionaire shall within 30(Thirty) days from the Effective Date submit to the SDMC and Project Monitoring Consultant, the MIOP for mobilization of resources. The SDMC and Project Monitoring Consultant shall approve the MIOP prior to issue of AMIOP Certificate by the Project Monitoring & Review Committee or may ask for improvements if it feels that the level of details required are

insufficient or not in conformity with the standards specified or norms recommended in the Manual of Municipal Solid waste Management published by the Government of India (GOI) or not to scientific standards. The Concessionaire shall submit such documents and reports from time to time as are reasonably required by the SDMC and Project Monitoring Consultant.

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 as per approved Working Drawings and laid down standard technical specifications.

The Construction Works shall be deemed to be complete and ready for commercial operations only when Completion Certificate is issued by the SDMC in accordance with the provisions hereof.

After the issue of AMIOP Certificate, 145 days of Mobilization Period will be given. If even after end of 145 days period mobilization spills over, Rs. [REDACTED] per day fine will be imposed. This penalty mobilization period is for only 15 days.

After the penalty time:

- i. If COD is achieved with the Completion Certificate then project will be run by successful bidder.
 - ii. If COD is not achieved and the selected bidder fails to get the Completion Certificate, Termination proceedings may be initiated.
- a) After completion of Mobilization Period, SDMC and Project Monitoring Consultant will review the resources within 7 days period and on end of the 7 days period, Project Review Committee will issue the Completion Certificate. With the issue of Completion Certificate, COD period will start.

S. No.	Events	Maximum Permissible Timeline
1	Issue of Letter of Award	After Price Bid Day (Say A)
2	Receipt of Letter of Acceptance or Effective Date	A+7 days (Say B)
3	Performance Security Payment and Signing of Concession Agreement	A+15 day
4	MIOP & R&M Plan Submission	B+21 days
5	MIOP & R&M Plan Approval by SDMC	B+21+7 days (Say C)
6	Mobilization Period	C+145 days
7	Issue of Completion Certificate	C+145+7 days
8	Commercial Operation Date (COD)	After mobilization period ends and Concessionaire receive the Completion Certificate, the Concessionaire has to start the Commissioning of the project

9.6 Resource Procurement, Operation and Maintenance

- a) The Concessionaire shall provide such number of vehicles and manpower, as specified by in the PIM, adhering to various stipulations, regulations, standards, specifications, and laws specified herein and/or otherwise in place and amended thereto from time to time to ensure effective and efficient collection, segregation, storage, transportation and disposal of MSW in accordance with the provisions of this Agreement.
- b) The Concessionaire shall operate and maintain the project facilities as per approved technical Proposals made available to SDMC at the start of the COD as part of MIOP & R&M Plan.
- c) The Concessionaire shall be deemed to be in material breach , if Project Monitoring & Review Committee has determined that due to breach of its obligations by the Concessionaire:

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- i. The maintenance of the Project Facility(ies) or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the Technical Proposals.
 - ii. There has been a serious or persistent breach in adhering to the Technical Proposals and thereby the Project Facility(ies) or any part thereof is not safe for operations;

9.7 Insurance

a) Construction Period:

The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, for the Operations Period, insurance against:

- i. loss, damage or destruction of the Project Facility(ies), at replacement value;
- ii. the Concessionaire's general liability arising out of the Concession;
- iii. liability to third parties;
- iv. any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

b) Evidence of Insurance:

The Concessionaire shall maintain records of premium paid towards the Project Facilities and proof of payments made shall be submitted to SDMC/PMC whenever requested for.

c) Validity of Insurance:

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, SDMC may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by SDMC thereof shall be deducted from the Tipping fees of the Concessionaire by SDMC.

d) Application of Insurance Proceeds:

Proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

9.8 Environmental and Safety Compliance

- i. The Concessionaire shall obtain and maintain from time to time all necessary clearances from the Pollution Control Board or any other similarly empowered Government Agency and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.
- ii. The Concessionaire shall ensure that all aspects of the Project Facilities during the Concession Period and processes employed in the construction, operation and maintenance shall conform to the laws pertaining to environment, health and safety aspects including MSW Rules 2000, policies and guidelines related thereto and maintain from time to time all necessary clearances obtained by the Concessionaire.
- iii. SDMC will provide assistance to the Concessionaire in obtaining such necessary clearances as and when required by the Concessionaire.

9.9 Project Assets

- a) Concessionaire shall at its own cost procure the Project Assets (Movable and fixed) in accordance with the specifications stipulated in PIM .The Concessionaire shall operate and maintain all the Project Assets in accordance with the Technical Proposals given by him as part of IOP, MIOP, and R&M Plan following Good Industry Practice throughout the Concession Period.
- b) PMC shall certify that all the Project Assets purchased by the Concessionaire are as per the specifications provided in this Agreement.
- c) In case the PMC certifies that any Project Assets procured are not as per the specifications provided in this Agreement the same shall be intimated to SDMC within 3 days from the date of issue of Certificate.
- d) In case the Project Assets are not meeting the specifications as per this Agreement, SDMC shall send a notice to the Concessionaire to replace those Project Assets.

9.10 Waste Collection Quality

- a) In case the MSW collected by the Concessionaire contains Hazardous Waste and/or Biomedical Waste or is nature of Non-Conforming Waste, the Concessionaire shall inform SDMC.
- b) The Concessionaire shall ensure that waste collected is not burnt, dumped in roads / areas outside the designated zone area or specified sites or transported to any other locations except designated sites
- c) The Concessionaire shall ensure that different kinds of wastes collected from household and/or construction debris and/or drain silt and/or road sweeping wastes and/or other conforming waste are not mixed at any stage of collection or storage or transportation.

9.11 Maintenance and Certification of Records

The Concessionaire shall maintain records of the quantum (measured in Metric Tons) of MSW and other wastes collected duly countersigned by the Project Monitoring Consultant on daily basis and submit monthly, quarterly and annual reports of the same to SDMC.

Concessionaire shall maintain accounting records of the SPV as per the prevailing law in India. Such accounting records shall be duly audited by the statutory Auditor. Such records shall also be available for scrutiny by the SDMC.

9.12 Management Information System

The Concessionaire shall establish a Management Information System (MIS) and install appropriate software to maintain records of the Project operations as enshrined in the PIM. MIS shall include details of all the information as specified in the Concession Agreement and Project Information Memorandum.

9.13 Shareholding

The Concessionaire shall ensure that Applicant/Consortium members hold equity as per the shareholding pattern submitted to SDMC as per the terms and conditions set out in RFP.

9.14 Indemnity by Concessionaire

The Concessionaire shall indemnify and hold harmless SDMC, the Project Monitoring Consultant and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the Construction Works and any activity incidental thereto.

9.15 General Obligations

The Concessionaire shall at its own cost and expense:

- a) investigate, study, design, construct, operate and maintain the Project Facilities in accordance with the provisions hereof;
- b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- c) comply with Applicable Law governing the operations of the Project Facilities, as the case may be, at all times during the Concession Period;
- d) ensure that Project Agreement contains provisions that would entitle SDMC or a nominee of SDMC to step into the same at SDMC's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement
- e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- f) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labor laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies SDMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall SDMC be treated as employer in this regard;
- g) be responsible for all the health, security, environment and safety aspects of the Project Facilities, as the case may be, at all times during the Concession Period;
- h) ensure that the Secondary Collection Points and Workshops remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- i) upon receipt of a request thereof, afford access to the Project Facilities to the authorized representatives of SDMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facilities and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- j) Pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities, as applicable throughout the Concession Period except Property Tax on Secondary Collection points, workshops and Parking sites which shall be borne by the SDMC.
- k) Make its own arrangements for the engagement of the employees and labor engaged for execution of the Construction Work following applicable laws on minimum wages and other employee benefit schemes.
- l) Keep in the registered office of SPV, two complete sets of this Agreement, approvals given by the SDMC/ Project Monitoring Consultant and any other communication given or issued under provisions hereof for inspection, verification and use by the SDMC/ project Monitoring Consultant or any authority authorized by law to inspect the same or any of them.
- m) Provide and maintain all necessary welfare facilities for its staff and labor. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structures forming a part of the Secondary Collection points, Workshops and Parking lots.
- n) Employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Construction Works.
- o) Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labor and to preserve peace and protection of persons and property in the neighborhood.

9.16 No Breach of Obligations

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

- a. Force Majeure Event, subject to Article 14.1;
- b. SDMC Event of Default;
- c. Compliance with the instructions of the Transaction Advisor Cum Project Management Consultant /SDMC 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;
- d. Closure of the Project Facilities or part thereof with the approval of SDMC.

9.17 Access and Assured Availability of the Project Facilities

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to SDMC / Person nominated by SDMC.

9.18 Expenses towards Statutory Deposits and Charges

In case SDMC pays service charges towards connection of utilities to the Project Facilities, other taxes such as water tax and sewerage charges for the Secondary Collection Points and Workshops, the Concessionaire shall reimburse these charges to SDMC.

SDMC's OBLIGATIONS	ARTICLE 10
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In addition to and not in derogation or substitution of any of its other obligations under this Agreement, SDMC shall have the following obligations:

10.1 Specific Obligations

- a) SDMC shall handover the possession of the Secondary Collection Points and Workshops to the Concessionaire in accordance with the Agreement;
- b) Prior to handover of the Secondary Collection Points and Workshops to the Concessionaire, SDMC shall remove all encroachments from the Secondary Collection Points and Workshops;
- c) SDMC shall pay Tipping Fees to the Concessionaire in accordance with Article 13.7.
- d) SDMC shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from SDMC under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- e) Provided where authorization for availability of utilities such as power, water, sewerage, and telecommunications or any other incidental services/ utilities is required, the same shall be provided by SDMC, within 15 days from receipt of request from the Concessionaire to make available such authorization.

10.2 General Obligations

SDMC shall upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;

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- a) assist the Concessionaire in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Facilities and implementing this Agreement in accordance with the provisions hereof;
 - b) Observe and comply with all its obligations set forth in this Agreement.

10.3 Environmental and Safety Compliance

The Concessionaire shall obtain and maintain from time to time all necessary clearances from the Pollution Control Board or any other similarly empowered Government Agency and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities. SDMC shall assist in obtaining approvals.

10.4 Weighbridge

a) Installation

- i. The SDMC shall at its own cost, install, operate and maintain a weighbridge at the landfill/ dumping sites, which is capable of accurately measuring all types of SW to enable the Parties to determine all quantities and make all calculations, referred to in this Agreement.
- ii. The Concessionaire shall provide data to the SDMC & Project Monitoring Consultant on a daily basis and monthly basis in a form reasonably acceptable to the Parties.

b) Accuracy of Weighbridge

- i. The SDMC shall, at its cost, ensure that the weighbridge is maintained, operated and inspected in accordance with all Applicable Laws and that it accurately measures and records all types of Solid Waste collected by the Concessionaire.
- ii. In case, if weighbridge is damaged by the Concessionaire, he will have to repair the same at his own cost.
- iii. Without limiting to the preceding Article 10.4b)(i), the SDMC shall ensure a calibration test of the weighbridge at least once in three months.

10.5 Audit

The Project Monitoring Consultant may conduct or arrange an audit of the weighbridge data and records for the purpose of verifying weighbridge data provided by the Concessionaire.

10.6 Adjustment

- a) If a calibration test conducted under Article 10.4 b) or an audit conducted under Article 10.5 shows that the weighbridge has been inaccurately measuring any of the items referred to in Article 10.4 a), the Parties may issue debit notes or credit notes, as the case may be, for any reasonable adjustments necessary to give effect to the result of the Calibration test or the audit.
- b) If it is not possible to accurately determine the date from which the weighbridge began inaccurately measuring any of the items referred to in Article 10.4 a), the Parties shall assume that the weighbridge had been:
 - i. accurately measuring the relevant items referred to in Article 10.4 a) from the date of the last accurate calibration test until the Halfway Point; and
 - ii. Inaccurately measuring the relevant items referred to in Article 10.4 a) from the day after the Half Way Point until the date of the calibration test that revealed that the weighbridge has been measuring accurately.
- c) For the purpose of preceding Article, the term "Half Way Point" means the day which is half way between the date of the last accurate calibration test and the date of the calibration test that revealed

that the weighbridge has been measuring inaccurately.

10.7 Weight, Recording and Reporting of Waste

- a) Concessionaire shall be bound by the procedures and guidelines elaborated in PIM for handling various kinds of waste, weighing, reporting and data recording.
- b) Non-conforming waste including the C&D waste shall not be allowed to dump at the Dhalaos/open sites. If non-conforming waste is found, Concessionaire shall transport it to the specified disposal site for such waste at own cost

10.8 Setting up Expert Committee

- a) SDMC may set up Expert Committee comprising of domain experts from SDMC and public to periodically monitor the project deliverables.
The expert committee would be chaired by Commissioner or his nominee from SDMC. The other members of the expert committee would be as under:
 - i. Representative of SDMC not below the rank of Executive Officer
 - ii. Municipal Health Officer
 - iii. Representative from public group
- b) Since the outputs in terms of overall cleanness in the city, frequency of collection, storage and transportation of MSW, treatment of MSW and disposal of MSW in accordance with MSW Rules are the prime deliverables of the entire project; the expert committee would evaluate the efforts and outputs of these activities by the concessionaire.
- c) The expert committee shall submit its report to the government regarding the achievement of projects deliverables with specific recommendation(s) on continuance/ discontinuance/ restructuring of the project.
- d) If the project deliverables are found to be moderate or low, the expert committee would direct SDMC to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs.
- e) The expert committee shall evaluate project deliverables on a three monthly basis based on visit to the facility, review of MIS, PMCs' reports and reports provided by concessionaire.
The Expert Committee shall monitor the performance of the Concessionaire based on the requirements laid down in Project Information Memorandum

PENALTIES AND FINES	ARTICLE 11
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11.1 Performance Penalties

Concessionaire is bound to perform as per terms and conditions laid down in the Tender Documents including RFP, PIM, and the Concession Agreement. Non-performance or lack of performance shall be viewed seriously resulting into levy of monetary penalties as prescribed in PIM reproduced in Schedule 6.

- 11.2 The Contracting Authority shall have the right to set-off from any Tipping Fee payable to the Concessionaire in accordance with this Agreement any amount due by the Concessionaire to the Contracting Authority in accordance with this Agreement, including any Performance Penalties

which were not adequately taken into account in the calculation of the Tipping Fee by the Concessionaire.

- 11.3 SDMC may revise, vary, alter or modify penalty system, quantum or mechanism from time to time as it deems fit in the interest of the Project and communicated to the Concessionaire in writing.
- 11.4 In case of situations not in control of the concessionaire such as closure of specified disposal sites or road blockade due to religious/political processions/festivals, the concessionaire shall make written report to the Ex. Engineer In charge along with appropriate proofs, who shall forward the same with his/her comments to the concerned DC for full or partial waiver of the penalty levied due to such event/occasion.

CHANGE OF SCOPE	ARTICLE 12
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12.1 Change of Scope

SDMC may, notwithstanding anything to the contrary contained in this Agreement, require provision of such addition/ deletion to the works and services which are beyond the scope of Project as contemplated by this Agreement (“Change of Scope”), provided such changes do not adversely affect the COD. All such changes shall be made by SDMC by an order (the “Change of Scope Order”) issued in accordance with the procedure set forth in this Article.

12.2 Procedure for Change of Scope

- a) SDMC shall whenever it desires provision of addition/ deletion of items of work and services referred to in Articles above, issue to the Concessionaire a notice of change of scope.
(The “Change of Scope Notice”)
- b) Upon receipt of such Change of Scope Notice, the Concessionaire shall within 15 days provide to SDMC / Project Monitoring Consultant such information as is necessary and reasonable together with preliminary documentation in support of the following:
- i. the impact, if any, which the Change of Scope is likely to have on the SCOD if the work is required to be carried out before COD, and
 - ii. the cost to the Concessionaire of complying with such Change of Scope Notice (the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications.

Provided, however, that the cost of providing such information shall be reimbursed to the Concessionaire by SDMC to the extent such costs are certified to be reasonable by the Project Monitoring Consultant.

- c) If SDMC desires, after receipt of information set forth in Sub-Article 1.2(b) to proceed with the Change of Scope, it shall convey the desired option (with or without modification) to the Concessionaire by issuing a Change of Scope Order within 30 days from the date of recommendation made by Project Monitoring Consultant and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, SDMC shall issue a written confirmation of the Change of Scope and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, SDMC may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.

- d) A Change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by SDMC. Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following SDMC's confirmation. Pending resolution of such dispute, SDMC shall pay to the Concessionaire, if the Change of Scope Order involves increase in bill of quantities an amount equal to the costs that are certified by the Transaction Advisor Cum Project Management Consultant/ Project Monitoring Consultant.
- e) All claims by the Concessionaire pursuant to this Article shall be supported by such documentation as is reasonably sufficient for SDMC / Project Monitoring Consultant to determine the accuracy thereof, including invoices from Contractors and certification of such claims by the Statutory Auditors.

Either party to the agreement i.e. SDMC and the Concessionaire shall have the right to ask for review of Tipping Fees in case of Change of Scope for the balance concession period.

TIPPING FEES AND FEE FOR IMPLIMENTING IEC	ARTICLE 13
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13.1 Tipping Fees

Concessionaire shall be paid Tipping Fee separately for following four components as per Schedule 1 on following basis:

- i. For MSW and Street Sweeping Waste on per Metric Ton (MT) basis.
- ii. Drain Silt on per Metric Ton (MT) basis.
- iii. Green Waste on per Metric Ton MT basis.
- iv. For C & D Waste on per Metric Ton (MT) basis.

13.2 Fee for Information Education and Communication (IEC) Events Implementation as per Schedule 1.

13.3 Adjustments and Deduction from Tipping Fee:

13.3.1 Inflation Adjustment after 01.04.2015

- a. Concessionaires shall be paid Tipping Fee as per the Financial Quote made and duly accepted by the Authority before issuing the Letter of Award for the Financial Year ending 31.03.2015. Service tax, if applicable shall be paid by SDMC as per prevailing law in addition to agreed tipping fee.
- b. As per clause 2.20 to 2.24 of the RFP, Authority shall use Yearly WPI (Wholesale Price Index) of "All Commodities" based on Financial year issued on every 14th April for adjusting tipping fee for the respective financial years. First revision will be applicable from 1st April 2015.
- c. Source of WPI will be <http://www.eaindustry.nic.in>
- d. Any changes in methodology or policy or law by the Government relating to calculation of fuel or wages or any other item shall be deemed to have been reflected in the WPI and Concessionaire shall not be eligible to invoke Change in Law clause as per Clause 13.7.4.
- e. Following Formula shall be used for the revision of Tipping fee:

$$\text{Tipping for a financial year} = \frac{[\text{WPI} (F_t)] * Q_{T_0}}{\text{WPI} (F_0)}$$

Where,

WPI (F_t) - Wholesale Price index for the Current Financial Year

WPI (F₀) - WPI as notified on 14 April 2014)

QT₀ - Quoted Tipping Fee for Financial Year 2014-15

For Example: - Let us say-

WPI (F_t) = 176.94

WPI (F₀) = 167.62

QT₀ = Rs. 1500

Tipping for the Financial Year in question = $\frac{176.94 * 1500}{167.62} = 1583.40$

13.4 User Charges

13.4.1 User Charges:

- a. **Households:** SDMC does not propose to levy any kind of charges for services provided from street level collection from the households. However, for few select colonies, door to door collection services may be provided. In those cases, SDMC intends to levy user charges per month as user charge for providing 'Door to Door Collection Services' as per table A in Schedule 1. The Concessionaire shall be required to collect such charges from the prescribed households.
- b. **Commercial:** SDMC intends to levy user charge from Commercial establishments, hotels, dhabas etc. The Concessionaire shall be required to collect prescribed charges of from Commercial establishments as per scheme announced by SDMC from time to time (as per table A given in Schedule 1).
- c. Concessionaire shall collect such user charges as mentioned in (a) and (b) and may utilize the collections towards overall project as incentive.
- d. Concessionaire shall have to file monthly return for the collections made with SDMC as per prescribed format.
- e. If Authority revises the tariff more than what is given in the Schedule 1 (Table A) in forthcoming time or days, additional amount collected shall be deposited in the account of SDMC.

13.4.2 Selling of Recyclable waste:

- a) Concessionaire will be allowed to make Recyclable centers in each zone as mentioned in the PIM for the collection of Dry waste.
- b) The Concessionaire will be allowed to sell the received Dry waste at those Recyclable Centers and shall utilize in overall project as incentive.
- c) Concessionaire shall file monthly return for the income/ earning from the sale of such Dry waste. If the income from such sale increases from the exemption limit of Sales Tax, Concessionaire shall pay Sales tax according to the Sales Tax Act of Delhi.

13.5 Deduction In the Tipping Fee

- 13.5.1 Bidders shall deploy minimum resources in terms of manpower, equipment, vehicles etc. as prescribed in the PIM. In case it is found that, the numbers of physical resources and manpower resources as prescribed in PIM are not deployed by the concessionaire at any time during the concession period, then tipping fee shall be reduced by the amount of penalty calculated on the basis of Article 11 of Concession Agreement. In case the bidder has committed higher number in IOP, MIOP and R&M Plan as compared to PIM, then the Bidder shall be bound to deploy higher number.

13.6 Deductions for Non Performance

It has been noticed in the past that Concessionaires do not invest in resources and manpower for developing and maintaining door to door and street level collection system. As a result, secondary collection points, Dhalaos receive all the waste from formal and informal collection system which is then lifted and transported by the concessionaire spending only a small part of the cost they little cost.

The Bidder shall note that proposed PIM lays down detailed mechanism of primary collection of solid waste from the generators. Emphasis has been laid on increased door to door collection and increased street level collection so that waste reaching secondary collection points reduces over a period of time and ultimately stops. Detailed monitoring tools slated to be deployed as part of the Project shall enable SDMC to know quantities lifted by the concessionaire through primary collection system or otherwise.

Bidders who do not fulfill their obligation of providing effective primary level collection system and are found to be lifting waste from secondary collection points shall be paid only 40% of the tipping fee quoted.

13.7 Mechanism of Payment

- 13.7.1 a) Concessionaire is expected to submit monthly invoice by 5th day of next month duly making all adjustments for penalties and deductions for approval of SDMC. Invoice should be complete in all respects.
- b) The Executive Engineer in-Charge, shall on receipt of invoice either approve it or record his observations, if any within 10 days of receipt of invoice.
 - c) In case of observations, and returning of the invoice back to the Concessionaire by the Ex. Engineer in Charge, the Concessionaire shall resubmit the rectified invoice with 5 days of receipt of same.
 - d) The Ex. Engineer in Charge shall either approve the revised/rectified invoice within 10 days of receipt of invoice complete in all respects or return back to the Concessionaire for further rectification.
- 13.7.2 SDMC/contracting authority shall make the priority payment of approved invoices within 15 days of approval of the same by the Ex. Engineer.
- 13.7.3 The Contracting Authority shall have the right to set-off from any Tipping Fee payable to the Concessionaire in accordance with this Agreement any amount due by the Concessionaire to the Contracting Authority in accordance with this Agreement, including any Performance Penalties which were not adequately taken into account in the calculation of the Tipping Fee by the Concessionaire.
- 13.7.4 In the event of a Change in Law which shall have the effect of rendering the performance of such services materially more costly than anticipated by the Parties, the Concessionaire shall have the right to include reasonable costs (subject to the obligation for the Concessionaire to take reasonable measures to mitigate such costs) due to the Change in Law in the Tipping Fees subject to the SDMC's approval.
- 13.7.5 The Concessionaire shall, when seeking the SDMC's approval, submit proof of such additional costs.
- 13.7.6 In the event the Contracting Authority refuses to give its approval to the modification of the Tipping Fees pursuant to the present Article 13.7.4 and 13.7.5, the Parties agree to submit the matter to the persons as defined in Article 17.1. If the Parties fail to agree with the decision rendered within the ten (10) Business Days following the decision, the Parties agree to submit the matter to the arbitral tribunal as described under Article 17.2.
- 13.7.7 Subject to the provisions of this Agreement and in consideration for the Concessionaire's

obligations under this Agreement, the Contracting Authority agrees and undertakes to pay the Concessionaire a Tipping Fee calculated in accordance with this Article, subject to any deduction(s) as allowed under the terms of this Agreement.

The Concessionaire shall, on or before the seventh (7th) day of every month or in case the seventh (7th) day of a month is a holiday then on the following Business Day, submit to the Project Monitoring Consultant and to the Contracting Authority a consolidated statement (the "Tipping Fee Statement") providing the following details:

- a) Records maintained and certified by the Project Monitoring Consultant in accordance; and
- b) Amount of Tipping Fee for the previous month calculated in accordance with Article 13.

13.8 Advertisement / Hoarding Charges

IEC Consultants shall advise SDMC on using advertising rights on the Project facilities and help prepare advertising material.

Concessionaires shall be responsible for implementing the advertising plan on the basis of directions received from SDMC from time to time.

The concessionaire shall be responsible for protecting advertisements/ hoardings etc. put up on the Project facilities.

The Concessionaire shall have no right to permit/allow and charge for advertisements/ hoardings in the Project Facilities which have not been part of approved IEC plan of SDMC.

FORCE MAJUERE AND MATERIALLYADVERSE GOVERNMENT ACTION	ARTICLE 14
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14.1 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 prevents the Affected Party from performing or discharging its obligations under this Agreement, 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 caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labor disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (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 Facilities or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Agreements.
 - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India 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 or the Contractor's breach or failure in complying with the Project Requirements,

Applicable Laws, and 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 Agreement by SDMC for reasons of national emergency, national security or the national interest.
- (h) Any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, 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-Article for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

14.2 Materially Adverse Government Action Events

"Materially Adverse Government Action" shall mean any act or omission, after the date hereof, by the Government of India, the Contracting Authority or any Relevant Authority which causes a materially adverse effect on the Project Facilities , Waste Collection, Storage and Transportation , except in so far as such act or omission is necessary on grounds of public safety.

Materially Adverse Government Action shall include, but shall not be limited to, the following:

- (a) the expropriation, requisition, confiscation or nationalization of the Concession Rights;
- (b) the imposition of any blockade, embargo, rationing or allocation;
- (c) any imposition or Change in Law directly targeted at the Concession and/or discriminatory against the Concessionaire or private sector waste handling companies or private sector operators of public infrastructure assets in India and any imposition or Change in Law which specifically refers to the provisions of services similar to the Waste Collection, Storage, Transportation in relation to the Concession, except for a Change in Law resulting from the adoption of a new Act which shall not qualify as a Material Adverse Government Action; and
- (d) The unreasonable refusal to grant or withdrawal of any Approval necessary for the Concessionaire or to perform Waste Collection, Storage and Transportation Services.
- (e) Notice of Materially Adverse Government Action In the event that any Materially Adverse Government Action occurs, the Concessionaire shall, as soon as practicable after becoming aware of such Materially Adverse Government Action, give written notice to the Contracting Authority specifying the event or situation which the Concessionaire considers as a Materially Adverse Government Action and its likely consequences for the Concessionaire (the **"Notice of Materially Adverse Government Action"**).
- (f) Suspension of Performance Due to Materially Adverse Government Action, provided the Concessionaire has given the Notice of Materially Adverse Government Action, the Concessionaire shall not be liable and the Contracting Authority shall not be entitled to terminate this Agreement, for any delay or failure by the Concessionaire in the performance of any of its obligations under this Agreement to the extent that such performance is prevented by the Materially Adverse Government Action.

14.3 Continuing Materially Adverse Government Action

The Parties shall consult each other in order to reach a mutually satisfactory solution to restore the Concessionaire to the position it would have been in had such Materially Adverse Government Action not occurred. If the Parties fail to reach an agreement on a mutually satisfactory solution, any Party may refer the issue to arbitration in accordance with Article 17.2.

14.4 Termination Due to Materially Adverse Government Action

Except as provided in Article 15, in the event the Parties fail to reach a mutually satisfactory solution within one hundred and twenty (120) Business Days of the commencement of the discussions mentioned in Article 14.3 the Concessionaire shall have the right to terminate this Agreement by written notice (the "**Materially Adverse Government Action Termination Notice**") to the Contracting Authority and this Agreement shall then immediately terminate.

14.5 Obligations of the Parties

- (a) As soon as practicable and in any case within 10 (Ten) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Authority setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated duration of the Force Majeure Event;
 - iii. the nature of and the extent to which, performance of any of its obligations under this 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 Agreement.
- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Article 14.5(a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
 - i. Assess the impact of the underlying Force Majeure Event,
 - ii. To determine the likely duration of Force Majeure Event 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 duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Article 14.5(b) as also any information, details or document, which the Parties may reasonably require.

14.6 Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this 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
- (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 Project Facility(ies) as a result of the Force Majeure Event and to restore the Project Facility(ies) , in accordance with the Good Industry Practice and its relative obligations under this Agreement
- (d) when the Affected Party is able to resume performance of its obligations under this 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

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- (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 Agreement
 - (f) Any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

14.7 Termination due to Force Majeure Event

(a) Termination

- i. If a Force Majeure Event, is an event described under Articles 14.1(a) to 14.1(e) and 14.1(i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this 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 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in Article 14.1 (f), 14.1 (g) or 14.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in Article 14.1 (f), 14.1 (g) or 14.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Provided further, SDMC may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Articles 14.1(f), 14.1(g) or 14.1(h).

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding Article 14.7(a) (i) or (a) (ii), 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 days from the date of event
- iii. Termination Notice
- iv. the estimated Termination Payment including the details of computation thereof and
- v. 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 by SDMC in accordance with the following Article is paid to the Concessionaire on the Termination Date and
- ii. The Project Facilities are handed back to SDMC by the Concessionaire on the Termination Date free from all Encumbrances.

(d) Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by SDMC in accordance with the following:

- i. If Termination is due to a Force Majeure Event, described under Articles 14.1(a) to 14.1(e), no Termination Payment shall be made by SDMC to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance

policies. In case SDMC decides to take over the movable assets financed by the lender Bank or substitute the Concessionaire with another entity, it may do so by undertaking to discharge future negotiated liabilities towards the bank. Liabilities till date of termination shall be discharged by the Concessionaire.

If Termination is due to the occurrence of any event described under Articles 14.1(f) , SDMC shall pay amount to the Concessionaire equal to debts owed including outstanding principal balance and interest owed on Termination Date and Share Capital contributed by the shareholders towards paid up equity capital of SPV. All movable and fixed assets deployed by the Concessionaire shall be taken over by SDMC or any other entity chosen by SDMC to substitute the Concessionaire.

Provided further that the Concessionaire shall pay any amount due to and recoverable by SDMC from the Concessionaire as on the Termination Date.

- ii. If Termination is due to the occurrence of any event described under Article 14.1(g) (h) or (i), SDMC shall not pay any amount to the Concessionaire.

Provided further that the Concessionaire shall pay any amount due to and recoverable by SDMC from the Concessionaire as on the Termination Date.

14.8 Liability for other losses, damages etc.

Save and except as expressly provided in this Article, 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.

14.9 Changes in Law

a.

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Bid Submission Due Date:

- i. The enactment of any new Indian law;
- ii. The repeal, modification or re-enactment of any existing Indian law;
- iii. A change in the interpretation or application of any Indian law by a court of record. Provided that Change in Law shall not include:
 - a. Coming into effect, after the Bid Submission due date, of any provision or statute which is already in place as of the Bid Submission Due Date,
 - b. 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 Bid Submission Due Date which is a matter of public knowledge.
 - c. Any change in the rates of the Central Taxes.

- (b) Upon occurrence of a Change in Law, the Concessionaire may, notify SDMC 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, minimize the Additional Cost.

15.1 Events of Default

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

a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Article 9.17:

- i. The Concessionaire has failed to adhere to IOP, Micro Implementation and Operational Plan (MIOP), R&M Plan, PIM and such failure, in the reasonable estimation of SDMC, is likely to delay achievement of COD beyond 90 days of the SCOD
- ii. The Concessionaire has failed to achieve COD within stipulated time period for any reason whatsoever
- iii. At any time during the Concession Period, the Concessionaire fails to adhere to the Project Implementation Requirements or Technical Proposals and has failed to remedy the same within 60 days
- iv. The Concessionaire has failed to make any payments due to SDMC and more than 60 days have elapsed since such payment became due
- v. The Concessionaire has collected user charges in excess of the rates prescribed
- vi. The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days or time period prescribed for individual items whichever is less;
- vii. Any representation made or warranty given by the Concessionaire at the time of submission of RFP and under this Agreement is found to be false or misleading;
- viii. A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- ix. 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 SDMC, 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;
- x. The Concessionaire has abandoned the Project Facility(ies) ;
- xi. The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xii. The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 days
- xiii. The Consortium formed for the purpose of the Project is changed by the Concessionaire without the consent of SDMC.
- xiv. The Concessionaire lifts waste from place other than the place under its jurisdiction unless specified by SDMC.

b) SDMC Event of Default

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

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- i. SDMC has failed to provide the Sites to the Concessionaire as per the provisions of Article 5.
 - ii. SDMC has failed to make Tipping Fees or any payments due to the Concessionaire and more than 3 (three) months have elapsed since such default from the submission of bill.
 - iii. SDMC is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 120 days of receipt of notice thereof issued by the Concessionaire.
 - iv. SDMC has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement without giving reasons
 - v. SDMC has unreasonably withheld or delayed of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect
 - vii. Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.
 - viii. Any representation made or warranties given by the SDMC under this Agreement has been found to be false or misleading.

15.2 Termination due to Event of Default

a. Termination for Concessionaire Event of Default

- i. Without prejudice to any other right or remedy which SDMC may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, SDMC shall be entitled to terminate this Agreement in the manner as set out under Article 15.2. Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 15.1(a), SDMC may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Article 15.3.
- ii. If SDMC decides to terminate this Agreement pursuant to preceding Article 15.2 a. (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to SDMC 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, SDMC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- iii. If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, SDMC shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

b. Termination for SDMC Event of Default

- i. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of SDMC Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding Article 15.2 b. (i) it shall in the first instance issue Preliminary Notice to SDMC. Within 60 days of receipt of Preliminary Notice, SDMC shall forward to the Concessionaire its proposal to

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- remedy/ cure the underlying Event of Default (the "SDMC Proposal to Rectify"). In case of non-submission of SDMC Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If SDMC Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefore, SDMC shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however SDMC fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

15.3 Termination Notice

If a Party having become entitled to do so and decides to terminate this Agreement pursuant to the preceding sub Article 15.2 a. or b., it shall issue Termination Notice setting out:

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and,
- iv. Any other relevant information.

15.4 Obligation of Parties

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

- i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility(ies),
- ii. the termination payment, if any, payable by SDMC in accordance with the following Article 15.6 is paid to the Concessionaire on the Termination Date and
- iii. All the Project Facilities are handed back to SDMC by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to SDMC.

15.5 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

15.6 Termination Payments on account of SDMC Event of Default

Upon Termination of this Agreement on account of SDMC Event of Default, the Concessionaire shall be entitled to withdraw the Performance Security, if subsisting, and receive from SDMC, termination payment as per following:

- i. If the Termination is prior to achievement of COD then the Termination Payment from SDMC shall be equal to the amount, as estimated by the Project Monitoring Consultant, which has already been spent by the Concessionaire for construction / up-gradation of Project Facilities.
- ii. If the Termination is post the achievement of COD then the Termination Payment from SDMC

shall be equal to debts owed and share capital contributed by the shareholders toward paid up equity capital of the SPV.

15.7 Termination Payments on account of Concessionaire Event of Default

Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall not be entitled to receive any Termination Payment from SDMC. Upon Termination of this Agreement on account of Concessionaire Event of Default, SDMC shall be entitled to forfeit the Performance Security. In case SDMC decides to take over the movable assets financed by the lender Bank or substitute the Concessionaire with another entity, it may do so by undertaking to discharge future liabilities towards the bank. Liabilities till date of termination shall be discharged by the Concessionaire

15.8 Rights of SDMC on Termination

- a) Upon Termination of this Agreement for any reason whatsoever, SDMC shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
 - i. enter upon and take possession and control of the Project Facilities and Project Assets forthwith
 - ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Facilities/Project Assets
- b) Notwithstanding anything contained in this Agreement, SDMC 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 Project, and the hand back of the Project Facilities and Project Assets by the Concessionaire to SDMC shall be free from any such obligation.

Hand back Requirements	ARTICLE 16
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16.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Secondary Collection Points, Workshops, Parking Sites and the Project Assets- Fixed, including all improvements made therein by the Concessionaire, shall at all times remain that of SDMC.

16.2 Obligations of Parties

(a) Concessionaire’s Obligations

- (i) The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the Secondary Collection Points, Workshops, Parking Sites and all other Project Assets (Fixed) to SDMC free of cost and in good operable condition.
- (ii) At least 12 months before the expected expiry of the Concession Period a joint inspection of the Secondary Collection Points, Workshops and the Project Assets- Fixed shall be undertaken by SDMC, Concessionaire and PMC. SDMC and PMC shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs (“Project Facilities Hand back Requirements”), if any, to be carried out so as to conform to the Construction Requirements and O&M (Operation & Maintenance) Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least 3 months

- prior to the expected expiry of the Concession Period and ensure that the Project Facilities continue to meet such requirements until the same are handed back to SDMC.
- (iii) SDMC and PMC shall, within 15 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to SDMC along with the Project Facilities.
 - (iv) The Concessionaire hereby acknowledges SDMC's rights specified in Clause 15.8 enforceable against it upon Termination and its corresponding obligations arising there from. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
 - (v) At least 12 months prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to hand back of the Project Facilities, submit to SDMC a bank guarantee, in the form as set forth in Schedule 8 ("Hand back Guarantee"), from a Nationalized bank acceptable to SDMC. The Hand back Guarantee shall be kept valid for a period of 30 months for an amount to be decided by SDMC/ PMC.

16.3 SDMC's Obligations

SDMC shall, subject to SDMC's right to deduct amounts towards:

- (a) Carrying out works/jobs listed under Clause 16.2(a)(ii), which have not been carried out by the Concessionaire,
- (b) Purchase of items, which have not been handed back to SDMC along with the Project Facilities in terms of Clause 16.2(a)(iii), and
- (c) Any outstanding dues, which may have accrued in respect of the Project Facilities during the Concession Period duly discharge and release to the Concessionaire the Hand back Guarantee within 3 months from the expiry of the Concession Period.

DISPUTE RESOLUTION	ARTICLE 17
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For any dispute the parties will move for amicable resolution as provided in Article 17.1. On failure of amicable resolution, Arbitration shall be followed as provided in Article 17.2.

17.1 Amicable Resolution

- a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.
- b) Either Party may require such Dispute to be referred to the Commissioner of SDMC and of the Concessionaire for the time being, for amicable settlement.

Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to

Expert Review Committee for review/settlement of disputes. Expert Review committee shall comprise of:

1. Commissioner,
2. Additional Commissioner,

3. Engineer In-Chief,
4. Chief Engineer Concerned,
5. DC concerned,
6. C.A.,
7. Vigilance Director of Vigilance,
8. SE concerned,
9. Ex. Engineer concerned and
10. S.S. concerned shall be the member of committee.

If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 17.2 below.

17.2 Arbitration

a) Procedure

Subject to the provisions of Article 17.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

b) Place of Arbitration

The place of arbitration shall be Delhi

c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

e) Performance during Arbitration

Pending the submission of and/or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

REPRESENTATIONS AND WARRANTIES,DISCLAIMER	ARTICLE 18
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18.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to SDMC that:

- a) it is duly organized, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this

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- Agreement;
- d) it has the financial standing and capacity to undertake the Project;
 - e) this 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 Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
 - g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the SDMC of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
 - h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
 - i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
 - j) subject to receipt by the Concessionaire from SDMC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in SDMC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or SDMC;
 - k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to SDMC or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - l) 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.
 - m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Secondary Collection Points and Workshops, and the information provided by SDMC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.
The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that SDMC shall not be liable for the same in any manner whatsoever to the Concessionaire.

18.2 Representations and Warranties of SDMC

SDMC represents and warrants to the Concessionaire that:

- a) SDMC has full power and authority to grant the Concession;
- b) SDMC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes SDMC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

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- d) There are no suits or other legal proceedings pending or threatened against in respect of the Project or Project Facilities.

18.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

18.4 Assignment and Charges

- a) The Concessionaire shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of SDMC.
- b) The Concessionaire shall not create, permit or subsist to any Encumbrance over the Project Facilities, except with prior consent in writing of SDMC, which consent SDMC shall be entitled to decline without assigning any reason whatsoever.

18.5 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same 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 15% 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 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 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.

18.6 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

18.7 Waiver

- a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - ii. shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - iii. Shall not affect the validity or enforceability of this Agreement in any manner.
- b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

18.8 Survival

Termination of this Agreement:

- a) shall not relieve the Concessionaire or SDMC 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 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.

18.9 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

18.10 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, Registered Post and delivered to the Parties at their respective addresses set forth below:

.....
South Delhi Municipal Corporation
New Delhi

If to the Concessionaire: The Managing Director, _____ (insert complete address with phone and fax details) as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- i. in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address

18.11 Severability

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

18.12 No Partnership

Nothing contained in this 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.

18.13 Language

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

18.14 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

18.15 Counterparts

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

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

For and on behalf of SDMC by:

(Signature) (Name) (Designation)

For and on behalf of

CONCESSIONAIRE by:

(Signature)

In the presence of:

1)

2)

**Schedule 1
TIPPING FEES**

Following Tipping Fee be paid to the Concessionaire:

1.1. For Financial Year ending 31.03.2015

- i. MSW and Street Sweeping Waste: Rs.per Metric Ton (MT).
- ii. Drain Silt: Rs.per Metric Ton (MT).
- iii. Green Waste: Rs.per Metric Ton MT .
- iv. C & D Waste: Rs.per Metric Ton (MT).

1.2. Fee for Financial Year Ending 31.03.2015 for Information Education and Communication (IEC) Implementation- IEC Events Charges: Concessionaire shall be eligible to receive Rs. 10,000 (Rupee ten thousand) per event as per plan of action laid down by IEC Consultant and approved by SDMC.

1.3. Charges to be collected from Commercial Establishments for the financial Year ending 31.03.2015

Table A

S. NO.	CATEGORY	PLOT AREA IN SQUARE METER	USER CHARGES (RS.)
A: STREET LEVEL WASTE COLLECTION FROM NON RESIDENTIAL UNITS			
1	Marriage Hall, Banquet hall, Commercial Lawns and open spaces, farm houses, Motels, Hotels, Rest Houses, Dharamshala, Guest Houses, Amusement Parks, Convention Centers, Sports Complex/Centre, Community Centers, Recreational Centers, Exhibition Ground, Fairs, Circus	less than 500	Rs. ■■■ per month
	Multilevel Parking	500-1000	Rs. ■■■ per month
	Auditoriums, Cinema Halls, Clubs		
	Slaughter Houses, Effluent Treatment Plant, Sewage Treatment Plant, Agriculture mandis, Wholesale Markets, Integrated Freight Complexes, Dairies	More than 1000	Rs. ■■■ per visit
	Factories, Godowns, Cold Storage (EXCLUDING INDUSTRIAL WASTE)		
2	Utilities, such as, - Railway Stations, ISBT, Cremation/ Burial Grounds, Cemetery, Power Stations, Sub-stations, Public Toilets/ Urinals, Fire Stations, Police Stations, Libraries, Old Age Homes, Orphanage, on-street parking, Religious Centers, Aanganwadis, Night Shelters, Telephone Exchanges	less than 500	Rs. ■■■ per month
		500-1000	Rs. ■■■ per month
		More than 1000	Rs. ■■■ per visit
3	Shops (excluding specified in 4 below), Super Markets, Shopping Malls, Shopping Complex, Markets, Local Shopping Complex, vegetable sellers	less than 500	Rs. ■■■ per month
		500-1000	Rs. ■■■ per month
	Educational Institutions, Coaching Centers, Schools,		

	Colleges, Universities, Technical Institutes, Vocational Training Centers, Police Training Centers Office Complexes, Institutional Buildings, Individual Offices, Banks, Hostels, Jails	More than 1000	Rs. ■■■ per visit
4	Restaurants, Dhabas, Food Stall, eatable vans and carts Sweet Shop, Bakeries, Milk products, Fruit and juice shops/ carts, Ice Cream shops/ carts, And any other shop selling take-away food.	less than 500	Rs. ■■■ per month
	Hospitals, Veterinary Hospitals, M&CW Centers, Dispensaries, Diagnostic Centers, Nursing Homes, Polyclinic (EXCLUDING BIOMEDICAL WASTE)	500-1000	Rs. ■■■ per month
	Parks & Gardens Vehicle Service Centers, Petrol Pumps, Motor Garage, SKO outlet Any Other Commercial entity or institution not specified	More than 1000	Rs. ■■■ per visit
B: WASTE COLLECTION FROM RESIDENTIAL UNITS			
1	Waste Collection from Housing Societies (Bins for segregated wastes are kept and managed within the boundaries of the Housing Society)	-	NIL
2	Waste Collection from Housing Societies (Bins for segregated waste are kept OUTSIDE the boundaries of the Housing Society)	Per Household	Rs. ■■■ per month
3	Street Level Collection from Residential Premises (Vehicle will come to the street, and citizen will deposit waste in the vehicle)	-	NIL
4	Door to Door Collection from residential premises (waste collector will come to the door-step to collect waste)	Per household	Rs. ■■■ per month

Note: For Establishments that are situated in area > 1000 sq. m the establishments are expected to store the segregated waste within the premises. Such establishments are also expected to deliver the garbage directly to the waste collection vehicles, and for each of such delivery, pay the 'per-visit' charges prescribed above. The word 'per visit' means per visit of truck/vehicle to collect the waste. If multiple visits of the truck/vehicle is requires to collect/clear the waste, the charges shall be payable for each such visit.

Schedule 2

TECHNICAL SPECIFICATIONS OF PROJECT ASSETS (Fixed & Movable)

(As per Technical Specifications laid down in Project Information Memorandum as part of Tender Documents).

Schedule 3

List of Approvals

(As Stipulated Under Various Applicable Laws Duly Approved By SDMC from Time To Time)

Schedule 4

Technical Proposal

[Initial Implementation and Operating Plan, Micro Implementation & Operating Plan and R & M Plan provided by the Concessionaire duly approved by SDMC]

Schedule 5A

Scope of Work of Project Monitoring Consultant

(As per Agreement between SDMC and Project Monitoring Consultant)

Schedule 5B
Scope of Work of Project IT Consultant
(As Per Agreement between SDMC and Project IT Consultant)

Schedule 5C

Scope of Work of Project IEC Consultant

(As Per Agreement between SDMC and Project IEC Consultant)

Schedule 6

Performance Penalties

The Monitoring System based on self-reporting by the Concessionaire is proposed *as per the PIM*. It may be noted that all these self-assessment reports shall tally with GPS report (auto analyzed by the computer system) for this monitoring system to work properly.

Penalty for non-conformance shall be imposed by Authority based on one or both of the following:

- (a) Complaint by 2 or more actual users, and validated by field report/s or GPS system;
- (b) Spot inspection and reporting by Authority officials/ appointed Project Monitoring Consultant.
- (c) The penalties imposed on the basis of MIS reports as described in the PIM (Refer ANNEXURE-II of PIM) shall over-ride the self-reporting by the concessionaire, notwithstanding the fact that the self-assessment may have been accepted by the authority. In addition, the Concessionaire shall be given an opportunity of being heard. Certain Tolerance for default(s) is prescribed in the ANNEXURE-II of PIM. If the performance of the concessionaire falls below the tolerance level, the penalties are applicable on all defaults (and not just that are in excess of the tolerance limits).

Schedule 7

Performance Security

[ON APPROPRIATE STAMP PAPER]

Address of the Bank:

Address of the Beneficiary:

On you concluded with (the "**Concessionaire**") a concession agreement (the "**Concession Agreement**") for the **Collection, and Transportation of Municipal Solid Waste, Street Sweeping Waste, Drain Silt, Green Waste and Construction and Demolition Waste in the South/ Central/ West/ Najafgarh Zones of South Delhi Municipal Corporation, New Delhi, India.**

The terms that are used but not defined herein shall have the same meaning as given to them in the Concession Agreement.

In accordance with the provisions of the Concession Agreement, the Concessionaire must provide a performance security of Crore Rupees (Rs.) in the form of a bank guarantee shall be valid for an initial period of 36 (thirty six) months and shall be renewed 3 (three) Months prior to its expiry, for an additional term of 48 (Forty Eight) months.

We, the undersigned(the "**Guarantor**"), waiving all objections and defenses under the Concession Agreement, hereby irrevocably and independently guarantee to pay on your first written demand an amount up to a total of against your written declaration that the Concessionaire has failed to duly perform his obligations under the Concession Agreement.

In the event of any claim under this guarantee, payment shall be effected to [●].

This guarantee shall expire no later than on the expiry of the Term. By this date, we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

This guarantee is governed by the laws of India.

Place, date

Signature

Schedule 8

Hand back Guarantee

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (*Name of the Bank*) having its Head/Registered office at _____ hereinafter referred to as “the Guarantor” which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favor of

SDMC, represented by its _____, having its office at _____, hereinafter referred to as “SDMC”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

A. By the Concession Agreement entered into between SDMC and _____ (name of the Successful Bidder), having its registered office at _____ (“the Concessionaire”) the Company had been granted the Concession to implement the Project, as defined under the Concession Agreement mentioned herein above.

B. In terms of Article 16.2 as the case may be, of the Concession Agreement, the Concessionaire is required to furnish to SDMC, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ (Rupees _____ only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to hand back of the Project Facility.

C. At the request of the Concessionaire, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement relating to hand back of the Project Facility.

6 In case of Consortium both members would be included as Parties to the Agreement and collectively referred to as ‘the Concessionaire/Consortium’ as the context may require.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Concessionaire”) of all its obligations relating to hand back of the Project Facility.

The Guarantor shall, without demur, pay to SDMC sums not exceeding in aggregate Rs. _____ within _____ calendar days of receipt of a written demand therefor from SDMC stating that the Concessionaire has failed to meet its performance obligations relating to hand back of the Project Facility. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by SDMC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the

Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.

4. In order to give effect to this Guarantee, SDMC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by SDMC or any indulgence shown by SDMC to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise, delayed exercise of any of its rights by SDMC or any indulgence shown by SDMC, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____7 unless discharged/released earlier by SDMC in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate is limited to a sum of Rs. _____ (Rupees _____only).

6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.

7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank
by the hand of Sh. _____
its _____ and authorized official.

Schedule 9
User Charges Monthly Return Format

Date	Number of Beats: Service Area/ Street / Colony/ Apartment	Total number of Households in all the beats	Amount Collected (in INR)	Total Number of non-paying Households	Amount uncollected (in INR)