

CONCESSION AGREEMENT

BETWEEN

GOVERNMENT OF STATE OF _____ (“State Govt”)

AND

_____ (“Concessionaire”)

For

**Design, Financing, Development, Construction, Operation, Maintenance, Management and
Transfer of a Regional Municipal Solid Waste Facility at [●]**

DRAFT

THIS AGREEMENT made this ___ [insert date] day of _____ [insert month] 2010 at [●]

BETWEEN

Government of [●], acting through [●], (hereinafter referred to as “**State Govt.**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of the ONE PART

AND

[name of the SPV incorporated by the Successful Bidder], a private limited company incorporated under the Companies Act, 1956 and having its registered office at _____, (hereinafter referred to as “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its associate/group companies, successors and assigns) of the OTHER PART

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

WHEREAS

- A. The Ministry of Environment and Forests, Government of India has formulated the Municipal Solid Waste (Management and Handling) Rules, 2000 (“**MSW Rules**”) under the Environment (Protection) Act, 1986 that impose an obligation on all municipalities in India to adopt suitable processes for scientific collection, management, processing and disposal of municipal solid waste (the “**MSW**”) generated within its jurisdiction. Pursuant to MSW Rules, the MC1 and MC2 constituted under the [S] State Municipal Corporation Act, 2003 are responsible for, *inter alia*, making adequate provisions for the collection/removal and disposal of filth, rubbish and other obnoxious or polluted matters. However, at present the MC1 and MC2 are disposing the waste collected within their respective jurisdictions in dumping sites and do not process the waste before disposing the same.
- B. The State Govt. recognizes that the existing state of the MSW management systems in the State of [S] are insufficient and are raising public health and sanitation concerns that need to be addressed. After taking into account the lack of adequate and appropriate facilities of MSW disposal in the State of [S], State Govt. has decided to develop a regional MSW management program on a cost sharing basis to provide a framework for facilitating appropriate processing and disposal of waste by urban local bodies (“**ULBs**”) in the State. For the purpose of implementing such regional MSW management program, the State Govt. has earmarked land admeasuring [●] acres, located at [●] and belonging to the State Govt. for

the development, establishment, finance, design, construction, operation and maintenance of the Regional MSW Facility, including landfill ("**Project**"). The Regional MSW Facility and any part of the Project, vest unconditionally with State Govt.

- C. The State Govt. has executed a project implementation agreement ("**PIA**") to implement the regional municipal solid waste management program for the purpose of disposal of the MSW in the State of [S]. The ULBs of the State desirous to use this Regional MSW Facility have been permitted to execute and sign this PIA. At present, MC1 and MC2 are the only ULBs that have signed and executed the PIA ("**Participating ULBs**"). However, other ULBs established in the State of [S] may use the regional MSW management facility after executing a Participation Deed to the PIA.
- D. The State Govt. has selected a private developer through a competitive bid process and pursuant to the framework established by the PIA, the Project shall be implemented by a special purpose vehicle incorporated by such selected private developer ("**Concessionaire**"). State Govt. is now desirous of entering into an agreement with the Concessionaire vesting it with the rights and obligations required to enable it to duly undertake the Project on a develop, finance, design, construct, operate, maintain and transfer basis.
- E. The provisions of this Concession Agreement are subject to the terms and conditions of the PIA.

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

1 DEFINITIONS & INTERPRETATION

1.1 Supplement to Project Implementation Agreement

This Agreement is to be read together with the Project Implementation Agreement ("PIA") dated [•] entered into between State Government, the Participating ULBs and the Concessionaire and is to be read as a supplementary agreement to the PIA. All aspects of the Project that are not covered by this Agreement shall be governed by the PIA.

1.2 Definitions

In this Agreement, unless repugnant to the context or inconsistent therewith, the following words, phrases and expressions shall bear the meaning hereinafter respectively assigned to them:

"Agreement" or **"Concession Agreement"** means this agreement between State Govt and Concessionaire, including its schedules and annexures and includes any amendments made hereto in accordance with the provisions hereof.

“Applicable Approvals” means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required by Applicable Laws, to be procured by either State Govt or by Concessionaire in connection with the implementation of the Project.

“Applicable Laws” means all the laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which have the force of law, 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.

“C&D Debris and Silt Waste” means solid waste resulting from construction, remodeling, repair, renovation or demolition of Structures or from land clearing activities or trenching or de-silting activities. “Structures” for the purposes of this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. C&D debris include, but are not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminum and other non-hazardous metals used in construction of structures.

“Composting” means a controlled process involving microbial decomposition of organic matter.

“Concession” means collectively all the rights granted by State Govt to Concessionaire under this Agreement with respect to developing, implementing, constructing, operating and maintaining the Regional MSW Facility for the management, processing and disposal of the MSW generated from within its jurisdiction, subject to all the terms, conditions, covenants and obligations of this Agreement.

“Concessionaire Event of Default” shall have the meaning given to the phrase in Clause 16.1(a).

“Concessionaire’s Proposal to Rectify” shall have the meaning given to the phrase in Clause 16.2(a)(ii).

“Construction Conditions” means in relation to the Regional MSW Facility, the minimum conditions that are required in order to ensure that the construction of the Regional MSW Facility is done in accordance with Good Industry Practice, and which are specified in the Standards and Specifications as provided under this Concession Agreement.

“Construction Commencement Certificate” is the certificate issued by the Project Engineer under clause 8.1 of the Concession Agreement.

“Construction Period” means in relation to the Project a maximum period of [●] months from the Effective Date (this Construction Period includes the Testing Period) within which the

Concessionaire shall ensure that the construction of the Regional MSW Facility is completed and it can be used for the treatment and disposal of the MSW in accordance with the terms and conditions as provided in the Concession Agreement.

“Daily Weight Sheet” shall have the meaning given to the term in Clause 9.3(a).

“Dead Remains” means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants).

“Development Costs” shall mean the aggregate of the amounts spent by Concessionaire in undertaking activities in relation to the implementation of the Project till the date of commissioning which amounts will include but not be limited to: (a) expenditure incurred by Concessionaire for and in relation to the Project which have been charged/assigned to Concessionaire, (b) expenditure incurred in relation to preparation of all reports, studies and other papers relating to the Project and the Regional MSW Facility, (b) expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Approvals, (c) fees of all consultants, experts, accountants, lawyers, lenders and other independent persons hired in relation to the Project, (d) costs of maintaining offices of Concessionaire that are attributable to the Project, (e) any payments made to the Participating ULBs or on behalf of the participating ULBs in relation to the Project and (f) costs of any contractors appointed by Concessionaire in relation to the implementation of the Project.

“Encumbrances” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including utilities both under and above the ground and encroachments on the Site.

“Effective Date” means the date on which the obligations of Concessionaire become binding and effective, and all the conditions precedent specified in Clause 3.1 are either satisfied or waived by the Concessionaire.

“Excluded Waste” means waste material of the nature that the Regional MSW Facility is not designed or authorised to receive, manage, process and dispose which includes (i) chemical waste, (ii) Hazardous Waste, (iii) industrial waste and (iv) Untreated bio-medical waste (v) other waste as specified.

“Force Majeure Event” means any event which prevents or delays the performance of the obligations under this Agreement in whole or in part by either Party by reason of public agitation, civil disturbance, riots, war, hostilities, acts of public enemies, civil commotion, sabotage, fire, flood, earthquake, epidemics, explosion, strikes, lock-outs, acts of God, acts on orders of Government/authorities, rules and regulations or delay/abandonment due to order of the Court and/or any other cause beyond the reasonable control of the Party affected.

“Financing Documents” or “Financing Agreements” means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall

include the security documents creating the relevant security (such as mortgages or charges or liens) on the Regional MSW Facility or any part thereof, for securing the debt provided.

“State Govt” means Government of [S]

“State Govt Event of Default” shall have the meaning given to the phrase in Clause 16.1(b).

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Concession Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any facilities similar to the Regional MSW Facility to be constructed, operated and maintained pursuant to the Project.

“Hazardous Waste” shall have the meaning as defined under the Hazardous Wastes (Management and Handling) Rules, 1989.

“Landfill Site” or **“Landfill”** means the landfill site for disposal of solid waste admeasuring [●] located within the Site, the exact location of which is indicated in the map in Schedule III.

“Lease Agreement” means the lease agreement provided by the State Govt pursuant to which State Govt shall lease the Site to the Concessionaire, the draft of which is provided as Schedule [●] to the Project Implementation Agreement.

“Lenders” means the Persons that provide the financing for the Projects pursuant to Financing Agreements.

“Manual of Municipal Solid Waste Management” means the Manual prepared and published by CPHEEO, Ministry of Urban Development in 2000, which gives elaborate guidelines on planning, implementation and operation and maintenance of MSW facilities with a view to fulfil the requisite obligations of MSW Rules – 2000

“MC” means the Municipal Corporation / municipality.

“MC 1” means the [] Municipal Corporation / municipality.

“MC 2” means the [] Municipal Corporation / municipality.

“MSW” or **“Municipal Solid Waste”** includes commercial and residential wastes generated in municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes.

“MSW Supply Agreement” means the agreement signed between the Participating ULBs and the Concessionaire whereby each Participating ULB agrees to collect and transport MSW from their respective jurisdiction to their respective Transfer Stations / pre-determined transfer points at their own cost, and the Concessionaire agrees to transport the MSW thus provided by the Participating ULBs to the Site for processing and disposal.

“MSW Rules” means The Municipal Solid Wastes (Management and Handling) Rules, 2000 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, for the time being in force.

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

“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.

“Milestones” means the milestones for construction as provided by State Govt of this Concession Agreement and it shall form a part of the Standards and Specifications that are required to be strictly adhered to by the Concessionaire for the purpose of the implementation of the Project.

“Minimum MSW Quantity” means [●] metric tons ([] MT) of MSW per day, (with a permitted variation level of plus-minus ten percent), which is the minimum quantity of MSW that each Participating ULB is required to deliver to the Concessionaire at its respective Transfer Station, in accordance with the MSW Supply Agreement.

“Operating Conditions” means, in relation to a Regional MSW Facility, the minimum conditions that are required in order to ensure the due performance of the relevant Regional MSW Facility.

“Operations Date” means the date notified by Concessionaire as the date on which the Regional MSW Facility is ready to commence commercial operations after successfully completing the Construction Period.

“Operations Period” means [●] years from the Operations Date till the end of the Term or any other such period as extended by State Govt in accordance with the terms and conditions of this Agreement.

“Organic Waste” means such type of waste that can be degraded by micro-organisms, but shall not include Excluded Wastes.

“Partial Readiness Certificate” is the certificate issued by the Project Engineer under clause 8.4 (b) of the Concession Agreement.

“Participating ULBs” means the MC1 and the MC2 which are party to the PIA, and include any other urban local body which may at a later date become party to the PIA by signing the Participation Deed.

“Participation Deed” means the deed of adherence provided in Schedule [●] of the PIA which shall be executed by those ULBs, apart from MC1 and MC2, which may be permitted to participate in the Project by the State Govt in the future.

“Performance Guarantee” means an irrevocable and unconditional bank guarantee by a nationalized/scheduled bank, payable at [●] in the name of [●]; as a security for performance of the obligation of the Concessionaire to implement the Project subject to Clause 2.4 of this Concession Agreement.

“Person” means any individual, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

“Preliminary Notice” means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“Products” means any product that is produced or obtained after the processing or disposal of MSW under the Project, including but not limited to Residual Inert Matter.

“Progress Certificate” means the certificate issued by the Project Engineer under Clause 8.3 (c) of this Concession Agreement.

“Project” means the project for enabling the processing of MSW at [●] and for that purpose to develop, establish, finance, design, construct, operate and maintain the Regional MSW Facility at the Site under and in accordance with the terms and provisions of this Agreement.

“Project Engineer” shall mean a reputed Person appointed by the PMC in accordance with Clause 6 in accordance with the PIA and for the purposes specified in the PIA.

“Project Implementation Agreement” or “PIA” means the agreement signed between the Government of [S], MC1, MC2, and the Concessionaire which provides the governing framework for implementation of a regional solid waste management and landfill project.

“Project Monitoring Committee” or “PMC” means the committee established by the State Govt as described in Clause 6.

“Readiness Certificate” is the certificate issued by the Project Engineer under clause 8.4 (e) of the Concession Agreement.

“Receipt Point” means the place within the Site, specified in writing by the Concessionaire and marked on a layout plan by the Concessionaire on or before the Operations Date, at which the Concessionaire shall bring the MSW received from Transfer Stations and shall construct a Weighbridge for measuring the MSW received in accordance with the terms of this Agreement.

“Refuse Derived Fuel” (RDF) means a process whereby pellets are prepared, which are small cubes or cylindrical pieces made out of solid wastes, meant for use as fuel.

“Regional MSW Facility” means the integrated MSW management, processing and disposal facility including a (i) the Site, (ii) the individual processing facilities (compost, RDF...etc) at the Site, (iii) Receipt Point, (iv) Weighbridge at the Receipt Point, and (iii) the Landfill.

“Residual Inert Matter” means the waste matter obtained after processing of the MSW by Regional MSW Facility.

“Rejected Waste” means such components of a consignment of MSW delivered by the Participating ULBs that are refused to be accepted by Concessionaire, either at the time of delivery or at any time thereafter, upon inspection of the MSW delivered or being delivered, as the case may be, on the ground that they are either: (a) Dead Remains, or (b) C&D Debris and Silt Waste, or (c) are of a composition that would be detrimental to the Operating Conditions or cause damage or adversely impact the efficient operation or maintenance of the Regional MSW Facility, or (d) they have excessive moisture, or (e) they are not in accordance with the composition of MSW as defined in this Agreement or (f) they are of a quantity that is below the Minimum MSW Quantity or (g) they are part of a consignment of MSW that is sought to be delivered by a Participating ULB when it has been notified that the Regional MSW Facility is undergoing repair or maintenance. Rejected Waste may include but are not limited to Excluded Wastes that may form part of a consignment of MSW.

“Site” means the land admeasuring [●] acres located at [●] (more particularly described in Schedule II hereunder and shown delineated by red colour boundary line on the Site plan annexed hereto and marked as Schedule III).

“Solid Waste” means wastes generated from commercial, agricultural, industrial and domestic activities within the jurisdiction of respective Participating ULBs that are in either solid or semi-solid form but shall not include the Excluded Wastes.

“Standards and Specifications” means the standards, specifications, terms and conditions which must be strictly adhered to by the Concessionaire in relation to the implementation of the Project and shall include the following: (i) Construction Conditions; (ii) Operating Conditions; (iii) project plan; (iv) Milestones and (v) any other condition that may be specified by State Govt necessary for the effective implementation of the Project; and such Standards and Specifications shall be provided in detail in Schedule I of this Concession Agreement.

“Testing Period” means a maximum period of [●] months within which any performance tests, trial runs etc. shall be conducted at the Regional MSW Facility so as to ensure that the Project is fit and ready to be used for the treatment and disposal of MSW in accordance with the terms and conditions as provided in the Concession Agreement.

“Technology” means the relevant technology for the disposal of MSW that the Concessionaire may, at its discretion, deem fit to use in the Regional MSW Facility from time to time.

“Term” shall have the meaning as specified in Clause 2.6 of this Agreement.

“Termination” means the early termination of this Agreement pursuant to Termination Notice given by either Party to the other Party or otherwise in accordance with the provisions of this Agreement but shall not, unless otherwise requires, include expiry of this Agreement due to the expiry of its Term.

“Termination Notice” means the termination notice given pursuant to Clause 16.2(c).

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Payment” means the payments payable pursuant to Clause 16.2(f).

“Tipping Fee” means the amount payable by the Participating ULB to the Concessionaire in consideration for the performance of services under the PIA.

“Transfer Stations” means the place specified in the MSW Supply Agreement by each Participating ULBs at which the respective Participating ULB shall be required to deliver MSW, and from where the Concessionaire is required to collect the MSW and transport it to the Site.

“Vacant Possession” means delivery to the Concessionaire, of possession of the land constituting the Site free from all Encumbrances and the grant of all easementary rights and all other rights appurtenant thereto.

“Weighbridge” means the electronic weighbridge constructed by the Concessionaire and capable of performing the operations specified in Clause 9.3.

1.3 Interpretation

- (a) The words, phrases and expressions defined hereinabove in Clause 1.2 or defined elsewhere by description in this Concession Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Clause 1.2 or in this Concession Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- (b) all words in singular shall be deemed to connote their respective plurals and vice-versa, unless the context suggests otherwise;
- (c) the words “include” and “including” are to be construed without limitation;
- (d) the headings of the Clauses in this Concession Agreement are merely for purposes of convenience and shall have no bearing on the interpretation of this Agreement;

- (e) the Schedules and Annexures to this Concession Agreement form an integral part of this Concession Agreement and shall be interpreted accordingly.

2. THE CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, State Govt hereby irrevocably grants to the Concessionaire and the Concessionaire hereby accepts exclusive right and authority, during the Term, to process MSW upto the Maximum Project Capacity and for that purpose develop, establish, finance, design, construct, operate and maintain the Regional MSW Facility at the Site, in addition to the other rights granted under this Agreement:

- (a) to develop, establish, finance, design, construct, operate and maintain the Regional MSW Facility at the Site, and transfer it back to the State Govt at the end of the Term of this Agreement;
- (b) to receive at the Transfer Stations, during each day of the Operations Period, MSW transported and supplied by each Participating ULB from their respective jurisdiction;
- (c) to accept and inspect the MSW delivered by Participating ULBs at the Receipt Point and identify Rejected Waste, in such manner as it deems fit, and refuse to accept the Rejected Waste;
- (d) to construct a Weighbridge at the Receipt Point and use it to weigh the quantity of the MSW received from each Participating ULB on a daily basis in accordance with the terms of this Agreement;
- (e) to use suitable technology for segregating the MSW at the Site and processing the segregated components of the MSW as per the Standards and Specifications of the Project as specified in Schedule I to this Concession Agreement;
- (f) to transport and dispose the Residual Inert Matter to the Landfill Site, without any additional approval, cost or charge;
- (g) to receive all the fiscal incentives and benefits accruing in respect of or on account of the Project;
- (h) to transfer the Regional MSW Facility to the State Govt. at the end of the Term.

2.2 Rights Associated with the Grant of Concession

Subject to the provisions of the PIA and without prejudice to the generality of the foregoing, the Concession hereby granted to the Concessionaire by the State Govt shall include without being limited to, and shall entitle the Concessionaire to enjoy the following rights, privileges

and benefits in accordance with the provisions of this Concession Agreement and Applicable Laws:

- (a) to develop, establish, finance, design, construct, operate and maintain the Regional MSW Facility at the Site either itself or through such Person as may be selected by it;
- (b) upon commissioning of the Regional MSW Facility, to manage, operate and maintain the same either itself or through such Person as may be selected by it;
- (c) to transfer the Regional MSW Facility to State Govt at the end of the Term or on Termination, in accordance with the provisions of this Concession Agreement ;
- (d) to borrow or raise money or funding required for the due implementation of the Project and create a mortgage, charge or lien or encumbrance on the whole or part of the Regional MSW Facility;
- (e) to use, appropriate, process MSW delivered by Participating ULBs to the Concessionaire and dispose the Residual Inert Matter;
- (f) to store, use, appropriate, market and sell or dispose all the Products obtained after the processing and treatment of the MSW.
- (g) to obtain the utilities required for enabling the construction of the Regional MSW Facility, without any additional cost or charges, other than the applicable user charges for the utilities
- (h) exclusively hold, possess, control the Site, in accordance with the terms of the Lease Agreement, for the purposes of the due implementation of this Project , in accordance with the terms of this Concession Agreement;

2.3 Use of Suitable Technology

- (i) The Concessionaire shall use the technology approved by State Govt as a part of the project plan for the Regional MSW Facility.
- (ii) Without prejudice to the generality of the foregoing, the Concessionaire shall have the right to develop the Regional MSW Facility using such technology that it considers suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Concession Agreement. It is acknowledged that it is the intention of the Concessionaire to use the Technology associated with the concept of an integrated waste processing plant (so as to minimise the quantity of waste needing to be land-filled) and that the Concessionaire shall have the right to modify, adapt, upgrade or change the Technology, from time to time, based on actual operations of the Regional MSW Facility and the requirements of the Project.

2.4 Performance Guarantee

The Concessionaire shall submit an irrevocable and unconditional bank guarantee of Rs. [●] as a Performance Guarantee within [●] months from the date of the execution of the PIA which shall be valid till the expiry of the Construction Period for the Regional MSW Facility.

2.5 Sale and Marketing of Products from Processing MSW

State Govt hereby confirms that the Concessionaire shall be free to sell or otherwise dispose of any Products derived or produced from the Regional MSW Facility as a consequence of undertaking the processing of the MSW at the Regional MSW Facility, without any interference or requirement of any additional reporting, clearance or approval in this regard from State Govt. The Concessionaire shall have the right to sell or otherwise dispose such Products, at such price and to such persons and using such marketing and selling arrangements as it may deem appropriate.

2.6 Term of Concession

This Concession Agreement shall be co-terminus with the Term of the PIA, and shall cease to be valid upon termination of the PIA.

2.7 Financial Closing

- (i) The Concessionaire shall ensure that its obligations in relation to obtaining required finances (whether in the form of debt or equity) for the purpose of implementation of the Project are fulfilled within a maximum period of [three (3)] months from the signing and execution of the PIA (“**Financial Closing**”).
- (ii) If the Financial Closing is not achieved within the stipulated time period, the State Govt may in its discretion either (a) Terminate this Agreement, or (b) extend the time period for achieving Financial Closing for a period as it deems fit. Provided, however, that the Term shall not be extended proportionately due to the delay on part of the Concessionaire in achieving the Financial Closing.
- (iii) State Govt confirms that it will cooperate with the Concessionaire in enabling the Financial Closing of the Project including entering into any substitution agreement that may be required by the Lenders. Provided, however, that the title to the Site and/or the Regional MSW Facility shall always remain vested with State Govt.

2.8 Renewal of Concession

State Govt may agree to renew or extend the Concession after the expiry of the Term, for another period of [●] years or such other period as may be mutually agreed to and on such terms and conditions as mutually agreed upon.

3. CONDITIONS PRECEDENT

3.1 State Govt.'s Conditions Precedent

This Concession Agreement and the Concession granted herein by State Govt to the Concessionaire is valid and binding from the date of execution of this Agreement *provided however*, the obligations of the Concessionaire under this Agreement would become effective and binding, only upon the satisfaction of the following conditions precedent:

- (a) The State Govt shall ensure that each Participating ULB should sign the MSW Supply Agreement within six (6) months of the date of execution of the PIA;
- (b) State Govt shall at its own cost and expense, vest the Concessionaire with the complete and lawful right, and Vacant Possession of the Site, in accordance with the provisions of this Agreement, before the expiry of six (6) months from the date of execution of the PIA;
- (c) State Govt shall provide security over grant funds as provided in Clause 11.2 of this Agreement; and
- (d) State Govt shall ensure that the Participating ULBs have procured all Applicable Approvals required to be procured by them for enabling the commencement and implementation of the Project.

3.2 Concessionaire's Conditions Precedent

The obligations of State Govt under this Agreement would become effective and binding, only upon the satisfaction of the following conditions precedent by the Concessionaire:

- (a) The Concessionaire shall obtain approval for the project plan as per the Standards and Specifications within six (6) months of signing of this Concession Agreement from the Project Management Committee ("**PMC**").
- (b) The Concessionaire shall provide Performance Guarantee to State Govt within a period of [●] months from the date of execution of the PIA.

- (c) The Concessionaire shall also obtain all Applicable Approvals required to enable the commencement of the Project and the commencement of the construction of the Regional MSW Facility.

3.3 Non-Compliance with Conditions Precedent

- (a) If State Govt does not fulfil the preconditions specified in Clause 3.1, then the Term of this Concession Agreement shall be extended by the same number of days as are taken by State Govt to fulfil the preconditions specified in Clause 3.1, and the Concessionaire shall not be liable for the delay in implementation of the Project, and the consequent delay in achievement of the Operations Date,
- (b) If the Concessionaire does not fulfil the preconditions specified in Clause 3.2 then State Govt shall have the option of either (i) extending the time period for satisfaction of the conditions precedent by the Concessionaire by another [●] months; or (ii) terminating this Concession Agreement. If the State Govt in its sole discretion decides to extend the time period for satisfaction of the condition precedent, the Concessionaire shall have no right to any payments of Tipping Fee for the days for which the extension has been granted.

Provided, *however*, that in the event that the Concessionaire is unable to fulfil the condition precedents within the extended time period, State Govt may invoke the Performance Guarantee and Terminate the Agreement.

- (c) The Parties may decide to waive the penalties imposed under Clause 3.3(b) above and extend the period of compliance for fulfilment of the condition precedent by mutual consent.

4. THE SITE

4.1 Vesting of Site with Concessionaire

- (a) State Govt hereby agrees that the land constituting the Site shall be vested with the Concessionaire under the Lease Agreement, for the purposes of the development of the Regional MSW Facility for enabling the Participating ULBs to discharge their functions of management, treatment, processing and disposal of MSW. State Govt shall vest the Site with the Concessionaire in accordance with this clause no later than six (6) months from the date of execution of this Concession Agreement.
- (b) State Govt shall lease the Site to the Concessionaire at a nominal lease rental of Rs. [●] per square meter per annum for the Term and the Concessionaire shall execute a separate Lease Agreement with State Govt together with the execution of this Agreement. The lease rental can be paid in advance for such period of time as the Concessionaire may deem fit.

The lease rental shall remain fixed for the entire Term and shall not be subject to any escalation. The Concessionaire shall have the full right to regulate the entry into and use of the Site.

4.2 Use of Site

The Site shall only be used for the purposes of development and implementation of a Regional MSW Facility throughout the Term. The Concessionaire shall not, without the prior written approval of State Govt, use the Site for any purpose other than for the purpose of designing, developing, financing, constructing, operating and maintaining the Regional MSW Facility and undertaking other activities as may be required to implement the Project pursuant to this Agreement.

4.3 Vesting of Site Co-Terminus with Concession Agreement

State Govt hereby assures and represents to the Concessionaire that the vesting of the Site with the Concessionaire shall be irrevocable for the Term and cannot be terminated earlier than the expiry or termination of this Agreement and shall be co-terminus with the expiry or termination of the Term. Provided however, that State Govt shall have the title to and ownership of the Site at all times during the Term.

5. PARTICIPATING ULB

The Concessionaire agrees and acknowledges that MC1 and MC2 currently constitute the Participating ULBs that have signed the PIA with the State Govt and have undertaken to supply MSW for processing and disposal to the Project; however, additional ULBs in the State of [S] may, with prior approval of the State Govt, sign the Participation Deed and the MSW Supply Agreement and subsequently supply their MSW for processing and disposal to the Project. Disposal of MSW supplied by these additional ULBs shall be in accordance with the terms of this Concession Agreement and such additional ULBs shall be bound to the terms of this Concession Agreement.

6. PROJECT MONITORING COMMITTEE

The State Govt shall constitute a Project Monitoring Committee (“**PMC**”) in accordance with the provisions of the PIA. Such PMC when constituted shall appoint a Project Engineer in accordance with the provisions of the PIA, and the costs and expenses in relation to the functioning of the Project Engineer shall be borne by the Participating ULBs in equal proportions.

7. COLLECTION OF MSW

7.1 In accordance with the obligations of the Participating ULBs under the PIA and the MSW Supply Agreement, each Participating ULB shall collect and transport MSW at their own cost and expense till their respective Transfer Stations, and thereafter the Concessionaire shall have the responsibility to transport MSW from each Transfer Station to the Site.

Provided, *however*, a Participating ULB shall be under no obligation to segregate waste (other than if and as agreed to between the parties) and shall collect the MSW generated within their jurisdiction in a manner as it deem fit.

7.2 The Participating ULBs have the obligation to ensure that the quantity of Excluded Waste in the MSW supplied by them does not exceed 10% of the quantity of MSW supplied. In the event of failure by any Participating ULB to meet this obligation, the Concessionaire shall have the rights specified in the MSW Supply Agreement.

8. CONSTRUCTION OF THE REGIONAL MSW FACILITY

8.1 Commencement of Construction

The Concessionaire shall carry out or cause to be carried out the construction work on the Site from the date of issuance of the Construction Commencement Certificate by State Govt in accordance with the Milestones.

8.2 Scope of Construction Work

(a) The Concessionaire shall construct the Regional MSW Facility in accordance with the Standards and Specifications as provided under the Concession Agreement and the project plan which is approved by State Govt. and shall include the construction of:

- (i) the Regional MSW processing facility (such as Compost plant, RDF, Waste to Energy...etc) including the Scientific Landfill; and
- (ii) the Transfer Station for each Participating ULB as per the specifications in the MSW Supply Agreement with each Participating ULB; and
- (iii) Installation of a weighing/metering device such as the Weighbridge at the Transfer Station and the Receipt Point at the Site; and
- (iv) any other allied work (including civil work) as required as per the detailed scope of work or as may be necessary in relation to the implementation of the Project.

(b) The Concessionaire shall ensure that the following activities are conducted within the scope of construction of the Regional MSW Facility at all times during the Term:

- (i) the construction of the Regional MSW Facility is done in accordance with the Standards and Specifications as provided in the Concession Agreement;

- (ii) the Regional MSW Facility is tested during the Testing Period so as to ensure that it is constructed in accordance with the Standards and Specifications and is ready to be used and operated;
- (iii) there are regular inspections and maintenance checks conducted in relation to the Regional MSW Facility;
- (iv) There are periodic reports submitted to the Project Engineer in relation to the construction of the Regional MSW Facility in accordance with this Concession Agreement;
- (v) there is an annual report (including both technical and financial reports) submitted to the State Govt. in relation to the construction of the Regional MSW Facility;
- (vi) there are accurate and updated records maintained in relation to construction activities done under this Concession Agreement;
- (vii) all Applicable Approvals and insurance covers are maintained by the Concessionaire and renewed as required.

8.3 Progress Report during the Construction Period

- (a) During the Construction Period, the Concessionaire shall, on or before the 15th day of every month, prepare and submit to the Project Engineer a monthly progress report, for the previous month, in a form as provided by State Govt. Such report shall describe (i) the progress of the design, construction and development of the Regional MSW Facility; (ii) the status of the construction as per the Milestones; and (iii) projected Operations Date as per the status of construction achieved till date of the progress report. The Concessionaire shall also submit to the Project Engineer the relevant designs and drawings and other technical information as may be reasonably necessary to carry out a technical appraisal of the Project.
- (b) During the Construction Period, the Project Engineer shall, at all reasonable times and upon reasonable notice, have access to the Regional MSW Facility for the purpose of inspecting the progress of work during the Construction Period.
- (c) Based on the review of the progress report submitted by the Concessionaire, the Project Engineer shall issue a Progress Certificate.

8.4 Testing Period

- (a) When the construction of the Regional MSW Facility has been completed, the Concessionaire shall so notify the Project Engineer in writing. Thereafter, the Project Engineer shall, within seven (7) days of the receipt of such notice, cause the Regional MSW Facility to be inspected.

- (b) Once the Project Engineer has inspected the Regional MSW Facility, the Project Engineer shall issue a Partial Readiness Certificate and the Testing Period of the Regional MSW Facility shall commence from the date of issuance of Partial Readiness Certificate.
- (c) During the Testing Period, which is a period of maximum of [three] months, the Project Engineer shall inspect Regional MSW Facility in presence of the representatives of the Concessionaire so as to ascertain any material defects, imperfections, shortcomings or any other faults in the operation of the Regional MSW Facility and shall direct the Concessionaire to remedy such defects. During this Testing Period, the Project Engineer may also supervise any trial runs and/or performance tests to be conducted under his supervision.
- (d) The Concessionaire shall rectify the defects and on the completion of all the works in relation to the correction of defects stipulated by the Project Engineer in sub-clause (b) above, the Concessionaire shall notify the Project Engineer. The Project Engineer shall, within seven (7) days of receipt of such notice, inspect the Regional MSW Facility.
- (e) The Project Engineer on being satisfied that (i) all the works stipulated in sub-clause (c) above have been completed; (ii) there are no defects which need remedied; and (iii) the Regional MSW Facility can be used and operated for the treatment and disposal of MSW as per the Standards and Specifications; then the Project Engineer shall issue a Readiness Certificate.
- (f) If any latent defect or other defect not in the nature of a defect specified in subsection (c) above appears in the Project during the Term, the Concessionaire shall undertake to make any repairs or take any remedial measures that are reasonably required to remedy any such defect. Such repairs or remedial measures shall be taken up as part of the Operations and Maintenance of the Project under this Agreement.

8.5 Completion Assurance

The Concessionaire hereby undertakes to cause the completion of the construction and commissioning of the Regional MSW Facility in accordance with the terms hereof; provided that the Concessionaire shall not be in breach of this Clause 8.5 if any non-fulfillment or delay in fulfillment of its obligations herein are caused by an occurrence of an event of Force Majeure; or a State Govt. Event of Default.

8.6 Obligation of Concessionaire from Operations Date

The Concessionaire agrees and acknowledges that it shall have the obligation to process MSW in accordance with the terms of this Concession Agreement from the Operations Date.

9. OPERATIONS AND MAINTENANCE OF THE REGIONAL MSW FACILITY

9.1 Scope of Operations and Maintenance

- (a) The Concessionaire shall ensure that the Transfer Stations and the Regional MSW Facility is in continuous use and operation from the Operations Date till the end of the Term in accordance with the Standards and Specifications as provided in this Concession Agreement.
- (b) The Concessionaire shall ensure that the following activities are conducted within the scope of operations and maintenance of the Regional MSW Facility at all times during the Term:
 - (i) the Concessionaire shall collect the MSW from the Transfer Stations and transport it to the Site at its own cost, and acknowledges that Participating ULBs are under no obligation to segregate or weigh the MSW at the Transfer Stations;
 - (ii) the Concessionaire shall ensure that the MSW obtained from each Transfer Station is weighed at the Weighbridge at the Site;
 - (iii) the Regional MSW Facility is in continuous use and operation;
 - (iv) the segregation and processing of MSW is undertaken by the Concessionaire at the Regional MSW Facility in accordance with the provisions of the Applicable Laws;
 - (v) there are regular inspections and maintenance checks conducted in relation to the Regional MSW Facility;
 - (vi) there are periodical reports submitted to the Project Engineer in relation to the operations and maintenance of the Regional MSW Facility;
 - (vii) there is an annual report submitted to the Project Engineer and the State Govt in relation to the operations and maintenance of the Regional MSW Facility;
 - (viii) there are accurate and updated records maintained in relation to the waste received and the Products of the Regional MSW Facility;
 - (ix) all Applicable Approvals and insurance covers are maintained and renewed as required;
 - (x) any other activity that may be specified by State Govt in relation to the implementation of the Project.

9.2 Delays in Occurrence of Operations Date

- (a) In the event that there is delay in the occurrence of the Operations Date due to any act or omission on the part of State Govt and/or Force Majeure, the Concessionaire shall have the right to extend the Operations Date by the same number of days by which the delay was caused.

- (b) In the event that there is a delay in the occurrence of the Operations Date due to any act or omission on the part of the Concessionaire, State Govt may (i) terminate the Concession Agreement in accordance with the PIA; or (ii) extend the Operations Date for a period as it deems fit.

9.3 Construction of Weighbridge and Measurement of MSW delivered

- (a) The Concessionaire shall cause a Weighbridge to be constructed at the Receipt Point which should have video surveillance, a server room, an electronic display unit and suitable technology, with duly calibrated weighbridge having the maximum possible accuracy, to carry out the following operations:
 - (i) weigh the MSW delivery trucks, take the dimensions of the delivery trucks, determine the weight of the consignment and determine the density of the consignment; and
 - (ii) generate and maintain an electronic data base for each delivery and provide a print out of the specifications and details for each consignment, as stated in sub-clause (i) above (such print out is hereinafter referred to as “**Daily Weight Sheet**”).
- (b) The Weighbridge shall be operated and maintained by the Concessionaire, at no additional cost to the State Govt or the Participating ULBs.
- (c) Each consignment of MSW shall be first screened and weighed at the Weighbridge.
- (d) The Weighbridge shall be monitored and inspected regularly to ensure its due calibration and accuracy and any errors shall be rectified immediately.
- (e) The Daily Weight Sheet shall be final and binding on the Parties.
- (f) In the event the Weighbridge is not operational, the weight of the MSW delivered at the Receipt Point during such time shall be measured by an appropriate alternate arrangement established by the Concessionaire and agreed to by the Participating ULBs under the MSW Supply Agreement.

The concessionaire agrees to construct processing facility such as Compost Plant including vermi-compost, RDF, Waste to Energy etc, so as to have suitable treatment option for treatment of municipal solid wastes.

9.4 The Landfill Site

- (a) The Concessionaire agrees that it shall dispose the Residual Inert Matter and the Rejected Waste at the Landfill Site.
- (b) The Concessionaire shall be responsible for the due operation and maintenance of the Landfill Site and for ensuring its availability and suitability for accepting the Residual Inert

Matter and Rejected Wastes. The Concessionaire shall cause the Landfill Site to be operated and maintained at its own cost and expense (including payment of all levies, charges and taxes whatever) and as per the requirements and conditions prescribed under Applicable Law.

- (c) The Concessionaire shall bear the cost of transportation and off-loading of the Residual Inert Matter (but not of the Rejected Waste) from the Site to the agreed point at the Landfill Site, provided however, that the transportation and offloading by the Concessionaire of the Rejected Waste shall be at the cost and expense of the Participating ULBs.
- (d) The Concessionaire shall ensure that the Landfill Site is utilized in such a manner that it is capable of being used for the Term of this Concession Agreement. In the event that the Landfill Site is closed for reasons attributable to operation of law and/or act of the state agencies/State Govt./Participating ULB then it shall be the obligation of State Govt. to provide an alternative site at a mutually agreeable location free of cost to the Concessionaire. If State Govt. fails to provide the said alternative Landfill Site, the Participating ULBs shall pay to the Concessionaire all transport and handling costs incurred by the Concessionaire in carrying and disposing the Residual Inert Matter and the Rejected Waste
- (e) The Concessionaire shall be responsible for the operational and post-closure care of the Landfill Site, including laying down a final cover on the Landfill Site as required by the MSW Rules.
- (f) After the expiry of the Term of this Concession Agreement, the Concessionaire shall hand back peaceful possession of the Landfill Site to the State Govt free of cost and in good condition.
- (g) State Govt hereby agrees that the Regional MSW Facility is undertaking the management, processing and disposal of MSW and is being specifically authorized to be constructed, developed, operated and maintained by State Govt for the purposes of enabling it to handle and process more MSW generated within jurisdiction of the Participating ULBs. State Govt acknowledges that the availability of the Landfill Site for the purposes of disposal of Rejected Waste and Residual Inert Matter are critical for the continued operations of the Regional MSW Facility in a viable manner. State Govt hereby agrees to indemnify and hold the Concessionaire harmless against any claims, liability, costs, expenses, damages and losses that the Concessionaire may incur as a result of (i) non-availability of adequate Landfill Site for the disposal of Rejected Wastes and Residual Inert Matter or (ii) any claim, litigation, action instituted by any third party in relation to the Landfill Site.

10. REJECTED WASTE

The Concessionaire shall, at the time from the measurement of a consignment of MSW till before the MSW is utilized in the Regional MSW Facility, be entitled to inspect the delivered MSW to ensure that no MSW that falls under the category of Rejected Waste is processed by

the Regional MSW Facility. If waste determined to be Rejected Waste is identified, then the rights of the Concessionaire specified with regard to Rejected Waste in the MSW Supply Agreement shall become effective.

11. PAYMENTS

- 11.1 Each Participating ULB shall make the payment of Tipping Fee and any other amounts payable by it in accordance with the terms of the PIA.
- 11.2 If a Participating ULB fails to make payments due under the MSW Supply Agreement to the Concessionaire, the State Govt undertakes to deduct the amount owed to the Concessionaire from the grant funds earmarked for that particular Participating ULB and pay such amount directly to the Concessionaire within thirty (30) days of default by a Participating ULB.

12. TEMPORARY SHUTDOWN AND CLOSURE

It is hereby agreed that temporary shutdown of the Regional MSW Facility shall be dealt with in accordance with the provisions of the PIA.

13. OBLIGATIONS OF CONCESSIONAIRE

In addition to and without prejudice to the other obligations of Concessionaire specified in other provisions of this Concession Agreement, Concessionaire shall also discharge the following additional obligations:

- 13.1 The Concessionaire shall design, construct, finance, operate, maintain, manage and transfer the Project as per the terms of this Concession Agreement;
- 13.2 The Concessionaire shall ensure that the Operations Date for the Project is achieved within a period of [●] after execution of this Concession Agreement;
- 13.3 The Concessionaire shall comply with its obligations under the MSW Supply Agreement to transport the MSW from the Transfer Stations to the Site;
- 13.4 The Concessionaire shall use suitable technology and Good Industry Practice to segregate and process the MSW received by it from the Participating ULBs in accordance with the terms of this Concession Agreement;

13.5 Concessionaire's Undertakings

- (a) the Regional MSW Facility shall be designed, constructed and developed in accordance with the Standards and Specifications as provided in the Concession Agreement;

- (b) the construction of the Regional MSW Facility shall be completed within the stipulated Construction Period;
- (c) the Regional MSW Facility shall be tested and evaluated during the Testing Period so as to ensure that the Regional MSW Facility is in proper condition to be used and operated for the purposes of the implementation of the Project;
- (d) the Regional MSW Facility shall be used, operated and maintained such that the Concessionaire shall always ensure it has the due authorization and proper legal right to use all the technology it uses for the operation of the Regional MSW Facility; and
- (e) that the Regional MSW Facility shall be operated and maintained in accordance with this Concession Agreement. The State Govt hereby agrees that Concessionaire may carry out the operation and maintenance of the Regional MSW Facility (or any part thereof) by itself or through any suitable Person it may appoint *provided however*, Concessionaire shall remain completely responsible to ensure that the Regional MSW Facility complies with this Agreement.

13.6 Adequate Organization

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

13.7 Marketing/Sale/Disposal of Products

Concessionaire shall be free to sell or otherwise dispose of any Products at the Regional MSW Facility, without any interference or requirement of any additional reporting, clearance or approval in this regard from State Govt.

13.8 Applicable Approvals

Concessionaire shall apply and procure all Applicable Approvals in respect of the construction, commissioning and operation of the Regional MSW Facility *provided however*, any Applicable Approvals that is to be provided by the State Govt shall be granted by State Govt upon the application for the same being made in accordance with applicable law by Concessionaire *provided further that* in the event State Govt fails to perform its obligation of providing support to Concessionaire for obtaining the Applicable Approvals, then the failure to obtain the relevant Applicable Approvals by Concessionaire shall not be an Concessionaire's Event of Default under this Concession Agreement.

13.9 Compliance with Applicable Laws and Environment Laws

Concessionaire shall construct, operate and maintain the Regional MSW Facility in accordance with Applicable Laws, including but not limited to all the applicable laws relating to protection and safeguard of the environment and the laws for preventing and monitoring

pollution of environment; and obtain and maintain the Applicable Approvals required for the same.

13.10 Repair and Maintenance Work of the Regional MSW Facility

Subject to the provisions of the MSW Supply Agreement, the Concessionaire shall have the right to suspend receiving and processing of MSW, if required, for undertaking maintenance or repair of any part of the Regional MSW Facility.

13.11 Appointment of Nominee Directors

Concessionaire agrees that it shall appoint two representatives selected by the Participating ULBs and one representative selected by the State Govt as nominee directors to its board of directors.

14. OBLIGATIONS OF STATE GOVT

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

14.1 Applicable Approvals

- (a) State Govt shall, at the request of Concessionaire, facilitate Concessionaire in procuring the necessary Applicable Approvals and facilitate the co-ordination with various state and other concerned authorities and agencies, and all other assistance and facilities.
- (b) Without prejudice to the generality of Clause 14.1(a) above, State Govt shall:
 - (i) recommend and forward to the relevant authority/ministry/department, any application of Concessionaire to obtain any Applicable Approval; and
 - (ii) co-ordinate the grant of the Applicable Approval with the relevant authority/ministry/department and assist Concessionaire in getting necessary clearances from the relevant authorities / ministry/departments.

14.2 Benefits to Project to Accrue Directly to Concessionaire

State Govt hereby agrees that if there is any financial or tax benefits or otherwise in respect or on account of the Project (including but not limited to viability gap funding, grants, tax benefits, etc.), they shall accrue directly and exclusively to Concessionaire alone and not to State Govt and State Govt hereby undertakes that it shall not claim or file any application claiming such benefits to the prejudice of Concessionaire.

The responsibility for arrangement of revenues from carbon credits lies with the concessionaire. However, the revenue sharing among the state govt. participating ULBs and the concessionaire will be in the ratio of [%], [%] and [%] respectively.

All expenses, monitoring and verification related to project registration with the UNFCCC will be the sole responsibility of the concessionaire.

14.3 Payment in case of default by Participating ULBs

In the event that any Participating ULB fails to make payments to the Concessionaire in accordance with the terms of this Concession Agreement, the State Govt shall deduct such amount from the grants earmarked for that particular Participating ULB and pay the same to the Concessionaire as specified in Clause 11.2.

15. FORCE MAJEURE

Notwithstanding anything contained in this Agreement, if there is an occurrence of a Force Majeure Event, the same shall be addressed in accordance with the provisions of the PIA.

16. TERMINATION

This Agreement can be terminated only in accordance with the provisions of the PIA.

17. LENDERS' STEP IN RIGHTS

The Lenders shall have and shall exercise their step in rights in accordance with the provisions of the PIA.

18. INSURANCE

The Concessionaire shall at its cost and expense, obtain and maintain, during the Term, all such insurances (in addition to those mandated by Applicable Laws or required by the Lenders) as may be required in accordance with the provisions of the PIA.

19. TRANSFER AND HANDBACK OF REGIONAL MSW FACILITY

Upon the completion and expiry of the Term of this Agreement or early Termination of this Agreement, the Concessionaire shall transfer the Regional MSW Facility in accordance with the provisions of the PIA.

20. LIMITATION OF LIABILITY OF CONCESSIONAIRE

State Govt hereby agrees that it is the owner of the lands constituting the Site and further that State Govt desires the construction, operation and maintenance of the Regional MSW Facility thereon for the purposes of enabling the management, storage, processing and disposal of MSW. Consequently, State Govt hereby agrees to indemnify and hold the Concessionaire harmless against any claims, liability, costs, expenses, damages and losses that the Concessionaire may incur as a result of any claim, litigation, action instituted by any third party against the use of the Site for the purposes of the development, construction, operation and maintenance of any one or more parts of the Regional MSW Facility; or in relation to any claim, litigation or action instituted by a third party alleging any loss, damage or harm as a result of the development, construction, operation and maintenance of any part of the Regional MSW Facility or the Regional MSW Facility at the Site.

21. DISPUTE RESOLUTION

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 be resolved in accordance with the provisions of the PIA.

22. NO WAIVER OF RIGHTS AND CLAIMS

Any forbearance, toleration or delay in invoking any of the rights or claims accruing in favour of any Party under the terms of this Concession Agreement shown or made by such a Party in whose favour such rights or claims might have vested by virtue of this Concession Agreement shall neither constitute nor be construed to be a waiver of such rights or claims accruing in respect of such a Party.

23. SCHEDULES AND ANNEXURES

All schedules and annexure and other explanatory details attached to this Concession Agreement shall be deemed to be a part of this Concession Agreement.

24. REPRESENTATIONS AND WARRANTIES

The Parties hereby confirm that the representations and warranties made by each Party to the other under the PIA continue to be valid and true, and shall continue to be valid till the terminations of this Agreement.

25. MISCELLANEOUS

In addition to clause 1.1, the provisions of the following clauses from the PIA shall be applicable to this Agreement:

- (a) No Waiver of Rights and Claims;
- (b) Schedules and Annexures;
- (c) Supersession of Earlier Agreements;
- (d) Notices;
- (e) Legal Charges;
- (f) Counterparts;
- (g) Assignment;
- (h) No Partnership;
- (i) Severability;
- (j) Commercial Agreement.

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

SIGNED, SEALED AND DELIVERED BY:

FOR GOVERNMENT OF STATE OF _____

Duly authorized by the []

(Signature)

IN PRESENCE OF

(Signature)

NAME:

ADDRESS:

FOR _____ [CONCESSIONAIRE]

(Director)

(Duly authorized by the resolution of the Board of Directors passed at its meeting held on _____)

(Signature)

IN PRESENCE OF

NAME:

ADDRESS:

DRAFT

SCHEDULE I: Specification and Standards

[Construction Conditions, Operating Conditions, Milestones and project plan and any other condition]

SCHEDULE II: Description of the Site

All that piece and parcel of urban land admeasuring _____ Acres being a portion of the
Landfill Site bearing Municipal Numbers _____ situated at _____ [S]
_____ bounded as under:

On or towards the North:

On or towards the East:

On or towards the South:

On or towards the West:

SCHEDULE III: Site Plan

DRAFT